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WEB www.cblh.com

September 29, 2006

By E-Mail and First Class Mail

Ralph I. Lancaster, Jr., Esquire
Pierce Atwood
One Monument Square
Portland, ME 04101

Re: *New Jersey v. Delaware*, No. 134 Original

Dear Mr. Lancaster:

Delaware respectfully submits this response to New Jersey's letter of today regarding New Jersey's request for a modification of the case scheduling order. New Jersey casts unwarranted aspersions on Delaware in its recent production of documents, and seeks to use that production as justification for a two-month modification in the schedule for the Special Master phase of this case. In so doing, New Jersey cannot show *any* prejudice by Delaware's production of additional documents, and New Jersey has yet to complete its own document production. Indeed, just today New Jersey produced documents that were the subject of a deposition taken earlier this week by Delaware.

The parties and counsel have invested a great deal of effort creating the current deposition schedule. If it is abandoned, it will cause great disruption and hardship to witness and counsel schedules. In addition, New Jersey has maintained throughout this litigation that discovery is unnecessary; for it now to propose a two-month extension for discovery is inconsistent with its prior statements to the Court. Therefore, we respectfully request that New Jersey's request for a two-month delay be denied and that the current discovery schedule be maintained.

Addressing the document production issues, on September 26, 2006, Delaware produced additional documents to New Jersey. The production consisted of 844 documents, and was intended in part to ensure that documents already known to the parties or in their possession contain Bates stamps, to comply with Case Management Plan paragraph 7. According to the Case

Management Plan, ¶ 14, the parties are also required to supplement their discovery responses within three months of the original responses. Of the 844 documents:

- 558 documents (and pages) were photographs or maps of the Delaware River. The photographs were taken on September 15 to use at the hearing before the Special Master – they will not be used during depositions (and indeed most will not be used at all). Most of the remaining documents are recently discovered maps and other photographs of the Delaware River, which also will not be used at depositions. Only six of those photographs – which Delaware initially produced to New Jersey on August 26, 2006, have been used in depositions to date and will likely be the only maps and photographs used hereafter in depositions. The photographs were re-produced to eliminate duplicate Bates numbers.
- 65 documents are the Economic Development Authority documents that New Jersey produced initially, later claimed were no longer relevant, and refused to re-produce with unique Bates numbers;
- 5 documents are New Jersey Coastal Management Program documents that multiple New Jersey affiants discussed in their submissions, but that New Jersey nevertheless refused to produce in discovery; these 5 documents account for 2,314 of the 6,276 pages, or 37% of the total pages in this production.
- 2 documents are from the Appendix to Delaware's Supreme Court Brief and the Lodging filed in October 2005;
- 2 documents are pleadings in *Ampro Fisheries v. Yaskin* in which Rachel Horowitz, Esquire, was the counsel of record;
- 1 document is a memorandum that was cited in an affidavit submitted by New Jersey and responsive to Delaware's document requests, but neither included as an exhibit to the affidavit nor produced by New Jersey in discovery;
- The remaining 211 documents (2091 pages) are additional documents uncovered in Delaware's continuing historical research, as well as miscellaneous documents from Delaware's

and New Jersey's files relating to permitting and activities on the Delaware River. If the articles printed from Lexis, statutes, and cases are removed from the count, the total number of pages produced is 1881. A significant part of the remaining pages are documents from the Delaware Coastal Zone proceedings (477 pages, 15 documents). The remaining production is roughly equivalent to New Jersey's recent document production of the last two weeks, including documents produced by New Jersey as late as today.

As can be seen from the above, aside from the photographs and maps, few of the foregoing documents are new to New Jersey, and some were produced because New Jersey refused to locate the documents or to produce documents in its possession with Bates numbers used in the discovery phase of the case. Equally important, and as Delaware represented to New Jersey multiple times this week, almost none of the documents will be used during the depositions. To eliminate any concern of prejudice, Delaware is willing to provide New Jersey advance notice before a deposition if Delaware intends to use at the deposition any document in the recent production.

