

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

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

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

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

**VOLUME 1 of 7
(PAGES 1A-158A)**

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RESOLUTIONS.

CHAPTER 216.

Joint Resolution relating to the Boundary controversy between the States of New Jersey and Delaware.

Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:

Appointment of Commissioners of State of Delaware to frame a compact with Commissioners of New Jersey.

That Preston Lea, Governor, Robert H. Richards, Attorney General, Herbert H. Ward and George H. Bates, special counsel, be and they hereby are appointed and constituted Commissioners of the State of Delaware to confer with like commissioners representing the State of New Jersey, for the purpose of framing a compact or agreement between the said states and legislation consequent thereon, to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware River and Bay.

Approved, February 13, A. D. 1905.

RESOLUTIONS.

CHAPTER 217.

Joint Resolution authorizing Thomas N. Rawlins to be sent to and sign, in behalf of the State of Delaware, the Sixth Article of the Articles of Association of the Bank of Wilmington.

Be it resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met:

That Thomas N. Rawlins, State Treasurer of his office, as State Treasurer of the State of Delaware, in and to the Fund of the State of Delaware, in two hundred and fifty-four shares of the Union National Bank of Wilmington, and he is hereby appointed irrevocable Agent of the State of Delaware to consent to and execute the State the amendment of the Sixth Article of the Association of The Union National Bank of Wilmington, which said amendment reads as follows:

"This Association shall continue in existence until June 21, 1925, unless sooner placed in liquidation by the act of its share holders owning the stock, or otherwise dissolved by the Board of Directors."

Approved, February 13, A. D. 1905.

OF SOVEREIGNTY, JURISDICTION AND LIMITS.

its behalf, to execute the same in duplicate, and to deliver one copy thereof to the Commissioners of the State of New Jersey. Commissioners of State authorized to execute compact in duplicate.

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

Approved March 20, A. D. 1905.

CHAPTER 6.

OF SOVEREIGNTY, JURISDICTION AND LIMITS.

AN ACT appointing Three Commissioners on the part of the State of Delaware, to confer with Three Commissioners to be appointed on the part of the State of New Jersey, in accordance with the provisions of the Compact between the States of New Jersey and Delaware respecting the Delaware River and Bay, defining their duties and powers and appropriating money to pay the necessary expenses thereof.

Whereas The Senate and House of Representatives of the State of Delaware in General Assembly met have passed an act entitled "An Act to Ratify and Confirm a Compact or Agreement between the States of New Jersey and Delaware respecting the Delaware River and Bay, and to authorize the execution thereof," which act hath received the approval of the Governor of the State of Delaware; and the Legislature of the State of New Jersey hath passed an act of the same title and of the same purport, which act hath received the approval of the Governor of the State of New Jersey; Preamble.

And Whereas The said Compact or Agreement between said two states hath been duly signed and executed in duplicate originals by Edward C. Stokes, Robert H. McCarter, Preamble.

OF SOVEREIGNTY, JURISDICTION AND LIMITS.

Franklin Murphey and Chauncey G. Parker, Commissioners on the part of the State of New Jersey, and by Preston Lea, Robert H. Richards, Herbert H. Ward and George H. Bates, Commissioners on the part of the State of Delaware, one of which duplicate originals hath been retained by said Commissioners of Delaware to be delivered to the Governor of that State and the other of which duplicate originals hath been retained by the Commissioners of New Jersey to be delivered to the Governor of that State;

Preamble. And Whereas It is provided and agreed by said compact or agreement between said States, among other things, as follows:

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

The faith of said contracting States is hereby pledged to the enactment of said laws so recommended by said commission-

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OF SOVEREIGNTY, JURISDICTION AND LIMITS.

ers, or to such concurrent legislation as may seem judicious and proper in the premises to the respective Legislatures thereof.

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

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

Now Therefore, In pursuance of the terms of said Compact,

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met :

Section 1. That Alexander B. Cooper, William S. Hillis and Walter H. Hayes be and they are hereby appointed Commissioners on the part of the State of Delaware, to confer with like Commissioners appointed or to be appointed by the Legislature of the State of New Jersey, to do and perform all the duties, acts, matters and things required and stipulated in the said Compact or Agreement hereinabove mentioned, to be by them done and performed. That in and upon said Commissioners are hereby vested and conferred all powers and authorities necessary and convenient for the full and complete performance of all the duties, acts, matters and things by this Act imposed upon them. Said Delaware Commissioners shall fill any vacancies occurring in the membership of said Delaware Commission by the selection of some other suitable citizen or citizens of the State of Delaware.

Commissioners
on part of
Delaware.

Duties and
powers of
Commissioners

Vacancies,
how filled.

Section 2. Said Commissioners shall, on or before the first day of June, A. D. 1905, organize by the election from their number of a president and a secretary. The president so elected shall be the presiding officer at all separate meetings of said Commissioners, and the general executive head of said commission. The Secretary so elected shall conduct the correspondence of said commission under its direction and keep a record of all the meetings, acts and proceedings

Organization of
Commissioners

President, his
duties.

Secretary, his
duties.

OF SOVEREIGNTY, JURISDICTION AND LIMITS.

of said Delaware Commissioners and of all meetings, acts and proceedings of the joint commissioners in the performance of the duties, acts, matters and things stipulated for in the said compact.

Commissioners may summon witness, and enforce production of books, etc.

Witnesses, how paid

Attendance of witnesses may be enforced by attachment.

Commissioners have power to administer oaths.

Appropriation of \$1500 for expenses.

Money, how drawn.

Said Delaware Commissioners shall have power to cause the production of books, papers and other things, and to summon before themselves, or before the said joint Commission, witnesses, expert and otherwise, the testimony of which, in the opinion of said Commissioners, shall be material to enable them to justly and fully perform the duties on them hereby imposed. All witnesses may be summoned upon warrants therefor signed by the President of said Delaware Commission, and shall be paid, for attendance and mileage, the fees usually paid in the State of Delaware for the attendance of witnesses at the trial of civil causes in the Superior Court of said State. The attendance of witnesses before said Delaware Commission or before said joint commission may be compelled by attachments issued by said Delaware Commission to the Sheriff of any County in the State of Delaware; said attachments shall be signed by the President of said Delaware Commission and countersigned by the Secretary thereof, and shall be executed and returned by the Sheriff to whom the same shall be directed. Each of said Commissioners shall have power and authority to administer oaths or affirmations to witnesses appearing before them or before said joint commission.

Section 3. The sum of fifteen hundred dollars is hereby appropriated out of the monies in the Treasury of this State, not otherwise appropriated, to pay the necessary expenses attendant upon the execution of the duties of said Commissioners. Said monies shall be drawn from the said Treasury, from time to time as occasion shall demand, upon the warrant of the Governor of this State drawn upon the State Treasurer, upon the certificate in writing to said Governor signed by the President and countersigned by the Secretary of said Delaware Commission, giving the details of such expenditures made or to be made as aforesaid.

Approved, March 23, A. D. 1905.

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LAWS
OF THE
STATE OF DELAWARE,

PASSED AT A
SESSION OF THE GENERAL ASSEMBLY

COMMENCED AND HELD AT DOVER,

ON TUESDAY, JANUARY 3RD, A. D. 1905

AND

IN THE YEAR OF THE INDEPENDENCE OF THE UNITED
STATES THE ONE HUNDRED AND
TWENTY-NINTH.

PUBLISHED BY AUTHORITY.

VOLUME XXIII—PART II.

1905:
THE DELAWAREAN PRINT,
DOVER, DEL.

APPENDIX.

The compact printed in this appendix is a State Document of such extraordinary character and binding force upon the high contracting parties, as well also of great importance to the citizens of this State, that I deem it my imperative duty to give it permanent form in this volume.

JOS. L. CAHALL,
Secretary of State.

APPENDIX.

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE STATE OF DELAWARE, RELATING TO THE BOUNDARY CONTROVERSY BETWEEN SAID STATES.

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

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

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

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between said States and their respective rights in the Delaware River and Bay.

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

Article 1: Criminal process issued under the authority of the State of New Jersey against any person accused of an offence committed upon the soil of said State, or upon the Eastern half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the New Jersey shore to low-water mark on the Delaware shore, except upon Reedy and Pea Patch Islands, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of Delaware, or the shores of said Islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of Delaware.

Article 2: Criminal process issued under the authority of the State of Delaware against any person accused of an offence committed upon the soil of said State, or upon the Western half of said Delaware River, or committed on board of any vessel being under the exclusive jurisdiction of that State, and also civil process issued under the authority of the State of Delaware against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any portion of the Delaware River between said States from low-water mark on the Delaware shore to low-water mark on the New Jersey shore, unless said person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be

APPENDIX.

under seizure by virtue of process or authority of the State of New Jersey.

Article 3: That inhabitants of the said States of Delaware and New Jersey shall have and enjoy a common right of fishery throughout, in and over the waters of said river between low-water marks on each side of said river between the said States, except so far as either State may have heretofore granted valid and subsisting private rights of fishery.

Article 4. Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three Commissioners to confer with three Commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, which said Commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws so framed and recommended by said joint Commission. Upon the adoption and passage of said laws so recommended by the respective Legislature of said two States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States. Said Commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States, where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

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

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

Article 5: All laws of said States relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery hereinabove mentioned, shall continue in force in said respective States until the enactment of said concurrent legislation as herein provided.

Article 6. Nothing herein contained shall effect the planting, catching or taking of oysters, clams or other shell fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either State.

Article 7: Each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective States.

Article 8: Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either State of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.

Article 9: This agreement shall be executed by the said Commissioners, when, authorized to do so by the Legislatures of the said States. It shall thereupon be submitted to Congress for its consent and approval. Upon the ratification thereof by Congress it shall be and become binding in perpetuity upon both of said States; and thereupon the suit now pending in the Supreme Court of the United States, in which the State of New Jersey is complainant and the State of Delaware is defendant, shall be discontinued, without costs to either party, and without prejudice. Pending the ratification hereof by Congress said suit shall remain in statu quo.

Done in two parts (one of which is retained by the Commissioners of Delaware, to be delivered to the Governor of that State, and the other one of which is retained by the Commissioners of New Jersey, to be delivered to the Gov-

APPENDIX.

ernor of that State) this twenty-first day of March in the
Year of Our Lord, One Thousand Nine Hundred and Five

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

Preston Lea,
Robt. H. Richards,
Herbert H. Ward,
Geo H. Bates.

SECRETARY'S OFFICE,

Dover, Delaware, August 24, 1905.

In obedience to the provisions and directions of Chapter 4 of the Revised Code, entitled "Of the Passing and Publication of Laws and Journals", I have collated with and corrected by the original rolls now in the office of the Secretary of State and caused to be published this edition of the Laws of the State of Delaware, passed by the General Assembly at the regular biennial session commenced on Tuesday the third day of January A. D. 1905, and ended on the twenty-third day of March, A. D. 1905, and approved by the Governor.

The Appendix is fully explained by note at head thereof. Words and sentences marked with asterisks are printed as they appear on the enrolled bills.

JOSEPH L. CAHALL,
Secretary of State.

January 23, 1907.
[H. R. 21689.]

[Public, No. 31.]

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

Sixth district.
Vol. 33, p. 1171.

Eleventh district.
Vol. 33, p. 1172.

Twelfth district.
Ante, p. 324.

Thirteenth district.
Ante, p. 324.

Contracts.

May be built in
navy-yards.

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

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

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

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

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

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

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

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

Approved, January 23, 1907.

January 24, 1907.
[S. 4975.]

[Public, No. 32.]

Preamble.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved, January 24, 1907.

Delaware River.
Agreement between
New Jersey and Dela-
ware as to, ratified.
Provido.
Rights of United
States not affected.

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

January 25, 1907.
[S. 3923.]

[Public, No. 33.]

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

Army.
Artillery reorgani-
zation.
Coast and field ar-
tillery organization.
Vol. 31, p. 748,
amended.
Provido.
Chief of Artillery to
be Chief of Coast Ar-
tillery after July 1,
1908, etc.

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

To be additional
member of General
Staff Corps.

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

Vacancies; how
filled.

Rank, etc., upon re-
tirement.

Additional number
in grade.
Provido.
Limit.

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

Coast artillery; du-
ties.

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

Field artillery.

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

Coast artillery to
constitute a corps.
Number of officers.

NEW JERSEY *v.* DELAWARE.

No. 11, original. Decided February 5, 1934 (291 U. S. 361).—
Decree entered June 3, 1935.

DECREE.

This cause came on to be heard upon the pleadings, evidence and the exceptions filed by the parties to the report of the Special Master, and was argued by counsel. The Court now being fully advised in the premises and for the purpose of carrying into effect the conclusions set forth in the opinion of this Court, announced February 5, 1934 (291 U. S. 361);

It is now ORDERED, ADJUDGED AND DECREED as follows:

1. The report of the Special Master filed in this cause is hereby approved, and all exceptions thereto are hereby overruled.

2. Within the twelve mile circle (that is, within the circle the radius of which is twelve miles, and the center of which is the building used prior to 1881 as the courthouse at New Castle, Delaware, certain arcs of which are hereafter described and determined), the Delaware River and the subaqueous soil thereof up to mean low water line on the easterly or New Jersey side is adjudged to belong to the State of Delaware, and the true boundary line between the States within said twelve mile circle is adjudged to be mean low water mark on the easterly or New Jersey side of the Delaware River.

3. Below said twelve mile circle the true boundary line between the States of New Jersey and Delaware is adjudged to be the middle of the main ship channel in Delaware River and Bay.

4. The real, certain and true boundary line separating the States of New Jersey and Delaware, in Delaware River and Bay thus determined is shown upon the annexed com-

Decree. 295 U. S.

694

Decree.

v. DELAWARE.

February 5, 1934 (291 U. S. 361).—
June 3, 1935.

RECEIVED.

heard upon the pleadings,
filed by the parties to the
and was argued by counsel.
advised in the premises and
to effect the conclusions set
court, announced February 5,

ORDERED AND DECREED as follows:
The Master filed in this cause
exceptions thereto are hereby

circle (that is, within the
twelve miles, and the center
prior to 1881 as the court-
re, certain arcs of which are
mined), the Delaware River
roof up to mean low water
Jersey side is adjudged to
are, and the true boundary
in said twelve mile circle is
ter mark on the easterly or
are River.

circle the true boundary line
Jersey and Delaware is ad-
the main ship channel in

the boundary line separating
Delaware, in Delaware River
down upon the annexed com-

posite map, made up of parts of charts Nos. 294 and 295
(published in September, 1933), and No. 1218 (published
in August, 1932), of the United States Coast and Geodetic
Survey, embracing the particular locality; said composite
map is identified by title and date as follows:

“Map of
New Jersey-Delaware Boundary
in
Delaware River and Delaware Bay
To Accompany

The Decree of the Supreme Court of the United States
Being a composite map combining and reducing U. S.
C. & G. S. Charts 294, 295 (Sept. 1933) and 1218
(Aug. 1932) to show boundary between New Jersey
and Delaware settled by the final decree of the Su-
preme Court of the United States—pursuant to the
opinion of the Court reported in 291 U. S. 361.

(Scale)

March 30, 1935

Sherman & Sleeper,

Engineers.

501 Cooper Street,

Camden, N. J.”

Said boundary line is described as follows:

BEGINNING at a point in the middle of the main ship
channel of the Delaware River in the extension southeast-
ward of the Eastern Arc of the Compound Curve of the
boundary between Delaware and Pennsylvania, as sur-
veyed by W. C. Hodgkins of the U. S. Coast and Geodetic
Survey and set forth in Appendix No. 8 of the Survey
Report for 1893; said point being a corner between Penn-
sylvania and New Jersey.

Thence (1) southeastward along said arc extended to
the mean low water line on the eastern bank of the Dela-
ware River, which point is N 49° 50' W True, 460 feet
from Boundary Reference Monument No. 1 the position
of which is Lat. 39° 47' 43.211", Long. 75° 24' 16.047".

Thence (2) along the mean low water line of the eastern bank of the Delaware River the several courses and distances thereof, the general direction being southwestward, crossing in a straight line the mouth of each intervening small estuary, to a point on the end of the spit extending southwestward from the fast land of Oldman's Neck, on the northwestern side of the mouth of Oldman's Creek; said point is located N 51° 38' W True, 637 feet from Boundary Reference Monument No. 2 the position of which is Lat. 39° 46' 23.552'', Long. 75° 26' 49.560''.

Thence (3) southwestward in a straight line across the mouth of Oldman's Creek to a point on the mean low water line located N 51° 38' W True, 183 feet from Boundary Reference Monument No. 2.

Thence (4) along the mean low water line of the eastern bank of the Delaware River, the several courses and distances thereof, the general direction being first southwestward, then southeastward, crossing in a straight line the mouth of each intervening small estuary, to a point located S 3° 57' 55'' E True, 116 feet from Boundary Reference Monument No. 3 (which monument is U. S. Coast and Geodetic Survey Triangulation Station SALEM COVE NORTH) the position of which is Lat. 39° 34' 40.915'', Long. 75° 30' 46.942''.

Thence (5) southward in a straight line across the mouth of the Salem River to a point on the mean low water line of the Eastern bank of the Delaware River located N 3° 57' 53'' W True, 108 feet from Boundary Reference Monument No. 4 (which monument is U. S. Coast and Geodetic Survey Triangulation Station SALEM COVE SOUTH) the position of which is Lat. 39° 34' 03.753'', Long. 75° 30' 43.614''.

Thence (6) along the mean low water line of the eastern bank of the Delaware River, the several courses and distances thereof, the general direction being first, southwestward, second, southeastward and lastly, southward,

295 U. S.

694

Decree.

water line of the eastern several courses and direction being southwestward, north of each intervening end of the spit extending north of Oldman's Neck, on north of Oldman's Creek; W True, 637 feet from No. 2 the position of which is Lat. $39^{\circ} 26' 49.560''$.

... straight line across the point on the mean low water line of the eastern several courses and direction being first southwestward in a straight line the estuary, to a point located from Boundary Reference Monument No. 2 the position of which is Lat. $39^{\circ} 34'$

... straight line across the point on the mean low water line of the Delaware River 183 feet from Boundary Reference Monument No. 2. The monument is U. S. Coast and Geodetic Station SALEM which is Lat. $39^{\circ} 34'$

... straight line across the point on the mean low water line of the Delaware River 183 feet from Boundary Reference Monument No. 2. The monument is U. S. Coast and Geodetic Station SALEM which is Lat. $39^{\circ} 34'$

... water line of the eastern several courses and direction being first, southward and lastly, southward,

crossing in a straight line the mouth of each intervening small estuary, to a point located S $80^{\circ} 19' W$ True, 55 feet from Boundary Reference Monument No. 5 the position of which is Lat. $39^{\circ} 29' 52.718''$, Long. $75^{\circ} 31' 41.555''$.

Thence (7) westward along the arc of a circle, the radius of which is 18216.16 meters or 59,764.2 feet and the center of which is the building used prior to 1881 as the County Courthouse at New Castle, Delaware, across Artificial Island, passing through Boundary Monument No. 6 on Artificial Island the position of which is Lat. $39^{\circ} 29' 47.255''$, Long. $75^{\circ} 32' 33.640''$; and continuing westward along the same arc extended to Turning Point No. 7 in the middle of the main ship channel of the Delaware River said Turning Point No. 7 being located S $86^{\circ} 30' W$ True, 1567 yards from said Boundary Monument No. 6.

Thence (8) in a straight line S $15^{\circ} 11' W$ True, 1603 yards to Turning Point No. 8 located N $89^{\circ} 07' E$ True, 907 yards from Reedy Island Jetty Middle Light.

Thence (9) in a straight line S $4^{\circ} 56' E$ True, 3341 yards to Turning Point No. 9 located N $51^{\circ} 33' E$ True, 1937 yards from Reedy Island Front Range Light.

Thence (10) in a straight line S $42^{\circ} 01' E$ True, 30,208 yards going from the Delaware River into Delaware Bay, and passing through a point located S $48^{\circ} 06' W$ True, 668 yards from Ship John Shoal Light, to Turning Point No. 10 located S $34^{\circ} 24' E$ True, 5106 yards from Ship John Shoal Light and in a straight line between Ship John Shoal Light and Elbow of Cross Ledge Light.

Thence (11) in a straight line S $34^{\circ} 22' E$ True, 12,995 yards to Elbow of Cross Ledge Light, being Turning Point No. 11.

Thence (12) in a straight line S $31^{\circ} 44' E$ True, along a straight line between Elbow of Cross Ledge Light and Brandywine Shoal Light, 18,124 yards to Turning Point

No. 12 located N 58° 16' E True, 1612 yards from Fourteen Foot Bank Light.

Thence (13) in a straight line S 24° 06' E True, be the distance more or less, through Delaware Bay and seaward to the limits of the respective States of New Jersey and Delaware in the Atlantic Ocean, said course passing through a point located S 65° 54' W True, 1303 yards from Brandywine Shoal Light.

In the foregoing description the courses or bearings refer to the true meridian passing through the beginning of each course; the positions of the monuments are given on the North American Datum 1927; the names of lights and ranges are those given in the Light Lists, Atlantic and Gulf Coasts of the United States, corrected to January 15, 1934, and published by the Bureau of Lighthouses, with the exception of Reedy Island Jetty Middle Light which was not established until about July 12, 1934; the position of the lights in 1934 is used in computing the turning points of the various courses of the boundary and as reference points for these turning points and tie lines to the courses.

5. The court retains jurisdiction of this cause for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may at any time deem to be proper in order to carry into effect any of the provisions of this decree, and for the purpose of a resurvey of said boundary line in case of physical changes in the mean low water line within said circle, or in the middle of the main ship channel below said circle, which may, under established rules of law, alter the location of such boundary line.

6. The State of Delaware, its officers, agents and representatives, its citizens and all other persons, are perpetually enjoined from disputing the sovereignty, jurisdiction and dominion of the State of New Jersey over the territory adjudged to the State of New Jersey by this decree;

ie, 1612 yards from Four-
 S 24° 06' E True, be the
 Delaware Bay and seaward
 States of New Jersey and
 ean, said course passing
 54' W True, 1303 yards

the courses or bearings
 ng through the beginning
 the monuments are given
 1927; the names of lights
 the Light Lists, Atlantic
 States, corrected to Janu-
 he Bureau of Lighthouses,
 Island Jetty Middle Light
 about July 12, 1934; the
 is used in computing the
 rses of the boundary and
 rning points and tie lines

ion of this cause for the
 n, or modification of this
 ree, which it may at any
 r to carry into effect any
 and for the purpose of a
 n case of physical changes
 hin said circle, or in the
 l below said circle, which
 law, alter the location of

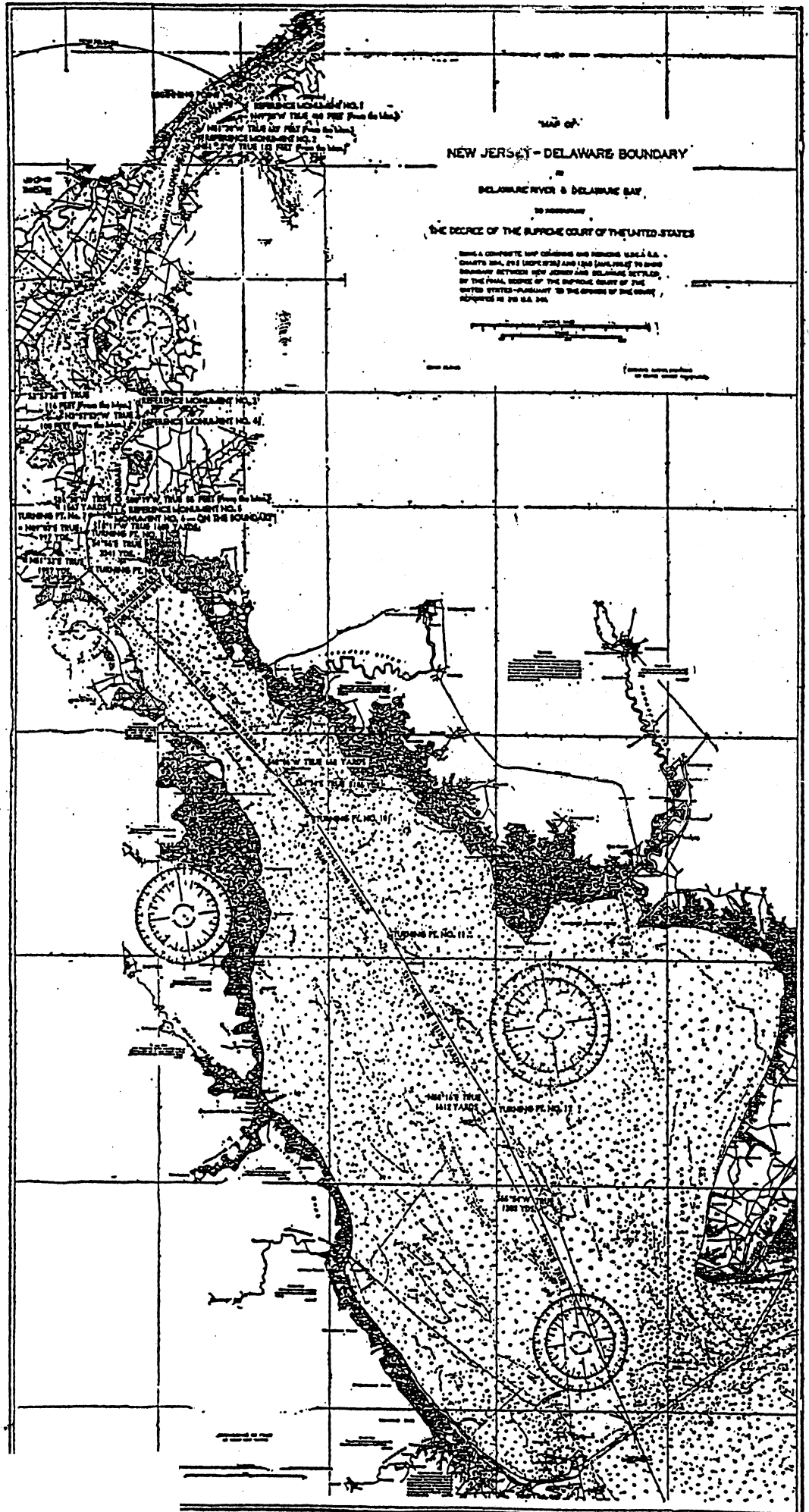
officers, agents and repre-
 her persons, are perpetu-
 ; sovereignty, jurisdiction
 ew Jersey over the terri-
 ew Jersey by this decree;

and the State of New Jersey, its officers, agents and repre-
 sentatives, its citizens and all other persons are perpetu-
 ally enjoined from disputing the sovereignty, jurisdiction
 and dominion of the State of Delaware over the territory
 adjudged to the State of Delaware by this decree.

7. This decree is made without prejudice to the rights
 of either state, or the rights of those claiming under either
 of said states, by virtue of the compact of 1905 between
 said states (*34 Stat. L. Pt. 1, Ch. 394, p. 858*).

8. The costs of this suit shall be equally divided be-
 tween the parties.

[A copy of the map referred to in the foregoing decree
 is inserted on the next page.]



at the next hearing , if desired.

Marked Complainant's Exhibit 97.

THE ATTORNEY GENERAL OF NEW JERSEY: We next offer in evidence a letter from the King to Berry, dated the 9th day of December 1672, and printed on page 38 of Leaming & Spicer,

Marked Complainant's Exhibit 98.

THE ATTORNEY GENERAL OF NEW JERSEY. We next offer in evidence an act of the Legislature of New Jersey, entitled " An Act to preserve the navigation of the rivers and creeks within the colony of New Jersey." Passed August 20, 1755, and found on pages 205 and 206 of Allison's Laws.

THE ATTORNEY GENERAL OF DELAWARE: We enter an objection to it as immaterial.

Marked Complainant's Exhibit 99.

THE ATTORNEY GENERAL OF NEW JERSEY: We next offer in evidence an act of the Legislature of New Jersey, being a Supplemental Act to the Act entitled "An Act to preserve the navigation of the rivers and creeks within the colony of New Jersey"; passed September 25, 1762, and found

in Allison's Laws on page 261.

THE ATTORNEY GENERAL OF DELAWARE: Objected to
by Defendant's counsel as immaterial.

Marked Complainant's Exhibit 100

THE ATTORNEY GENERAL OF NEW JERSEY: We next offer in evidence an act of the Legislature of the State of New Jersey ENTITLED "An Act declaring the River Delaware a common highway and for improving the navigation in the river." Passed December 23, 1773, and found on page 347 of Allison's Laws.

THE ATTORNEY GENERAL OF DELAWARE: Objected to
as immaterial.

Marked Complainant's Exhibit 101.

THE ATTORNEY GENERAL OF NEW JERSEY: We next offer in evidence an act of the General Assembly of the State of New Jersey, passed May 27, 1783, entitled "An Act to ratify and confirm an agreement made between the Commissioners appointed by the Legislature of the State of New Jersey and Commissioners appointed by the Legislature of the State of New Jersey, for the purpose of settling the jurisdiction of the River Delaware, and islands within the same," found on page 323 of Wilson's Laws of New Jersey

THE ATTORNEY GENERAL OF DELAWARE: Objected to as immaterial.

Marked Complainant's Exhibit 102.

THE ATTORNEY GENERAL OF NEW JERSEY: We next offer in evidence a certified copy of a deed dated on the 18th day of March on the six and twentieth year of the reign of our Sovereign Lord Charles the Second, between Lord Berkley and John Fenwick, for a large tract of land in Salem County.

THE ATTORNEY GENERAL OF DELAWARE: The admission of the said deed is objected to by counsel for the defendant on the ground that it is not in support of any ^{averment} ~~affirmant~~ in the Bill of Complaint and is immaterial.

Marked Complainant's Exhibit 103.

THE ATTORNEY GENERAL OF NEW JERSEY: We offer in evidence a deed from John Fenwick and Edward Bylynge to William Penn, Gawen Lawrie and Nicholas Lucas, dated February 10, 1674, and found in Book 1 of Salem Deeds, Recorded in the secretary of State's office at page 12.

THE ATTORNEY GENERAL OF DELAWARE: Objected to by counsel for the defendant as not being in support of any ^{averment} ~~averment~~ in the Bill of Complaint and as immaterial.

Marked Complainant's Exhibit 104.

THE ATTORNEY GENERAL OF NEW JERSEY: We also refer to the endorsement upon said deed showing the partition of ten parts of the property therein conveyed, to Fenwick.

THE ATTORNEY GENERAL OF DELAWARE: Defendant's counsel interposes the same objection.

Marked Complainant's Exhibit 104a.

THE ATTORNEY GENERAL OF NEW JERSEY: We next offer in evidence the so called Fenwick's Form of Government, dated June 28, 1675, and recorded in Vol. I of Salem Deeds page 60.

THE ATTORNEY GENERAL OF DELAWARE: Objected to as not in support of any averment in the Bill of Complaint and as immaterial.

Marked Complainant's Exhibit 105.

THE ATTORNEY GENERAL OF NEW JERSEY: We next offer in evidence a deed from John Fenwick to William Penn, dated March 23, 1682, and recorded in the Secretary of State's office in Book E F of Deeds on page 135.

THE ATTORNEY GENERAL OF DELAWARE: The admission of this document in evidence is objected to by defendant's

counsel as not in support of any averment in the Bill of Complaint and as immaterial).

Marked Complainant's Exhibit 106.

THE ATTORNEY GENERAL OF NEW JERSEY: We next offer in evidence an act of the Legislature of the State of Delaware, passed February 7, 1794 and found in Second Booth's Delaware Laws, on page 1174, entitled "A supplement to an Act entitled An Act for opening and establishing a land office ~~xxxxxxxalaxxkxkxk~~ within this state and for the sale of all vacant and unlocated land therein."

Marked Complainant's Exhibit 107.

MR. PARKER. Counsel for the complainant offers in evidence an act of the province of New Jersey, passed in the year 1683 and found on page 480 of Leaming & Spicer, and refer to Section 13 of the act.

THE ATTORNEY GENERAL OF DELAWARE: Objected to as immaterial).

Marked Complainant's Exhibit 108.

MR. PARKER: Counsel for complainant next offer in evidence an act of the Legislature of the State of New Jersey passed in the year 1820 and found in the ~~xxxxxxx~~

Print Laws of New Jersey for the year 1820, page 205, and entitled "An act concerning the boundaries and jurisdiction of this state in the Bay of Delaware."

THE ATTORNEY GENERAL OF DELAWARE: Objected to as immaterial.

Marked Complainant's Exhibit 109.

MR. PARKER: Counsel for the complainant next offer in evidence an act of the Legislature of the State of New Jersey passed in the year 1822, found on page 27 of the Session Laws of New Jersey, 1822, and entitled "An Act appropriating a sum of money for the protection of the oyster beds in the Delaware Bay."

THE ATTORNEY GENERAL OF DELAWARE: Objected to as immaterial.

Marked Complainant's Exhibit 110.

MR. PARKER: Counsel for complainant offer in evidence an act of the Legislature of the State of New Jersey, passed in the year 1823, found in the ~~Print~~ ^{Print} Laws of the state of New Jersey 1823, page 152 being a supplement to the act last offered.

THE ATTORNEY GENERAL OF DELAWARE: Objected to as immaterial.

MR. PARKER: Counsel for the complainant offer in evidence a further supplement to the last act passed by the Legislature of New Jersey in 1825, and found on page 109 of the Pamphlet Laws of New Jersey, 1825.

THE ATTORNEY GENERAL OF DELAWARE: Objected to as immaterial.

Marked Complainant's Exhibit 112.

MR. PARKER: Complainant's counsel offer in evidence an act of the Legislature of the State of New Jersey passed in the year 1848 entitled "An Act to protect the private rights of the owners of docks, wharfs, storehouses and piers" found in the Pamphlet Laws of 1848 at page 217.

THE ATTORNEY GENERAL OF DELAWARE: Objected to as immaterial.

Marked Complainant's Exhibit 113.

MR. PARKER: Complainant's counsel also offer in evidence an act of the Legislature of the State of New Jersey passed in the year 1851 entitled "An Act to authorize the owners of islands upon tide water to build wharfs in front of the same" found in the Pamphlet Laws of 1851, page 335.

THE ATTORNEY GENERAL OF DELAWARE: Objected to
as immaterial.

Marked Complainant's Exhibit 114.

MR. PARKER: Counsel for the complainant next
offer in evidence a supplement to the last mentioned
act passed by the Legislature of the state of New Jersey
in the year 1853 and found on page 394 of the Laws of New
Jersey for 1853.

THE ATTORNEY GENERAL OF DELAWARE: Objected to
as immaterial.

Marked Complainant's Exhibit 115.

MR. PARKER: Complainant's counsel next offer in
evidence an act of New Jersey, concerning the boundaries
of Salem, found in Leaming & Spicer, page 531.

THE ATTORNEY GENERAL OF DELAWARE: Objected to
as immaterial.

Marked Complainant's Exhibit 116.

MR. PARKER: Counsel for the complainant next
offer in evidence the first Constitution of the State of
New Jersey which is found at page XXI General Statutes of
New Jersey, Vol. 1: adopted July 2, 1776.

A I would have to guess at that, unless I had been notified a little sooner, I was called on early this morning, about one o'clock and it gave me no chance whatever, and I will have to guess in reference to that matter. I should think we could safely say that there is in Salem County - I should think we could say eight hundred at least.

Q 22 What improvements, in the way of docks and wharfs, for the last fifty years, have been made extending out into the river on the Jersey side?

A Docks and wharves - you have reference to what the Government has done?

Q 23 Anybody other than the Government?

A There has not been very much on our side outside of what the Government has done - the Jetty below Pennsville; you want me to confine my attention to the upper--

Q 24 Anywhere in Salem county?

A On the Dan Baker shoals there has been work done,

Q 25 Are there or are there not any docks in Salem county or any wharves or steam boat landings?

A Yes, sir.

Q 26 That is what I am talking about?

Yes, sir, at Penns Grove and Pennsville.

Q 27 What are they?

There are wharves or steam boat landings.

Q 28 Where?

A At Penns Grove I say and Pennsville.

Q 29 How long are those docks and wharves?

A I think the one at Penns Grove is - I suppose it is one hundred and twenty five yards from the main land to the end; at Pennsville there has been a new one built at the upper part, I don't know how long that has been built, but it has been built for some time.

Q 30 How about the old one, do you remember that for a long time?

A Yes, sir, I remember that as long as I can remember ^{anything} that, the old one.

Q 31 Does your estimate of eight hundred persons who are engaged in the fishing business include those who are in the sturgeon business?

A Well, I have some thought of part of them; I do not think it would include all of them; I do not think it would include more than fifty or seventy five.

Q 32 Taking your lower distance, won't you tell us between what points you fished on the lower side?

A Yes, I can do that; the main points I fished from the lower side is from the lower end of Reedy Island down to Bem-Bay Hook - or Ship John Light, I will put it; that is about the extent, the distance.

Q 33 EXAMINATION, by the Attorney General of Delaware.

Q 34 About how far below Reedy Island would you throw out your nets to begin fishing?

Q 5 What was the custom of fisherman at that time in that respect?

A As a general rule we fished to the eastward, because that was the best fishing ground.

Q 6 You did go some times, I understand you to say, to the west?

A Yes, sir.

Q 7 What part, if any, would you choose on the west side when you did go there?

A We would lay off from Deep Water Point and go by New Castle down through to the westward of Fort Delaware.

Q 8 Are you still a fisherman?

A Yes, sir.

Q 9 And have been continuously since the time you have stated?

A All except one year.

Q 10 What year was that?

A The year before last.

Q 11 There has been some testimony in this case concerning a new dock or wharf, a steam boat wharf, being built up at Pennsville, do you know about that?

A Yes, sir.

Q 12 When was that put up, if you remember, about?

A I think that new wharf was built about four or five years ago, I won't be certain which.

Q 13 Is there another one there, an old one?

A There is an old one there, yes, sir.

14 How long has that been there?

A It has been there ever since I have known anything.

Q 15 And they are both used for steam boat landings?

A I don't know whether they used the upper one for the steam boat or not, the old one is used for the steam boat, for them to stop to; I think there is a Salem line that stops at the other one.

Q 16 North of Peapack or Fort Delaware up to Oldman Creek, on which side of the river was the deep water, the Jersey side or the Delaware side?

A The Jersey shore.

Q 17 Has that always been so in your recollection?

A It has been ever since I knew it.

Q 18 Have you noticed any change in the channel below Fort Delaware?

A Nothing only the shoals that have made up there from dumping the mud around in different places.

CROSS EXAMINATION By the Attorney General of Delaware.

Q 19 You said that some times when fishing from Oldman Creek you would fish on the westerly side of the river?

A Yes, sir.

Q 20 How frequently was that?

A Well, that would be according to how we were jammed, if we were jammed we would go to the westward, if the nets were thick on the eastward and we could not get in we would lay off to the westward and go down through the westward.

Q60 On the eastward?

A That is my recollection.

ATTORNEY GENERAL OF DELAWARE: Saving the objection

which I entered as to the testimony in chief as to the wearing away of the New Jersey shore I will ask the following questions

Q 61 You said that at Pennsville, in your judgment the shore has worn away one hundred feet?

A Yes, sir.

Q 62 Do you mean by that that the low water mark has gone inland one hundred feet?

A I mean to say the high water mark has; I would not like to say about the low water mark but I would venture to say, thoroughly, that I have known trees to stand out one hundred feet from where high water mark is now, and perhaps a good deal more, but I will venture to say one hundred feet.

Q 63 Whereabouts at Pennsville has been this wearing away?

A About a quarter of a mile, from one eighth to one quarter of a mile above the wharf at Pennsville.

Q 64 Has there been any appreciable wearing at the place where the wharf is?

A Yes, sir.

Q 65 How much there?

A I don't know but I can tell that thoroughly, because it has not had the opportunity for wearing away. Human beings have taken the

Washed away as I say, the ground is gone.

5 Have you observed any other washing away or change in the Jersey shore?

THE ATTORNEY GENERAL OF DELAWARE: Counsel for the defence objects to this question and to this line of testimony as immaterial.

Elsonborough Point, I have seen quite a wash-out there, in one storm we had in the spring it washed away about 8 feet there in one storm.

16 Was that down by the Country Club?

Yes, sir, right opposite it. I was down the day after the storm, and it was washed fully 8 feet, not less than that.

17 Do you know enough of the situation or not to tell us whether or not the channel of the river has changed any?

It was changed before I quit fishing, the main shipping channel was to the westward when I commenced to fish in 1856.

18 Do you remember any improvements in the way of wharves that have been put out in the river in Salem County?

I know the Penns Grove wharf was washed away, and that was re-built.

19 When was that?

It is 15 years ago, and there has been a new wharf built at Pennsville since, and that's about all I know--and then there has been a wharf built at the battery.

10 Is that known as the government jetty?

Not the jetty; but at Fort Mott there has been a wharf built there since.

11 A wharf at Fort Mott?

Yes, sir.

12 About how long is the Fort Mott wharf?

I was never on it, the channel comes in pretty close there, not the channel, but the deep water comes in pretty close.

23 Do all these docks or wharves you speak of go to the deep water?

Well, they go to the deep water so that a vessel can unload there; I have seen a three-masted schooner unloading at Fort Mott and at Pennsville at the old wharf, but at the new wharf I have never seen anything but the small steamers; I don't know how much water there is there; our river steamer plies there.

CROSS EXAMINATION by the Attorney General of Delaware:

14 You began fishing in 1856?

Yes, sir, in the year Buchanan was elected.

out of

25 And have been ~~at~~ the fishing business about 35 years?

Yes, sir.

26 Then you fished for about 14 years?

About 13 years; I was out one year when I didn't fish.

27 You fished for 13 years?

Yes, sir, that is, as a business; I did fish before that as a boy, but not as a business.

28 You went out with your father?

Yes, sir.

29 During that period you say you fished mainly in two places, one was off the orchard, and where was the other place?

Pennsville.

30 When you fished off Pennsville on an ebb tide, where would you put out your net?

There were three drifts there--used to be when I fished; they fished shallower nets then than they do now, the eastern drift, the middle drift and the western drift; if the eastern drift was full and we could not get in, we would go to the middle drift, if that was full, we would go to the westward, wherever we could get the best show.

31 You used the western drift as a last resort?

Yes, sir, well, one or two years we fished on the western more than to the eastward, there was more shad there around

the White Buoy, around to the westward of the Port.

32 When you fished off the old orchard on the flood tide,
where would you cast your net?

When I was fishing on the eastward?

33 Yes, sir.

I went to the sand bar buoy on the flood tide.

34 On the Jersey shore?

Yes, sir.

Where would you cast your net when you were fishing in
that locality on an ebb tide?

From Newcastle, why, we would come to the eastward or go
to the westward off what we call the White Buoy drift,
the White Buoy there, the ship channel.

36 Was your object in casting your net to let it pass along
some channel or as near it as possible?

We tried to get in the channel unless the shad were on
the flats, if they were on the flats, we would fish there
on both sides.

37 Were you intentionally a deep or shallow water fisherman?

Both, I had a shallow net for two or three years and I
fished the flats of both sides.

THE ATTORNEY GENERAL OF DELAWARE: Reserving
the objections made to certain lines of testimony
on direct examination, I will ask the following

questions:

Q 38. This wearing away of 8 feet which you saw near the Country Club at Elsonborough Point--

A I think after one storm it was in the neighborhood of 8 feet.

Q 39 Was that a permanent washing away?

A Yes, sir.

Q 40 When was that?

A Last spring.

Q 41 That was done by a storm?

A Yes, sir.

Q 42 Was the wearing away of the orchard opposite Fort Delaware done by a storm?

A Most of it.

Q 43 Was it done at one time?

A Not all of it, different storms.

Q 44 Different storms?

A Westerly storms, or sou'west storms sweeping up the bay make a pretty heavy sea; that was a bank when I fished there about 8 feet high, a clay bank.

Q 45 The water would eat in and it would break down?

A It is worn away so now that it is only about a two foot bank, it has worn back into the high ground, there is a hollow back of the orchard and it has worn away nearly

into that hollow.

Q 46 You say that was done mostly by storms?

While I was there, I don't know how it has been done since; there was one old apple tree went away there and fell down in one storm, I remember.

Q 47 Did you observe whether this wearing away took place constantly day after day as well as in storms?

No, sir, I don't think it did, I think it was all done by storms, the high wind on top of the tide would cut the bank away and then the tide would raise it.

Q 48 Do you remember about when this orchard began to waste away?

It commenced to waste away before I went there. There is a well outside there at low water--it is not a well, but you can see a curb, an old barrel has been settled down, I think that's the way they used to make wells in the old time.

Q 49 You can see that at low water?

Yes, sir, right at low water, nearly westward, and Thomas Gebham, an old man, said there was a building there at one time, and that is 100 yards from where high water mark is at this time.

50 100 yards?

That's my judgment at this time, it was 60 yards or more when I fished there, and I think there was 6 rows of apple trees left there when I fished, and I think they are all gone now but one or two trees; I was there last summer, had business there.

Q 51 You say when you began fishing there in 1856 the main channel for the large boats was to the westward?

Yes, sir.

Q 52 Can you fix the time when the main channel for the larger boats went to the eastward?

No, sir, they came over gradually.

Q 53 Can you fix the time when large boats ceased to go to the westward?

Well, the upper spit of the Fort, extended up the river and close by the White Buoy, that is the ship channel, that is the buoy of the ship channel, it closed up so that it was not deep enough for vessels to go over, and I see vessels lying on the spit of the Fort several times.

Q 54 When was that?

Along about the time of the war, I think, and after that they got coming to the eastward.

Q 55 You have spoken of a wharf at the jetty, the government jetty?

At Fort Mett, you mean?

Q 56 Yes.

Yes, sir.

Q 57 There is a wharf there, as I understood you, built by the government?

Yes, sir.

Q 58 At the Fort?

Yes, sir.

Q 59 In addition to that there is a jetty?

Above.

Q 60 At Finns Point?

At what they call Newell's Point.

Q 61 How long is that jetty?

I never have been on it, I stood on the shore once and looked at it, and it was quite a way out.

Q 62 A mile long?

I should not think that long.

Q 63 Something like a mile?

It run down I suppose about as far as to where Bulk-head Buoy used to be, there were two buoys there when I fished, Sand-bar Buoy and Bulk-head Buoy, on the eastern shore when I fished.

WILLIAM M. BRIGHT, a witness produced on behalf of the complainant, being duly sworn by the

commissioner according to law, testified as follows:

DIRECT EXAMINATION by the Attorney General of New Jersey:

1 Are you hard of hearing?

Yes, sir.

2 How old are you?

Fifty-five.

3 Have you ever carried on fishing?

Yes, sir.

4 How long have you lived in this County?

55 years.

5 How long have you carried on fishing?

I began when I was a little boy with my father, and when I was fifteen I started as a full hand fishing, and fished for 22 springs.

6 What parts of the river did you fish in?

My main fishing was from Deep Water Point to Reedy Island.

7 On what sides of the river would you fish?

My main fishing ground was on the Delaware side.

8 Where would you cast your nets on the Delaware side?

Just above Newcastle.

9 Were there many others fishing like you during those times?

Yes, sir.

10 From Jersey, I mean.

Yes, sir.

Q 11 When did you cease fishing?

A I ceased fishing 18 years ago.

Q 12 Were you ever prevented from fishing by the authorities of Delaware?

A No, sir.

CROSS EXAMINATION by the Attorney General of Delaware:

XQ 13 How many seasons did you fish altogether?

A 22.

XQ 14 And during that time you say your main fishing ground was on the Delaware shore?

A Yes, sir.

XQ 15 On an ebb tide where would you set out your nets?

A Just above Newcastle.

XQ 16 And drift down by the Fort?

A No, sir, we generally boated before we got to Fort Delaware on that drift, we usually boated just above Fort Delaware on that drift.

XQ 17 And you took your net where then?

A Right opposite Fort Delaware and laid off again, sometimes we would drift right on through, but as a general thing we boated just above Fort Delaware.

XQ 18 And then let it out again on what side, the west side?

A Both.

Q 19 Was the main Jersey fisherman's place to fish on the Jersey or Delaware shore?

The majority of the fishermen fished on the Jersey shore when I was fishing, the majority of the Jersey fishermen fished on the Jersey shore, but a number of us fished on the western channel.

Q 20 By choice?

A Yes, sir.

Q 21 Between the two?

A Yes, sir, I fished there because I thought I could get more fish there.

RE-DIRECT EXAMINATION by the Attorney General of New Jersey:

RDQ 22 Where do you live?

A Pennsville, New Jersey.

RDQ 23 Have you noticed any change in the Jersey shore line?

THE ATTORNEY GENERAL OF DELAWARE: Counsel for the defence interposes an objection to this question and to this line of testimony as immaterial.

A Well, the most changes have been since I stopped fishing. The jetty was built after I stopped fishing, which changed the drift ~~mark~~ there.

DAVID G. SIMPKINS, - witness produced on

behalf of the complainant, being duly sworn by the commissioner according to law, testified as follows:

DIRECT EXAMINATION by the Attorney General of New Jersey:

- 1 Where do you live?
Penns Grove.
- 2 How long have you lived in this County?
About 50 years.
- 3 Have you ever been a fisherman?
Yes, sir.
- 4 For how long a time?
Ever since I was a boy, I fished up to and during the war and then I went to war, and after that I commenced fishing again right away.
- 5 How long have you fished?
Until about 18 years ago, then I was in business in Philadelphia, and I don't know much about it since 18 years back.
- 6 During the time you fished or was on the river so that you saw what was going on, where was the fishing, on which side?
My main fishing was down below in the bay from Hope Creek. Did you fish at all north of Reedy Island?
Very little, up to the Fort not above the fort.
- 8 You did fish up to the Fort though?

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A The apple orchard that I remember when I was a boy--it
came into Joseph Donovan's hands, when I was a boy, but it
did not belong to him before, but that has washed away,
the old orchard and a new one has grown up at the other end.

ES Can you locate that?

A It lies right below the battery point, Fort Mott, you might
call it, it is now; it was not Fort Mott in those days,
but there has been a new name given to it, it was not Fort
Mott when I first recollect it. There have been consider-
able improvements made there since I was a boy, but it did not
go by the name of Fort Mott then.

Do you know about these wharves that have been referred to
here?

When I first recollect there was not any wharf there at all
at Penns Point, nothing but a beach and it is now stone
walled up there for a considerable length of distance, miles
I suppose, a heavy stone wall.

You remember these steamboat ^{wharves} ~~wharves~~, I suppose?

I remember the old steamboat wharf at Pennaville.

That has been there as long as you can remember?

Yes, it was there when I first recollect it.

And there has been a new one put up there, too?

Yes, sir, there is a new one there now that has been put
there lately.

A Yes, sir.

Rd Q240 I want to ask you whether or not there have been any docks built, or any improvements made along the Jersey shore in Salem county, within your recollection?

A Well, what's that like?

Rd Q241 Any docks or wharves that you know of, or any piers?

A Yes, sir.

Rd Q242 Out from the Jersey shore?

A There has been one.

Rd Q243 One that you know of, where is that?

A That is up there by the Port.

Rd Q244 Opposite what, near what place on the shore?

A I could not exactly describe that, but it is about halfway from the orchard to Pennsville or near it.

Rd Q245 Whose dock is that called?

A That is the Government pier that was built out there; that is to throw the tide in a different direction.

Rd Q246 Do you remember the location of the Government docks right opposite Fort Delaware?

A Well, they ain't built none since that.

Rd Q247 At Finn's Point?

A That is just the very one I have been telling you about.

Rd Q248 How long is that, if you know?

A I don't know how long it is.

Rd Q249 Do you remember any other one?

A No, there ain't no other.

Rd Q250 No other that you remember?

A No, sir; not on the Jersey shore.

Rd Q251 Do you remember one up at Pennsville?

A Well, there is nothing but steamboat wharves there.

Rd Q252 That is what I am talking about.

A Oh, you want steamboat wharves?

Rd Q253 Any kind of dock or wharf.

A I don't know nothing about that there at Pennsville; you have got some Pennsville men here who could tell you that better than I could.

Rd Q264 You spoke, in ~~xxxxxxx~~ ^{response} to Attorney-General Ward's questions about a marsh betw een Peapatch and the Delaware shore, is that filled in there?

A It is out away.

Rd Q265 Between Peapatch and Delaware now?

A Between Peapatch and Delaware?

Rd Q266 Yes, is it the same as it used to be or what?

A To the eastward?

Rd Q267 To the westward?

A Oh, the western shore I don't know nothing about .

Rd Q268 I want to know whether the river between Peapatch Island and

money we are after.

Q60 Did you do it with nets?

A Yes, sir.

Q61 The same as described by the witness this morning?

A Yes; drifted with the ~~maxx~~ tides backwards and forwards.

Q62 Do you know of any wharves or improvements in the river at Pennaville?

A Yes, sir, there is a wharf at Pennaville, a new one.

Q63 What is that?

A It is a steamboat landing built out with piling and boarded out, bulk-headed out.

Q64 What about is the length of it?

A I could not tell anything about the length of it, three or four hundred feet, I reckon; it is out to nine feet of water.

Q65 How long has it been there?

A Well, Charlie Brown put that there about --

Q66 You do not remember the year?

A It is seven or eight years ago.

Q67 Is there any other wharf there at Pennaville?

A Yes, sir, the old wharf that has been there ever since I can remember.

Q68 How long has that been there; as long as you remember, you say?

A It was there when I can first remember it.

Q69 Is that a long walk or a short one?

A It is not quite as long as what the other one is, I think not.

Q70 What is that, the other?

A Steamboat landing, and fishermen put up there.
those wharves?

Q71 Do you know what steamboats used ~~XXXXXXXXXXXX~~

A The Major Reibald uses the lower wharf, the old wharf, and the City of Salem uses the upper. We call the lower one Cravens Ferry.

Q72 Do you know anything about any wharves up at Penns Grove in front of French's Hotel?

A Yes, sir, there is one in front of French's Hotel, a wharf.

Q73 How long has that been there?

A It has been there as long as I have been here, I guess, as far as I know.

Q74 What is that used for?

A Steamboat landing; Major Reibald and Eureka and Thomas Glyde.

Q75 That is in Salem County?

A Yes, sir.

Q76 That goes out in the river about what length?

A I suppose about 400 or 500 feet-- 500 or 600 feet, somewhere along there, I can't tell.

Q77 Do you know of any repairs or improvements of any kind

that have been made by the citizens or owners of the upland along the Jersey shore in this County besides these wharves,

(The following is a copy of Complainants Exhibit 35)
THE STATE OF NEW JERSEY TO ALL WHOM THESE PRESENTS SHALL
COME OR MAY CONCERN, GREETING:

WHEREAS, Pursuant to an act of the legislature of
said state approved March 21st, 1871, entitled "A further
supplement to an act entitled 'An act to ascertain the
rights of the state and of the riparian owners in the lands
lying under the waters of the Bay of New York and else-
where in this State,'" approved April eleven, one thou-
sand eight hundred and sixty four,

Daniel H. Kent of Wilmington, Delaware, being the owner
of lands fronting on the Salem Cove where the tide ebbs
and flows therein and being said riparian owner on tide
waters in this State, and desirous of obtaining a grant
from the said State of the lands under water hereinafter
mentioned, which lie in front of his said lands, did apply
to the commissioners, to wit:

Thomas McKeen, Bennington F. Randolph, Amzie Dodd
and Gershom Mott

for a grant of the lands hereinafter conveyed. And where-
as, the said commissioners having due regard to the in-
terests of navigation, have agreed to grant the lands
hereinafter mentioned and determined that one hundred and
eighty nine dollars and seventy five cents is a proper

compensation to be paid to this State for the lands hereinafter conveyed.

NOW THEREFORE, the said State of New Jersey, by the said Thomas McKeen, Bennington F. Randolph, Amzie Dodd and Gershom Mott, commissioners aforesaid, the Governor of said State concurring, in consideration of the premises aforesaid and of the said sum of One hundred and eighty nine dollars and seventy five cents duly paid by the said Daniel H. Kent, to the said State, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell and convey unto the said Daniel H. Kent, and to his heirs and assigns forever.

All those two parcels of land ~~falling~~ flowed by tide water lying in the township of Elsinboro in the county of Salem and State of New Jersey described as follows:

First tract - Beginning at a point in the high water mark of the southerly shore of Salem Cove where the same is intercepted by a course of North 12 degrees east from the easterly chimney on Daniel H. Kent's house and from thence running north two degrees, west 300 ft. to the exterior line established by the commissioners appointed under the authority of the act entitled, "An act to ascertain the rights of the State and of riparian owners in the

lands lying under water the waters of the Bay of New York and elsewhere in this State", Approved April eleven, A.D. 1864, and the supplements thereto - thence westerly along said exterior line as shown on the map hereto annexed 534 ft. more or less to a point thence south two degrees east four hundred feet to the highwater mark of the southerly shore of Salem Cove at a point distant along said shore 525 ft. westerly from the place of Beginning, thence easterly along said highwater mark to the place of Beginning.

Second tract - Beginning at a point in the highwater mark of the southerly shore of Salem Cove where the same is intersected by a course of North 26 degrees, 50 minutes east from the easterly chimney of Daniel H. Kent's house ~~XXXXXXXXXXXX~~ and from thence running north 53 degrees 25 ~~fast~~ minutes east 275 feet. to the exterior line established by the commissioners appointed under the authority of the act aforesaid and the supplements thereto, thence southerly along said exterior line as shown on the map hereto annexed 225 ft. more or less to a point thence south 53 degrees, 25 minutes west 330 ft. to the high water mark of the southerly shore of Salem Cove, thence northwesterly along said highwater mark to the place of Beginning with the right, liberty, privilege and franchise

to exclude the tide waters from so much of the lands above described as lies under tide water by filling in or otherwise improving the same and to appropriate the lands above described to his exclusive private uses and if and when said exterior line shall be fixed at any other points or places further out into said cove also any and all lands under water lying between the present exterior line above described and the next exterior line or lines that may be hereafter fixed the same to be used agreeably to the terms of such extension. Together with all and singular the hereditaments and appurtenances thereto belonging and all the rights of the State in said line.

To have and to hold all and singular the above granted and described lands covered with water and premises unto the said Daniel H. Kent, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said State has caused these presents to be sealed with the great seal of the said State, and to be subscribed by George C. Ludlow, the Governor of said State and by three of the said commissioners and attested by Henry C. Kelsey, the Secretary of State thereof this seventeenth day of February, in the year one thousand eight hundred and eighty three.

(The following is a copy of Complainants Exhibit 37)

STATE OF NEW JERSEY

TO ALL WHOM THESE PRESENTS MAY COME OR MAY CONCERN

GREETING:

WHEREAS, Pursuant to an act of the legislature of the said State approved March 21st 1871, entitled "A further supplement to an act entitled 'An act to ascertain the rights of the State and of Riparian Owners in the lands lying under the waters of the Bay of New York and elsewhere in this State'", approved April 11th, One thousand eight hundred and sixty four and other statutes and Joint Resolutions of said State Eugene J. Dupont, Francis M. Henry A. Dupont, Alexis J. Dupont, Charles J. Dupont Dupont and Alfred J. Dupont of New Castle County State of Delaware, partners trading under the firm name of E.J. Dupont de Nemours & Co. being the owners of lands fronting on the southerly shore of Delaware river at Carneys Point in the Township of Upper Penns Neck in the county of Salem and State of New Jersey, which lie above high water mark and in front of which the lands hereinafter granted lie, and so being an applicant within the said acts and joint resolutions; and being desirous of obtaining a grant upon the terms set forth in this instrument for the lands under water hereinafter described which lie in front of the lands of said applicant and having applied to the Riparian Com-

missioners appointed under said acts and joint resolutions and to the Governor of the said State for a grant of the lands hereinafter described and to fix the boundaries, price or reasonable compensation and terms for the grant of so much of said lands under water as lie below high water mark and may properly be included in this grant.

And whereas the Governor of the State of New Jersey and said Commissioners to wit:

Leon Abbott, Governor, and Willard C. Fisk, Miles Ross, Richard B. Reading and Richard N. Herring, Commissioners having due regard to the interests of navigation and the interests of the State have agreed to grant the lands hereinafter mentioned upon the terms herein set forth and have determined the sum of Two hundred dollars as the price or reasonable compensation to be paid to the State for the lands hereinafter granted.

Now therefore the said State of New Jersey by the said Commissioners, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of Two hundred dollars duly paid by the said Eugene Dupont, Francis G. Dupont, Henry A. Dupont, Alexis J. Dupont, Charles J. Dupont and Alfred J. Dupont to the said State the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey

subject to the terms, covenants, conditions and limitations herein contained unto the said Eugene Dupont, Francis G. Dupont, Henry A. Dupont, Alexis J. Dupont, Charles J. Dupont and Alfred J. Dupont, as joint tenants and not as tenants in common and to the survivor or survivors of them and the heirs and assigns of the survivor forever,- All that parcel of land flowed by tide water lying at Carneys Point in the Township of Upper Penns Neck in the County of Salem and State of New Jersey, described as follows: Beginning at a point in the high water line of the southerly shore of Delaware river distant 720 ft. on a course south 56 degrees 28 minutes west from where the center of the dyke separating the marsh from the upland intersects the high water line of Delaware river at Carneys Point, and from thence north 33 degrees, 30 minutes west 550 ft. to the exterior line established by the Commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the State and of Riparian Owners in the lands lying under the waters of the Bay of New York and elsewhere in this State", approved April 11th, A.D. 1864, and the supplements thereto; thence along said exterior line north 56 degrees 30 minutes east 200 ft. thence south 33 degrees 30 minutes east 550 ft. more or less to the high water line of the southerly shore

of the Delaware River; thence southwesterly along said high water line to the place of Beginning.

Subject, however, to the rights of the public, if any exist, to an easement or right of way over and across any part of the above described premises.

With the right and privilege under the covenants and conditions of this grant to exclude the tide water from so much of the lands above described as lie under tide water by filling in or otherwise improving the same, and to appropriate the lands under water above described to the said grantees and their exclusive private uses.

Provided, however, that nothing in the instrument contained shall prevent or in any way interfere with the full and ample right of the State to hereafter give license power or authority affecting lands under water whether in front of said lands or elsewhere in the State.

And also provided that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein for the cultivation of oysters or other fish or for any other purpose whatever provided, that a water space of suitable width for free and uninterrupted navigation be left open and unobstructed between the exterior line for solid filling or between the exterior line for piers when the same has or shall be

established and the lands which have heretofore been or may be hereafter be leased or granted by this State as aforesaid in front of any exterior or pier lines as the same now or may hereafter exist, the dimensions of which water way shall be determined and regulated by the said Commissioners or other authority under any present or future law of the State with the assent of the Governor.

And also provided that the State of New Jersey by its Riparian Commissioners or any other law or authority may from time to time determine, fix and change the exterior lines for solid filling and piers, even though such action may effect the lands hereby granted, whenever the State may deem it necessary for its interests so to do and if such exterior or pier lines shall be placed out further from the shore than formerly then the party or parties claiming under this instrument or grant may within such period as may be fixed by the State either through such Riparian Commissioners or any other lawful authorities have the right to apply for a lease or grant of such additional land under water lying between the present exterior lines above described and the new exterior line or lines that may be hereafter fixed, such additional land to be used for solid filling and for piers respectively as directed by the said Commissioners or their successors or

other lawful authority under any present or future law of this State upon payment of such additional rental or compensation and upon such terms as shall be fixed by said Commissioners or under any present or future law of this State.

And also provided that if the exterior lines for solid filling and the exterior lines for piers or either of said lines now established or lines that may be hereafter established by the Riparian Commissioners or other lawful authority of the State of New Jersey shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages that the claim or claims therefor must be made against the authorities of the United States Government and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands covered with water and premises subject to the terms, conditions and limitations aforesaid unto the said Eugene Dupont, Francis G. Dupont, Henry A. Dupont Alexis J. Dupont, Charles J. Dupont and Alfred J. Dupont as joint tenants and not as tenants in common

and to the survivor or survivors of them, and to the heirs and assigns of the survivor forever.

IN WITNESS WHEREOF the said Commissioners have hereunto respectively set their hands and these presents have been signed by the Governor and the great seal of the said State has been hereunto affixed and attested by the said ~~State~~ Secretary of State this 27th day of November, in the year eighteen hundred and ninety one.

Leon Abbott, Gov.
Willard C. Fisk
Miles Ross
Richard D. Reading
Richard N. Herring
Witness R.C. Bacot.

(Seal)
Attest,
Henry C. Kelsey,
Sec. of State.

STATE OF NEW JERSEY ss
COUNTY OF HUDSON.

BE IT REMEMBERED That on this 7th day of December 1891, before me the subscriber, a Master in Chancery of New Jersey personally appeared Robert C. Bagot, being by me duly sworn on his oath saith that he saw Williard C. Fisk, Miles Ross, Richard B. Reading and Richard N. Herring the within named Commissioners, sign and deliver the within deed as their voluntary act, and that he the said Robert C. Bagot thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me R.C. Bagot
at Jersey City the day and year
aforesaid

John V. Bagot,
Master in Chancery of New Jersey.

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I hereby certify that this is a true copy of a
grant onrecord in the office of the Riparian Commission
of New Jersey. (Book G. page 386)

John C. Payne,
Secy. & Engr.

Complainant's Exhibit 37a

is a copy of the map attached to a grant by the State of New Jersey to Eugene J. Dupont, et als. of which grant Exhibit 37 is a copy.

(The following is a copy of Complainants exhibit 38)

STATE OF NEW JERSEY.