Responding to the specific points in New Jersey's letter of today, both Delaware and New Jersey continued to produce documents during the last three weeks, yet neither party requested an extension.¹ The 150 pages of documents provided to New Jersey before the recent deposition of Mr. Streets (*see* NJ Letter of today at 1) were received from Delaware emergency responders just before the deposition, and pertained solely to emergency responses within the twelve-mile circle. Delaware provided the documents to New Jersey at the deposition, New Jersey was provided time to review the documents, and questioned the witness about them without objection. Regarding alleged random sequencing, with each production, Delaware has provided New Jersey with a chart identifying the issues to which each document relates. Delaware provided the same chart with the current production. Delaware did not randomly sequence the documents as New Jersey appears to imply.

¹ Delaware's earlier document production was received by New Jersey on September 15 (Exhibit A), not on September 18 as New Jersey states in its letter. New Jersey did not ask for a two-month delay based on this production and was content to go forward with depositions on the previously agreed schedule. The September 15 document production was not unlike prior productions – a collection of historical documents and other course of performance documents, many of which came from New Jersey's files that New Jersey did not produce.

Delaware has invested a great deal of time negotiating with New Jersey the current deposition schedule, and counsel and witnesses have blocked out the agreed-upon dates and scheduled other commitments around those dates (Exhibit B). Yesterday, New Jersey, without a protective order, unilaterally declared it would not make its witness available for a deposition noticed for today, and stated that other witness depositions noticed for next week were cancelled as well. New Jersey also noticed the deposition of a Delaware witness for today, and unilaterally cancelled that deposition. It has long been our understanding, under the Federal Rules, that noticed depositions cannot be unilaterally cancelled without a protective order. Given the limited nature of Delaware's recent document production, and the lack of any prejudice to New Jersey, the disruption of the deposition schedule was unjustified.

Regarding New Jersey's production, the Special Master may recall that on September 6 in the monthly case status teleconference, New Jersey promised additional document production to Delaware, but did not provide a firm date. On September 18 and 20, New Jersey produced almost 1000 "pages" and approximately 125 documents to Delaware, including affidavits of putative New Jersey witnesses (Exhibit C).² Just this morning, New Jersey sent the enclosed letter, producing hundreds of additional pages (Exhibit D). Some of those documents relate to deposition topics covered at the deposition of a New Jersey witness on Wednesday and concern specific permits and projects discussed by that same witness in his affidavit submitted in New Jersey's initial filing of July 28, 2005. Delaware has not, however, attempted to disrupt the deposition schedule or to ask for additional time in the schedule to await a complete production from New Jersey. There is already a procedure in the Case Management Order addressing the need for supplemental depositions, which New Jersey could use as well. See Appendix E of February 8, 2006 Case Management Order No. 1, at ¶ 10.

Finally, and independent of New Jersey's complaints about the effects of the recent Delaware production on its fact discovery, we see no justification for New Jersey's request to extend the schedule for expert reports. New Jersey makes no effort to justify the nearly two-month delay in the submission of those reports on the basis of Delaware's most recent production. As explained above, the vast bulk of those documents are already within New Jersey's possession or will not even be used by Delaware in its depositions of New Jersey fact witnesses.

² New Jersey's production on September 20 was just two days before the first scheduled deposition of a Delaware witness. Delaware agreed at New Jersey's request to reschedule the deposition due to the illness of New Jersey's attorney.

Ralph I. Lancaster, Jr., Esquire
September 29, 2006
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They are thus irrelevant to any subjects on which any experts for New Jersey would reasonably opine.

Therefore, we respectfully request that the current deposition schedule stand as agreed by the parties, and that the case proceed according to the current scheduling order. We also respectfully request that noticed deposition dates which have been agreed to in advance not be changed without agreement of the parties, and that the depositions unilaterally cancelled by New Jersey be rescheduled promptly, to occur within the current fact discovery period.

Respectfully,



Collins J. Seitz, Jr.

CJS,Jr./saj
Enclosures

cc: Rachel J. Horowitz, Esquire
Barbara Conklin, Esquire
David C. Frederick, Esquire

EXHIBIT A

Kimberly A. Hill

From: TrackingUpdates@fedex.com
Sent: Friday, September 15, 2006 12:00 PM
To: Kimberly A. Hill
Subject: FedEx Shipment 791550499877 Delivered

Our records indicate that the following shipment has been delivered:

Tracking number:	791550499877
Reference:	5976*4
Ship (P/U) date:	Sep 14, 2006
Delivery date:	Sep 15, 2006 11:06 AM
Sign for by:	L.BUSSA
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Box
Number of pieces:	1
Weight:	2.0 LB

Shipper Information
Kimberly Hill
Connolly Bove Lodge & Hutz
1007 N. Orange Street
Wilmington
DE
US
19801

Recipient Information
Barbara Conklin, Esquire
State of New Jersey
25 W. Market Street
Richard J. Hughes Justice Complex
Trenton
NJ
US
08625

Special handling/Services:
Deliver Weekday

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 10:31 AM CDT on 09/15/2006.