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, GREETING:

WHEREAS, Pursuant to an act of the legislature of said State approved March 21st, 1871, entitled "A further supplement to an act entitled "An act to ascertain the rights of the State and of Riparian Owners in the lands lying under the waters of the Bay of New York and elsewhere in this State", approved April 11th, One thousand eight hundred and sixty four and other statutes and Joint Resolutions of said State, Annie E. Brown being the owner of lands fronting on the easterly shore of Delaware Bay and State of New Jersey which lie above high water mark and in front of which the lands hereinafter granted lie, and so being an applicant within the said acts and joint resolutions and being desirous of obtaining a grant upon the terms set forth in this instrument for the lands under the water hereinafter described which lie in front of the lands of said applicant and having applied to the Riparian Commissioners appointed under said Acts and Joint Resolutions and to the Governor of said State for a grant of the lands hereinafter described and to fix the boundaries, price or reasonable compensation and terms for the grant of so much of said lands under water as lie be-

low high water mark and may properly be included in this grant.

And whereas the Governor of the State of New Jersey and said Commissioners, to wit: Willard C. Fisk, Miles Ross, Richard B. Reading and Richard N. Herring having due regard to the interest of navigation and the interests of the State have agreed to grant the lands hereinafter mentioned upon the terms hereinset forth, and have determined the sum of Sixty dollars as the price or reasonable compensation to be paid to the State for the lands hereinafter granted.

Now therefore the said State of New Jersey by the said Commissioners, the Governor approving in consideration of the premises the terms and conditions hereinafter contained, and the said sum of sixty dollars duly paid by the said Annie E. Brown to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain sell and convey subject to the terms, covenants, conditions and limitations herein contained unto the said Annie E. Brown and her heirs and assigns forever, All that parcel of land flowed by tide water lying in Pennsville xxx in the Township of Lower Penn's Neck in the county of Salem and State of New Jersey, described as follows:

Beginning at a point in the high water line of the

easterly shore of Delaware River at a point distant 44 ft. southwesterly along said high water line from the center line of a new street and from thence north 47 degrees west 850 ft. to the exterior line established by the authority of the act entitled An Act to ascertain the Commissioners appointed under the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State", approved April 11th, 1864, and the supplements thereto; thence southwesterly along said exterior line 20 ft. thence ~~southwesterly along said exterior line~~ 47 degrees, east 850 ft. to the high water line of the easterly shore of Delaware River; thence northwesterly along said high water line to the place of Beginning. Subject, however, to the rights of the public if any exist, to an easement or right of way over and across any part of the above described premises.

With the right and privilege under the covenant and conditions of this grant to exclude the tide water from so much of the lands above described as lie under the tide water by filling in or otherwise improving the same and to appropriate the lands under water above described to her exclusive, private uses.

Provided however that nothing in this instrument contained shall prevent or in any way interfere with the full

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and ample right of the State to hereafter give license, power or authority affecting lands under water whether in front of said lands or elsewhere in the State.

And also provided that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior lines for solid filling or piers mentioned or referred to herein for the cultivation of oysters or other fish or for any other purpose whatever, provided that a water space of suitable width for free and uninterrupted navigation be left open and unobstructed between the exterior line for solid filling or between the exterior line for piers when the same has been or shall be established and the lands which have heretofore been or may be hereafter leased or granted by the State as aforesaid in front of any exterior or pier lines as the same now or may hereafter exist, the dimensions of which water way shall be determined and regulated by the said Commissioners or other authority under any present or future law of the State with the assent of the Governor.

And also provided that the State of New Jersey by its Riparian Commissioners or any other law or authority may from time to time determine, fix and change the exterior lines for solid filling and piers, even though such action may affect the lands hereby granted whenever the State may deem it necessary for its interests so to do,

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and if such exterior or pier lines shall be placed out further from the shore than formerly then the party or parties claiming under this instrument or grant may within such period as may be fixed by the State, either through said Riparian Commissioners or any other lawful authority, have the right to apply for lease or grant of such additional land under water lying between the present exterior lines above described and the new exterior line or lines that may be hereafter fixed. Such additional lands to be used for solid filling and for piers respectively as directed by the said Commissioners or their successors or other lawful authority under any present or future law of this State upon payment of such additional rental or compensation and upon such terms as shall be fixed by said Commissioners or under any present or future law of this State†

And also provided that if the said Annie E. Brown is not the owner of the land adjoining the land under water hereby granted then, and in that case, this instrument and conveyance so far as the same binds the State and all the covenants herein on the part of the State shall be void as affecting any part or parts of said land joining land not owned by the said Annie E. Brown.

And also provided that if the exterior line for

solid filling and the exterior line for piers or either of said lines now established or lines that may be hereafter established by the Riparian Commissioners or other lawful authority of the State of New Jersey shall be hereafter changed by the action of the authorities of the United States Government, and the grantees herein or any party claiming hereunder shall suffer damages that the claim or claims therefor must be made against the authorities of the United States Government and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands covered with water and premises subject to the terms, conditions and limitations aforesaid unto the said Annie E. Brown, her heirs and assigns forever.

IN WITNESS WHEREOF the said Commissioners have hereunto respectively set their hands and these presents have been signed by the Governor and the great seal of said State has been hereunto affixed and attested by the Secretary of State this 28th day of August in the year Eighteen hundred and ninety one.

Judge Hayes death in even a telephone conversation.

I think that I must add just a word of regret to what he has already said.

BY THE COMMISSIONER: The Commissioner expresses his strong sense of the loss of the services of Mr. Hayes in this case. The knowledge that the Commissioner has had of him in the one or two meetings at which he has been present, impressed him with the great learning he had and particularly along the lines as they will be developed in this case, and feels that his loss will be most serious to all of us, and further directs that this minute be placed upon the notes.

ATTORNEY GENERAL OF NEW JERSEY: In order to make it intelligible to counsel and the Commissioner, we propose to show that what is known as the Board of Riparian Commissioners of New Jersey have, acting under certain Legislation of this State, from time to time made grants of rights in the Delaware river within the bounds of the so-called twelve mile circle thereby manifesting the assert-

ion to the State of New Jersey of its interest in and ownership of the waters beyond high-water mark and the Delaware Bay and River along Salem County; in order to pave the way for that evidence I think it proper that we should offer in evidence the laws of the State of New Jersey under which the Riparian Board is organized and undertakes to act, and to that end we first offer in evidence Chapter 351 of the Session Laws of 1864, of the State of New Jersey, being an act entitled "An act to ascertain the rights of the State and of the Riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in the State", approved April 11, 1864, page 851.

ATTORNEY GENERAL OF DELAWARE: Considering that this might be simply an act of one party to a suit in which the other party has no privity and by which it ought not to be bound, the defendant enters a formal objection for that reason, and also on the ground that it is immaterial and irrelevant.

The Commissioner admits the offer subject to argument and consideration hereafter.

The Act offered is marked "Complainant's exhibit 22."

ATTORNEY GENERAL OF NEW JERSEY: For the same purpose and along the same line, we further offer in evidence Chapter 805 of the Laws of 1869, entitled supplement to an act entitled "An act to ascertain the rights of the State and of Riparian Owners in the lands lying under the waters of the Bay of New York and elsewhere in this State", Approved April 11, 1864 and found in the Session Laws of 1869 on page 1017. The supplement itself being approved March 3, 1869.

ATTORNEY GENERAL OF DELAWARE: Objects to the admission in evidence of THIS Act, it being an Act of the complainant not with the privity of the defendant and not binding upon the defendant, and also upon the ground that it is immaterial and irrelevant.

The Commissioner makes the same ruling.

The Act is marked "Complainant's Exhibit 25."

ATTORNEY GENERAL OF NEW JERSEY: For the same purpose and along the same line, the complainant further offers in evidence Chapter 284 of the Laws of 1871, being entitled a further supplement to an Act entitled "An Act to ascertain the rights of the State and Riparian owners

in the lands lying under the waters of the Bay of New York and elsewhere in this State", Approved April 11, 1864, which supplement was approved March 21, 1871; the supplement being found on page 44 of the Pamphlet Laws of New Jersey for 1871.

(Same objections)

The Commissioner makes the same ruling.

The Act is marked "Complainants exhibit 24."

ATTORNEY GENERAL OF NEW JERSEY: For the same purpose and along the same line, the complainant offers in evidence Chapter DCLVIII of the Laws of 1872, being entitled "Supplement to an act to ascertain the rights of the State and of Riparian owners of the lands lying under the waters of the Bay of New York and elsewhere in said State", approved April 11, 1864, which supplement was itself approved April 4, 1872, and is found on page 99 of the Pamphlet Laws of the State of New Jersey, for the year 1872.

Same Objections.

The Commissioner makes the same ruling.

The Act is marked "Complainants exhibit 25".

ATTORNEY GENERAL OF NEW JERSEY: For the same purpose and along the same line, the complainant offers in evidence Chapter CCCCXVII of the Laws of 1874 being entitled a further supplement to an act entitled "An Act to ascertain the rights of the State and the Riparian owners of the lands lying under the waters of the Bay of New York and elsewhere in the State", approved April 11, 1864, which supplement was itself passed March 27, 1874, and is found on page 103 of the Pamphlet Laws of the State of New Jersey, for the year 1874.

Same objection.

The Commissioner makes the same ruling.

The Act is marked "Complainant's Exhibit 26".

ATTORNEY GENERAL OF NEW JERSEY: For the same purpose and along the same line, the complainant further offers in evidence Chapter 308 of the Laws of 1875, entitled a further supplement to an act entitled "An Act to ascertain the rights of the State and Riparian Owners in the lands lying under the waters of the Bay of New York and elsewhere in this State", approved April 11, 1864, which said supplement was itself approved April 5, 1875, and is found on page 53 of the Pamphlet Laws of the State

New Jersey for the year 1878.

Same objection.

The Commissioner makes the same ruling.

The Act is marked "Complainants exhibit 27".

Division of Taxation, New Jersey, 1878.

ATTORNEY GENERAL OF NEW JERSEY: For the same purpose and along the same line, the complainants further offer in evidence Chapter 291 of the laws of 1888, entitled a supplement to an Act entitled a further supplement to an act entitled "An Act to ascertain the rights of the State and Riparian Owners in the lands lying under the waters of the Bay of New York and elsewhere in this State", approved April 11 1864, which supplement was approved April 5, 1878. The supplement now offered itself being approved April 17, 1888 and found on page 437 of the Pamphlet Laws of the State of New Jersey, for the year 1888.

Same objection.

The Commissioner makes the same ruling.

The Act is marked "Complainants exhibit 28".

Division of Taxation, New Jersey, 1878.

ATTORNEY GENERAL OF NEW JERSEY: For the same purpose

and along the same line, the complainant further

offers in evidence Chapter CLXXII of the Laws of 1894, entitled "An Act to reorganize the Board of Riparian Commissioners of this State" which act is approved May 9, 1894, and is found on page 267 of the Pamphlet Laws of the State of New Jersey, for the year 1894.

Same objection.

The Commissioner makes the same ruling.

The Act is marked "Complainants Exhibit 29."

J O H N C. P A Y N E, a witness called on behalf of the Complainant, having been duly sworn according to law, by the Commissioner, testified as follows:

EXAMINED By the Attorney General of New Jersey.

Q1 What is your profession, Mr. Payne?

A I am a Civil Engineer.

Q2 And you reside where?

A And I am the secretary and engineer of the State Board of Riparian Commissioners of New Jersey.

Q3 How long have you been such?

A I have been assistant secretary and engineer for about twenty years, and secretary and engineer for about seven.

Q4 Who was the engineer and secretary while you were assistant?

A Robert C. Baet.

Q5 Is he dead or alive?

A Dead.

Q6 Was he the original secretary and engineer?

A Yes, sir.

Q7 From the organization of the Board to the time of his death?

A Yes, sir.

Q8 How long ago did he die?

A Four years.

Q9 You succeeded him, having been his assistant for perhaps sixteen or seventeen years previous?

A Yes, sir.

Q10 Have you with you any maps showing action taken by the Board of Riparian Commissioners of New Jersey in the Delaware river on the shore of Salem County?

A Yes, sir.

Q11 Will you produce them?

A Yes, sir, I have them with me.

Q12 Please do so.

A (Witness produces same) I have with me the Riparian Commissioners maps showing the Delaware river shore front of Salem County and the exterior lines up to which grants have been and may be made by the State, and the same are used in the office of the Commissioners. Also map showing part of

Salem and Fenwick Creeks in Salem County, showing the same data, the shore lines of Salem and Fenwick Creeks and the lines up to which the Riparian Commissioners of the State of New Jersey have made grants of lands under water to the abutting shore owners, out to the lines fixed in said grants.

Q13 What line on the map indicates what you have called the line of outer filling?

Objected to as immaterial.

A An unbroken line exterior to the shore line which is shaded blue -- an unbroken black line exterior to the shore line which is shaded blue.

Q14 Before you pass on to the next map, I will ask you, referring to this map No. 1, if they are drawn to a scale, and if you can tell the distance of what you have called the exterior line from the shore?

Objected to as immaterial.

A Yes, sir, the scale of Map No. 1, that we are referring to is one-ten-thousandths or eighty thirty three and a third feet per inch, as indicated on the map.

Q15 Now, we will take Map No. 2, I will ask you what that is?

Objected to as immaterial.

A Map No. 2, is the second sheet showing the Delaware river front of Salem County, with the exterior line fixed by the Riparian Commissioners, in the same manner as map No. 1 indicates it, and is drawn to the same scale.

Q16 What is meant by the red spots shown on the map?

Objected to as immaterial, and irrelevant.

A They are the locations of grants of lands under water made by the Riparian Commissioners of the State of New Jersey, to the abutting shore owners out to the exterior line described in said grants.

Q17 We will pass now to the third map, what is that?

Objected to as immaterial, and irrelevant.

A Map No. 3, is the third section of the Riparian Commissioners map of the Salem County shore front of the Delaware river, and shows the shore line, and the exterior line as shown on the other maps and is drawn to the same scale.

Q18 The indication in red is the same in this map as the other?

A Yes, sir.

Same objection.

Q19 Now, take Map No. 4.

Objected to as immaterial and irrelevant.

A Map No. 4 shows a part of Salem Creek and a part of Fenwick Creek with the exterior line fixed by the Riparian Commissioners of the State of New Jersey, and in a red coloring, the grants of lands underwater made out to this line to the shore owners and is drawn on a scale of two hundred feet to the inch.

Answer objected to as immaterial and irrelevant.

Q20 The exterior line being indicated in the same way?

A Yes, sir, a full black line.

Same objection.

Q21 I now show you Map of Gloucester County, No. 1, and ask you what that is?

Objected to as immaterial and irrelevant.

A This is sheet No. 1 of the maps of Gloucester County, on file in the office of the Riparian Commissioners of the State of New Jersey, and showing the shore line and the exterior line out to which grants of lands under water are made by the State of New Jersey, and is drawn to a scale of one-tenthousandths or eight thirty three and a third feet per inch.

Q22 This map includes certain islands?

Objected to as immaterial and irrelevant.

- A Yes, sir, this map shows Raceon and Cadwalder Islands.
- Q23 If the maps that have already been referred to in your evidence were put together, would they show the continuous line of Gloucester and Salem Counties?
- A Yes, sir.
- Q24 Between the northerly boundary of Salem and southerly boundary of Gloucester?
- A Between the southerly boundary of Salem county and the northerly part boundary of Salem county and part of Gloucester County.
- Q25 Now these papers which you now produce in the form of tradings Salem County 1, 2, 3, 4 and Gloucester County No. 1, are they tracings of the maps you have just been referring to?
- A Yes, sir.
- Q26 And are in all respects correct copies?
- A Yes, sir.

ATTORNEY GENERAL OF NEW JERSEY: I offer these five original maps in evidence.

ATTORNEY GENERAL OF DELAWARE: The admission of these maps in evidence is objected to by defendant, inasmuch as they constitute acts of the complainant, without the privity of the defendant and not binding upon the defendant, and because they are immaterial and irrelevant.

The Commissioner admits the offer subject to future argument and consideration, and the five maps produced are marked consecutively "Complainant exhibits 30, 31, 32, 33 and 34."

Counsel for the respective parties stipulate that the tracings produced by the witness shall be substituted for the original maps and may be used in final hearing to the same extent and purpose as if the originals were produced, with the right on behalf of the defendant to inspect the originals if they wish to do so.

Q27 Referring to Exhibit 31, have you a certified copy of the grant that has been made by the Riparian Board of land under water shown thereon, and if so, will you produce it?

ATTORNEY GENERAL OF DELAWARE: The question is objected to as immaterial and irrelevant.

A I have such certified copy and present it.

Q28 What is the tracing attached to the type-written description?

A It is a tracing from the map copied into the record of the Riparian Commission in connection with the grant, and is a copy of the map attached to the original grant by the State.

ATTORNEY GENERAL OF NEW JERSEY: I offer a certified copy of the grant and of the map accompanying the same, in evidence.

ATTORNEY GENERAL OF DELAWARE: Objected to on the ground that it constitutes an act of the complainant without the privity of the defendant, and not binding upon it, and as immaterial and irrelevant.

THE COMMISSIONER: The Commissioner admits the offer subject to future argument and consideration, and it is marked "Complainants Exhibit 35" and the Tracing attached is marked "Complainants exhibit 35a".

Q29 Will you please designate the name of the grantee in the foregoing grant, Exhibit 35?

ATTORNEY GENERAL OF DELAWARE: Objected to as immaterial and irrelevant.

THE COMMISSIONER: Same ruling.

A Daniel H. Kent, Wilmington, Delaware.

Q30 I now show you a grant purporting to be to the Salem Brick Company and ask you what that is?

ATTORNEY GENERAL OF DELAWARE: Objected to as immaterial and irrelevant.

THE COMMISSIONER: Same ruling.

A That is a certified copy of a grant made by the State of New Jersey to the Salem Brick Company, and of the map accompanying the same.

ATTORNEY GENERAL OF NEW JERSEY: We offer that in evidence.

ATTORNEY GENERAL OF DELAWARE: Objected to, inasmuch as said deed is an act of the complainant without privity of the defendant and not binding upon it, and as immaterial and irrelevant.

THE COMMISSIONER: Same ruling.

Said Grant is marked "Complainants exhibit 36" and the tracing attached marked "Complainants exhibit 36a"

Q31 We now refer to exhibit No. 32, have you with you any copies of grants made by the Riparian Commissioners and shown upon that map?

A This is the certified copy of a grant by the State of New Jersey to Eugene J. Dupont, Frances G. Dupont, Henry A. Dupont, Alexis J. Dupont, Charles I. Dupont and Alfred I. Dupont of New Castle, State of Delaware, and trading under the firm name of E. I. Dupont DeNemours & Co.

Q32 And the map accompanies the same as before?

A Yes, sir.

ATTORNEY GENERAL OF NEW JERSEY: I will offer that in evidence.

ATTORNEY GENERAL OF DELAWARE: Objected to for the same reason.

THE COMMISSIONER: The same ruling.

Marked "Complainants exhibit 37" and the tracing attached marked "Complainants exhibit 37a".

Q33 I now ask you to identify the next certified copy that you produce?

A The next certified copy is a copy of a grant to Annie E. ~~Brown~~ Brown, and of the map accompanying said grant.

Q34 Also bearing the exhibit number 38 in red?

A Yes, sir.

ATTORNEY GENERAL OF NEW JERSEY: I will offer that in evidence.

ATTORNEY GENERAL OF DELAWARE: Objected to for the same reason.

THE COMMISSIONER: The same ruling.

The copy of grant is marked "Complainants exhibit 38" and the tracing attached is marked "Complainants exhibit 38a".

8 I now ask you to refer to exhibit No. 33, and tell us whether you have in your possession, and produce certified copies of any grants shown on that exhibit?

Yes, sir, I have four, the first is a grant to the Delaware City Salem and Philadelphia Steam Navigation Company.

ATTORNEY GENERAL OF NEW JERSEY: I offer that in evidence.

ATTORNEY GENERAL OF DELAWARE: Objected to for the same reason.

THE COMMISSIONER: The same ruling.

Grant marked "Complainants exhibit 39".

(Continuing) The second is a certified copy of the grant by the State of New Jersey to the West Jersey Railroad Company, and of the map attached to the grant.

Shown also on the exhibit 33 in red is it?

Yes, sir.

ATTORNEY GENERAL OF NEW JERSEY: I offer that in evidence.

ATTORNEY GENERAL OF DELAWARE: Objected to for the same reason.

THE COMMISSIONER: The same ruling.

Grant marked "Complainants exhibit 40" and the tracing attached marked "Complainants exhibit 402".

A (Continuing) Also certified copy of grant by the State of New Jersey to John Gaynor, and of the map attached to said grant.

Q37 This also appears in red on exhibit 337

A Yes, sir.

ATTORNEY GENERAL OF NEW JERSEY: I offer that in evidence.

ATTORNEY GENERAL OF DELAWARE: Some objection.

COMMISSIONER: Same ruling.

Marked "Complainants exhibit 41" and the tracing attached marked "Complainants exhibit 41a".

A (Continuing) Also certified copy of grant by the State of New Jersey to the Atlantic Refining Company, and with the map attached to said grant.

ATTORNEY GENERAL OF NEW JERSEY: I offer that in evidence.

ATTORNEY GENERAL OF DELAWARE: Some objection.

COMMISSIONER: Same ruling.

Marked "Complainants exhibit 42" and the tracing attached marked "Complainants exhibit 42a".

ATTORNEY GENERAL OF DELAWARE: Reserving objections made to the introduction of the documentary evidence pro-

duced by this witness, counsel for defendant cross examines.

CROSS EXAMINATION By Attorney General of Delaware.

XQ38 From what records are these certified copies taken?

A The exhibit 42 and 43, is copied from the Liber L. on page 167 of the records of the Riparian Commission of the State of New Jersey.

XQ39 Where are they kept?

A In the office of the Riparian Commission in the Commercial Trust Building, Jersey City.

XQ40 In whose custody are they?

A They are in the custody of the secretary and engineer of the Board.

XQ41 Which is yourself?

A Yes, sir.

XQ42 Does that hold as to all of the deeds or grants which you have offered in evidence?

A Yes, sir.

XQ43 That is all.

CORRESPONDENCE.

STATE OF NEW JERSEY, }
EXECUTIVE DEPARTMENT; }
TRENTON, May 9, 1872. }

His Excellency James Ponder, Governor of the State of Delaware:

SIR—I have received information that W. W. Prichett, a constable residing at Wilmington, in the State of Delaware, accompanied by an armed posse, on the second day of May instant, embarked on the steam-tug Falcon, proceeded to the eastern portion of the river Delaware, and there arrested twenty-two citizens of New Jersey, while engaged in the business of fishing, and carried them as prisoners to Delaware. I am further informed that the arrests were made by advice of the Attorney General of Delaware, under the claim that the place of arrest was within the jurisdiction of that State, and because the persons arrested were there pursuing this business without the license of Delaware.

I am aware that a grant by the State of Delaware to the United States of "Pea Patch Island" was, in the year 1848, decided by the arbitrator, chosen by the United States and Mr. Humphrey, to be valid. New Jersey was not a party to that litigation; nor was she represented by counsel. This State has never considered that the opinion of the arbitrator in that submission decided, even incidentally, the boundary and jurisdiction of the respective States. Neither before that opinion, nor since, until now, has Delaware made the practical claim, from the effects of which many respectable and industrious citizens of this State are suffering. This is the first time that an attempt has been made by the authorities of Delaware to interrupt the business of fishing on the eastern side of the river.

Being confident that the State of Delaware does not desire that proceedings, such as those herein complained of, should be continued any further than to assert her claim and put it in course of judicial determination; and this State being anxious to submit the question to the proper legal tribunal at as early a period as practicable, I trust that the authorities of Delaware will abstain from further attempts to practically enforce her claim of jurisdiction, until a decision of the Supreme Court of the United States shall settle the controversy.

Believing that the arrest of citizens of New Jersey, made as hereinbefore stated, was an infringement upon the rightful authority and jurisdiction of this State, I have issued a proclamation (a copy of which I herewith send you,) which, while it asserts the claim of New Jersey to jurisdiction over the eastern half of the Delaware river, and warns all persons to refrain from arresting any persons there without legal process from the proper authority in this State, and from molesting or disturbing

citizens there in pursuit of a lawful occupation, also calls upon all citizens of New Jersey to abstain from acts of violence.

Trusting that the spirit of comity which dictates this will so be met by your Excellency that the public peace may not be disturbed, and that the question may be submitted to judicial decision,

I am, very respectfully,

Your obedient servant,

JOEL PARKER.

STATE OF DELAWARE, }
OFFICE SECRETARY OF STATE }
DOVER, DEL., May 14, 1872. }

His Excellency Joel Parker, Governor of the State of New Jersey:

SIR—I am in receipt of your communication of the 9th inst., enclosing your proclamation in reference to fishing in the river Delaware.

The act of General Assembly of the State of Delaware, requiring all persons to procure license before engaging in the business of fishing in the Delaware river within the limits of this State, was passed in 1871, at the suggestion and request of the fish commissioners of New Jersey, Messrs. Howell and Slack, who attended the session of the legislature, bringing letters of introduction from your predecessor, ex-Governor Randolph. Anterior to this time, the legislature of New Jersey had passed an act more stringent in its provisions than our present law, and the said commissioners desired the passage of a similar enactment by the legislature of Delaware. But the committee to whom the matter was referred, differing from the said commissioners after several conferences, finally modified their bill to meet the approbation of all parties; and the said bill so modified, was afterwards enacted as our present law. The reasons which actuated the legislature in the passage of said act, were founded solely in a feeling of courtesy and amity to the State of New Jersey, and the act was passed for the purpose of aiding the propagation of certain fish which were fast becoming extinct. It is certainly, therefore, entirely unexpected, and much to be regretted that the controversy arising under this act should be between the States of New Jersey and Delaware, as to their respective powers over said waters. The State of Delaware does not regard the question as to her jurisdiction over the said river and bay, as claimed by her, as an open question. The jurisdiction thus claimed is exclusive over the waters of said river to low water mark, on the eastern side of said river, within the twelve mile circle from New-Castle, and is regarded by said State as paramount to any which may be claimed by any other State. This opinion is founded not only upon the original grants, but also upon the decision made by the arbitrator in the case of the United States, concerning Pea Patch Island, to which you refer

in your communication. Whether New Jersey was or was not a party to that litigation, or whether or not she was represented by counsel, we apprehend, does not affect the principle, that the decision confirmed the title of the State of Delaware to the property in question as complete and valid.

The constitution of this State renders it obligatory upon the Governor that "he shall take care that the laws be faithfully executed." The act in regard to fishing in the Delaware waters being a law upon our statute book, I have no power, as the Executive of this State, to suspend its execution for an instant.

The spirit of comity which dictated your communication affords me much gratification, and I regret, exceedingly, that you did not commence the correspondence before issuing your proclamation. The rights of the State of Delaware are too well known for us to fear a judicial investigation, and her citizens can have no objection to a legal trial of the entire question, before the proper tribunal, for final adjudication and settlement. I would much prefer an amicable adjustment; but the constitution gives me no power to agree upon or appoint an arbitrator. Probably your Excellency can suggest some plan by which the affair can be arranged.

With the same spirit which dictated your communication, I would respectfully suggest that your Excellency advise the citizens of New Jersey to refrain from fishing in said waters, within the jurisdiction of the State of Delaware, unless they conform to the laws of this State, until the question of jurisdiction can be judicially determined.

I have not issued a counter proclamation, for the reason that it might be the means of stirring up contention and strife between the citizens of the neighboring States, when they should live in peace and harmony with each other, as they have in the past.

Hoping that the friendly relations heretofore existing between New Jersey and Delaware may long continue, and that the question may be settled in a satisfactory manner, at an early day,

I am, very respectfully,

Your obedient servant,

JAMES PONDER.

STATE OF NEW JERSEY, }
EXECUTIVE DEPARTMENT, }
TRENTON, May 22, 1872. }

His Excellency James Ponder, Governor of the State of Delaware:

Sir—Your reply to my letter of the 9th inst. has been received.

The communication of your Excellency claims that the State of Delaware has exclusive jurisdiction over the waters of the Delaware river to low water mark on the New Jersey side, within what is called the twelve mile circle. In other words, it is

insisted that the State of Delaware has such title to the territory, embracing some twenty-four miles in length of the river, as to exclude the people of New Jersey from fishing on the eastern side thereof, unless they obtain the permission of Delaware.

The State of New Jersey denies that Delaware has jurisdiction over any part of the waters of the river east of the middle line, and insists that her citizens have the legal right to fish on the New Jersey side of the river without the license of Delaware, either within or without the so-called circle. The question involved is one of great importance, and I agree with your Excellency that it should be settled at an early day.

It seems that the State of Delaware bases her claim to exclusive jurisdiction over the waters of the river within the twelve mile circle upon the decision of the arbitrator in the Pea Patch case, and also upon the original grants. As the communication of your Excellency emphatically states these two grounds of confidence in the claim of Delaware, it is proper that I should briefly notice them.

The submission in the Pea Patch case was between the Secretary of War, acting for the United States, and James Humphrey, and the question submitted was whether the United States or Mr. Humphrey had title to the land of that island.

The award in that case has never been considered authority binding on any but the parties to the submission.

In his decision, the arbitrator states that "he is fully aware that his opinion is of no authority whatever, except for the single purpose as to which the agreement of the parties has made it conclusive, that is, the question of title *between them*."

The award, therefore, does not amount to judicial authority, and is only the opinion of an able lawyer antagonistic to the opinions of other able lawyers contemporaneous with the arbitrator, and in conflict with the charge of Judge Baldwin, in a case tried in the United States Circuit Court involving the same question. It certainly cannot conclude either Delaware or New Jersey on the question of jurisdiction. The disputed jurisdiction of States can be settled only by treaty, or by the decision of the Supreme Court of the United States.

Even if the award in the Pea Patch case be considered judicial authority, it does not decide the question of the right of the respective States to *jurisdiction upon the waters* of the Delaware.

The opinion of the arbitrator only determined the *title to land not covered by water*. The question raised by the arrest of which New Jersey complains, relates not to title to land which is *jus-privatum*, but to jurisdiction on navigable waters, which is *jus-publicum*.

The further claim of the State of Delaware to jurisdiction over the waters of the river within the twelve mile circle up to the Jersey shore, is founded on the ancient grants. A careful examination of these has led me to a conclusion different from that of your Excellency.

her citizens that had been made, and also as a means of preventing breaches of the peace, by giving assurance to those immediately interested that the controversy would be settled amicably by legal action. 1873
4.3

I have considered the suggestion made by your Excellency to issue a proclamation, requesting citizens of this State to cease fishing on the waters on the New Jersey side of the river pending the decision of the legal question of jurisdiction, and after reflection, I have concluded that it would be so disastrous to the livelihood of a large class of men who depend on the occupation of fishing for subsistence, and so abruptly deny them a public right which they and their ancestors have enjoyed for two centuries, that it would be neither just nor wise to take that course. It appears to me that the jurisdiction of Delaware, as now claimed, but in no wise asserted, over the locality in question, by her law of 1871, should not be insisted upon in such a way as to produce these consequences. In my former communication, I did not intend to suggest that the Governor of a State had power to suspend a law, for it appears to me that the question was simply whether the Delaware authorities might not, pending a legal controversy, allow a question of jurisdiction, which her law of 1871 does not assert, to remain practically as it was found by that law. I regret, exceedingly, that notice was not given the authorities of this State, soon after the passage of the law of 1871, that Delaware would claim to enforce its provisions on the eastern side of the river, within the twelve mile circle, so that the question could have been decided before the commencement of the fishing season of 1872, and thus the arrest of industrious and peaceable citizens, and the interruption of their business, have been avoided.

It is to be regretted that the legislature of our States are not in session, so that commissions to negotiate and settle the whole question might be authorized. But as this cannot now be done, I am much gratified with your ready acquiescence in the proposition to submit it to judicial decision. The mode of such submission can doubtless be arranged by the law officers of the respective States, and I will at once refer that part of the communication of your Excellency to the Attorney General of this State. I suppose a case can be made, and the facts agreed upon.

I join your Excellency in the hope that the question may soon be settled in a satisfactory manner, and that the friendly relations which have always existed between the States of Delaware and New Jersey may continue uninterrupted.

Very respectfully,

Your obedient servant,

JOEL PARKER.

ORDER FOR PRELIMINARY INJUNCTION.

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

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

“This cause coming on to be heard on a motion for a preliminary injunction made on behalf of the complainant,

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

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

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

March 26th, 1877.

True copy.

Test :

[L. S.]

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

ler, Montgomery, Newcorn, Pettersen, Posten, Roberts, Schumann, Scovel, Sharwell, Shedaker, Treacy, Weismann, Wildrick, Willever—45.

The Speaker thereupon declared the amendment lost.

The Committee Substitute for

Assembly Bill No. 195, entitled "An act to consolidate with and annex to the city of Newark, in the county of Essex, the territory embraced within the bounds of the town of Irvington, in the county of Essex, provided a majority of the votes cast in said town upon the question of such annexation and consolidation shall be in favor thereof, and to provide for the submission of the said question to the voters of said town,"

Was then read a second time, considered by sections, agreed to, ordered to be printed, and to have a third reading.

A message was received from the Governor by the hand of his Secretary, and was read as follows:

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, March 17th, 1903. }

To the House of Assembly:

I have the honor to transmit herewith the report of the Commissioners appointed to confer with like Commissioners from the State of Delaware upon the boundary line between the States of New Jersey and Delaware.

Respectfully,
FRANKLIN MURPHY,
Governor.

To the Senate and General Assembly of the State of New Jersey:

The undersigned Commissioners, appointed by joint resolution of the Legislature, approved March 5th, 1903, to meet with similarly appointed Commissioners from the State of Delaware, to frame a compact, or agreement, between the said States, and legislation consequent thereon, to be submitted to the Legislatures of said two States, for action thereon, looking to the amicable termination of the suit between said States now pending in the Supreme Court of the United States, and final adjustment of all controversies relating to the boundary line between said States, and to their respective rights in the Delaware River, hereby report that on Thursday, the 12th day of March, and again on Saturday, the 14th day of March, 1903, they met for the purposes aforesaid in the City of Philadelphia, with the Commissioners on the part of

the State of Delaware, who were John Hunn, Governor of Delaware, Herbert H. Ward, Attorney-General of Delaware, and the Hon. George H. Bates; that after a thorough consideration of all the differences between the two States an agreement was reached and a compact prepared, subject to ratification by the Legislatures of the respective States, and the consent and approval of Congress. The compact received the unanimous endorsement of all the Commissioners from both States. It is herewith submitted as part of a proposed act, which, it is strongly recommended, should be enacted by the Legislature of this State at its present session. Your Commissioners feel that while it was not found practicable to settle the exact geographical boundary line between the two States, nevertheless every interest of the State of New Jersey has been protected, all its riparian, fishery and other rights and jurisdiction thoroughly safeguarded and every question of practical difficulty between the two States settled for all time. At the same time the interests of our sister State of Delaware have been amply safeguarded in a manner acceptable to the Commissioners from that State.

In witness whereof your Commissioners have hereunto set their hands this sixteenth day of March, nineteen hundred and three.

FRANKLIN MURPHY,
THOS. N. McCARTER,
EDWARD C. STOKES.

The Governor's message was then taken up.

Mr. Boyd moved that the Governor's message be spread at length upon the minutes of the House, and that it be referred to the Committee on Judiciary,

Which motion was carried.

Mr. Shedaker offered the following resolution; which was read and adopted:

Resolved (the Senate concurring), That the Governor be requested to return to the house, in which it originated

Assembly Bill No. 87, entitled "A supplement to an act entitled 'An act to establish standard packages for cranberries,'" approved March twenty-third, one thousand eight hundred and eighty-eight,

eighty-eight.

A message was received from the Senate, by the hands of its Secretary, as follows:

New Jersey State Archives
Minutes of the Assembly
3/16/1903

Dover, Delaware,

March 28th 1903.

Gentlemen:

After the adjournment of the meetings of the Joint Commission on the New Jersey-Delaware boundary controversy, we communicated to the General Assembly the result of our conferences with you. The bill prepared for submission to the Legislatures of both States was introduced and considered and it was made to appear to both houses that it represented the conclusions as to which it was found practicable to reach an agreement on the part of the commissioners of the two States. The scope and effect of the proposed measure were clearly made known by us before the committees, in personal conference with members and in a public hearing in which by invitation the subject was explained and our views expressed by the Attorney General on our behalf.

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The result was that the bill not only failed of passage, but it encountered so vigorous an opposition that we are satisfied that its enactment would be impossible under any circumstances by this Legislature.

Upon careful consideration of the public opinion of the people of the State, we are also satisfied that the opposition to the measure which developed in the Legislature was the reflection of a sentiment among the people of the State unalterably opposed to the surrender directly or indirectly of the title and jurisdiction which the State of Delaware claims to and over the soil and waters

-:1:-

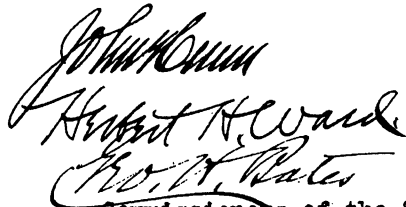
of the Delaware River within the twelve mile circle.

We believe that this sentiment is so strong that it will be satisfied with nothing short of a final and conclusive settlement of the--questions involved in the pending suit, and therefore that it is for the interest of both States that the case be proceeded with and the whole subject disposed of by the only tribunal which can settle the controversy.

Regretting that the situation and the nature of the controversy were such as to involve failure of our joint efforts to reach a settlement out of court, and with the most cordial expression of the satisfaction which we have personally derived from our conferences with you, and of our appreciation of your courtesy, we are,

With great respect,

Your obedient servants,


Commissioners of the State
of Delaware.

To/

Hon. Franklin Murphy
Hon. Thomas N. McCarter
Hon. Edward C. Stokes
Commissioners of the State of New Jersey.

Governor Franklin Murphy

Correspondence Box 10 Folder 260

New Jersey - Delaware Boundary Controversy, March - April 1903

New Jersey State Archives

February 11th 1905.

Hon. George H. Bates,
3002 Lenigh Avenue,
Philadelphia.

Dear Mr. Bates:

Our General Assembly yesterday passed a joint resolution of precisely similar terms to that of two years ago, with the addition of the words "and bay" at the end, appointing Governor Lea, Attorney General Richards, yourself and myself as commissioners to confer with the commissioners of New Jersey to frame a compact settling the boundary dispute. Inasmuch as our General Assembly may adjourn by the first of March, it is important that we should get promptly to work as a joint commission to frame this compact and get it returned in proper shape to our General Assembly, so that we may not be caught in the closing hours with it on our hands as we were caught two years ago. I have notified Attorney General McCarter of the passing of this resolution. New Jersey passed its resolution on Tuesday of this week.

I suppose the primary thing will be to secure a place for our meetings. The place where we met before was very convenient and central. Have you any idea whether we can secure the same place again? If not, I presume we can sit in the room in the United States Court House where we took our testimony for several days. Kindly give me your ideas on this subject at once. I think the sentiment of the General Assembly is at present very favorable to the adoption of any reasonable agreement between the two states.

Yours very truly,



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

DE H.S.
Box 7 File 2



State of New Jersey
Assembly Chamber

Woodbury, ~~Trenton~~ December 19, 1905

Hon. E. C. Stokes,
Trenton, N. J.

Dear Governor:-

I send enclosed, a copy of the resolution and minute adopted by the Delaware and New Jersey Commission in joint session last Friday.

The desire of the Commission is that a request be made to either the President or other persons who may have the charge and control of this compact, to hold the matter up for a short period.

I will see you about the matter in a few days.

Yours respect'y.

John Boyd Dowd

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Office of Secretary of State
DOVER, DEL.

JOSEPH L. CANNON,
Secretary.

December 21st, 1954.

Hon. Hiram R. Burton,
Washington, D. C.

Dear Sir:-

I am directed by the Governor to send the within copy of the resolution adopted by the Delaware and New Jersey Commissions, pursuant to the request of said Commissions, and respectfully request that you act therein in accordance with said request.

Respectfully yours,

Joseph L. Cannon
Secretary of State.

B. Cooper,
President

William S. Hilles,

Walter H. Hayes,
Secretary.

DELAWARE COMMISSIONERS,

(Delaware-New Jersey Fisheries Compact)

904 Market Street,

Wilmington, Delaware.

January 19, 1907.

Honorable Robert H. Richards,

Attorney General,

Wilmington, Delaware.

Dear Sir:

We enclose a copy of a resolution, passed by the Joint Commission (Delaware-New Jersey Fisheries Compact) on January 16th, 1907.

In view of this resolution, the Delaware Commissioners have no further request to make of Congress in the matter, for delay or otherwise.

Yours very truly,

(Sgd.) Alex. B. Cooper

(Sgd.) Wm. S. Hilles

WHEREAS the Joint Commission (Delaware-New Jersey Fisheries Compact) did, on the Fifteenth day of December, A. D. 1905, adopt the following resolution:

"RESOLVED, That the Governor of the State of Delaware and the Governor of the State of New Jersey are requested to ask Congress to defer the ratification of the Compact entered into between the State of Delaware and the State of New Jersey until the Commission shall make further request"; and

WHEREAS, said Congress has deferred final action of the ratification of said Compact:

NOW, THEREFORE, BE IT RESOLVED by the said Joint Commission this Sixteenth day of January, A. D. 1907, that the Governor of the State of Delaware and the Governor of the State of New Jersey are hereby notified that said Joint Commission has this day agreed upon the uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the states of Delaware and New Jersey.

State of Delaware,



Attorney General

ROBERT H. RICHARDS,
ATTORNEY GENERAL.
DELAWARE HOUSE OF REPRESENTATIVES,
LEGISLATIVE BUILDING, DOVER, DELAWARE.

Wilmington, Delaware, Jan. 19, 1907.

To the
Chairman of the Judiciary Committee,
House of Representatives,
Washington, D. C.

Dear Sir:

At the first Session of this Congress a Bill was passed by the Senate to ratify a Compact which had previously been signed and agreed to by the States of New Jersey and Delaware. The object and purpose of this Compact was to settle certain matters concerning fisheries which had been the cause of the litigation for years pending in the Supreme Court of the United States between the two States. This Compact was passed by the Legislature of the State of Delaware and also by the Legislature of the State of New Jersey and, in accordance with the Acts of the respective Legislatures, the Commissioners from each State, of whom I have the honor to be one, on the part of the State of Delaware, signed and formally executed the Compact which had been agreed to by the respective Legislatures. This Compact provided that it should be ratified by

of the United States. It does not purport to settle any question of the boundary line between the two States, but on the other hand, expressly provides that the boundary line between the two States shall not in any wise be affected by the Compact. The Governors of the two States upon the assembling of the First session of the present Congress transmitted a copy of the Compact to the President of the United States, requesting that he submit the same to Congress for ratification. The matter was transmitted to the President by a separate communication from each of the Governors with a separate specific request that he submit the Compact to Congress for ratification. The President acting in accordance with the two requests, submitted the Compact to Congress by a Message to the Senate, as I am informed. A Bill was drawn to ratify the said Compact and introduced in the Senate by Senator Kean of New Jersey, and immediately passed the Senate. The Bill was then transmitted to the House of Representatives and referred to your Committee, as I am informed. About this time a Joint Commission appointed by the Governors of New Jersey and Delaware for the purpose of drafting a uniform fishing law, to carry out the provisions of said Compact, joined in a request to me and to the Governors of each of the said States, the ratification of the Compact be delayed until it could be ascertained whether the said Joint Commission could agree upon such uniform fishing laws. At the time of this request, my judgment was that the ratifi-

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of the Compact should not be delayed for this or any other reason. As I viewed the matter, each State was in honor bound to secure, if possible, a speedy ratification of the Compact by Congress, and I further was of opinion that neither State could afford either having, through the negative executive, requested the President of the United States to call upon Congress to ratify this Compact, subsequently to make requests to Congress itself to delay such ratification. Notwithstanding my personal views upon the subject, out of deference to the request of the Joint Fishery Commission, I joined in a request to Congressman Burton of this State for a delay of the passage of the Act to ratify said Compact. Pursuant to the requests thus made, Congressman Burton, I am informed, made a request of your Committee that the Bill to ratify said Compact should be held up by said Committee and should not be reported to Congress until a further communication from him. The request made of Congressman Burton to ask for a delay of the ratification of this Compact was on or about March 15th, 1906. At the time I joined in such request, I was lead to believe by the Fishery Commission that they would be able to ascertain whether they could agree upon uniform fishing laws within a few weeks and that the Compact could be ratified by the last Session of the present Congress. Subsequently I was informed by some Member Members of said Commission that they felt satisfied that they could do so but had not at that time agreed upon the law itself. Shortly before the adjournment of the last Session of the present Congress, to-wit, on 20

41.

1906, I wrote Congressman Burton a long letter setting forth the reasons why, in my judgment, the Compact should be ratified at once. In that letter I suggested to Congressman Burton, as is the fact, that the conditions involved in the matter were legal, and that it was his duty to assume all responsibilities for his action in the matter. Congressman Burton at that time, both verbally and by letter, gave me to understand that he would withdraw any objection that he had made and bring about the ratification of the Compact before the adjournment of the last Session of Congress. I did not know that he had failed to do this until after Congress had adjourned, when he wrote me, after the adjournment of Congress stating reasons why he did not care to withdraw his opposition to this measure. Not only was he at that time advised to bring about the ratification of the Compact by myself, but he was also so advised by the Governor of this State.

I am writing to-day a letter to Congressman Burton requesting him to press at once for the passage of the Bill to ratify this Compact, advising him that we had great difficulty in securing a further postponement of the proceedings in the case of the State of New Jersey vs. the State of Delaware by the Supreme Court when we last appeared before that Court on October 9th, and that the Court clearly intimated that the delay which they then granted until the First of February, 1907 for the express purpose of giving Congress a further opportunity to ratify this Compact, would not be again extended.

I enclose herewith a copy of my letter to Congressman Burton and also a copy of all enclosures which were contained in my letter to him.


It will appear from the statements contained in my letter to Congressman Burton that the Governor of this State desires the passage of this Compact, that the present Legislature so desired, that of course the last Legislature, which agreed to the Compact, so desired, and that the majority of the people of this State by their vote at the last election was in favor of this agreement between the two States.

It will, therefore, clearly appear, in case Congressman Burton should further oppose the passage of the Bill ratifying this Compact, that such action would be contrary to the wish of the present State Government of this State and contrary to the wishes of a majority of the people of this State.

I do not know what attitude Congressman Burton will now take in the matter. I do not desire to incur any further opposition from him in the matter. I do, however, desire to state to you as the Chairman of the Committee having charge of the Bill in question, that in my opinion this Bill should be passed by the House of Representatives at once, and I further state that such is the opinion of the Governor of this State.

I remain,

Yours very truly,


Attorney General.

NEW JERSEY
Supreme Court of the United States

No. 19 Original October Term 1979

STATE OF NEW JERSEY

Plaintiff

STATE OF DELAWARE

Defendant

Reply Brief of Defendant Before
Special Master

REUBEN SAMPHER BLAWIE, JR.
*Attorney General of the State of
Delaware*

CLAFFENCE A. SOUTHERLAND

Special Counsel

NEW JERSEY
Office of Counsel

that must be the contention of Plaintiff, because otherwise the argument is beside the point.

Plaintiff's brief says (p. 70):

"The foregoing authorities show that, independent of the common law of England respecting public rights in tidal waters, a modification of the strict common law rule came into practice and common usage among the settlements on Delaware river and bay at the beginning of colonial history, as a matter of necessity arising from their situation and conditions, which had the implied, if not the actual, approval of the Crown and its successors in sovereignty. Under such modifications of the common law rights have sprung up, in favor of plaintiff and its inhabitants in the bed of tidal waters of Delaware river and bay, east of the ship channel, which are binding upon defendant, whether it derives its title from Penn (who was one of the West Jersey Proprietors at the times mentioned) or from the Crown."

We agree that under colonial usage and custom in both the Province of New Jersey and the Colony of Delaware riparian rights sprang up, unknown to the English common law. What of it? Such rights are in no wise inconsistent with the fact that the ownership of the subaqueous soil was vested in William Penn, and the recognition of such rights could not avail to change the boundaries of the colonies.

We are here concerned with a question of title and boundaries. If the riparian owner's right to wharf out vested in him no title to the foreshore or the subaqueous soil of the river then the title thereto remained unaffected by the existence of the right. Moreover, that right flowed from custom and usage sanctioned by the proprietaries of both colonies. It is elementary that one who claims a

right derived as grantee of another does not hold adversely to the other and can not by the exercise of that right acquire title by adverse possession.

The conclusion, therefore, is that the exercise of riparian rights by the inhabitants of the Province of New Jersey was not in any sense hostile or adverse to the ownership of the soil by William Penn. It was a right which he and all other proprietaries of American colonies accorded to the inhabitants of those colonies.

Plaintiff is here seeking to establish *title* to the subaqueous soil of the Delaware River east of the main ship channel. Such title can not be established by pointing to the exercise of riparian rights by the inhabitants of the Province of New Jersey. Even if it could be argued that the riparian owner acquired title by adverse possession to the subaqueous soil underneath the wharf erected by him, such adverse possession would not inure to the benefit of New Jersey and would not shift the boundary line between the States.

It is to be noted that Plaintiff does not expressly claim that the exercise of riparian rights by the inhabitants of the Province of New Jersey had the effect of establishing title in the proprietors of New Jersey to the middle of the main ship channel. We do not see how such a proposition could be argued. Yet unless Plaintiff is prepared to make such an argument it is not seen how the existence of wharf rights has any bearing on the case. If the Province of New Jersey at the time of the Revolution did not hold title to the eastern half of the Delaware River and if the riparian owners on the western shore of New Jersey did not hold such title—and both these propositions seem to be admitted by Plaintiff—then the title was of necessity William Penn by virtue of the deeds of feoffment and letters patent of March 22, 1682/3 from the Crown.

To put the matter in another way, the right of the riparian owner to wharf out does not rest upon title to the subaqueous soil, and a claim to ownership of the subaqueous soil by the State of Delaware is not inconsistent with the use of such subaqueous soil by the riparian proprietor for the purpose of wharfing out.

Let us suppose that after a lapse of time a riparian owner who has erected a wharf upon subaqueous soil in front of his property tears down that wharf and does not rebuild it. Surely it can not be said that he holds title to the subaqueous soil which is no longer covered by a wharf. He still has the right to build another wharf, but the ownership of the soil is not thereby changed.

Let us suppose again that a valuable mineral deposit is found in the subaqueous soil of the river within the area circumscribed by the piling of the wharf erected by the owner of the upland. Could it be contended for a moment that the owner of the upland, by virtue of his having erected a wharf, would have any title to such deposit? Clearly not. Nor could the riparian owner contend that by virtue of his long possession of the wharf he had acquired a title by prescription to the subaqueous soil.

As pointed out in our original brief, nearly all the New Jersey grants of riparian rights within the twelve-mile circle, and practically all the improvements on the New Jersey shore within the twelve-mile circle, were made or built after the institution of the prior suit in 1877. The failure of the State of Delaware to attempt to tax these improvements during the pendency of this suit can not be ascribed to laches nor can any acquiescence be imputed to the State during that time.

Riparian rights of the New Jersey side of the river were recognized by the Compact of 1905, quoted on page

126 of Plaintiff's brief. Article VII of this Compact recognizes, by implication, the rights of riparian owners on the New Jersey shore. It is to be noted that Article VII refers to "riparian lands and rights". Subaqueous soil is not comprehended with the term "riparian lands".

Hart v. Board of Levee Commissioners, 54 Fed. 559;

Bathgate v. Irvine, 58 Pac. 442, 126 Cal. 135;

Rome Railway & Light Co. v. Loeb, 141 Ga. 202, 80 S. E. 785, Ann. Cas. 1915 C. 1023.

Article VII of the Compact is obviously merely a recognition of the rights of the riparian owners of New Jersey and a cession to the State of New Jersey by the State of Delaware of jurisdiction to regulate those rights. That the Compact of 1905 left the title to the subaqueous soil unaffected is clear from the express language of Article VIII.

Plaintiff's brief says (p. 126):

"That compact, alone, is sufficient to sustain the title of plaintiff and its grantees in the bed of the river east of the ship channel, independent of all other considerations."

It may be safely said that this contention is one that did not occur to Plaintiff's counsel until after the suit was filed. The Bill of Complaint in this case (Rec., pp. 4-18) sets forth with great particularity the source of Plaintiff's claim of title to the eastern half of the Delaware River and nowhere mentions the Compact of 1905 as the source of that claim. Moreover, the construction placed upon the compact at all times since its execution and approval by Congress has been the reverse to that now contended for by Plaintiff. Since 1907 the United States has accepted

several cessions of subaqueous soil from the State of Delaware east of the ship channel within the circle. It is safe to say that the contention made in Plaintiff's brief in this case is the first time that the idea has ever been advanced that the Compact of 1905 settled the boundary dispute within the twelve-mile circle. Certainly if it had settled the dispute by ceding to New Jersey the eastern half of the river there would have been no occasion whatever for the language of Article VIII of the Covenant which expressly reserves the boundary question from the settlement.

On pages 132-146 of the brief Plaintiff discusses the exercise of admiralty jurisdiction and rights of navigation upon the assumption that these were acts of dominion by the province of New Jersey over the Delaware River. This assumption is wholly unfounded. By the English common law the right of navigation of a navigable river was a right in the subject, protected by the Crown, and every grant of the subaqueous soil of a navigable river was subject to this right. The exercise of admiralty jurisdiction was the exercise of the Royal prerogative applicable alike to colonial and proprietary colonies, and in no wise inconsistent with the ownership of the subaqueous soil by William Penn.

It is stated (Plaintiff's brief, p. 132) that defendant has produced no record of any judicial or other proceeding which shows the exercise of jurisdiction by the State of Delaware within the twelve-mile circle. This statement ignores the evidence that was presented to the arbitrator in the *Case of Pea Patch Island*, a summary of which is found in the opinion, and ignores numerous instances of the exercise of jurisdiction testified to by the witnesses in the former suit. (Exhibits 691, 692, 694, 719.)

Plaintiff's brief (p. 140) refers to Defendant's Exhibit 569 as an exhibit introduced "to show exercise of admiralty jurisdiction in New Castle." The exhibit was introduced for the purpose of showing that the Admiralty Court which, as Plaintiff rightly says, was a Royal Court and not a Colonial Court, judicially construed the phrase: "territories thereof and thereon depending" as meaning the Delaware counties. Many of the acts of the Pennsylvania Colonial Assembly contained this phrase and its meaning is thus judicially determined in the case summarized in Exhibit 569.

I-24. Plaintiff's Rights by Prescription. Brief, pp. 92-205.

In Plaintiff's discussion of this point numerous authorities are cited to establish the legal proposition that, when one State or nation has continuously enjoyed and possessed certain territory with the acquiescence of the other nation of State such possession and acquiescence is to be taken as the strongest possible evidence of title. The correctness of this general principle of law is not questioned. An examination of the authorities cited, however, shows that the principle is applicable only when the possession and claim has been *acquiesced in by the other State or nation*. It can never be applied when there has been a continuous dispute and an assertion of a contrary claim by the other State. Thus, in *Indiana v. Kentucky*, 136 U. S. 479, an excerpt from which is quoted on pages 200-202 of Plaintiff's brief, the Supreme Court says:

"This long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potential than the recollections of all the witnesses produced on either side."

Delaware Boundary Case

Stenographer's Record

Fourteenth Session.

STATE OF NEW JERSEY

vs.

STATE OF DELAWARE.

**Oral Argument Before
the Special Master.**

Baltimore, Maryland

September 12, 1932

DUANE E. MINARD,
for Plaintiff.

CLARENCE A. SOUTHERLAND,
for Defendant.

Argument of Clarence A. Southerland for Delaware.

10 conflict, a dispute between the States, which in some form or another has been active during a great portion of this time. The Pea Patch case, it is true, was not technically between the States, but was a suit brought pointedly to the attention of the States, the general boundary dispute, and the suit in 1877, of course, related to the boundary within the circle and the very Compact of 1905, of course, is an acknowledgment by both parties, if you please, that at that time, in 1905, there existed [1213] between the States unsettled an existing dispute of the boundary line, so that we say there is no room in this case for the application, as we see it, by either State of that principle. Notwithstanding that, both States, of course, have submitted to the Master many illustrations of the exercise of jurisdiction; first of all, by cessions of land to the United States: New Jersey has 20 one cession where the Government took a site for a light house and took no deed from Delaware, and we have one in 1927 for which there is no New Jersey deed. An application was made by the War Department some twelve years before.

The Master: That would be within the twelve mile circle.

30 Mr. Southerland: Within the twelve mile circle, and east of the ship channel. The apparent reason was that under the New Jersey Constitution a grant of that sort could not be made without compensation, and it being impracticable to pay compensation, the Government took a Delaware deed and improved the land and is still there under a Delaware title. All I am seeking to [1214] point out is the recognition of the claim of both these States to the eastern half within the twelve mile circle. Taking the maps all in all, they show this, the later maps in this section of the country have followed the United States Geological Survey. ~~namely~~ the boundary on the

Argument of Clarence A. Southerland for Delaware.

New Jersey shore, which shows at least, an existing dispute with our friends from New Jersey.

There is one feature of that, however, which calls for comment. The argument is made that plaintiff and its citizens have acquired by prescription certain rights, and it is stated that modifications of the common law of England have sprung up. We agree with that undoubtedly. By an early common law of England, no subject could encroach upon the foreshore unless he had a grant for it. That law was wholly unsuited for the development of the American colonies, and the only State we know of that has clung to it in any way is the State of New Jersey. The law is, as laid down by Chief Justice Marshall, that you hold to low water mark, not to high water mark, but the State of New [1215] Jersey holds tenaciously to the theory that it owns the foreshore. Undoubtedly modifications have sprung up. In *Gough v. Bell*, a New Jersey case, the Court seems to limit it to low water mark. We say it is undoubtedly true in the State of Delaware and in most of the American colonies that the upland owner had the right to wharf out and that right was not adverse to the owner of the soil. When you build a wharf on the State's land at New Castle, or Rehoboth, or somewhere on the Delaware shore, you are not trespassing on the property of the State of Delaware. The State of Delaware gives you that right subject only that you must not either by State or Federal law obstruct navigation.

We say moreover that the Compact of 1905 expressly acknowledged the rights of the citizens of New Jersey, at least, by implication to wharf out, and in my view the Compact of 1905 ceded to the State of New Jersey all the right to control the erection of those wharves and to say who shall erect them, and it was a very sensible thing to do. Therefore, we say there is no case here for the ap-

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Argument of Clarence A. Southerland for Delaware.

plication of any doctrine [1216] of prescription, that the evidence that is in simply shows that each State has continuously on every possible occasion asserted its claim to the best of its ability.

10 My friend complains about the nature of the evidence we have put in showing dominion over the river. Actually there is no evidence, if you please, in this record except the arrest of one or two fishermen by New Jersey of any dominion by the State or Federal Courts of New Jersey. It is impossible for us at this date to discover the issuance of writs one hundred years ago, and the writ itself would show nothing. That testimony was before Mr. Sargeant in the Pea Patch case and a resume of the testimony is in his opinion. I appreciate that one hundred years have gone by since that decision, but the Supreme Court of the United States has recognized the fact that a long lapse of time since such testimony was available is a good reason for taking the best that can be gotten.

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The Master: In connection with that provision of the Compact, there is another provision immediately [1217] preceding regarding fisheries. I confess to a good deal of perplexity as to the provision regarding fisheries.

30 Mr. Southerland: It is Section 6 of the Compact. My general understanding of that is the parties had solved the fisheries difficulty. That had been the occasion of the dispute of 1877. This Compact settled the fishing rights and both States were to adopt uniform laws to regulate fishing rights in the river and when it came to oysters and clams, they said we won't touch that question at all, we will lay it aside.

The Master: It excluded oysters and clams?

Mr. Southerland: Excluded shell fish.

40 The Master: Otherwise, unless there was some limit, to me it meant New Jersey could plant up to the Delaware

Argument of Clarence A. Southerland for Delaware.

shore and Delaware could plant up to the New Jersey shore. Unless some restriction is placed on the interpretation there—

Mr. Southerland: As a matter of fact, the old Compact related to the circle and settled the dispute in the circle regarding the service of process [1218] and fisheries.

Mr. Minard: But there were no oysters in the circle.

Mr. Southerland: But it might be deemed wise to put a saving clause in about it.

Mr. Minard: There is no evidence of oysters there from the earliest date.

Mr. Southerland: I desire to discuss for just a moment what my friend calls the repudiation of the Penn grant. What is a repudiation? Obviously, if this means anything as a legal assertion, as a doctrine which is followed by any legal consequences, it means that the State is estopped to assert the truth as to its title by reason of a contrary recital in a preamble to a legislative act. No authority is cited on plaintiff's brief for that proposition. We don't think any authority can possibly be found. My friend was reluctant, he would much rather talk about repudiation than he would about the legal doctrine, which is estoppel. That doctrine applies under certain definite conditions. They are simply these, that an estoppel [1219] occurs when A misleads B by reason of B's ignorance of the truth and B relies upon what A says. It is an elementary doctrine of law and we say, Yes, in the heat of passion the General Assembly of 1794 took these lands but obviously it was an after-the-war measure, but we say how did that transfer title to anything to the State of New Jersey? How did that avail to divest the State of Delaware of a title she had theretofore lawfully had? There is no suggestion in plaintiff's brief, by any means known to the law, by which Delaware's title passed to the State

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IN THE
SUPREME COURT OF THE UNITED STATES.

—
OCTOBER TERM, 1933.
—

State of New Jersey, Plaintiff, }
 } No. 13, Original.
vs. }
State of Delaware, Defendant. }

—
Report of the Special Master.
—

In 1917 the War Department applied to New Jersey for a cession of certain lands within the circle near Artificial Island, and it was ruled by the Attorney General of the State that the grant could not lawfully be made. (Exhibit 207.)

Thereafter, in 1925 and 1927, the United States took two grants from Delaware for land near Artificial Island and one for land near Fort Mott, for which there appear no New Jersey deeds.

In 1823 the State of New Jersey passed acts relating to the boundaries of the counties bordering on the Delaware River which asserted the jurisdiction of the State over all the river to the ship channel. (Exhibits 37-40.)

The plaintiff has also adopted fishing statutes from time to time, a list of which appears in Exhibit 34.

The plaintiff, beginning with 1843, authorized the building of wharves beyond low water mark on its shore of the river within the twelve-mile circle. Five records of such legislative grants appear in Exhibits 41-44, 48, 131-135.

Many other grants of riparian rights by authorities of the plaintiff have been made beginning with 1883. These grants will be found in Exhibits 57-92, 94-97. These grants were all issued, and the improvements erected after the institution of the suit by plaintiff against defendant in 1877, and which was pending until 1905. (Exhibit 53.)

No testimony has been offered on behalf of plaintiff showing the exercise of dominion by it over shipping in the eastern half of the river through the processes of its courts.

Plaintiff has introduced some sixty-one maps of the State of Delaware. (Exhibits 1133, 1136-1138, 1140-1143, 1180.) The object of this evidence is to show that since none of these maps carries the twelve-mile circle to the New Jersey shore, the maps are negative evidence to the effect that the boundaries of the defendant do not include the Delaware River.

Colonel Lawrence Martin testified concerning some of these maps, (Rec. 686-714) and it will appear from his testimony that on none of the maps offered by plaintiff was any attempt made to fix any boundary between plaintiff and defendant. It would seem that in a contrivance involving so many aspects little weight can be given to the absence of a boundary between the States upon particular maps. One map in evidence, as Colonel Martin testified, represents a very careful effort by the map makers to plot the boundaries accurately. This is the United States Geological Survey map which shows the eastern boundary of Delaware on the New Jersey shore within the twelve-mile circle. (Exhibits 720, 724, 726.)

Maps made by the Federal Government under competent authority have been recognized by this Court as of evidential value in the matter of boundaries. *Louisiana v. Mississippi*, 202 U. S. 1, 55-56.

It is contended by plaintiff that the rule of the common law limiting the owner upon the shore to high water mark had been modified and liberalized by the New Jersey decisions and Acts of Assembly, and that this has changed the boundary within the river. But the policy of New Jersey applied, of course, not change the title to the river unless this policy gave rise to the actual exercise of rights adversely to the defendant.

The claim of defendant in the case is, to low water mark on the New Jersey shore within the twelve-mile circle and defendant claims that there is nothing inconsistent between the ownership of the subaqueous soil and the exercise of riparian rights along the river front. There is no evidence in the case of any such adverse exercise of rights by riparian owners as could give rise to prescriptive rights on the part of the plaintiff. The number of grants and improvements thereunder made upon the plaintiff's shore were few, as above pointed out, and in no view of the matter could the exercise of riparian rights change the

and the efficacy of the instruments which in effect made William Penn proprietary of Delaware and established an English colony in America. The deed of feoffment for the two he-mile circle contained the following language :

"Together with all Rents Services Royalties franchises Jurisdiccions liberties and privileges thereunto belonging And all the Estate Right Title Interest powers property claime and demand whatsoever of his said Royall Highnesse of in or to the same or to any part or parcell thereof . . ." (Exhibit 521, p. 2.)

The case of *Martin v. Waddell*, 16 Pet. 367, is urged by plaintiff as establishing that the ownership of the subaqueous soil could not have been legally granted by the Crown. The case referred to involved the construction of the terms of the surrender by the proprietors of the province of East Jersey and did not involve the question of the power of the Crown to grant subaqueous soil. The facts before this Court in that case were as follows:

The case below was an action of ejectment instituted by the lessee of Waddell in the Circuit Court of the United States for the District of New Jersey, against Martin, et al., for the recovery of certain subaqueous soil in Raritan Bay, New Jersey. Waddell's lessee, the defendant in error before the Supreme Court, claimed by virtue of a survey of the lands made in 1834 under authority of the proprietors of East Jersey. Martin, the defendant in the ejectment, claimed under an act of the State of New Jersey of November 25, 1824, under the terms of which act the State authorized commissioners to permit the owners of the upland to survey the adjacent subaqueous soil for the purpose of planting and growing oysters.