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All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or visit us at fedex.com.

This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to fedex.com.

Thank you for your business.

Kimberly A. Hill

From: TrackingUpdates@fedex.com
Sent: Friday, September 15, 2006 11:59 AM
To: Kimberly A. Hill
Subject: FedEx Shipment 791122456391 Delivered

Our records indicate that the following shipment has been delivered:

Tracking number:	791122456391
Reference:	5976*4
Ship (P/U) date:	Sep 14, 2006
Delivery date:	Sep 15, 2006 10:54 AM
Sign for by:	D.KOBLE
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Box
Number of pieces:	1
Weight:	2.0 LB

Shipper Information
Kimberly Hill
Connolly Bove Lodge & Hutz
1007 N. Orange Street
Wilmington
DE
US
19801

Recipient Information
Rachel Horowitz, Esquire
State of New Jersey
25 W. Market Street
Richard J. Hughes Justice Complex
Trenton
NJ
US
08625

Special handling/Services:
Deliver Weekday

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 10:30 AM CDT on 09/15/2006.

To learn more about FedEx Express, please visit our website at fedex.com.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or visit us at fedex.com.

This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to fedex.com.

Thank you for your business.

9/29/2006



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Ryan Patrick Newell
TEL (302) 888-6434
FAX (302) 656-0116
EMAIL rnewell@cblh.com
REPLY TO Wilmington Office

September 14, 2006

BY OVERNIGHT DELIVERY

Rachel J. Horowitz, Esquire
Deputy Attorney General
Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 112
Trenton, N.J. 08625

**Re: State of New Jersey v. State of Delaware
No. 134, Original**

Dear Ms. Horowitz:

Enclosed please find the State of Delaware's fourth round of production, comprised of one CD. The CD contains documents with Bates numbers DE18208 – DE22715 and DUP0000737. Because some of the documents may be difficult to read when viewed on the CD we have also enclosed hard copies of these documents.

If you have any questions, please feel free to contact me.

Sincerely,



Ryan Patrick Newell

RPN/kah

Enclosures (3)

cc: Barbara Conklin, Esquire (by overnight mail, w/two enclosures)
David Frederick, Esquire (by overnight mail, w/two enclosures)
Collins J. Seitz, Jr., Esquire (by hand delivery, w/out enclosures)

EXHIBIT B



CONNOLLY BOVE LODGE & HUTZ LLP

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FAX (213) 687 0498

WEB www.cblh.com

September 15, 2006

**BY ELECTRONIC AND
FIRST CLASS MAIL**

Rachel Horowitz, Esquire
Deputy Attorney General
State of New Jersey
Richard J. Hughes Justice Complex
25 W. Market Street
P.O. Box 093
Trenton, NJ 08625-0112

**Re: *State of New Jersey v. State of Delaware*
No. 134, Original
Final Deposition Schedule & Discovery Agreements**

Dear Rachel:

We write to confirm the agreements reached during our telephone call of yesterday.

Regarding the deposition schedule, we agreed to the following individuals on the following dates:

Robert Hutchins –	September 22, 2006	in Wilmington
David Blaash –	September 22, 2006	in Wilmington
William Streets -	September 26, 2006	in Wilmington
Kevin Broderick-	September 27, 2006	in Trenton
Philip Cherry –	September 29, 2006	in Wilmington
Ruth Ehinger –	September 29, 2006	in Trenton

David Small –	October 3, 2006	in Wilmington
Richard Castagna –	October 5, 2006	in Trenton
Suzanne Dietrick –	October 5, 2006	in Trenton
Kurt Reuther –	October 5, 2006	in Wilmington
Sarah Cooksey --	October 10, 2006	in Wilmington
Steven Whitney –	October 10, 2006	in Trenton
Marin McHugh –	October 11, 2006	in Trenton

All depositions will start at 9:30 a.m. unless advance notice is provided otherwise. If New Jersey asks for and is granted an extension of the October 11, 2006 fact discovery cut-off, Delaware will determine the availability of Laura Herr¹ and William Moyer for a deposition on the same date, preferably October 16 or October 18, 2006. As we said during our call, Mr. Moyer may already be out of the country, and Delaware may not be able to confirm Mr. Moyer's availability until after he returns on September 30, 2006.