The question before the court therefore was the right of Martin, the plaintiff in error, and the defendant in the ejectment proceeding, to take oysters upon a tract of sub-

title to the river or affect the boundary between the plaintiff and the defendant.

By the Compact of 1905 (Exhibit 53) the two States agreed, among other things, each with the other as follows:

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

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

Under this Compact clearly all improvements made by riparian owners upon the shore of either State are protected, and any decree fixing the boundary between the plaintiff and the defendant must so provide.

The Power of the Crown to Make the Grant.

Much discussion has been had concerning the right of the English Crown to grant subaqueous soil in private ownership. This discussion, however, is not applicable to the instant case because the record shows that in fact governmental powers were granted to William Penn by the deeds of feoffment for Delaware. The Duke of York, who had theretofore been exercising such governmental powers, transferred them to William Penn by the deeds and by his act of relinquishing control over the territory and thereafter exercising no control whatever over Delaware. Penn and his successors, including the Assembly of the Delaware Counties, proceeded to exercise powers of government for one hundred years prior to the Treaty of Peace with Great Britain. No technical objections to the form of the grants for Delaware can avail to destroy the validity

16. The said Order in Council of November 13, 1685, and the proceedings incident thereto recognized William Penn as the equitable owner of the Colony of Delaware.

17. By Order in Council of August 9, 1694, and by Letters Patent under the Great Seal of England of August 20, 1694, the title and possession of William Penn to the soil of the Colony of Delaware and the powers of government of William Penn thereover were duly and formally recognized, ratified and confirmed by the Crown of England.

18. By various and sundry acts of the Crown of England, its ministers and officers, from the year 1682 until the year 1776, the title and possession of William Penn to the soil of the Colony of Delaware, and the powers of government of the said William Penn, or his successors, and of the Delaware Assembly thereover were recognized and confirmed.

19. Neither the Crown of England nor its ministers or officers, at any time from the year 1682 until the year 1776, took or instituted any action or proceeding looking to the dispossession of William Penn and his successors from the administration of the government, or from the occupancy and possession of the soil of the Colony of Delaware. By reason thereof, the title of the said William Penn and his successors thereto and their powers of government thereover were ratified and confirmed by the Crown of England.

20. The State of Delaware at all times since 1783 has claimed, asserted and exercised exclusive dominion and jurisdiction over the lands and waters within the boundaries fixed by the said title deeds, as modified by the compact of 1905 between the States of Delaware and New Jersey. These boundaries include within their limits all that part of the Delaware River lying north of the southernmost part of a circle of twelve-miles radius from the Town of New Castle, Delaware.

21. At no time has the State of Delaware ever abandoned its claim, dominion or jurisdiction over the Delaware River within said twelve-mile circle, nor has it at any time acquiesced in the claim of the State of New Jersey, thereto, except as modified by the said Compact of 1905.

22. The State of New Jersey has at all times recognized the existence of a boundary dispute between the State of New Jersey and the State of Delaware, and by the Compact of 1905 between the said States the existence of such a dispute was expressly recognized.

23. By the Compact of 1905 between the States of New Jersey and Delaware the State of Delaware recognized the rights of riparian owners to wharf out on the easterly side of the Delaware River within the twelve-mile circle. By said Compact the State of Delaware did not convey to the State of New Jersey title to any part of the Delaware River or to any part of the subaqueous soil thereof, and said Compact did not in anywise alter or affect the boundaries of the respective states.

24. The record establishes that as early as Fisher's Chart of Delaware Bay (1756) there has been a well-defined channel of navigation up and down the Bay and River. This channel has, since the Revolution, been regularly marked by the government.

25. That Delaware River and Bay, on account of shoals, are not equally navigable in all directions, but the main ship channel must be adhered to for safety in navigation:

26. The testimony shows that the Bay is only an expansion of the lower part of the Delaware River; that the current in the Bay is mainly tidal; but the testimony shows that there is a flow of water through the Bay and that a maximum current velocity is found in the ship channel.

27. Approximately two billion cubic feet of fresh water per day drains into the Bay. It does not spread out uni-

RECOMMENDATIONS FOR A DECREE.

I recommend the following decree:

1. That within the twelve-mile circle the river and the subaqueous soil thereof shall be adjudged to belong to the State of Delaware, subject to the Compact of 1905.
2. That the true boundary between the plaintiff and the defendant below the twelve-mile circle shall be adjudged to be the middle of the main ship channel in said river and bay.

It is further recommended that the costs of this suit be equally divided between the two States.

WILLIAM L. RAWLS,
Special Master.

NEW HESPERIDEAN BOUNDARY CASE

IN THE

Supreme Court of the Commonwealth of Massachusetts

between
GEORGE S. SOWARD,
Plaintiff,
and
WILLIAM A. STEVENSON,
Defendant.

STATE OF NEW HAMPSHIRE,

vs.

STATE OF DELAWARE,

Plaintiff,
vs.
Defendant.

WILLIAM A. STEVENSON,
Plaintiff,

vs.
GEORGE S. SOWARD,
Defendant.

WILLIAM A. STEVENSON,
Plaintiff,

vs.
GEORGE S. SOWARD,
Defendant.

December 18, 1913.

II. (7) Compact of 1905.

Delaware, as they have heretofore been accustomed to do, before the said interference; and from arresting, imprisoning, trying, fining, or in any manner punishing, or seizing, holding or selling any property of any citizen or resident of New Jersey for fishing in said river as aforesaid, until this court shall make other order to the contrary" (*Ex. 237, pp. 13-15*).

Defendant filed its answer, claiming title and jurisdiction in the bed of the river to low water mark on the east side within a radius of 12 miles of New Castle. A compact having been agreed upon between the parties (*Ex. 237, pp. 18-26*), the case was, on April 15, 1907, discontinued without prejudice (*205 U. S. 550*).

That case involved only the right of common fishery by citizens of plaintiff in Delaware river within a radius of 12 miles of New Castle. The pleadings did not include any question of territorial jurisdiction or boundary outside that area (*Ex. 693*). No question was raised in that case by defendant respecting grants theretofore made by plaintiff of lands under water below low water line in the area in dispute, or respecting the right, title and interest of the grantees, or respecting appropriations to their exclusive use, by citizens of New Jersey of lands below low water line in that area. Such titles and interests have never been questioned by defendant, and have been enjoyed and exercised, continuously, by plaintiff from the first legislative grant of such lands in 1854 down to the present time, and such appropriations have been made and enjoyed since before 1801, according to the present record.

The Compact was ratified by plaintiff's legislature March 21, 1905 (*Ex. 161, pp. 35-6*); by defendant's legislators on March 20, 1905 (*Ex. 161, pp. 14-15*) and approved by Congress January 24, 1905 (*Ex. 53; 34 St. L. Pt. I, Ch. 394, p. 858*).

II. (7) Compact of 1905.

The Compact recites the controversy between the parties:

"relative to jurisdiction of such portion of the Delaware river as is included within the circle of 12 miles radius, an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom."

It recites the pendency of the suit in this court and the injunction granted therein in 1877 (*Ex. 53, p. 1*).

Articles I and II provide for concurrent jurisdiction in civil and criminal processes on the entire river.

Article III provides for concurrent rights of common fishery by the inhabitants of both states on any part of the river between low water marks, "except so far as either state may have heretofore granted valid and subsisting private rights of fishery." The Compact further provides as follows:

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

Article VIII. Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either State of, in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as herein expressly set forth" (*Ex. 53, p. 5*).

The Master, after quoting said sections, said:

"Under this Compact clearly all improvements made by riparian owners upon the shore of either State are protected, and any decree fixing the boundary between the plaintiff and the defendant must so provide" (*Rep. p. 54*).

II. (7) Compact of 1905.

He found that this Compact recognized a right of riparian owners to wharf out on the easterly side of the Delaware river within the 12 mile circle but that it did not convey to plaintiff title to any part of the river or to any part of the subaqueous soil thereof, and did not in anywise alter or affect the boundaries of the respective states (*Rep. p. 77, Finding No. 23*). He recommended a decree as follows: "That within the 12 mile circle the river and the subaqueous soil thereof shall be adjudged to belong to the State of Delaware, subject to the Compact of 1905" (*Rep. p. 80, Recommendation No. 1*). The finding and that recommendation appear to be inconsistent and indefinite.

At the time the Compact was made owners of the shore front, referred to by the Master as "riparian owners" had no right to wharf out, and had no rights below high water mark. Under the heading "*Riparian Rights and Grants*" of this brief, it appears that such rights were recognized prior to an Act of 1851 (*N. J. P. L. 1851, p. 335*). From that time until the enactment of Chapter 383, in 1869, (*N. J. P. L. 1869, p. 1007*) they still had the right to wharf out to low water line without public permission, but the Act of 1851 was then repealed and thereafter private use of the land below high water mark could not be acquired except by a grant from plaintiff at other places in New Jersey, and that law was applied to the Delaware river and bay in 1871 (*N. J. P. L. 1871 p. 44*).

Numerous grants were made by plaintiff in the bed of the river below low water mark, between 1854 and the date of the Compact (*Exs. 3, 41, 42, 43, 44, 45, 70, 92, R. 125, 280, 282, 291, 382-4, 522-40*).

After the Compact was made, plaintiff, without objection by defendant, continued to make grants of the bed of

III. (7) Compact of 1905.

The Delaware river below low water mark in that area; 25 of these are shown in this record (Exs. 58-69; 73-91; 93-7; 2; 3; 57; 127; R. 120; 291; 84-90; 117-123; 130-155; 265-292).

Most of these grants extend to the bulkhead lines established by plaintiff in 1877 (*Ex. 144*) or to a later one in 1916, both of which were below low water mark at distances varying from 378 to 3,550 feet (*Ex. 144, R. 339; Ex. 145; R. 275, 290-1, 340-1*).

The Compact constituted the settlement of a litigation in which the boundary, including territory and jurisdiction within a radius of 12 miles of New Castle, was directly in controversy. Defendant claimed to low water mark on the east side. Plaintiff claimed to the middle of the ship channel, and it had granted lands, and citizens of both states had purchased such titles from plaintiff and possessed and improved them at great expense, in the bed of the river below low water mark. This, although not involved in the lawsuit any more than the oysters and clams mentioned in Article VI of the Compact, was considered by the commissioners, and they agreed that plaintiff "on its own side of the river," should "continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights" under its own laws. If that language referred to lands between high and low water mark, *only*, it was meaningless, since defendant never claimed such lands. Plaintiff had, for 60 years, prior to the date of the Compact, made a practice of conveying the bed of the river to navigable water at low tide (*Exs. 41, 42, 43, 44, 48*). Docks and other permanent fixed improvements, accessible to vessels at low tide, were built on these tracts, and are still in use.

On that state of facts, the above quoted language of the Compact was adopted. It meant lands below low

II. (7) Compact of 1905.

water mark, or it meant nothing, since there were no grants by plaintiff of land *between* high and low water marks.

When the Master says that Compact conveyed no title to any part of the subaqueous soil of the river or in anywise altered or affected the boundary (assuming, as he does, that the boundary is at low water mark) (*Rep. p. 77, Finding No. 23*), he overlooks the very important exception in Article VIII of the Compact, reading:

“Nothing herein contained shall affect the *territorial limits*, rights or jurisdiction of either State of, *in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as herein expressly set forth*” (*Ex. 53, p. 5*). (Italics ours.)

That exception, taken with Article VII, can have but one meaning respecting “territorial limits” “*in*,” “the Delaware river, or the *ownership of the subaqueous soil thereof*,” namely, to concede to plaintiff its claim of title and jurisdiction, and the right to convey that title and exercise that jurisdiction, in the subaqueous soil in the river *below* low water mark east of the main ship channel.

It has been so interpreted by both parties ever since, and that interpretation has not been questioned in this suit.

Not only has plaintiff continued to grant this land (to the extent of above 10,000 lineal feet) ever since that Compact was made, but such grants have been accepted during that time by citizens of defendant to the extent of more than 5,000 lineal feet, for considerations aggregating more than \$87,000.

Plaintiff has acted upon that interpretation, without a single objection from defendant, for the past 28 years. It established its new pierhead line in that area in 1916 (*Ex. 145*), and all the grants made since that time by

II. (7) Compact of 1905.

plaintiff have extended to that line, including those made to and accepted by citizens of defendant; in several instances to a Delaware corporation, in which the Attorney General of defendant was one of the incorporators at the time the grant was obtained, and these grants have been improved by the purchasers to the extent of several millions of dollars. Defendant has never yet objected to, or raised any question about, these grants.

Plaintiff submits that these facts show a practical construction by both parties of this Compact which has been acted upon by plaintiff, and acquiesced in by defendant, during the past 28 years, and that the Master is in error if the language he uses (*Finding No. 23, Rep. p. 77*) means that defendant did not concede to plaintiff by that Compact any title to any part of the subaqueous soil of the river below low water line on the east side thereof, and did not in anywise alter or affect the boundary, as then claimed by defendant on that low water line. Plaintiff contends that that Compact did concede to plaintiff title to the subaqueous soil of the river, within a radius of 12 miles of New Castle, to the extent necessary to accommodate navigation and commerce to the industries which have developed, and used, or may develop and use, the subaqueous soil on that side.

The Master therefore errs in finding and concluding that defendant has title to low water mark on the east side of the river, within a radius of 12 miles about New Castle, and that this Compact did not in anywise alter or affect that boundary.

IN THE
Supreme Court of the United States.

No. 13 ORIGINAL. October Term, 1933.
(No. 19 ORIGINAL. October Term, 1939.)

STATE OF NEW JERSEY,
Plaintiff,
v.
STATE OF DELAWARE,
Defendant.

ON EXCEPTIONS TO REPORT
OF SPECIAL MASTER.

REPLY BRIEF OF DEFENDANT.

This reply brief will be devoted to answering certain arguments advanced in Plaintiff's first brief and will follow the subject headings in Plaintiff's brief.

Plaintiff's brief, like Defendant's, treats the questions under the two separate headings of "The Boundary Within the Twelve-Mile Circle" and "The Boundary Below the Circle".

BOUNDARY IN TWELVE-MILE CIRCLE.

Before considering in detail the specific points advanced in this portion of Plaintiff's brief we desire to invite the Court's attention to the general nature of Plaintiff's claims.

Plaintiff's brief on this branch of the case is devoted, first, to an attempt to establish title by prescription in the State of New Jersey to the subaqueous soil of the Delaware River; and second, to an attack on the Delaware title.

Under part II of the brief under the heading "The Title of the State of New Jersey", Plaintiff apparently con-

Shelton

he and all other proprietaries of American colonies accorded to the inhabitants of those colonies.

Plaintiff is here seeking to establish title to the subaqueous soil of the Delaware River east of the main ship channel. Such title can not be established by pointing to the exercise of riparian rights by the inhabitants of the Province of New Jersey. Even if it could be argued that the riparian owner acquired title by adverse possession to the subaqueous soil underneath the wharf erected by him, such adverse possession would not inure to the benefit of New Jersey and would not shift the boundary line between the States.

To put the matter in another way, the right of the riparian owner to wharf out does not rest upon title to the subaqueous soil, and a claim to ownership of the subaqueous soil by the State of Delaware is not inconsistent with the use of such subaqueous soil by the riparian proprietor for the purpose of wharfing out.

Let us suppose that after a lapse of time a riparian owner who has erected a wharf upon subaqueous soil in front of his property tears down that wharf and does not rebuild it. Surely it can not be said that he holds title to the subaqueous soil which is no longer covered by a wharf. He still has the right to build another wharf, but the ownership of the soil is not thereby changed.

Let us suppose again that a valuable mineral deposit is found in the subaqueous soil of the river within the area circumscribed by the piling of the wharf erected by the owner of the upland. Could it be contended for a moment that the owner of the upland, by virtue of his having erected a wharf, would have any title to such deposit? Clearly not. Nor could the riparian owner contend that by virtue

rights of the owners of the upland the common law prevailed and was modified only in so far as the riparian owner actually reclaimed the shore or exercised his riparian right by the actual erection of a wharf.

It follows from the foregoing that the recognition of such riparian rights in colonial times never had the effect of passing title to the soil to the riparian owner. *Much less did it have the effect of vesting title in the province of New Jersey to the bed of the river east of the main ship channel.*

We agree with the statement that under colonial usage and custom in both the Provinces of New Jersey and the Colony of Delaware riparian rights sprang up, unknown to the English common law. What of it? Such rights are in no wise inconsistent with the fact that the ownership of the subaqueous soil was vested in William Penn, and the recognition of such rights could not avail to change the boundaries of the colonies.

We are here concerned with a question of title and boundaries. If the riparian owner's right to wharf out vested in him no title to the foreshore or the subaqueous soil of the river then the title thereto remained unaffected by the existence of the right. Moreover, that right flowed from custom and usage sanctioned by the proprietaries of both colonies. It is elementary that one who claims a right derived as grantee of another does not hold adversely to the other and can not by the exercise of that right acquire title by adverse possession.

The conclusion, therefore, is that the exercise of riparian rights by the inhabitants of the Province of New Jersey was not in any sense hostile or adverse to the ownership of the soil by William Penn. It was a right which

the exercise of riparian rights change the title to the river or affect the boundary between the plaintiff and the defendant." (Report, pp. 53-54.)

In concluding our discussion of this point we should notice an assertion in Plaintiff's brief to the effect that the State of Delaware "never asserted or claimed title to the bed of the river east of the ship channel until 1872." (Brief, p. 63.)

The Master found on the evidence that from 1682 until the American Revolution William Penn and the Pennsylvania and Delaware Legislative Assemblies exercised exclusive control over the lands and waters within the boundaries of the colonies of Delaware. (Report, p. 74, finding 9.)

The Master further found that since 1783 the State of Delaware has claimed, asserted, and exercised exclusive dominion and jurisdiction over the lands and waters within the boundaries fixed by the title deeds as modified by the Compact of 1905 between the States, and that at no time has it ever abandoned its dominion or jurisdiction or acquiesced in the claim of the State of New Jersey except as modified by the Compact. (Report, pp. 76-77, findings 20-21.)

It would be a tedious process to review all the evidence which disproves the above assertion in Plaintiff's brief and sustains the Master's finding. See Defendant's first brief, pp. 90-105. It will be sufficient here to quote from Plaintiff's own brief statements wholly inconsistent with this contention. On page 121 of Plaintiff's brief Plaintiff argues in effect that there was a subsisting dispute between New Jersey and Delaware over the boundary line prior to the suit of 1877 and in support thereof cites the Delaware

of his long possession of the wharf he had acquired a title by prescription to the subaqueous soil.

Moreover, as pointed out in our original brief, nearly all the New Jersey grants of riparian rights within the twelve-mile circle, and practically all the improvements on the New Jersey shore within the twelve-mile circle, were made or built after the institution of the prior suit in 1877. The failure of the State of Delaware to attempt to tax these improvements during the pendency of this suit can not be ascribed to laches nor can any acquiescence be imputed to the State during that time.

It should be further noted that the State of Delaware has never questioned the right of citizens of New Jersey to wharf out to navigable water nor can such a right be questioned now because it is clearly protected by the Compact of 1905 between the States.

The point of the matter lies in this: That the exercise of riparian rights by the inhabitants of the Province of New Jersey, and by the citizens of the State of New Jersey is in no way adverse to the title of the State of Delaware. The Special Master so held. We quote from his report as follows:

"The claim of defendant in the case is, to low water mark on the New Jersey shore within the twelve-mile circle and defendant claims that there is nothing inconsistent between the ownership of the subaqueous soil and the exercise of riparian rights along the river front. There is no evidence in the case of any such adverse exercise of rights by riparian owners as could give rise to prescriptive rights on the part of the plaintiff. The number of grants and improvements thereunder made upon the plaintiff's shore were few, as above pointed out, and in no view of the matter could

which expressions ought, we think, to be confined to rivers, fishings and royalties within the boundaries of the granted premises."

The case also holds that the inhabitants of West New Jersey made use of the Bay and River Delaware for the purposes of navigation and fishery. As above pointed out, this right is unquestioned and in no way affects the title of the State of Delaware.

The case of *Kean v. Rice*, 12 Serg. & R. (Pa.) 203, deals with oyster rights in Maurice River Cove, in the Delaware Bay, far outside of the twelve-mile circle. It has nothing to do with the present dispute. The case of *Bennett v. Boggs*, 1 Bald. 60, 8 Fed. Cas. 221, deals with fishing rights in the Delaware River between Pennsylvania and New Jersey, north of the twelve-mile circle, and is likewise not on the point.

The case of *Gale v. Belling*, unreported, will be hereafter discussed. It is sufficient to point out here that the record title of the State of Delaware, based on the Letters Patent of March 22, 1682/3, was not shown to the court, and the charge on the law was therefore founded on an error of fact.

In conclusion we would point out that even if it were true that the possession of subaqueous soil by riparian owners for the purpose of erecting wharves were hostile or adverse to the State of Delaware the only result would be that such wharf owners would acquire good title against the State of Delaware by adverse possession. But such adverse possession could not avail to transfer title to such wharf lands to the State of New Jersey. The land would be owned in private ownership by the riparian owners but

would still be within the boundaries of the State of Delaware. Much is said by the Plaintiff, in this portion of the brief, of the great value of these wharf rights on the New Jersey side. The implication in the brief is that if the boundary line between the States is determined to be low-water mark on the New Jersey shore the interests of the riparian owners will be either destroyed or seriously prejudiced. This, of course, is simply not the fact. The Compact of 1905 above referred to recognized the rights of riparian owners in the river to wharf out, and the Master so found. We quote the following from his report:

"By the Compact of 1905 (Exhibit 53) the two States agreed, among other things, each with the other as follows:

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

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

"Under this Compact clearly all improvements made by riparian owners upon the shore of either State are protected, and any decree fixing the boundary between the plaintiff and the defendant must so provide." (Report, p. 54.)

II. (c) (4). The Circular Boundary. Brief, pp. 70-88.

Plaintiff's brief discusses the origin and development of the twelve-mile circle, and the point is made that the circle originated in an arc starting on the Delaware River

Reply Brief of Defendant

and clear as to the actual serving of civil process on vessels in the eastern half of the Delaware River within the circle. The original writ of attachment or summons would not itself disclose where the writ was served. The only possible way to prove where the writ was served was to call the various marshals and deputy marshals who served such writs and the lawyers who knew of the service of the writs in the eastern half of the Delaware River. This was done and their testimony was not impeached or shaken in any respect whatsoever. It is direct and positive evidence in this case of the exercise of civil jurisdiction over the eastern half of the river by the Delaware courts.

Similar testimony was produced in the case of Pea Patch Island before Mr. Sergeant the arbitrator and is summarized by him in the extract from his opinion in our first brief, pages 96 to 98 above referred to.

Not one single instance of the service of a writ of summons or attachment on a vessel in the eastern half of the circle from the United States court for the district of New Jersey is offered by the Plaintiff. In view of this fact and of the evidence above referred to it is not surprising that the Master's finding on this point was as follows:

"20. The State of Delaware at all times since 1783 has claimed, asserted and exercised exclusive dominion and jurisdiction over the lands and waters within the boundaries fixed by the said title deeds, as modified by the compact of 1905 between the States of Delaware and New Jersey. These boundaries include within their limits all that part of the Delaware River lying north of the southernmost part of a circle of twelve-miles radius from the Town of New Castle, Delaware." (Report, p. 76.)

on Exceptions to Report of Special Master

II. (c) (?). The Compact of 1905.

Under this heading Plaintiff's counsel claim that by the Compact of 1905 between the States the State of Delaware ceded to the State of New Jersey "title to the subaqueous soil of the river, within a radius of twelve miles of New Castle, to the extent necessary to accommodate navigation and commerce to the industries which have developed, and used or may develop and use, the subaqueous soil on that side."

We may ask at once: Why, if the Compact intended any such result, did it not expressly so state? The fact is that the Compact of 1905 reserves the question of the boundary line between the States. By the Compact (Exhibit 53) the State of Delaware in Article I ceded to the State of New Jersey authority to serve original and civil process over the entire Delaware River, except upon Reedy and Pea Patch Islands, not including, however, vessels moored at wharves on the Delaware side of the river.

By Article III a common right of fishery in the inhabitants of both States was recognized to exist in the Delaware River.

The effect of Article VII of the Compact, quoted in Plaintiff's brief (p. 127) was that the State of Delaware recognized the rights of the inhabitants on the east side of the river to what out to navigable water. This right had never been questioned and was undoubtedly inserted to put beyond question the riparian rights (as distinguished from title) of land owners in New Jersey.

Article VIII then provides as follows:

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

The Master's finding that this Compact in no way affected the boundary line between the States but merely protected the rights of the riparian owners on the Jersey shore is obviously sound. If the Compact intended to cede to New Jersey title to the subaqueous soil it undoubtedly would have so provided.

Plaintiff is here met with an insuperable difficulty. If the Compact of 1905 was a cession of land, the question arises, How much land was ceded? Apparently Plaintiff's counsel contend that there was ceded to New Jersey a vague and uncertain quantity of land "to the extent necessary to accommodate navigation and commerce to the industries which have developed, and used, or may develop and use, the sub-aqueous soil on that side". This is a wholly untenable position. If sound, the boundary line would be forever uncertain. It would depend on the extent to which it may hereafter become necessary to develop and use the lands below low-water mark on the New Jersey shore.

Plaintiff does not specify any line which could be fixed if its contention should be adopted by this Court. What would be the line? Is this Court to investigate to what extent it may hereafter become necessary for riparian owners on the east bank of the Delaware River to use the subaqueous soil of the river Delaware and fix a line which represents such probable future use? Such a suggestion is without any basis whatever to support it. Moreover, no such suggestion was made by Plaintiff when the case was before the Special Master.

Plaintiff argues that the qualifying phrase in Article VIII "except as herein expressly set forth" refers to a cession of land. The phrase obviously refers to the "jurisdiction" over the river which was ceded to New Jersey by

Article I of the Compact. Plaintiff argues that the Compact expressly legalized the grants of subaqueous soil by the State of New Jersey. This again is a strained construction of Article VII. The phrase "riparian lands" refers to the upland and perhaps to the foreshore, but not to the subaqueous soil. Compare the following cases:

Hart v. Board of Levee Commissioners, 54 Fed. 559;

Batligate v. Irvine, 58 Pac. 442, 126 Cal. 135;

Rome Railway & Light Co. v. Loeb, 141 Ga. 202,
80 S. E. 785, Ann. Cas. 1915 C. 1023.

"Riparian" lands are "bank" lands; not lands under water.

Even if the Compact of 1905 be construed as ceding to the State of New Jersey the right to determine to whom riparian rights (i. e., wharf rights appurtenant to riparian lands) shall be granted, it would still not affect the boundary between the States in any conceivable way. The boundary line would continue to be low water mark.

It is safe to say that the construction of the Compact of 1905 now contended for by New Jersey did not occur to its counsel until long after the present suit was instituted.

The Bill of Complaint in this case (Rec., pp. 4-18) sets forth with great particularity the source of Plaintiff's claim of title to the eastern half of the Delaware River and nowhere mentions the Compact of 1905 as the source of that claim. It is inconceivable that the contention now made could have been overlooked when the bill was filed if there were any basis to support it.

Moreover, the construction placed upon the Compact at all times since its execution and approval by Congress has

Testimony.

[1] IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1930.

No. 18, Original.

STATE OF NEW JERSEY,

vs.

STATE OF DELAWARE.

10

Before Hon. **WILLIAM L. RAWLS**, Special Master.

Testimony taken this 8th day of June, 1931, at Post Office Building, Philadelphia, Pa.

COUNSEL PRESENT:

On behalf of Plaintiff.

William H. Stevens, Esq.,
Attorney-General of New Jersey

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Duane E. Minard, Esq.,
Assistant Attorney-General of New Jersey.

George H. Hobart, Esq.,
Special Counsel.

On behalf of Defendant.

Reuben Satterthwaite, Jr., Esq.,
Attorney-General of Delaware.

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Clarence A. Southerland, Esq.,
of Ward & Gray, Special Counsel.

[2] Jack Salmon, Esq., of Baltimore, Maryland, was then duly sworn as Stenographer.

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STEVENS,
Attorney-General
WARD,
Attorney-General,
... for Plaintiff.

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Order of Reference.

Mr. Minard: We will now have incorporated in the record the Order of Reference.

"SUPREME COURT OF THE UNITED STATES

No. 19 Original, October Term, 1929.

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The State of New Jersey,
Complainant,

vs.

The State of Delaware.

ON CONSIDERATION of the motion for the appointment of a special master in this cause,

IT IS NOW HEREBY ORDERED by this Court that the said motion be, and the same is hereby, granted.

20

AND IT IS FURTHER ORDERED that the Honorable WILLIAM L. RAWLS, of Baltimore, State of Maryland, be, and he is hereby, appointed special master in this cause, with power to summon witnesses, issue subpoenas, and to take such testimony as may be introduced and such as he may deem necessary to call. The master is directed to make findings of fact and conclusions of law, and to submit [3] the same to this court with all convenient speed, together with his recommendations for a decree. The findings, conclusions, and recommendations of this special master shall be subject to consideration, revision, or approval by the Court.

30

January 6, 1930.

(SEAL)

A true copy.

Test:

Charles Elmore Cropley
Clerk of the Supreme Court of
the United States."

40

Opening Statement on behalf of Plaintiff.

Mr. Minard: If your Honor please this is an original action brought by the Attorney General in the name of the State of New Jersey, pursuant to Joint Resolution No. 25, Laws of 1929, page 834, to secure a judicial determination of the boundary line between the States of New Jersey and Delaware in the Delaware River and Bay.

10

The territory now embraced in the State of New Jersey was claimed by the British Crown by virtue of the discoveries of Captain John Smith, John and Sebastian Cabot and others who sailed under the British flag. After the voyage of Henry Hudson in 1609, the [4] Dutch settled a portion of this territory on the east side of the Hudson River and on both sides of the Delaware River in portions now located within the States of New Jersey and Delaware, respectively, in conjunction with their occupancy of Manhattan Island and the territory along both sides of the Hudson River, in what is now New York State up to the vicinity of Albany.

20

In 1664 Charles II issued commissions to Sir Robert Carr, Col. Nichols, George Cartright and Samuel Mervick to visit the British colonies in North America and incidentally drive out the Dutch who had settled on the Hudson and Delaware Rivers. This was accomplished without much difficulty in the same year, but without waiting for this to be accomplished Charles II granted to his brother, the Duke of Yorke, under date of March 12, 1664, practically all of the Atlantic coastal area in North America between Nova Scotia and the Delaware River, except the territory occupied by the Massachusetts colonies. This grant forms the basis of the title to lands of the State of New Jersey. The territory now constituting New Jersey was included in a description of all land on the west side of the Con- [5] necticut river to the east side of Delaware bay. The deed contained full powers of government and title in common socage.

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Honorable WILLIAM
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of the Supreme Court of
New Jersey.

Opening Statement on behalf of Plaintiff.

10 By lease dated June 23, and release dated June 24, 1664, the Duke of Yorke conveyed to Lord Berkeley and Sir George Carteret, a portion of these lands bounded on the east partly by the main sea and partly by Hudson river and on the west by the Delaware bay and river and extending from Cape May at the mouth of the Delaware bay up the river to the northermost branch thereof which is in 41 degrees and 40 minutes of latitude, and from thence crossing over to the Hudson river is 41 degrees of latitude. In these documents the Duke of Yorke undertook to convey all his right, title and interest, propertiea and privileges in as full and ample a manner as the same were granted to him by King Charles.

20 Lord Berkeley and Sir George Carteret thereby each acquired a joint undivided one-half interest in the territory. They made certain concessions and agreements with prospective settlers and undertook to settle the country. By a succession of meane conveyances the undivided interest of Lord Berkeley came into the possession [6] of Wm. Penn, Gawen Lawrie and Nicholas Lucas. On July 1, 1676, Sir George Carteret, who was still the owner of an undivided one-half interest, and Penn, Lucas and Lawrie (and Edward Billings, who had an equitable interest) executed a deed for the division of the territory and for the conveyance to Carteret of the easterly (or northerly) portion which afterwards became known as East Jersey, and the conveyance of the westerly (or southerly) portion to Penn, Lucas and Lawrie, which portion afterwards became known as West Jersey, and extended throughout the whole length of the New Jersey boundary on the Delaware river, including that portion lying opposite what is now the State of Delaware.

40 The affairs of East Jersey and West Jersey were separately administered by a governor appointed by their

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Opening Statement on behalf of Plaintiff.

respective proprietors, until April 15, 1702 when the proprietary governments thereof were surrendered in a joint document submitted to, and two days later accepted by, Queen Anne. Thereupon, New Jersey became a royal colony whose affairs were administered in conjunction with those of New York by a governor appointed by the Crown. It had, however, a separate council or assembly [7] for the enactment of its laws. Its government in conjunction with New York ended in 1738, when the Crown appointed a separate governor for New Jersey and its affairs were so administered from thence until the Revolutionary War.

10

The controversy in the present suit involves the boundary in the river from the boundary line between Pennsylvania and Delaware to the Capes at the mouth of Delaware Bay. Delaware claims to own the river and bed to low water mark on the New Jersey side within a radius of 12 miles from Newcastle, and to the geographical center of the river and bay below that circle. New Jersey conceives its title to extend to the thalweg or main navigable channel of the river and the bay throughout the entire extent from the boundary line between Pennsylvania and Delaware to the Capes and this claim is rested upon the common law of England under which the Crown held title to the bed and waters where the tide ebbed and flowed. In this river the tide ebbs and flows as far as Trenton and has always done so from the earliest records of the country. New Jersey's claim is that by conquest in the Revolutionary War and by Article I of [8] the Treaty of Paris between King George and the several States it took title to the waters and bed of the river east of the thalweg and the State of Delaware took title to the bed and waters on the west side of the thalweg of the river and bay and New Jersey has always exercised her sovereign rights in accordance with that understanding.

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Opening Statement on behalf of Plaintiff.

10 The claim of Delaware to the contrary has been asserted on several occasions, but never pursued to a determination in any court, State or Federal. The first claim of this character was made by Wm. Penn himself when he appointed commissioners in 1683 to negotiate with Samuel Jennings, the Governor of the Province of West Jersey, for the settlement of a number of controversies including the question of the title to the river. The governor of West Jersey responded by procuring from his assembly the appointment of commissioners to conduct such negotiations, though there is no record that they ever actually negotiated or reached a conclusion.

20 The controversy was renewed in 1873 by the State of Delaware and after a failure of the representatives to agree a suit was instituted in this court by New Jersey [9] to determine the question, by bill filed March 13, 1877. The case dragged along and was partly tried in 1905 when the parties entered into a treaty and the suit was dismissed by consent without prejudice. (205 U. S. 550.)

The treaty was limited to the question of jurisdiction and the common right of fisheries of the citizens of both states within the 12 mile circle, only.

30 The suit did not involve the boundary line below that circle. The treaty was adopted by the legislatures of both states and approved by Act of Congress, January 24, 1907. It expressly stated that it should not affect the territorial limits, rights or jurisdictions of either state of, in or over the Delaware river or the ownership of the subaqueous soil thereof.

Subsequent attempts have been made to negotiate a treaty as to territory, but without success.

40 We do not present for the consideration of the court an abstract question of legal right. Within the disputed area extensive and expensive structures have been erected

Opening Statement on behalf of Plaintiff.

below low water line within the 12 mile circle under riparian grants or leases issued by the [10] State of New Jersey, which have always been considered as being located in and have always been taxed by the authorities of New Jersey. Below the 12 mile circle there are in the disputed area extensive and valuable natural oyster beds which have been developed by and at the expense of citizens of New Jersey, which they have always considered as having belonged to that state.

10

The State of New Jersey, therefore, respectfully submits to the court the testimony and records in support of its contentions.

The Master: Do you gentlemen want to make a statement at this time?

Mr. Satterthwaite: I think not at this time.

Mr. Minard: My thought then is to introduce at this time a report of John P. Stockton, Attorney-General of New Jersey, on the dividing line between the Delaware River and Bay, dated August 12, 1885. This report was made to the Governor of New Jersey, and contains the correspondence between him, as Attorney-General of New Jersey, and John H. Paynter, Attorney-General of Delaware. There was some question at that time as to where the river ended and the bay began, and as that [11] question may come into the case a little later, and inasmuch as we are going down the river on an inspection trip, it occurred to me this should go in at this time. I offer it, subject to any inspection the gentlemen may desire to make of it at any later time.

20

30

Mr. Southerland: What is the purpose?

Mr. Minard: So as to show where the river ended and the bay began.

Mr. Satterthwaite: Is that material?

40

Henry J. Sherman—for Plaintiff—Direct.

Mr. Minard: Inasmuch as Delaware has not made a statement of the case, we have to assume every possible angle. Of course, it leaves the Master in the dark, and leaves us in the dark in the presentation of our case, so that we have to unduly prolong our case.

10 Mr. Satterthwaite: We have filed an answer in this case.

Mr. Minard: That answer was filed fifty years ago.

Mr. Satterthwaite: We would like to reserve the right to make an objection to it at any time.

Mr. Minard: We will offer it.

Mr. Satterthwaite: You contend that this is [12] admitted to fix the boundary lines between the river and the bay.

20 Mr. Minard: As between the two parties, and you have an Act of your legislature confirming it. You can offer any objection to it that you wish, but I am offering it in evidence.

Mr. Satterthwaite: We reserve the right to object to it.

(Report referred to was then filed marked Plaintiff's Exhibit No. 1.)

30 HENRY J. SHERMAN, a witness of lawful age, produced on behalf of the Plaintiff, being duly sworn according to law, testified as follows:

Direct examination.

Q. (Mr. Minard.) Mr. Sherman, where do you live?

A. I live in Moorestown, New Jersey.

Q. What is your profession?

A. Civil Engineer.

Q. And you practice where?

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Henry J. Sherman—for Plaintiff—Direct.

A. In Camden, New Jersey, and generally through southern [13] Jersey.

Q. Are you connected with the Board of Commerce and Navigation in New Jersey?

A. Yes, sir.

Q. In what capacity?

A. As Consulting Engineer. 10

Q. And how long have you been such?

A. Since 1915.

Q. What is the Board of Commerce and Navigation?

A. The Board of Commerce and Navigation has charge of the administration of lands below tide water in the State.

Q. Of the tidal areas, and so on?

A. Yes, sir.

Q. Does it issue grants or leases for such territory? 20

A. It issues grants or leases for such territory and permits for construction in that territory.

Q. Any construction is required to have a permit of the Board?

A. Yes.

Q. Now, Mr. Sherman, I have here a series of United States Government charts. I show you a map, United States [14] East Coast, U. S. C. & G. S. No. 295, Delaware river, Wilmington to Philadelphia. Is that an official Government chart? 30

A. Yes, sir.

Q. And it covers the territory described on its face?

A. Yes, sir.

Q. Now, on this chart there are no other marks, or are there any, than the Government has put on?

A. Yes, there are other marks.

Q. Now, did you put those marks on?

A. Yes, sir.

Q. What are they? 40

Henry J. Sherman—for Plaintiff—Direct.

A. We have extended what purports to be the 12 mile circle on the New Jersey side of the river from the west-
erly edge of the Delaware River across the river into New
Jersey to the end of the chart.

Q. This broken line between Pennsylvania and Dela-
ware, that was on the map when you received it?

10 A. Yes, sir.

Q. From the Government, which extended to the west
side of the Delaware river, and you by pencil continued
it, in order to show what was included in that circle
[15] beyond the line given on the map?

A. Yes, sir.

Q. Is there any line on this map that you put on?

A. There is a red line showing the middle of the
channel, as dredged and maintained by the United States
20 War Department. There is a green line, which shows the
distance mid-way between the two sides of the river.

Q. In other words, the geographical center of the river?

A. Yes, sir.

Q. And this section beginning at the north point, the
point in the river which was opposite the north boundary
of Delaware continued to the end of the chart?

A. Yes, sir.

Q. And this chart gives you the soundings at the points
in the river—

30 A. Yes, sir.

Q. And shows shoals, islands, creeks, and rivers, and
all that sort of thing?

A. Yes, sir.

Q. Is this the latest chart, the official chart at the
present time?

A. The latest that we were able to purchase, and I
pre- [16] sume it was the latest one published.

40 Mr. Satterthwaite: When was it published?

Henry J. Sherman—for Plaintiff—Direct.

A. Re-issued October, 1929.

Q. (Mr. Minard.) The broken parallel line, that broken line in the center above the red there, represents what?

A. It represents the channel of the Delaware river, as dredged by United States Government.

Q. And there are a series of red and black buoys, these little diamond-shaped affairs, are those the channel buoys maintained by the United States Government? 10

A. They are.

Q. And are the ranges, sailing ranges shown here—for instance, Marcus Hook range?

A. Yes, sir.

Q. And the location of the range light?

A. Yes, they are all shown there.

Mr. Minard: Now, we will pass that for the moment, with the consent of the parties, those designations and marks will come in later in our testimony. I offer it in evidence as Plaintiff's Exhibit No. 2. 20

Mr. Southerland: It is offered for the convenience of the Master? [17]

Mr. Minard: And passing certain things that will come in later in the case.

Mr. Satterthwaite: Before it is admitted, can I ask Mr. Sherman a question? 30

Q. Did I understand you to say that this red line represents the main channel?

A. The center of the main channel as laid out by the United States Government.

Q. But you inserted that red line—that was done by you, and not by the Government?

A. The Government had a dotted line, and I put the red line on the dotted line. 40

Miss Vera E. Castellano—for Plaintiff—Direct.

Q. And then did you print certain sections, which related to counties bordering on the Delaware river?

A. Yes, I caused to be printed those parts only.

(Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 35.)

10 Q. Did you procure photostatic copies of pages 12 to 14 inclusive, of the Acts of the General Assembly of the Province of New Jersey, published by Samuel Nevil, Esquire, Second Justice of the Supreme Court of Judicature of said Province, 1762, and did you print therefrom, or cause to be printed, those sections, with the title, that related to counties bordering on the Delaware river and bay?

A. Yes, I caused to be printed only those sections.

20

Mr. Minard: I offer that as Exhibit 36.

(Pamphlet referred to was then filed marked [44] Plaintiff's Exhibit No. 36.)

Q. Did you cause to be photostated pages 6 and 7 of the Laws of New Jersey for 1821, an Act entitled, "An Act to preserve and support the jurisdiction of this State", passed December 3, 1807, by the Legislature of New Jersey?

30

A. Yes, sir.

Q. And has that been printed?

A. That has been printed.

Mr. Minard: I offer it as Exhibit 37.

(Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 37.)

40 Q. Did you cause to be photostated pages 36 and 37 of the Laws of New Jersey for 1823, which is part of a

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Miss Vera E. Castellano—for Plaintiff—Direct.

Act relating to the boundaries of the counties of the State, and cause to be printed therefrom those sections which relate to the counties bordering on the Delaware?

A. Yes, I did.

Mr. Minard: That is offered as Exhibit 38.

(Pamphlet referred to was then filed marked 10
Plaintiff's Exhibit No. 38.)

Q. Did you typewrite from the Laws of New Jersey of 1846, [45] an Act entitled, "An Act to define the boundary lines of Salem, Cumberland, and Cape May counties", approved April 10, 1846, compiled in two Statutes of New Jersey, 1690, Section 61 of that Act, relating to the boundaries of Salem County?

A. Yes, sir.

Q. And that is printed in pamphlet form?

A. Yes, sir.

Mr. Minard: I offer it as Exhibit 39.

(Pamphlet referred to was then filed marked
Plaintiff's Exhibit No. 39.)

Q. Did you cause to be photostated pages 367 to 369 inclusive, of the Laws of New Jersey for 1881?

A. Yes, sir.

Q. Entitled, "Special Public Acts", passed by the One Hundred and Fifth Legislature, Chapter VII, an Act entitled, "An Act for the division of the township of Upper Penns Neck, county of Salem, and to create a new township of the same, to be known as Oldmans township"?

A. Yes, sir.

Mr. Minard: I offer that as Exhibit No. 40.

[46] (Pamphlet referred to was then filed marked
Plaintiff's Exhibit No. 40.)

40

Miss Vera E. Castellano—for Plaintiff—Direct.

Q. Did you photostat pages 375 and 376, New Jersey Laws of 1854, Chapter CXLIII, entitled, "An Act to authorize Thomas D. Broadway, Charles B. Newell and Jacob M. Mitchell, to build, maintain, and keep in repair, a dock or wharf in front of their lands, in the township of Lower Penns Neck, in the county of Salem"?

10

A. I caused them to be photostated.

Q. And they are now printed in pamphlet form

A. Yes, sir.

Mr. Minard: I offer it as Exhibit 41.

(Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 41.)

20

Q. Did you cause to be photostated pages 274 to 276 inclusive, Laws of New Jersey for 1855, Chapter CLX, entitled, "An Act to incorporate the Pennsgrrove Pier Company"?

A. Yes, I did.

Q. And that is printed in pamphlet form?

A. Yes, sir.

Mr. Minard: I offer that as Exhibit 42.

[47] (Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 42.)

30

Q. Did you photostat pages 758 and 759 of the Laws of New Jersey for 1871, Chapter CCCVII, entitled, "An Act to authorize Henry Barber to build wharves, piers and bulkheads in front of his land, on the Delaware river, in the township of Upper Penns Neck, Salem county, New Jersey"?

A. I did not personally photostat them, but I had portions of pages 758 and 759 photostated.

Q. And you had them printed in pamphlet form?

40

A. Yes, sir.

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Miss Vera E. Castellano—for Plaintiff—Direct.

Mr. Minard: I offer it as Exhibit 43.

(Pamphlet referred to was then filed marked
Plaintiff's Exhibit No. 43.)

Q. Did you cause to be photostated page 726, Laws of
New Jersey for 1871, Chapter CCCXLIV, entitled, "An
Act to authorize the construction of a Wharf or Dock at
Penns Grove", approved March 17, 1870? 10

A. Yes, sir, I did.

Q. And had the photostated copy printed?

A. Yes, sir.

[43] Mr. Minard: I offer it as Exhibit 44.

(Pamphlet referred to was then filed marked
Plaintiff's Exhibit No. 44.)

Q. Did you cause to be photostated pages 604 to 606
inclusive, Laws of New Jersey, 1878, Chapter CXXVI,
entitled, "A Supplement to an act entitled 'An act to au-
thorize Reimer Henry Schacht to build a bridge from
Mona's Island, in Delaware river, to the bank along the
Repaupo meadows, and to stake off the channel between
the said island and the bank of said Repaupo meadows, in
the township of Greenwich, Gloucester county, New Jer-
sey'", approved February 19, 1873, which supplement was
approved March 27, 1878? 20

A. Yes, that was photostated and later printed in
pamphlet form. 30

Mr. Minard: I offer it as Exhibit 45.

(Pamphlet referred to was then filed marked
Plaintiff's Exhibit No. 45.)

Mr. Minard: I am going to take this occasion
to introduce a map for the convenience of every-
body. This is a map entitled, County and Munic- 40

Miss Vera E. Castellano—for Plaintiff—Direct.

10 ipality Map of New Jersey, Political Boundaries as of June 1, [49] 1924, Henry B. Kummel, State Geologist, Edition of 1925, revised by L. P. Plummer, Topographic Engineer. This is the official copy, Sheet No. 39 of the Division of Geology and Waters, Department of Conservation and Development, State of New Jersey. I am offering that for convenience. It was surveyed in 1877, and then revised to date.

(Map referred to was then filed marked Plaintiff's Exhibit No. 46.)

Q. Did you cause to be photostated pages 713 and 714, Laws of New Jersey for 1860, Number V, entitled, "Relative to the Removal of obstructions in the river Delaware", approved March 22, 1860?

20 A. I did, yes, sir.

Q. And this is the printed pamphlet?

A. Yes, sir.

Mr. Minard: I offer that as Exhibit 47.

(Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 47.)

30 Q. Did you cause to be photostated page 346, Laws of New Jersey for 1870, Chapter CXXXI, entitled, "An Act to authorize Robert Walker and Francis P. Walker [to] to build wharves, piers and bulkheads in front of their lands on the Delaware river, in the township of Upper Penns Neck, Salem county, New Jersey", approved March 1, 1870?

A. Yes, I did.

Q. And that is in pamphlet form?

40 A. Yes, sir.

Miss Vera E. Castellano—for Plaintiff—Direct.

Mr. Minard: I offer it as Exhibit 48.

(Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 48.)

Q. Did you cause to be photostated pages 156 and 157, Laws of New Jersey for 1901, Chapter 73, entitled, "An Act making appropriation for the protection of oyster beds and seed oysters thereon under the tidal waters of the Delaware bay and Delaware river, above the line running direct from the mouth of Straight creek to Cross Ledge lighthouse, and commonly known as the 'southwest line' " ? 10

A. Yes, sir.

Q. And you have printed copies of that?

A. I had copies printed of that.

Mr. Minard: I offer that as Exhibit 49. 20

[51] (Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 49.)

Q. Did you cause to be photostated pages 642 to 646 inclusive, Laws of New Jersey, 1871, Chapter CCLX, entitled, "An Act for the better enforcement in Maurice River Cove and Delaware Bay, of the act entitled 'An act for the preservation of Clams and Oysters', approved April fourteenth, eighteen hundred and forty-six, and of the supplements thereto", which Act was approved March 21, 1871? 30

A. I caused to be photostated those several sheets.

Q. And had them printed in pamphlet form?

A. Yes, sir.

Mr. Minard: I offer that as Exhibit No. 50.

(Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 50.) 40



ALL-STATE LEGAL 800-222-0510 ED119C RECYCLED

Miss Vera E. Castellano—for Plaintiff—Direct.

determination, and I understand that the Commissioners from Delaware concur in that report.

Mr. Satterthwaite: They made a similar report to the Legislature of Delaware, and they passed a similar Act.

10 [55] Mr. Minard: Instead of burdening the record with all these negotiations, we decided if this statement was made in the record, it would serve the purpose. Moreover, up to 1905, the various negotiations related primarily to fisheries and various conflicts between citizens of the two States, arising over fisheries, and arising over the fisheries in the 12-mile circle. A suit was started in the United States Supreme Court in 1877, and that, of course, is a matter of record in this Court. It was dismissed by mutual consent of the parties without prejudice, and under new negotiations, reached an agreement on jurisdiction and the right of common fisheries, etc., and how they were to deal with questions arising over fisheries in the 12-mile circle, which was ratified by both States and approved by Congress. Rather than introduce all these preliminary laws leading up to the negotiations, I have obtained a few copies of Public Act No. 32, as issued by Congress, 20 entitled, "An Act giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States", approved January 24, 1907. I call attention, however, to the fact that so far as the Act respects the territorial limits, as stated in the title, it merely agreed that the question of territory should remain undetermined. That is in the act, and this includes a complete copy, and I offer 30 same as Exhibit No. 53.

40

Miss Vera E. Castellano—for Plaintiff—Direct.

(Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 53.)

Q. Miss Castellano, did you procure photostatic copies from the New Jersey Historical Society of documents certified and authenticated, similar to those you have described, by the Assistant Keeper of the Public Record Office, and by the Consul-General of the United States, at Great Britain, of Declarations, Charles II, confirming Duke of Yorke's release, of March 14, 1682, which confirmation is dated November 23, 1683?

10

A. I did, yes, sir.

Q. And are those printed up now?

A. Yes, sir, printed in pamphlet form.

[37] Mr. Minard: I offer that as Exhibit 54.

20

(Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 54.)

Q. Did you procure a photostatic copy of the Release of Duke of Yorke to twenty-four East Jersey Proprietors, March 18, 1682, from the Historical Society?

A. Yes, sir.

Q. And which contains the certificate of the Assistant Keeper of Records of England?

30

A. Yes, sir.

Q. And the Consul-General of the United States?

A. Yes, sir.

Q. And have you had that printed?

A. Yes, sir.

Mr. Minard: I offer that as Exhibit 55.

(Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 55.)

40



ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED11-2C RECYCLED

Miss Vera E. Castellano—for Plaintiff—Cross.

Q. Have you caused to be prepared a pamphlet containing the Titles to New Jersey's Riparian Laws down to and including 1931?

A. Yes, sir, I did.

Mr. Minard: That is offered as Exhibit 58.

10 [58] (Pamphlet referred to was then filed marked Plaintiff's Exhibit No. 58.)

Mr. Minard: This is a similar treatment as that of the Oyster Laws, and I will agree to furnish to the Master and the gentlemen on the other side a pamphlet containing all those laws. The purpose of this exhibit is to show the method by which the State of New Jersey, as a sovereignty considers the land under water, in what is considered to be its territory limits.

20 (Examination suspended.)

(At this point a recess was taken for one hour.)

[59]

After Recess.

MISS VERA E. CASTELLANO, a witness heretofore produced and sworn, resumed the stand for further examination.

30

Mr. Minard: I have no more questions to ask Miss Castellano at this time; I may have some more later.

Cross examination.

Q. (Mr. Satterthwaite.) I understand you prepared and compared all of the exhibits which were admitted this morning with the originals?

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Henry J. Sherman—for Plaintiff—recalled, Direct.

A. Yea, sir.

Q And to the best of your knowledge they are true and correct copies?

A. Yea, sir.

Mr. Minard: She compared every copy with the original, and the printing from the copies was handled by Mr. San Filippo, and he will go into that. We will withdraw Miss Castellano for the time being.

(Examination concluded.)

[60] HENRY J. SHERMAN, a witness heretofore produced and sworn, recalled by the Plaintiff, testified as follows:

Direct examination.

Q. (Mr. Minard.) Mr. Sherman, I show you a printed pamphlet and ask you whether or not that is a printed copy of the Tripartite Deed of Lease, dated February 9, 1874, which we reserved the opportunity to introduce as Exhibit No. 19?

A. It is.

Q. Now, that is the original that Mr. Sleeper was asked to produce, is that right?

A. Yes, sir.

Q. Now, did you have in your possession the original?

A. I did.

Q. And did you read the original and compare it with this?

A. I did.

Q. Personally?

A. Personally.

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. All this ancient spelling, and so forth, are intended to be exactly as the language in the Deed?

[61] A. Yes, sir.

10 Mr. Minard: We can produce that original under subpoena, but these are the copies we had made of it. They are not uniform in size with the others, but they are so printed, they can be cut down. I now present Exhibit 19, which was reserved.

Q. Now, Mr. Sherman, have you any official connection with the State of New Jersey?

A. Yes, I have testified I was Consulting Engineer to the Board of Commerce and Navigation.

Q. The Board of Commerce and Navigation was organized when?

20 A. 1915.

Q. And it succeeded what?

A. The old Riparian Commission and Inland Waterway Commission, and Commissions administering the laws of power boats on inland waters.

Q. As far as the riparian rights of the State are concerned, they were the successors of the Riparian Commission.

A. Yes, and have the administration of same.

Q. And when did the old commission come in existence?

30 A. About 1869.

[62] Q. You say they have jurisdiction over all the lands of the State under tidal water?

A. Yes, sir.

Q. And under the authority of the State, they issue licenses or grants?

A. It does.

40 Q. You have examined the Acts of Legislature which have been introduced here as exhibits, especially giving grants to individuals, like Brown, Pennegrove Ferry Com-

Henry J. Sherman

pany, Barber, the Delaware r

A. Yes, sir.

Q. Did you present here the

A. I did not

Q. Referring to 4, they contain capital letters

A. Yes, sir.

Q. What do

A. They refer to the Board of C

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Q. Have you grants?

A. Yes, sir.

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Q. All of the black hatched

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A. Yes, sir.

Q. And you

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A. Yes, sir.

Q. Did you

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New Jersey, At

Henry J. Sherman—for Plaintiff—recalled, Direct.

pany, Barber, Walker, and the others, granting rights in the Delaware river to low-water marks?

A. Yes, sir.

Q. Did you put those on the exhibits which you presented here the other day?

A. I did not.

Q. Referring now to Plaintiff's Exhibits Nos. 2, 3 and 4, they contain certain black hatched areas indicated by capital letters of the alphabet?

A. Yes, sir.

Q. What do they represent?

A. They represent riparian grants or leases made by the Board of Commerce and Navigation, or its predecessor, (63) to individuals or corporations.

Q. Have you with you certified copies of all those grants?

A. Yes, sir.

Mr. Minard: Now, I ask leave to withdraw Exhibits 2, 3 and 4, for the purpose of having located in a similar manner by some other designation, the grants that were made directly by the Legislature so this exhibit will show the location of all grants.

Q. All of the locations shown on Exhibits 2, 3 and 4, black hatched areas of grants, and all those you expect to put on from exhibits already in, Legislative grants direct, are within the radius of 12 miles from the City of Newcastle, are they not?

A. Yes, sir.

Q. And you have inscribed that circle in pencil on these maps to show that fact?

A. Yes, sir.

Q. Did you prepare, or cause to be prepared under your supervision, upon a map of the Geological Survey of New Jersey, Atlas Sheet No. 30, a list of the grants on the

Henry J. Sherman—for Plaintiff—recalled, Direct.

Delaware river and bay, within the radius of 12 miles of Newcastle, made by your Board and its [64] predecessor?

A. Yes, sir.

Q. Then did you photostat that map and produce the copies?

10 A. I did.

Q. At the top is a list of grants under tide-water on easterly shore of Delaware river. They are designated by capital letters of the alphabet, are they?

A. Yes, sir.

Q. And it gives the name of the grantee, the date of the grant, the number of lineal feet frontage, and the number of separate tracts of land involved in each deed?

A. Yes, sir.

Q. And those under that heading are on the river itself?

20 A. Yes, sir.

Q. Then there is another list of grants made by the State of New Jersey, showing thus—that is merely a legend for your map?

A. Yes, sir.

Q. Then the next list of names numbered by arabic numerals, 1 to 25 inclusive, under the head, Grants under tide-water on various creeks. Are they tributary creeks of the Delaware river?

30 [65] A. Yes, sir.

Q. And they, likewise, give the name of the grantee, the date and frontage, is that right?

A. Yes, sir.

Q. And does it give the name of the creek it is on?

A. Yes, sir, and all within the 12-mile circle.

Q. Now, the letters on the first list and the numbers on the second list have been located on this map to show the location of these grants, have they not?

40 A. Yes, sir.

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Henry J. Sherman—for Plaintiff—recalled, Direct.

Mr. Minard: This map was prepared on the theory that Delaware would claim a low-water mark on the Jersey shore. Now, the low-water mark on the Jersey shore goes up and around all these streams to a certain extent. We lettered all those in the Delaware and numbered all in the Delaware and tributaries within that radius. The map was prepared on that theory.

10

Mr. Satterthwaite: The State of Delaware makes no claim below the low water mark of the Delaware river, and the low water mark of the Delaware river, at the intersection of the entering streams, would be the low water mark of the Delaware river on one side of [66] the stream and the low water mark of the Delaware river on the other side of the stream.

20

Mr. Minard: I desire to offer positive photographs of all these negatives.

Q You have made or caused to be made positive photographs of all negatives?

A. I have.

Mr. Minard: We offer as Exhibit 57, map, Atlas Sheet No. 30, New Jersey Geological Survey, with circle shown thereon at a radius of 12 miles from Newcastle, showing the location of the various grants, leases or licenses in that circle on the Delaware river. For the purposes of this exhibit, we are disregarding all numbers of grants, which are on tributaries of the river.

30

(Map referred to was then filed marked Plaintiff's Exhibit No. 57.)

Q Now, Grant A, on Exhibit 57, have you a certified copy of that?

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. Yes, I have.

Q. Give us the parties and the date of that grant.

A. That is from the Riparian Commissioners to James
A. [67] Denny, and Samuel M. Denny, dated April 23,
1906.

Q. Now, this is a complete copy of the deed from the
State of New Jersey to those persons?
10

A. Yes, sir.

Q. With the names of all signers, certified by the Director and Secretary of the Board of Commerce and Navigation?

A. Yes, sir.

Q. Under date of March 17, 1931?

A. Yes, sir.

Q. Is there attached to that a tracing copy of the
map of the land in question, which was attached to the
original conveyance, and which is recorded in the office
of the Board of Commerce and Navigation?
20

A. It is.

Q. What does that show?

A. The frontage conveyed, the depth from the high
water line to the exterior wharf line, fixed by the Riparian
Commissioners.

Q. And it extends from high water line how far out?

A. A distance of 500 feet.

Q. Do you know where low water line is at that point?

80 [68] A. Yes, sir.

Q. Can you tell us?

A. I can by referring to my notes.

Q. All right.

A. The low water line is 50 feet beyond the high water
line, so that 450 feet of the area conveyed by the Riparian
Commissioners to Denny would be beyond the low water
line.

Q. Now, this map also shows the ownership in the
land back to the first street?
40

Henry J. Sher

A. Yes, sir

Q. And it is
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A. Yes, sir

Q. This map
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A. Yes, sir

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Q. You say

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Q. How long

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Q. Have you
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A. From 11

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A. The Del

Q. What fe

Henry J. Sherman—[for Plaintiff]—recalled, Direct.

A. Yes, sir.

Q. And it shows the name of the municipality or municipalities involved?

A. Yes, sir.

Q. This map covers the area southwest of the Borough line dividing Pennagrove from Upper Penns Neck?

A. Yes, sir.

10

Mr. Minard: I offer that grant as Exhibit 58.

(Grant referred to was then filed marked Plaintiff's Exhibit No. 58.)

Mr. Minard: Just note that the examination of Mr. Sherman is suspended temporarily.

[60] ARTHUR M. DENNY, a witness of lawful age, produced on behalf of the Plaintiff, being duly sworn according to law, testified as follows:

20

Direct examination.

Q. (Mr. Minard.) Where do you live?

A. Pennagrove.

Q. You say you live in the Borough of Pennagrove?

A. Yes, sir.

Q. What is your official position there?

A. Assessor, as far as this is concerned.

30

Q. How long have you been assessor?

A. Two years.

Q. Have you the record of the Assessors' Office in your possession?

A. From 1915 to the present day.

Q. In your Borough, are there any industries along the river built out beyond the high water mark?

A. The Delaware & New Jersey Ferry Company.

Q. What ferry is that?

40

In The
Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

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

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

**VOLUME 2 of 7
(PAGES 159A-312A)**

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1915 N.J. Laws, ch. 242, p. 432: New Jersey Board of Commerce and Navigation Act	292a
1917 N.J. Laws, ch. 189, p. 541: New Jersey Cession to United States Government	298a

New Jersey Attorney General Opinions and Related Correspondence

Formal Opinion 1954-No. 3, February 2, 1954	302a
Letter from Chief Deputy Attorney General of Delaware to Mr. Gannon, Chief of New Jersey Navigation Bureau, June 13, 1955 and Reply of June 19, 1955	305a
Letter from Mr. Friedman of New Jersey Navigation Bureau to Delaware Chief Deputy Attorney General, August 2, 1956	307a
Formal Opinion 1956-No. 22, November 16, 1956	308a

W. W. Weatherby—for Plaintiff—Direct.

[73] W. W. WEATHERBY, a witness of lawful age, produced on behalf of the Plaintiff, being duly sworn according to law, testified as follows:

Direct examination.

10 Q. (Mr. Minard.) Where do you live, Mr. Weatherby?
A. Pennsville.

Q. What is your official position, do you hold any office?

A. I am assessor for Pennsville.

Q. And how long have you been assessor?

A. Six years.

Q. Have you any structures in your Borough that extend below low water line?

A. Yes, sir.

20 Q. How many?

A. Three.

Q. What are they?

A. Dye Works Pier.

Q. What company?

A. E. I. Du Pont, William D. Acton and Delaware & New Jersey Ferry Company.

Q. Where does that ferry lead to?

[74] A. Newcastle.

30 Q. That is the Newcastle ferry?

A. Yes, sir, originally it was under the name of the Wilson Line.

Q. Are those the only structures in your Borough that extend below low water line?

A. Yes, sir.

Q. They are assessed by your Borough?

A. Yes, township.

Q. All structures below the low water line?

A. Yes, sir.

40 Q. How long have they been so assessed?

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W. W. Weatherby—for Plaintiff—Direct.

A. Wall, speaking of the ferry line, that has been assessed since 1926.

Q. Do you know whether it existed before that time?

A. It did not.

Q. It has been assessed ever since it was built?

A. Yes, sir.

Q. Now, as to the others, how long?

10

A. The Du Pont, since about 1915 or 1916.

Q. Is that the time they were constructed?

A. Yes, sir.

[75] Q. So ever since they were constructed, they have been assessed?

A. Yes, sir.

Q. How about Acton?

A. Acton—years ago there was an old pier at Pennsville that was used as a passenger wharf; that was torn down by Mr. Acton and a new pier built for a passenger line from Philadelphia to River View Beach or Pennsville.

20

Q. Who owned the old pier, do you know?

A. No, I could not say, but I think Mr. Acton did.

Q. How long has that been assessed in the Borough?

A. I don't know—I could not say.

Q. Of your own knowledge, how long has it been assessed there?

A. I think for years on back—the new wharf was built there recently; it is used as a ferry wharf now; that was torn down or remodeled.

30

Q. During the time you have been assessor, has that pier always been assessed?

A. Yes, sir.

Q. In the Borough?

[76] A. Yes, sir.

Q. And before that time, do you know it was?

A. Yes, I know it was.

Q. But you don't know how far back?

40

W. W. Weatherby—for Plaintiff—Direct.

A. I don't know how long.

Q. Have you looked over the records to see how far back it was assessed?

A. I would say for years on back.

Q. When you say years, is there anything more definite, any more definite information you can give?

10 A. I could feel safe in saying 20 years, would that be all right?

Q. Whatever you know.

A. Well, 25 years.

Q. I only want what you know.

A. I would say 20 or 25 years.

Q. Was it ever assessed anywhere else except in your Borough, as far as you know?

A. No, sir, it was not.

20 Q. Have you the American Gas & Electric Company's pier in your Borough?

A. That has never been assessed.

[77] Q. It has never been?