Last evening, New Jersey provided Delaware deposition dates of September 27 and October 4 for David Risilia's deposition. Delaware will likely depose Mr. Risilia on September 27, but will confirm the date early next week.

In addition, the parties have agreed to postpone the depositions of Keith Trostle, Kevin Maloney, and William Andersen to the end of the discovery period, and will revisit the need to depose these attorneys after certain fact witnesses are deposed.

On September 19, 2006 Delaware has agreed to respond to New Jersey's September 14, 2006 letter regarding Delaware's responses to New Jersey's requests for admission.

Regarding expert witness discovery, New Jersey and Delaware agree as follows:

¹ Please note that if an extension of the discovery schedule is not granted by the Special Master, Ms. Herr's last available date for deposition is September 28, 2006. She will be out of town the first ten days of October.

1. With respect to documents and other written materials relied upon by the expert, to the extent that such documents have been produced in the litigation, they shall, whenever practicable, be identified by Bates number, and to the extent that such documents have not been produced in the litigation, they shall be identified with reasonable particularity and copies of such documents shall be included with the expert report.
2. The following information and materials shall be excluded from expert discovery:
 - (a) Any drafts of materials prepared by experts; and
 - (b) Communications with counsel, except to the extent that the expert relies upon information received from counsel.
3. Any fees charged by experts for responding to discovery, including time spent at depositions, shall be paid by the party who retained the expert.

Please let me know promptly if I have misstated any of the agreements set forth in this letter. Thank you.

Very truly yours,


Collins J. Seitz, Jr.

CJS,Jr./saj

cc: Barbara Conklin, Esquire (by electronic and first class mail)
David C. Frederick, Esquire (by electronic and first class mail)
Scott K. Attaway, Esquire (by electronic and first class mail)
Matthew F. Boyer, Esquire (by electronic mail and hand delivery)
(487943)

EXHIBIT C



JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 0112
TRENTON, NJ 08625-00112

ANNE MILGRAM
Acting Attorney General

September 20, 2006

RECEIVED

SEP 21 2006

C. J. Seitz

Collins J. Seitz, Jr., Esq.
Connolly Bove Lodge & Hutz LLP
The Nemours Building
1007 North Orange St.
P.O. Box 2207
Wilmington, Delaware 19899

Re: State of New Jersey v. State of Delaware
No. 134, Original
Discovery

Dear Mr. Seitz:

Enclosed please find the State of New Jersey's documents bates stamped NJ04733 - NJ05422 which are supplemental to our discovery responses.

NJ04733 - NJ04815 are Logan Generating 1993 - 2002 NJPDES Permit files.

NJ04816 - NJ04992 is the Atlantic City Electric Company ("Connectiv") NJPDES Permit.

NJ04993 - NJ05145 is the Penns Grove Boro Sewerage Authority NJPDES Permit.

NJ05146 - NJ5147 is a Blueprint titled "Pierhead and Bulkhead Line for the Westerly Shore of the Delaware River between Edgemoor Bridge Works Wharf and Christiana River, Delaware dated February 9, 1901.

NJ05148 - NJ05150 is a Cover letter to Albert Stetser Esquire dated August 5, 1935.

NJ05151 - NJ05196 is Logan Generating 2006 NJPDES Permit

NJ05197 - NJ05404 are additional NJPDES Enforcement

Documents.



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Page 2

NJ05403 - NJ05404 are Additional documentation regarding
Land Use Regulation Permit No. 82-0519.

NJ05405 - NJ05408 are Additional documentation regarding
Land Use Regulation Permit No. 1708-95-0014.1.

NJ05409 - NJ05419 are Additional documentation regarding
Land Use Regulation Permit No. 0809-91-0010.1, .2, & .6.

NJ05420 is Additional documentation regarding Land Use
Regulation Permit No. 1708-00-0001.3.