A. No, the reason why, it was not finished last year.

Q. It was not finished by the first of October?

A. No, sir.

Q. You make your annual assessment on the first of October?

A. Yes, beginning the first of October.

30 Q. And if the structure is not completed before that—

A. We have no right to assess it.

Q. Is there any reason why it will not be assessed in your Borough in 1931?

A. No.

(No cross examination.)

(Examination concluded.)

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Harry M. Geiter—for Plaintiff—Direct.

HARRY M. GEITER, a witness of lawful age, produced on behalf of the Plaintiff, being duly sworn according to law, testified as follows:

Direct examination.

Q (Mr. Minard.) Where do you live, Mr. Geiter?
 A. Carney's Point, New Jersey, Upper Penns Neck township. 10

Q. That is the municipal designation, Upper Penns Neck [78] township?

A. Yes, sir.

Q. Are you the assessor there?

A. Yes, sir.

Q. For how long?

A. The past three years.

Q. Have you in your municipality structures extending below low water mark in the Delaware river that are assessed by the township? 20

A. No, sir.

Q. No structure?

A. No structure.

Q. You have no structure below low water mark there?

A. No, sir.

Q. Are there any structures there that extend below the low water mark?

A. Nothing but sewers. 30

Q. No piers or docks?

A. No.

(No cross examination.)

(Examination concluded.)

Henry J. Sherman—for Plaintiff—recalled, Direct.

[79]. HENRY J. SHERMAN, a witness heretofore produced and sworn, recalled on behalf of Plaintiff, testified further on direct examination as follows:

10 Mr. Minard: When you withdrew from the stand, we were offering Plaintiff's Exhibit No. 58, the Grant to Denny, which has been described.

(Grant referred to was then filed marked Plaintiff's Exhibit No. 58.)

Q. Now, with regard to Exhibit 58, Grant A, have you prepared any data that can accompany it giving information?

A. Yes, sir.

20 Q. Have you made an examination of the location to ascertain the nature and extent of the improvements marked under that grant?

A. I have.

Q. Now, will you tell us what the result of your investigation was?

Witness: Speaking now of the Denny Walk under Grant A?

Mr. Minard: Yes, Exhibit 58.

30 A. The location I have marked as foot of West Riverside [80] Walk, about 200 feet southwest of the northeast line of the Borough of Pennsgrove.

Q. Now, what does that paper show—I don't mean for you to read it—I mean, what information does it give?

A. It gives a general description of the structure and a diagram of it.

Q. Does it show the high water line?

A. It does.

Q. Does it show the low water line?

40 A. It does.

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Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. And relates to Grant A on Exhibit 58?

A. Yes, sir.

Mr. Minard: I offer as Exhibit 59 a sketch and description of the improvements made under the Grant on Exhibit 58.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 59.) 10

Q. Now, can you describe generally what the nature of that structure is on Exhibit 59?

A. It consists of a solid fill wharf for a distance of about 150 feet beyond the high water line and 100 feet [61] beyond low water line, in which, for a distance of 400 feet, the wharf consists of barges resting on piles.

Q. Do you know what it is used for?

A. It is not in use at the present time. 20

Q. Do you know how long it has been there?

A. Well, I visited that territory during the War, and I remember seeing it there, and I would say it has been there more than 10 years.

Q. Now, Grants B and C on Exhibit 57. I show you a document which purports to be a deed from the Board of Commerce and Navigation to the Pennagrove Pier Company for land below high water mark in the Borough of Pennagrove, dated March 21, 1916, certified by the Director and Secretary of the Board of Commerce and Navigation, with map attached, and ask you what that document is. 30

A. That is a grant from the Board of Commerce and Navigation to the Pennagrove Pier Company for property situated on the Delaware river in the Borough of Pennagrove.

Q. The map shows the extent of the property?

A. Yes, sir. 40

Henry J. Sherman—for Plaintiff—recalled, Direct.

[82] Q. And it is certified?

A. Yes, sir. May I also add it is at the foot of Main street, Pennsgrove.

Mr. Minard: I offer that as Exhibit 60.

10 (Grant referred to was then filed marked Plaintiff's Exhibit No. 60.)

Q. I show you what purports to be a certified copy of grant to French's Hotel Company, of lands in the Borough of Pennsgrove, dated October 17, 1931, is that a certified copy?

A. It is.

Mr. Minard: I offer that in evidence as Plaintiff's Exhibit No. 61.

20 (Paper referred to was then filed marked Plaintiff's Exhibit No. 61.)

Q. I understand you have a description of Exhibits 60 and 61?

A. Yes, sir.

Q. Of improvements made under those grants?

A. Yes, sir.

Q. Generally, what kind of structure is it?

30 A. It is really a double pier, two piers, one for river [83] steamers and the other for ferry service from Pennsgrove to Wilmington.

Q. What is the character of the structure, how is it made?

A. Part of it solid fill retained between walls, sheet pilings, so-called sheet pilings, or steel pilings, with steel bridges on piers, or upon the piling structure, with wooden decks.

40 Q. What is it used for?

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Henry J. Sherman—for Plaintiff—recalled, Direct.

A. It is used for loading and unloading passengers and freight.

Q. By what company?

A. The Wilson Line, known as the Delaware & New Jersey Ferry Company.

Q. At the present time that is the name of it?

A. Delaware & New Jersey Company. 10

Q. And they use it for the ferry to Wilmington?

A. Yes, sir.

Q. And for a general landing place for river steamers?

A. Yes, sir.

Q. How far does it extend beyond the high water mark?

A. About 885 feet.

Q. Do you know how far it extends beyond low water line?

A. About 755 feet. 20

(84) Mr. Minard: I offer in evidence as Exhibit No. 62, the description of these piers covered by Grants B and C, or Exhibits 60 and 61.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 62.)

Mr. Minard: Now, then, I offer as Exhibit 63 the sketch covering the structures built under Grants B and C.

(Sketch referred to was then filed marked Plaintiff's Exhibit No. 63.) 30

Q. Grant D on Exhibit No. 57 purports to be a certified copy of a grant from the Board of Commerce and Navigation to E. I. Du Pont De Nemours and Company, dated August 21, 1916, is that what that is?

A. It is.

Mr. Minard: I offer it as Exhibit 64. 40

Henry J. Sherman—for Plaintiff—recalled, Direct.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 64.)

- Q. How many strips of ground does Exhibit 64 cover?
 A. Nine strips.
 Q. And all nine are marked D on your exhibit No. 57?
 A. Yes, sir.
 10 [85] Q. And are so indicated by the letter D in the black hatching of Exhibit No. 2, are they?
 A. They are.
 Q. And in this grant, Exhibit No. 64, each one of these nine strips of land is described as a separate tract?
 A. It is.
 Q. There are nine tracts described in the deed?
 A. Yes, sir.
 Q. Now, have you a description of the improvements
 20 improvements found on that grant separate from the other grants?
 A. No, sir, not separate.
 Q. What is the next grant involved?
 A. Grant F.
 Q. Which purports to be a certified copy of a grant of the same company from Board of Commerce and Navigation dated July 16, 1917, is that correct?
 A. It is.

30 Mr. Minard: I offer that as Exhibit 65.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 65.)

- Q. Now, the next grant involved in that group is what?
 [86] A. The next grant involved in that group is Grant G.
 Q. It purports to be a certified grant of the Board of Commerce and Navigation to the same company, dated November 20, 1916, is that correct?
 40

Henry J. Sherman

A. It is.

Mr.

(Plaintiff's)

Q. Now, this contains one tract map and description.

A. Yes, sir.

Q. I show 57, from the same company figures 29 and the Director the grant map that is merely that such a description.

A. It is.

Mr.

[87] (Plaintiff's)

Q. Now, this is made upon the Exhibit 65; Grant G.

A. I have.

Q. Now, to there?

A. A sewer.

Q. How far high water line?

A. I have.

Q. Can you extend beyond

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. It is.

Mr. Minard: I offer that as Exhibit 66.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 66.)

Q. Now, Exhibit 65 contains two tracts, and 66 contains one tract of land, is that correct, as shown on the map and description?

10

A. Yes, sir.

Q. I show you what purports to be Grant U on Exhibit 57, from the Board of Commerce and Navigation to the same company, dated October 21, 1929—I notice that the figures 29 are omitted from the copy, but in the certificate the Director and Secretary certify that this was a copy of the grant made on the 21st day of October, 1929—I assume that is merely a typographical omission in the form. Is that such a document?

20

A. It is.

Mr. Minard: I offer that as Exhibit 67.

[67] (Paper referred to was then filed marked Plaintiff's Exhibit No. 67.)

Q. Now, have you a description of the improvements made upon the lands granted in Grants D, Exhibit 64; F, Exhibit 65; G, Exhibit 66; and U, Exhibit 67?

30

A. I have.

Q. Now, tell us generally what kind of structures are there?

A. A sewer out-fall, a sea-wall, and a wharf.

Q. How far do they extend respectively beyond the high water line?

A. I have not those exact distances.

Q. Can you tell from your observation whether they extend beyond the low water line?

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. They extend a substantial distance beyond low water line, in some cases, several hundred feet.

Q. These grants of same letters shown on Exhibits 3 and 4, were those black hatches drawn to scale?

A. Yes, sir.

10 Q. So, by scaling these exhibits, these approximate distances can be ascertained?

A. Yes, sir.

[88] Q. But not the structures?

A. No.

Q. Do all these structures extend a substantial distance below low water?

A. Not all; the sea-wall is about highwater, but the sewer out-fall and wharf extend a substantial distance beyond the low water.

20 Q. Is this the description?

A. Yes, sir.

Mr. Minard: I offer the description as Exhibit 68.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 68.)

Q. Now, have you a sketch of those improvements?

A. No, I have not.

30 Mr. Minard: I offer now as Exhibit 69, a sketch similar to the one we have with the other grants, showing the structures and general physical conditions there.

(Sketch referred to was then filed marked Plaintiff's Exhibit No. 69.)

40 Q. I have what purports to be a grant from the Emparian [89] Commissioners of New Jersey, to several DuPont individuals, dated November 27, 1891, is that a certified copy with map annexed?

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Henry J. Sherman—for Plaintiff—recalled, Direct.

A. It is.

Mr. Minard: I offer this as Exhibit No. 70.
(Paper referred to was then filed marked Plaintiff's Exhibit No. 70.)

Q. Now, have you a description of the seven northerly tracts of Grant D, which is Exhibit No. 64, and of the one tract described in Grant E, which is Exhibit No. 70? 10

A. Yes, sir.

Mr. Minard: I offer that as Exhibit 71.
(Paper referred to was then filed marked Plaintiff's Exhibit No. 71.)

Q Now, will you tell me generally what kind of structures they are? 20

A. They are structures within the line of this grant, sluice gates, at Whopping John and Henly Creeks and one at Bouttown Creek.

Q. Do you know whether they extend below low water line or not?

A. They do.

[80] Q. Do you know how far?

A. Well, I could not say exactly, but the foundations of these are below low water, considerably below low water. However, under the Attorney-General's statement, of the low water line in the Delaware river at the entrance to creeks, this would be eliminated. 30

Q. You mean the structure described in Exhibit 71 would be eliminated?

A. Yes, they are in the creek, that is, the sluice gate.

Q. And what other structures are under that?

Q. There is a sea-wall 2200 feet long, but about high water line. 40

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. Any other structures below low water line in the grant?

A. Yes, there is an in-take pipe to supply them with water. It has a value of only about \$465.

Q. Do you know how far that extends below low water mark?

10 A. No, but some substantial distance.

Q. Are there any other structures below low water mark?

A. No, sir.

Mr. Mlnard: I offer as Exhibit 72, a chart a diagram of the structures referred to in Exhibit 71 [91] (Paper referred to was then filed marked Plaintiff's Exhibit No. 72.)

20 Q. I show you a paper and ask you what that is.

A. This is a grant from the Board of Commerce and Navigation to the Franklin Real Estate Company, in lands under water in the Delaware river in the township of Lower Penns Neck.

Q. Dated when?

A. June 18, 1928.

Q. How many tracts of land?

A. One tract.

30 Q. Shows on map accompanying it?

A. Yes, sir, and certified by the Director and Secretary of Board of Commerce and Navigation.

Q. How far does that tract extend below high water mark?

A. At the northerly end, it extends 827.7 feet beyond high water mark, and at the southern end it extends 991.5 feet below high water mark.

Q. Now, give us the figures on the low water mark

40 A. I cannot give you that.

Henry J. Sh

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Henry J. Sherman—for Plaintiff—recalled, Direct.

Mr. Minard: I now offer this as Exhibit 73.

Paper referred to was then filed marked [92] Plaintiff's Exhibit No. 73.)

Q. Have you any description of Grant H, Exhibit 73?

A. I have.

Q. What plant is there now?

A. Deep Water Power Plant.

Q. And you have this description in two sheets?

A. Yes, sir.

Q. Generally speaking, what do the structures consist of?

A. They consist of a large power house, with all modern facilities for generating electric power, a dock along the waterfront, intake for the supplying of water, and modern facilities for unloading coal and carrying it to the plant and pulverizing it.

Q. How far do these structures extend below low water mark at present?

A. I will have to give you that later.

Q. This sheet that is annexed showing valuation data, Deep Water Plant, what is that?

A. That gives an itemized statement and description of the portions of the plant below low water and the value of each.

Mr. Minard: Now, I offer this as Exhibit 74. [93] (Paper referred to was then filed marked Plaintiff's Exhibit No. 74.)

Q. Now, Grant I (1), we will designate it for this purpose, purports to be a certified copy of a grant from the Board of Commerce and Navigation to Josephine Grace Locumson and Anna C. B. Locumson, for lands in the township of Lower Penns Neck, dated April 15, 1929, is that correct?

10

20

30

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. It is.

Q. How far does that grant extend beyond high water mark?

A. 818.78 feet.

Q. Is there anything to indicate how far it goes below low water mark?

10 A. No.

Q. Do you know?

A. Low water mark is approximately 75 feet beyond the high water mark.

Q. So, substantially, 75 feet from what you have stated is the approximate location?

A. Of the low water mark.

Mr. Minard: Now, I offer that as Exhibit 75 Paper referred to was then filed marked (96) Plaintiff's Exhibit No. 75.)

20

Q. Grant I (2) is a grant from the Board to Ann C. B. Locuson of lands in Lower Penna Neck township, dated April 15, 1929, purporting to be a certified copy?

A. Correct.

Q. For one tract?

A. One tract.

Q. What distance does that extend below low water mark?

30

A. 809.16 feet.

Mr. Minard: I offer that as Exhibit 76. (Paper referred to was then filed marked Plaintiff's Exhibit No. 76.)

Q. Grant I (3) purports to be a grant from the Board of Commerce and Navigation to Josephine Grace Locuson and Anna C. B. Locuson, dated June 17, 1929, is that correct?

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Henry J. Sherman—for Plaintiff—recalled, Direct.

A. It is.

Mr. Minard: I offer that as Exhibit 77.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 77.)

Q. Grant I (4) purports to be a certified copy of a grant from the Board to Josephine Grace Locuson of lands [85] in Lower Penns Neck township, dated April 15, 1929, is that correct? 10

A. It is.

Q. Map shows one tract extending how far out?

A. One tract extending 818.78 feet beyond high water line.

Q. And what have you said about the low water line being approximately 75 feet below high water line applies to this location? 20

A. Yes, sir.

Q. And in Exhibit 77?

A. Yes, sir.

Mr. Minard: I offer this as Exhibit 78.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 78.)

Q. Now, Grant I (5) purports to be a certified copy of a grant from the Board to William G. Locuson of lands in township of Lower Penns Neck, dated April 15, 1929, is that correct? 30

A. It is.

Q. And contains how many tracts?

A. Contains one tract.

Q. And what distance below high water mark?

[86] A. 823.60 feet.

Q. And 75 feet difference between high and low water line is the same there? 40

Henry J. Sherman--for Plaintiff--recalled, Direct.

A. Yes, sir.

Mr. Minard: I offer that as Exhibit 79.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 79.)

10 Q. On the Grants I-1 to I-5 inclusive, no structures have been built on them?

A. No, sir, there are no structures.

Q. These letters by which these grants are designated correspond to the letters on Exhibits 2, 3 and 4, and Exhibit 57. Now, Grant J purports to be a certified copy from the Board to William D. Acton, township of Lower Penns Neck, dated August 7, 1925, is that what that is?

A. It is.

20 Q. And contains how many tracts?

A. One tract.

Q. And extending how far from high water line?

A. 863 feet on the southerly side and 854 feet on the northerly side.

Q. And how far is low water line from high water line approximately there?

A. 53 feet.

30 Q. So how much of this extension is below low water line?

A. Over 800 feet.

Mr. Minard: I offer that as Exhibit No. 80.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 80.)

Q. Have you a description of the structures on the tract?

A. I have.

40 Q. Tell us, generally, what they are.

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Henry J. Sherman—for Plaintiff—recalled, Direct.

A. The only structure on this tract is a Y-shaped timber jetty extending about 50 feet beyond low water line, valued at about \$2,000, the whole structure.

Q. Is that description given in the sketch I now have?

A. Yes, sir.

Mr. Minard: I now offer that as Exhibit 81.

10

(Paper referred to was then filed marked Plaintiff's Exhibit No. 81.)

Q. Grant K purports to be a grant from the Board to the township of Lower Penns Neck, a municipal corporation of the State of New Jersey for lands in that township, dated September 21, 1925, is that correct?

(98) A. It is.

Q. How many tracts?

20

A. One tract.

Q. Extending how far?

A. 967 feet on one side, and 970 on the other beyond the high water line.

Mr. Minard: I offer that as Exhibit No. 82.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 82.)

Q. Grant M purports to be a certified copy of a grant from the Board to William D. Acton in Lower Penns Neck township, dated August 17, 1925, is that correct?

30

A. It is.

Q. How many tracts?

A. One tract.

Q. Extending how far beyond high water line?

A. 967 feet.

Mr. Minard: I offer that as Exhibit 83.

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 83.)

10 Q. Grant N purports to be a certified copy of grant from the Board of Riparian Commissioners of New Jersey to [99] Annie E. Brown, dated August 28, 1891, is that correct?

A. Yes, sir.

Q. For how many tracts?

A. One tract.

Q. Extending how far from high water line?

A. 850 feet.

Mr. Minard: I offer it as Exhibit 84.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 84.)

20 Q. Grant K, Exhibit 82, Grant M Exhibit 83 and Grant N Exhibit 84, have you a combined description of the structure constructed on the land covered by those grants?

A. I have.

Q. What is it?

A. Pile bulkhead near high water line.

Q. None of it extends below low water line?

A. None of it below low water line.

30 Q. Is it described here on this paper?

A. It is.

Mr. Minard: I offer that as Exhibit 85.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 85.)

40 [100] Q. Grant L purports to be a certified copy of grant from Board of Commerce and Navigation to William D. Acton of lands in township of Lower Penns Neck, dated November 19, 1923, is that correct?

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Q.

Comm

in Low

is that

A.

Q.

A.

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. It is.

Q. How many tracts?

A. One tract.

Q. Extending how far from high water line?

A. 964 feet on the north side and 970 feet on the south side.

Mr. Minard: I offer it as Exhibit No. 86.

10

(Paper referred to was then filed marked Plaintiff's Exhibit No. 86.)

Q. Have you a description of the structure upon that tract?

A. I have a sketch.

Q. A sketch of the structure?

A. Yes, sir.

Q. Describe, generally, what it is.

20

A. It is a pier for landing boats to carry people to and from a park adjoining the pier.

Q. How far does it extend below low water mark?

[101] 494 feet.

Q. Below low water mark?

A. Yes.

Mr. Minard: I offer the two sheets of description and the tracing or sketch as Exhibit 87.

30

(Papers referred to were then filed marked Plaintiff's Exhibit No. 87.)

Q. Grant O appears to be a grant from the Board of Commerce and Navigation to William D. Aston of lands in Lower Penna Neck township, dated October 19, 1925, is that correct?

A. It is.

Q. How many tracts?

A. One tract.

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. Extending how far below high water mark?

A. 1008 feet on the south side and 941 feet on the north side.

Mr. Minard: I offer that as Exhibit 88.

10 (Paper referred to was then filed marked Plaintiff's Exhibit No. 88.)

Q. Now, have you a description of Exhibit 88?

A. It is just one tract.

Q. Any construction below high water mark?

[102] A. No.

20 Q. Grant P purports to be a grant from the Board of Commerce and Navigation to William D. Acton of land in Lower Penns Neck, dated February 19, 1923, is that correct?

A. It is.

Q. How many tracts?

A. One tract.

Mr. Minard: I offer this grant as Exhibit 89.

30 (Paper referred to was then filed marked Plaintiff's Exhibit No. 89.)

Q. What does "Q" mean on Exhibit 57?

30 A. Leased to Fogg and Hire, August 18, 1924.

Q. How many feet?

A. 252 feet.

Q. Is that the same 252 feet that is referred to as grant under Q-prime?

A. Yes, sir.

Q. So, first there was a lease of this ground?

A. Yes, sir.

40 Q. Grant Q-prime purports to be a grant from the Board of Commerce and Navigation to the Delaware-Nev

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Henry J. Sherman—for Plaintiff—recalled, Direct.

Jersey Ferry Company, of lands in Lower Penns Neck, dated [103] May 19, 1880?

A. That is correct.

Q. How many tracts?

A. One tract.

Q. And that was the same thing that was leased under

Q. August 18, 1924?

10

A. Yes, sir.

Q. And how far does that extend below high water mark?

A. 985 feet.

Mr. Minard: I offer that as Exhibit 90.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 90.)

Q. Now, Grant P, Exhibit 89; Grant Q-prime, Exhibit 90; are they covered by a description which you have in writing?

20

A. They are.

Q. And accompanied by sketch?

A. They are.

Q. Now, tell us, generally, what those two are used for.

A. It covers two ferry piers, originally two independent companies, one operated by the Wilson Line and the other operated by local interests, but a few years ago [104] they were combined, so now both are operated by the Wilson Line, and known as Delaware & New Jersey Ferry Company, operating between Pennsville and Newcastle.

30

Q. How far do these tracts extend below low water mark?

A. A substantial distance.

Q. And you will put that distance on the next exhibit we are about to offer?

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. Yes, sir.

Mr. Minard: I offer this description of Grant P and Q-prime, and sketch, as Exhibit 91.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 91.)

10

Q. Grant B purports to be a grant from the Riparian Commissioners to Daniel H. Kent, dated February 11, 1888, is that correct?

A. That is correct.

Q. And how many tracts does it cover?

A. That covers two tracts.

Q. Extending how far below high water mark?

A. Tract No. 1 extends three to four hundred feet beyond high water mark, and tract No. 2, extends from 275 to 330 feet beyond high water mark.

20

[105] Q. Where is that property located?

A. At the mouth of Salem Creek.

Q. But this extension is in the Delaware river, rather than Salem Creek?

A. Tract No. 1 is in the Delaware river and tract No. 2 might be considered in the mouth of Salem Creek.

Q. What are those lines emanating from the chimney?

30

A. That indicates the beginning points of the two tracks.

Q. Do you know what this property is used for?

A. It is a residence—a country estate.

Q. What improvements are there on it?

A. No structures below low water, but a bulkhead about at high water line.

Mr. Minard: I offer this as Exhibit 92.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 92.)

40

Henry J. Ebers

Q. I show you a grant or cession of land in the United States that correct?

A. It is.

Q. What property?

[106] A. It is a meter opposite

Q. In the D

A. Yes, and

Q. And what

A. For light

Q. For a Go

A. Yes, sir.

Q. How far water line?

A. About 30

Mr. Mi

(Paper Plaintiff's Exhibit

Q. Grant T from the Board were River Port that correct?

A. It is.

Q. How many

A. It covers land in the bottom

[107] Q. How water mark?

A. It extends channel.

Q. The ship

A. The ship

Henry J. Eberman—for Plaintiff—recalled, Direct.

Q. I show you what purports to be a certified copy of a grant or cession by the State of New Jersey to the United States of America, dated March 29, 1909. Is that correct?

A. It is.

Q. What property does that cover?

[106] A. It covers a tract of land about 400 feet in diameter opposite Peans Neck. 10

Q. In the Delaware river?

A. Yes, and known as Goose Island.

Q. And what use is made of it?

A. For lighthouse purposes.

Q. For a Government lighthouse?

A. Yes, sir.

Q. How far is that from low water line, or beyond low water line?

A. About 3000 feet. 20

Mr. Minard: I offer that as Exhibit 93.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 93.)

Q. Grant T purports to be a certified copy of a license from the Board of Commerce and Navigation to the Delaware River Power Company, dated October 21, 1929, is that correct?

A. It is. 30

Q. How many tracts does it cover?

A. It covers a permit for the laying of cables on State land in the bottom of the Delaware river.

[107] Q. How far does the permit extend from high water mark?

A. It extends out to and across the Delaware river channel.

Q. The ship channel?

A. The ship channel. 40

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. The map attached to it shows the location of the cables?

A. Yes, sir.

Q. Is the ship channel shown on this map annexed to the grant?

A. The ship channel is indicated.

10 Q. By the broken parallel lines?

A. It is.

Q. Do you know whether it is now being used for the purpose?

A. It is.

Mr. Minard: I offer this as Exhibit No. 94.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 94.)

20 Q. Grant V purports to be a grant from the Board of Commerce and Navigation to the Penn Beach Property Owners Association of lands in the township of Lower Penns Neck, dated October 31, 1929, is that correct?

A. It is.

[108] Q. How many tracts?

A. One tract.

Q. Extending how far from high water mark?

A. 450 feet.

30 Q. Do you know how far it extends below low water line?

A. I do.

Mr. Minard: I offer this in evidence as Exhibit 95.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 95.)

40 Q. Have you a description or sketch of the structure erected on that tract?

Henry

A.

Q.

A.

Q.

A.

Q.

A.

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th

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. I have.

Q. What kind of structure is that?

A. Small timber pier.

Q. Extending how far beyond low water mark?

A. 80 feet.

Q. And of course, between low and high water?

A. Yes, an additional 50 feet.

10

Mr. Minard: I offer that description as Exhibit 96.

(Paper referred to was then filed marked [109] Plaintiff's Exhibit No. 96.)

Q. Regarding Grant T, Exhibit 94, have any other structures been put in there beside the cables themselves under that grant?

20

A. There is a cable house on the shore.

Q. Extending below the low water mark?

A. Not below low water mark.

Q. Is there anything else there?

A. Several concrete ice breakers below low water mark.

Q. For what purpose?

A. For the purpose of protecting the cable.

Q. Do you know how far they extend below low water mark?

30

A. I don't know exactly, no.

Q. Any substantial distance?

A. A substantial distance.

Mr. Minard: I offer as Exhibit 97 a more detailed description and sketch showing the location of this concrete structure, etc.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 97.)

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. You have, have you not, Mr. Sherman, a description and sketch of the structures that have been placed on locations described in Special Acts of the Legislature?

A. I have.

10 Q. You will have those with the high and low water marks on them on your return on Monday?

A. Yes, sir.

Q. Has your Board fixed any bulkhead lines or pierhead lines on the east side of the Delaware river within the radius of 12 miles of Newcastle?

A. It has.

Q. Now, what has it fixed?

30 A. It has fixed the lines in the vicinity of Carney's Point and Deep Water Point, and in everyone of the grants made in the 12-mile circle, there is an exterior line in the river to which the conveyances are made.

Q. Is there any uniform continuous line at the exterior end of these grants you have found there?

A. No.

Q. So these distances vary according to the location?

A. Yes, the practice is, if the Government has fixed the pierhead or bulkhead line to make such line coincide with it.

30 Q. Has the Government placed any lines out there?
[111] A. No, sir.

Q. Within the radius of 12 miles of Newcastle?

A. No, sir.

Q. And your Board has not, either?

A. No, sir.

The Master: I understood you to say before it has within the radius.

40 A. The Board fixes bulkhead and pierhead lines similar to the Government where the Government has them.

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Henry J. Sherman—for Plaintiff—recalled, Direct.

to coincide with the Government where they have been fixed, but it is the policy of the Government not to fix them until a number of structures are constructed. I was wrong when I said we had fixed the bulkhead and pierhead lines within the 12-mile circle.

Q. (Mr. Minard.) Referring to Grant V, and the map attached to it, Plaintiff's Exhibit No. 95, on that map, there is designated a pierhead and bulkhead line, has that line any official status?

A. It has not.

Q. It is merely a line that the Board has designated as the exterior line of the grant?

A. Yes, and has no official standing.

[112] Q. Does that indicate any limit of use, or is the description of the grant the limit of use?

A. The description of the grant is the limit of use.

Mr. Minard: I desire to offer at this time a map which has the sanctity of yellow age. It is entitled, The Province of New Jersey, Divided Into East and West, commonly called The Jerseys, engraved and published by William Faden, Charing Cross, December 1, 1777, drawn from the Survey made in 1769, by order of the Commissioners appointed to settle the partition line between the Provinces of New York and New Jersey.

Q. Are you familiar to any extent with the question of the dividing line between the east and west proprietors?

A. In a general way.

Q. Your partner, Mr. Sleeper, is Surveyor-General?

A. Yes, sir.

Q. And their business is all handled in your office?

A. Yes, sir.

Henry J. Sherman—for Plaintiff—recalled, Direct.

10 Mr. Minard: Now, this map is the survey of New Jersey in 1777. It was included in Smith's History of New Jersey in the re-print, the official reprint of 1890, and it was there on better paper, [113] so I photostated from that map, in order to get copies for the record. Here is that map in the book slightly reduced. Now, the maker of this map, Faden, will be explained and the map will be described, and the historical value will be presented to the Court by Colonel Lawrence Martin, Chief of the Map Section of the Library of Congress, whose testimony we will have a little later in connection with some other maps. If I may, I would like to offer it now and have it marked as an exhibit, subject to further proof when I get Colonel Martin on the stand.

20 The Master: That will be Exhibit 98.

Mr. Minard: Yes, sir.

(Map referred to was then filed marked Plaintiff's Exhibit No. 98.)

30 Mr. Minard: Now, just one more map that I offer under the same circumstances. This is a map of Joshua Fisher. That was offered as Exhibit 104 in the other case, and it is entitled, To the Merchants & Insurers of the City of Philadelphia. This chart of Delaware Bay and River, containing a full and exact description of the shores, creeks, harbors, [114] soundings, shoals, sand and bearings of the most considerable land marks with a Tide Table from the Capes to Philadelphia, and the set of the tides on the several quarters of the flood and ebb. February 28, 1756.

The Master: Where was that published?

40 Mr. Minard: Joshua Fisher, so I understand, a noted man in Philadelphia. This was published

Henry J. Sherman

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Henry J. Sherman—for Plaintiff—recalled, Direct.

Philadelphia, and the original is in the Pennsylvania Historical Society in Philadelphia, and upon this is a list of subscribers who say they have perused this annexed draft of Delaware Bay and recommend it as a very exact performance and will greatly contribute to the safe navigation in the said Bay, as the several drafts heretofore made are very imperfect and no dependence to be had on them. It is signed by twenty-two Pilots of ships, and the same number of Masters of vessels; that also Colonel Martin will discuss, and perhaps Mr. Meyers. I offer it now as Exhibit 99. 10

(Map referred to was then filed marked Plaintiff's Exhibit No. 99.)

Mr. Minard: It is now time to adjourn, and [115] that is all I will take up now. 20

(Examination suspended.)

(At this point the taking of testimony was adjourned until Monday, June 15, 1931, at 11 A. M. Eastern Daylight Saving Time.)

30

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. Is it connected with the plant?

A. Yes, sir.

Q. What kind of a plant is it?

A. A plant for the manufacture of tetraethyl lead carbonic ice and industrial alcohol.

10 Q. Where is that plant assessed?

A. That plant is assessed in Lower Penns Neck Township.

Q. Is the whole property, including the riparian grant [291] included in the assessment?

A. Yes, sir.

Q. Do you know the value of that plant?

A. I know what it is assessed for.

Q. How much?

20 A. \$8,714,500.

Q. To what extent does that plant depend upon the use of this riparian land?

A. To, I would say, a very large extent, though one may judge from the tonnage of inbound and outbound freight in one year—the inbound freight in 1930, net ton, 64,059, with a value of \$5,572,516.

Q. All that is shown on Exhibit 68?

A. Yes, sir.

30 Q. Then we don't have to repeat it. Now, what relation does the use of that riparian grant have to the existence and operation of that plant in that location?

A. It is hard to conceive how the plant could operate successfully without their waterfront facilities.

Q. In other words, they are there because of that opportunity and facility?

A. That is one of the elements.

40 [292] Q. Now, reverting to Exhibit 63, for the time being, what relation does the land covered by Grants B and C, bear to the use of the upland?