NJ05421 - NJ05422 are Additional documentation regarding
Land Use Regulation Permit No. 1708-00-0001.1 & .2.

Sincerely yours,

ANNE MILGRAM
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: *Rachel Horowitz*
Rachel Horowitz
Deputy Attorney General

c: David Frederick, Esq.
Barbara Conklin, Esq.

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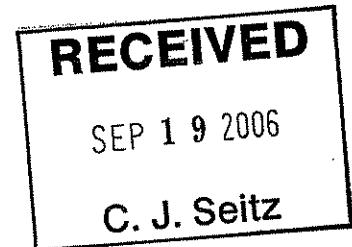


JON S. CORZINE
Governor

State of New Jersey
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ANNE MILGRAM
Acting Attorney General

September 18, 2006



Collins J. Seitz, Jr., Esq.
Connolly Bove Lodge & Hutz LLP
The Nemours Building
1007 North Orange St.
P.O. Box 2207
Wilmington, Delaware 19899

Re: State of New Jersey v. State of Delaware
No. 134, Original
Discovery

Dear Mr. Seitz:

Enclosed please find the State of New Jersey's documents bates stamped NJ04428 - NJ04732 which are supplemental to our discovery responses.

NJ04428 - NJ04438 are affidavits.

NJ04439 - NJ04635 are Enforcement files on the following NJPDES permits, Logan Generating Plant, Penns Grove Sewerage Authority, DuPont deNemours and Co., Chambers Works, Atlantic City Electric Company ("Connectiv") and Pennsville Sewerage Authority.

NJ04636 is a memo dated April 30, 1993 which is also grouped with the ACOE Supplemental Documents on CD 2 of 2.

NJ04637 - NJ4683 are U.S. Coast Guard Navigation and Vessel Inspection Circular No. 05-05.

NJ04684 - NJ04686 is an affidavit.

NJ04687 - NJ04701 is the Real Property Appraisal Manual for New Jersey Assessors (3rd Edition).

NJ04702 - NJ04720 is the Real Property Appraisal Manual for New Jersey Assessors (2nd Edition).



September 18, 2006
Page 2

NJ04721 - NJ04732 is the State of New Jersey Department of the Treasury Division of Taxation Engineering and Railroad Tax Bureau - Tax Map Specifications dated August 1, 1958.

Sincerely yours,

ANNE MILGRAM
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: *Rachel Horowitz*
Rachel Horowitz
Deputy Attorney General

c: David Frederick, Esq.
Barbara Conklin, Esq.

EXHIBIT D



JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
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STUART RABNER
Attorney General

September 28, 2006

Collins J. Seitz, Jr., Esq.
Connolly Bove Lodge & Hutz LLP
The Nemours Building
1007 North Orange St.
P.O. Box 2207
Wilmington, Delaware 19899

RECEIVED

SEP 29 2006

C. J. Seitz

Re: State of New Jersey v. State of Delaware
No. 134, Original
Discovery

Dear Mr. Seitz:

Enclosed please find the State of New Jersey's documents bates stamped NJ05423 - NJ05646 which are supplemental to our discovery responses.

NJ05423 - NJ05439 is the Fort Mott Application previously emailed.

NJ05440 - NJ05498 are Additional Enforcement files for Pennsville Sewerage Authority, NJPDES Permit No. NJ0021598;

NJ05499 - NJ05542 are Additional Enforcement files for Penns Grove Sewerage NJPDES Permit No. NJ0024023;

NJ05543 - NJ5646 are Additional Enforcement files for DuPont Chambers Works, NJPDES Permit No. NJ0005100.

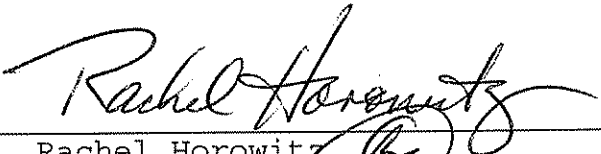


September 28, 2006
Page 2

Also enclosed are documents bates labeled NJ04790 - NJ4807, that are part of the Keystone NJPDES file, a few pages of documents were double sided and were inadvertently not bates labeled when produced September 20, 2006.

Sincerely yours,

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY

By: 
Rachel Horowitz
Deputy Attorney General

c: David Frederick, Esq.
Barbara Conklin, Esq.