Henry J. Sherwo

A. Their use the land under v

Q. The lands

A. Yes, sir.

Q. That is a

A. Yes, sir.

Q. Now, I ha tion of the struc

A. Yes, sir.

Q. Is the inf

A. Generally,

Q. Where is

A. That prop Township.

Q. Do you kn

A. There is r of not being in

Q. That is th

A. Yes, sir.

Q. What com

[293] A. The dening purpose

places; it is india

Q. Exhibit 7

description and

A. Yes.

Q. And a val

A. Yes, sir.

Q. Now, that grant?

A. Yes, sir.

Q. Where is

A. That will ship next Octob

Q. Does the

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. Their use with the uplands are indispensable, with the land under water.

Q. The lands under water are indispensable?

A. Yes, sir.

Q. That is a ferry company?

A. Yes, sir.

Q. Now, I have here Exhibit No. 74, that is a description of the structures on Grant H? 10

A. Yes, sir.

Q. Is the information as to their use shown there?

A. Generally, yes.

Q. Where is that property assessed?

A. That property is assessed in Lower Penns Neck Township.

Q. Do you know for what amount?

A. There is no assessment placed on it yet on account of not being in operation at the last period. 20

Q. That is the one the assessor testified to before?

A. Yes, sir.

Q. What connection has this grant with the upland?

[200] A. The use of the waterfront there is for condensing purposes, and for receiving some of their supplies; it is indispensable.

Q. Exhibit 74 consists of two typewritten sheets of description and one diagram or sketch?

A. Yes. 30

Q. And a valuation sheet?

A. Yes, sir.

Q. Now, that contains all the information about that grant?

A. Yes, sir.

Q. Where is that assessed?

A. That will be assessed in Lower Penns Neck Township next October.

Q. Does the sketch show where the low water line is? 40

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. Then, the bulkhead line is near the shore?

A. Yes.

Q. And this extends below low water line and branches out?

A. Yes, sir.

Q. Now, what is this?

A. It is a jetty to protect the shore line. 10

Q. Is that a permanent structure?

A. Yes, sir.

Q. What relation does that bear to the upland?

A. It protects the upland from erosion.

Q. Is it necessary for that purpose?

A. Yes, sir.

Q. Is there any industry on the upland there?

A. No, it is an amusement park.

[208] Q. So this is in connection with the amusement park? 20

A. Yes, sir.

Q. At Pennsville?

A. Pennsville.

Q. Known as Riverview Beach Park?

A. Yes, sir.

Q. That is used in connection with the docking of the steamship line?

A. Yes, sir.

Q. Is the waterfront along the river there used in connection with the park? 30

A. Yes, sir.

Q. For what purpose?

A. Merely for bathing purposes and boating.

Q. And that jetty was built to protect that beach?

A. Yes, sir.

Q. Now, Exhibit 85, that is a description and diagram?

A. Yes, sir.

Q. Do you know where that is assessed? 40

Henry J. Sherman—for Plaintiff—recalled, Direct.

- A. Yes, sir.
- Q. Where is that on the sketch?
- A. It is shown on the left-hand side of the sketch under the portion marked, Plan.
- Q. In the diagram in the upper left-hand corner?
- A. Yes, sir, and the lower left-hand corner.
- 10 [294] Q. Now, bulkhead, what does that represent?
- A. That represents a construction between high and low water.
- Q. Which they have erected themselves?
- A. Yes, sir.
- Q. Where is the limit of that grant shown on this?
- A. It is not on there; we were not asked to show it.
- Q. Is the limit of the grant below low water line?
- A. Yes, sir.
- 20 Q. How far out?
- A. A substantial distance, several hundred feet.
- Q. I notice from this sketch they have a coal dock there.
- A. Yes, sir.
- Q. Is that where they receive their supplies of coal?
- A. Yes, sir.
- Q. For the plant?
- A. Yes, sir.
- 30 Q. Exhibit 81 contains a description and diagram of the structure on Grant J. Do you know where that improvement is assessed?
- A. It is in Pennsville or Lower Penns Neck Township.
- [295] Q. The low water line is shown on that?
- A. Yes, sir.
- Q. The bulkhead is at the bottom of the diagram, is it not?
- A. Yes, sir.
- Q. So that the wings of the Y are towards the shore?
- 40 A. Towards the river, towards the center of the river.

Henry J. Sherman

- Q. Then, the
- A. Yes.
- Q. And this out?
- A. Yes, sir.
- Q. Now, wh
- A. It is a je
- Q. Is that
- A. Yes, sir.
- Q. What rel
- A. It protec
- Q. Is it nec
- A. Yes, sir.
- Q. Is there
- A. No, it is
- [296] Q. So park?
- A. Yes, sir.
- Q. At Penn
- A. Pennsylv
- Q. Known a
- A. Yes, sir.
- Q. That is a steamship line?
- A. Yes, sir.
- Q. Is the wa
- A. Yes, sir.
- Q. For wha
- A. Merely f
- Q. And that
- A. Yes, sir.
- Q. Now, Ex
- A. Yes, sir.
- Q. Do you h

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. That is assessed in Lower Penns Neck Township.

Q. What is the value of it?

A. About \$500.

[297] Q. Does that show the low water line on that sketch?

A. No, that is simply a bulkhead which is approximately along or near high water line.

10 Q. How far out does the grant extend?

A. Our grant extended there some four or five hundred feet.

Q. Beyond the bulkhead?

A. Yes, sir.

Q. How far below the low water line?

A. Approximately about, the low water line is 50 or 75 feet outside of the high water line, so it would be that much less.

20 Q. What is this used for?

A. Used for the protection of the amusement park.

Q. This is another grant for the same enterprise?

A. Yes, sir.

Q. When you say for protection, what do you mean?

A. It holds the shore line from washing away, and preserves their beach there.

Q. Preserves their beach?

A. Yes, preserves their beach.

30

Mr. Southerland: This structure is entirely above low water mark?

[298] A. Yes, sir.

Q. And the valuation referred to is the valuation of the structure?

A. Yes, sir.

40 Q. (Mr. Minard.) Exhibit No. 87 consists of two sheets, one a textual description of the improvement on Grant L, and the other is a sketch, is that right?

Henry J. She

A. Yes, sir.

Q. Now, w

A. This is

Q. And w

A. For riv

Q. That is

A. Yes, si

Q. And de

A. Yes, si

Q. Do you

A. It is a

Q. The p

A. Yes, si

Q. Where

[299] A. I

Q. For ho

A. \$7,500.

Q. Do you

A. From

the value of

Q. You at

this structure

Board of Co

A. Ever

near for the

1915.

Q. Have

A. Design

Q. So you

have your va

A. Yes, s

Q. Now,

description

sketch or di

of those?

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. Yes, sir.

Q. Now, what is the use of that?

A. This is the pier of the Riverview Beach Company.

Q. And what do they use the pier for?

A. For river boats to load and unload passengers.

Q. That is essential to the industry or upland use?

A. Yes, sir.

10

Q. And does this sketch show low water mark?

A. Yes, sir.

Q. Do you know whether this property is assessed?

A. It is assessed.

Q. The pier is assessed?

A. Yes, sir.

Q. Where?

[290] A. In Lower Penns Neck Township.

Q. For how much, do you know?

A. \$7,500.

20

Q. Do you know what the value of the pier is?

A. From my knowledge of this structure, I estimate the value of it roughly at \$25,000.

Q. You stated from your experience and knowledge of this structure; how long have you been an engineer of the Board of Commerce and Navigation?

A. Ever since it was created in 1915, and I was engineer for the Inland Waterways Commission from 1901 to 1915.

30

Q. Have you generally dealt with them?

A. Designed them, built them and improved them.

Q. So you have had some experience upon which you base your valuation of that pier?

A. Yes, sir.

Q. Now, Exhibit 91 consists of two sheets of textual description of the structures on Grants P and Q, and a sketch or diagram of same. Now, what is the use made of those?

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. These are ferry slips of the Wilson Line at Pennsville, [300] two slips.

Q. Does it show low water line?

A. It does not show it, but I know where low water line is.

Q. High water line is shown?

10 A. Yes, sir.

Q. Near the bottom of the sketch?

A. Yes, sir.

Q. How far above the low water line?

A. About 75 feet.

Q. Then, how much of these structures are below low water line?

A. About 850 feet.

Q. There is marked on here, pierhead and bulkhead lines?

30 A. That is the exterior wharf line established by the Board of Commerce and Navigation, and it is about 60 feet outside of the galley frame or dock proper.

Q. When was that bulkhead line established?

A. It was established about 1916.

Q. How far along was that bulkhead or pierhead line established?

A. For a distance of several miles from Penns Grove [301] proper down to and below Deep Water Point.

30 Q. Have you a map of that?

A. Yes, sir.

Q. Now, that is used for a ferry slip?

A. Yes, sir.

Q. And the use of the land of that grant is essential to the upland?

A. Undisputably.

Q. Where is that assessed, that improvement?

A. In Lower Penns Neck Township.

Q. Do you know for how much?

40

Henry J. B...

A. Yes, s

Q. You a

A. Of the

Q. Did y

A. Yes, s

Q. What

A. \$123,3

Q. I see

A. That

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Q. Yes; (

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Q. You d

a ferry there

A. No, I

ferry was th

Q. Now,

Grant V. T

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A. Yes, s

Q. What

A. That i

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the pier, and

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Q. Then,

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[303] A. Y

Q. And lo

A. Yes, si

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. Yes, sir, \$30,000.

Q. You are now speaking of the pier itself?

A. Of the two piers.

Q. Did you put any value on that structure?

A. Yes, sir.

Q. What was it?

A. \$133,300.

10

Q. I see you have an appraisal value, what is that?

A. That is the value furnished by the Wilson Line.

Q. They gave you that value of \$35,300?

Q. Yes; they claimed their net value was \$132,692.81, [302] but they think that value is too high, so they have appraised it at \$35,300, but if you take it on the basis of the assessed value, 60%, it is very nearly right.

Q. Is that the general rule in that neighborhood, valuations are about 60%?

20

A. About 60%.

Q. You don't happen to know how long there has been a ferry there?

A. No, I don't happen to know that; I have known the ferry was there approximately ten years or more.

Q. Now, No. 96 is a description of the structure on Grant V. That contains a textual description as well as a sketch, does it not?

A. Yes, sir.

Q. What is that used for?

30

A. That is used as a pier by the Penn Beach Property Owners Association. They have a club house right back of the pier, and they use this for boating and fishing purposes.

Q. Then, that pier has some relation to the use of the island?

[303] A. Yes, sir.

Q. And low water is shown there?

A. Yes, sir.

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. And pierhead and bulkhead lines is also shown?

A. Yes, sir.

Q. That is the same one that you referred to as established some time ago?

A. No, that is a different one.

Q. When was that established?

10 A. That must have been established at the time the grant was made.

Q. And local to the grant?

A. Yes, sir.

Q. That would appear then on the map annexed to the grant?

A. Yes, sir.

Q. Do you know where this pier is assessed?

A. No, I do not.

20 Q. You placed a value on it?

A. Yes, of \$800.

Q. Now, Exhibit 97 contains a textual description and sketch of structure on Grant U?

[304] A. That is License T, Grant U. The license was issued—the grant was issued to the DuPont Company first, and then the Deep Water Power Station got permission to put that on the grant; they got the license on the grant.

Q. The grant is the basic right?

30 A. Yes, sir.

Q. And you gave a license for another use in the same land?

A. Yes, sir.

Q. Is the use on this land of these wires essential to the use of the upland?

A. Yes, sir.

Q. Do you know where that wire crossing is assessed?

40 A. No, sir, that is not assessed yet; that is part of the Deep Water Plant.

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Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. That was recently constructed?

A. Yes, sir.

Q. Now, Grants I-1 to 5 inclusive, you have descriptions here, values, etc., and that covers Plaintiff's Exhibits 75 to 79, inclusive, is that right?

A. Yes, sir.

10

[305] Mr. Minard: I now offer this as Exhibit 180.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 180.)

Mr. Minard: And I offer this as Exhibit 181.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 181.)

Q. Now, with regard to Exhibit 41, authorizing Broadway and others, to build a wharf in the Delaware River, Act of Legislature of New Jersey, March 16, 1854, did you make an investigation of that?

20

A. Yes, sir.

Q. What did you find?

A. I found that was located at the foot of Main street, or Penns Neck Township.

Q. Was the wharf built?

A. There is a wharf there now owned by the Wilson line; whether there was a wharf there originally, no one could tell.

20

Q. How did you identify that with the Broadway grant?

A. I had an old citizen down there who was familiar with the neighborhood, and who was in this company, tell me where the grant was.

[306] Q. Where the Broadway grant was?

A. Yes, sir.

Q. What was his name?

A. Mr. Ellinton.

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

Q. On Exhibit 131, you have stated the location of the grant as near as you could ascertain it?

A. Yes, sir.

Q. And what it is now used for?

A. Yes, sir.

10 Q. The wharf that is there now, where do you say that is?

A. That is at the foot of Main street in Pennsville, a part of the Wilson Line piers. This legislative grant was for property afterwards granted to W. D. Acton.

Q. That was included then in the Acton grant?

A. Yes, sir.

20 Mr. Southerland: Then, as I understand it, when you located the place where this old legislative grant was, you discovered nothing that would show a wharf built in pursuance to the grant?

A. Nothing I could find there.

[307] Q. You cannot state one way or the other?

A. No, sir.

30 Mr. Southerland: We think the way this memorandum is drawn, it is a little misleading—I know not intentionally so, "Wharf built for freight use now being the site of the Pennsville-Newcastle Ferry wharf property now owned by Delaware-New Jersey Ferry Company, with the Wilson Lines as operator," which would lead one to believe it was built under the Broadway grant.

A. They said they built a wharf there originally for freight purposes; whether they did I could not tell; there was nothing there.

40 Q. Who said that?

Henry J.

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Henry J. Sherman—for Plaintiff—recalled, Direct.

A. I believe Mr. Elkinton said they got the legislative grant because they wanted to ship freight from there originally, but there is no evidence of the wharf there; all we can see is the Wilson Line pier.

Mr. Southerland: It seemed to me it put in the record a statement that it was there. 10

Mr. Minard: We can withdraw this and produce [308] the man Elkinton here.

The Master: Why not let it say this particular memorandum is modified in the light of Mr. Sherman's testimony?

Mr. Minard: We could keep it out.

Mr. Southerland: There is no objection to that.

The Master: Exhibit 181 should be read in the light of Mr. Sherman's testimony. 20

Mr. Satterthwaite: Yes, that will be all right.

Q. (Mr. Minard.) Now, with respect to legislative grant of March 15, 1855 to Incorporators of Penns Grove Pier Company, Exhibit 42, did you make an investigation to ascertain the location of the grant contained in that act?

A. I did.

Q. What did you find out, and tell us exactly how you found it out, so it will be plain—tell us what you found out about the Penns Grove Pier Company, also. 30

A. It was located at the foot of Main street in Penns Grove, New Jersey. It was built by Charles Elkinton [308] and associated incorporators, and it is the same as Grant B to the Penns Grove Pier Company. The information was furnished by George H. Elkinton, who is a son of Charles Elkinton, and Dr. John Summerill of Penns Grove, New Jersey. 40

Henry J. Sherman—for Plaintiff—recalled, Direct.

Mr. Minard: I now offer that for what it is worth.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 182.)

10 Q. (Mr. Southerland.) I don't suppose they have any recollection how far that old pier went in the river?

A. I did not inquire about that.

Q. And you did not look for any of the posts?

A. No.

Q. (Mr. Minard.) Now, Exhibit 43 is an Act of the Legislature of New Jersey, March 23, 1871, authorizing Barber to build a wharf—did you make an investigation of that?

A. Yes, sir.

20 Q. What did you find?

A. I found there an old wharf located at the foot of [310] West Harmony street, Penns Grove, originally used for a freight line, but now in a very decadent condition.

Q. Do you know who it was built by?

A. Henry Barber.

Q. Is he the grantee in the act?

A. He is.

30 Q. Do you know how far that pier was built below the low water line?

A. About 400 feet.

Q. Below low water mark?

A. Yes, sir.

Q. Do you know when that was built?

A. No, I do not.

Q. Is that included in any grant from the Board?

A. No, sir.

40

Mr. Minard: I now offer this paper in evidence.

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Q. Now
Act, Exhibit

Henry J. Sherman—for Plaintiff—recalled, Direct.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 133.)

Mr. Southerland: You have no information at all of the date of the erection of the pier?

[311] A. No, I have not.

Q. (Mr. Minard.) Exhibit 44 was an Act of March 17, 1870, authorizing Guest to construct a wharf at Penns Grove. Did you make an investigation of that?

10

A. Yes, sir.

Q. What did you find?

A. I found there only the remains of an old structure the outlines of which I could trace on low water.

Q. And you have shown that on this proposed Exhibit 134?

A. Yes, sir.

Q. Now, where is low water line on that one?

20

Q. Low water is outside of that pier.

Q. What do you mean that you could trace it to low water?

A. I walked around there, and I could see the stumps of the old pier.

Q. So far as you know, it did not extend beyond low water?

A. No, sir.

Q. Do you know when it was built?

A. No.

30

Q. Or by whom?

A. No, but the lines of it are shown.

[312] Mr. Minard: I offer that in evidence as Plaintiff's Exhibit 134.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 134.)

Q. Now, did you make an investigation of the Walker Act, Exhibit 48, March 21, 1870?

40

Henry J. Sherman—for Plaintiff—recalled, Direct.

A. Yes, sir.

Q. Authorizing the construction of a wharf in Upper Penns Neck Township, proposed Exhibit 135?

A. Yes, sir.

Q. What did you find out?

10 A. I found out there was a bulkhead on this property above low water line; it is used to retain the fill there and to protect the DuPont apartment house built on the upland.

Q. Is there any evidence of any structure below low water mark?

A. No.

Q. Do you know when that wall was built?

A. No, sir, I do not.

Q. Have you made any attempt to find Mond's Island mentioned in Exhibit 45?

20 [315] A. Yes, sir.

Q. Where is it?

A. It is not very far away; I would say it is about four miles above the so-called circle boundary.

Mr. Southerland: It is Mond's Island.

A. Yes, sir.

Q. And they are unquestionably a division between A and B?

30 A. Yes, sir.

Mr. Minard: If that is settled, we might as well withdraw Exhibit 45.

Mr. Southerland: I should think so.

Mr. Minard: We withdraw Exhibit 45.

(Examination suspended.)

(At this point a recess was taken until 2 P. M.)

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Mr. Minard: I would like to state in connection with Exhibit 111, which is now being distributed, the only purpose of that is to show the natural beds on what New Jersey considers its territory above the southwest line, and it also shows the clam line that came into the discussion the other day, which is not shown on any of the other exhibits. The oyster planting grounds are embraced within the lines and show New Beds, Egg Island Bed, Bennies Bed, Ship John, Cohanssy and the other beds that the other witnesses have talked about.

10

Now, when we introduced the riparian grants, we told you we would give you copies of the full text of the laws in the reports of 1930. That is now being printed. I will give you a copy of the 1927 report, which has not all the laws up to this time—I will let the Master have this, if he desires, and as soon as they come from the printers, I will send the others out.

20

[315] Now, then, by reference to Exhibit 55, you will find there is in that exhibit the title of Chapter 20, Laws of 1907, page 44, entitled, An Act authorizing the Governor to cede to the United States certain lands under water in the Delaware River for the purpose of aiding in the improvement of said river.

30

The Master: What page is that?

Mr. Minard: Page 64 of the Annual Reports of 1927. I desire to offer at this time to be printed up and supplied as other exhibits, a copy of that Act in full, because it contains a description of the lands to be conveyed, and that exhibit will be accompanied by a copy of the grant made by the Governor of New Jersey, pursuant to the authority

40

HOBART & MINARD

Newark, New Jersey.

April 17, 1935.

Hon. Clarence A. Southerland,
Delaware Trust Building,
Wilmington, Delaware.

Dear Mr. Southerland:

Reflecting upon our paragraph 7, as discussed yesterday, it occurred to me on the way home that the several Delaware companies, like duPont and the Ferry Company, and perhaps others, are neither "citizens" nor "inhabitants" of the state in the sense that those words were used in our draft, and since it is the intention not to interfere with them or others similarly situated, I suggest the following for the consideration of Mr. Green and yourself.

"7. This decree is made without prejudice to the rights of either state, or the rights of those claiming under either of said states, by virtue of the compact of 1905 between said states (35 Stat. L. Pt. 1, Ch. 394, p. 858)."

The words "by virtue of" are not intended to change the thought about the compact or the right, but merely to avoid a repetition of the word "under". However, I have no objection to repeating that word if you prefer.

Very truly yours,

DUANE E. MINARD

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Volume

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Atty Gen NJ v DE

Boundary Case 1935

#308 Folder 5

CLARENCE A. SOUTHERLAND
JAMES H. HUGHES, JR.
E. ENNALLS BERL
HERBERT H. WARD, JR.
WILLIAM S. POTTER
PAUL LEAHY
SYBIL U. WARD
DAVID F. ANDERSON
GEO. GRAY THOURON

LAW OFFICES
WARD & GRAY
DELAWARE TRUST BUILDING
WILMINGTON, DELAWARE
TELEPHONE-WILMINGTON 5277

GEORGE GRAY
1863-1899, 1914-1925
HERBERT H. WARD
1862-1927
ANDREW C. GRAY
1895-1929

April 18, 1935.

Re: New Jersey v. Delaware

Honorable Percy Warren Green,
Attorney General,
Public Building,
Wilmington, Del.

My dear Mr. Attorney General:

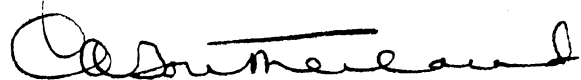
I have a letter from Mr. Minard suggesting a revision of the language of the proposed paragraph 7 of the decree in the boundary case. I inclose a copy of that letter for your consideration.

I think that his suggestion is sound and that, for the protection of many Delaware corporations who have acquired wharfage rights in New Jersey, it should be accepted, and I recommend that you approve it.

Please advise me your views upon it and I will communicate further with Mr. Minard.

Very truly yours,

CAS:A
Inc.



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Volume

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The State of Delaware
Office of the Attorney General

December 27, 1932.

Hon. Richard C. McMullen,
Governor of the State of Delaware,
Dover, Delaware.

My dear Governor:

The Clerk of the U. S. Supreme Court has informed me that the U. S. Supreme Court on December 19th. denied the second petition of the State of New Jersey to reopen its decree made in the Delaware-New Jersey boundary case and therefore the easterly boundary of the State of Delaware is that as passed upon by the U. S. Supreme Court in its final decree, viz, mean low water mark of the Delaware River within the twelve mile circle and the center of the main ship channel to the south thereof. You will note that after the final decree entered in this boundary case by the Supreme Court that two petitions have been filed by the State of New Jersey in the hope to have the main ship channel within the twelve mile circle declared as the easterly boundary of the State of Delaware, but the State of Delaware has been successful in persuading the Supreme Court that both of these petitions do not present any new matter that would justify the Court in reopening its final decree. As New Jersey has been unsuccessful in its attempt on these two occasions, I feel that it can be reasonably assumed that New Jersey has exhausted every effort it can put forth and therefore the easterly boundary line is as decreed.

It is my understanding that the reason for the determined effort by the State of New Jersey to have the main ship channel within the twelve mile circle established as the easterly boundary of the State of Delaware is because valuable property rights extend into the Delaware River from the New Jersey shore, especially in the nature of piers, which in New Jersey are assessed and taxed for school purposes.

Up to the present time these properties have not been taxed by the State of Delaware, New Castle County or the City of Wilmington, and I am calling these facts to your attention for whatever action you deem proper, for as you know, I am now leaving the office of the Attorney General.

The State of Delaware

Office of the Attorney General

2.

By Chapter 179 of 40 Delaware laws, p. 864, the boundaries of the City of Wilmington were redefined and inter alia, were projected over to the low water mark upon the easterly side of the Delaware River. The Act provides that all real estate included therein "shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said City". There was however added to this provision the following exception:

" * * * except that no property situated within that part of the City of Wilmington which shall have become a part of the said City by virtue of this Act shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled 'New Jersey v. Delaware', reported in 291 U.S. 361. The word 'determination' as herein used may refer either to agreement between the said States or to a final Court adjudication."

Chapter 18 of the same volume 40 at page 12 similarly defines the boundaries of Brandywine, New Castle, Red Lion and St. George's Hundreds with a similar exception against taxation as to the property held to belong to the State of Delaware under the said decision of the U. S. Supreme Court.

At the same session of the Legislature by Chapter 119 of Vol. 40, page 412, a Delaware-New Jersey Boundary Commission was provided for, by which the Governor was authorized to appoint, as Commissioners on the part of this State, the Attorney General of the State and the Special Counsel authorized by Chapter 277 of 36 Delaware Laws, with the power and authority of the Commissioners "to make and conclude an agreement between the said State of Delaware and New Jersey, respecting taxation, civil and criminal jurisdiction, and any other question relating to boundary and jurisdiction of this State and of the State of New Jersey in the Delaware River." Pursuant to this provision you appointed former Attorney General Clarence A. Southerland and myself as Commissioners for Delaware, and although such work was done it was impossible to come to any final determination, and as provided by the Act we made a report before the convening of the General Assembly in 1937 and suggested that this Commission be recreated but such was not done. However Mr. Southerland and I continued to act as Commissioners, although we had some doubts as to our authority so to do, but were unable to make any headway because of the pending petitions of the State of New Jersey to reopen the U. S. Supreme Court decree.

The State of Delaware

Office of the Attorney General

3.

In view of these facts I feel that your attention and the attention of the City of Wilmington and New Castle County should be called to these matters for whatever action the respective authorities feel should be taken relative to the asserting of our determined ownership over to the New Jersey shore. You and the other authorities may feel sure of the cooperation of Mr. Southerland and myself at any time if you feel we can be of any assistance to you in the premises.

I am sending a copy of this letter to the Mayor of the City of Wilmington and the Levy Court of New Castle County because of their interest in this matter.

Most respectfully yours,

Attorney General.

PMG*2

c.c. to Mayor of the City of Wilmington.
c.c. to Levy Court of New Castle County.

DE Public Archives

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Attorney General Gen. Admin. Files
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Wilmington, Delaware,
July 3, 1935.

Hon. Percy Warren Green, Attorney General,
Wilmington, Delaware.

My dear Mr. Attorney General:

As Special Counsel for the State of Delaware in the suit of State of New Jersey v. State of Delaware, to determine the true boundary line between the States, which has just been terminated by decree of the Supreme Court of the United States, I submit the following report:

I. FILING OF THE SUIT AND
REFERENCE TO SPECIAL MASTER.

On June 3, 1929, the State of New Jersey filed in the Supreme Court of the United States a bill of complaint against the State of Delaware (No. 19 Original, October Term, 1929). The bill of complaint alleged that the State of New Jersey claimed title to the subaqueous soil of the Delaware River and Bay lying between the States, to the center line of the main ship channel or thalweg of the Delaware River and Bay; and that a dispute had existed between the two States over the boundary line and the territorial ownership of the bed of the river and bay for many years but had never been settled. The bill prayed, inter alia, that the State of Delaware answer the bill and that the true boundary between the States be determined by the court.

The bill of complaint thus presented a controversy between two of the States, of which the Supreme Court, by Article III, Section 2, of the Constitution of the United States, has original jurisdiction.

Upon the filing of the bill the Supreme Court ordered

process to issue, returnable July 1, 1929 (279 U.S.825).

On October 7, 1929, the then Attorney General of the State of Delaware, Hon. Reuben Satterthwaite, Jr., filed the answer of the State of Delaware, which answer averred that the State of Delaware had title to all of the subaqueous soil of the Delaware River within a circle of twelve miles from the Town of New Castle, and also had title to that portion of the subaqueous soil of the Delaware River and Bay lying south of the circle to the geographical or center line of the river and bay.

On December 9, 1929, the State of New Jersey, by its then Attorney General, Hon. William H. Stevens, and its then Assistant Attorney General, Hon. Duane E. Minard, together with Walter C. Bacon, Esq., counsel, filed in the Supreme Court a motion for the appointment of a Special Master to take testimony and file findings in the cause.

On January 6, 1930, the court appointed William L. Rawls, Esq., of the City of Baltimore, State of Maryland, Special Master in the cause, with power to summon witnesses, issue subpoenas and take testimony. The Special Master was directed to make findings of fact and conclusions of law and submit the same to the court, together with recommendations for a decree.

On March 25, 1930, the undersigned was retained by Attorney General Satterthwaite as Special Counsel in the case. By the Act of the General Assembly, approved February 11, 1929 (Vol. 36 Laws of Del., Chap. 277), the Attorney General had been authorized and directed to take such steps as he deemed necessary to bring the matter of the boundary dispute before the proper court for the purpose of protecting the rights of the State of Delaware in the disputed area of the Delaware River and Bay.

II. PREPARATION AND TRIAL OF CASE.

Following the retaining of the undersigned as special counsel in the case, work was begun toward preparing the case for trial.

The Attorney General and special counsel were aided in this work by the record of the testimony and exhibits in the prior suit between the States, which was filed in the Supreme Court of the United States by the State of New Jersey in 1877. The suit filed in 1877 was allowed to rest, without any action, for many years, but finally an answer was filed by the State of Delaware and the issues referred to a Master. Much documentary evidence was collected at that time and was presented to the Special Master during the years 1903 to 1905. A record of the testimony and exhibits was preserved and was available to counsel in the present case.

On June 8, 1931, the first hearing of the case took place at the Post Office Building in Philadelphia, Pa., before the Special Master. Following the conclusion of the hearing on June 8th, the Special Master, counsel representing the States, and others, made an inspection tour of the Delaware River and Bay in one of the New Jersey police boats.

The hearing was continued on June 11, June 15 and June 16. At the conclusion of the hearing on June 16, counsel for New Jersey indicated that they had practically completed the introduction of their prima facie case. Thereupon the hearing was adjourned, to meet at Wilmington, Delaware, on August 24, 1931.

The hearing was resumed on the date last mentioned and continued on August 25, August 26, and August 27. At the end of

the hearing on August 27, the defendant's counsel had concluded presentation of their prima facie case and the hearings were suspended to meet in Baltimore, Maryland, October 26 following. During the sessions in Delaware, on the afternoon of August 26, the Special Master, in company with counsel on both sides, visited the State Archives at Dover, where there was exhibited to the Master the document claimed by the State of Delaware to be the original patent from King Charles II. to the Duke of York for what is now the State of Delaware.

The hearing was not resumed in Baltimore, but by agreement of counsel was adjourned to take further testimony at Trenton, New Jersey, on December 21, 1931, at which time the State of New Jersey began the introduction of its rebuttal evidence. Hearings were continued on December 22 and December 23. At the conclusion of the hearing on December 23, the hearing was adjourned to meet at the Library of Congress at Washington on February 3 following, to facilitate the introduction into evidence by the State of New Jersey of copies of certain maps.

On February 3, 1932, a hearing was held before the Master in the Library of Congress, Washington, D.C., to take the testimony of Col. Lawrence Martin, the Chief of the Division of Maps of the Library of Congress.

The final hearing in the cause for the taking of testimony was held at Wilmington, Delaware, June 6, 1932, at which time the State of Delaware introduced its evidence in surrebuttal, and both sides closed their testimony.

By agreement the hearing was adjourned, to meet in Baltimore September 12, 1932, for presentation of briefs to the Master and argument of the case.

III. ARGUMENT AND SUBMISSION OF THE CASE AND DECISION

On September 12, 1932, the case was orally argued before the Special Master by Hon. Duane E. Minard for the State of New Jersey, and by the undersigned for the State of Delaware. At this hearing both sides submitted to the Master briefs and reply briefs, having exchanged their main briefs some time prior to the argument.

On October 9, 1932, the Special Master filed his report in the Supreme Court of the United States. His report sustained the claim of the State of Delaware to the subaqueous soil of the river within the so-called twelve mile circle, and sustained the claim of the State of New Jersey to the subaqueous soil of the lower river and bay to the center of the main ship channel.

Each State filed exceptions to the report of the Special Master in respect of those findings which were adverse to it.

Briefs were duly filed and the matter came on for argument before the Supreme Court of the United States on January 9, 1934, the case being then No. 13 Original, October Term, 1933.

On February 5, 1934, the opinion of the Supreme Court, written by Mr. Justice Cardozo, was filed. The opinion sustained the Master's findings in all respects.

IV. SETTLEMENT OF THE DECREE.

Following the entry of the Court's opinion, conferences were had between Mr. Minard, representing the State of New Jersey, and the undersigned, with a view to agreeing upon some proper method of surveying the boundary line as determined by the Court.

An agreement was reached that the line should be surveyed, marked and described by the United States Coast and Geodetic Survey, if the services of the Survey could be had for that purpose. Mr. Minard and the undersigned visited Washington, D.C., pursuant to an appointment with the Director of the Survey, and were able to arrange for the services of engineers of the Coast and Geodetic Survey for the purpose of surveying and marking the boundary line. The work was undertaken and was completed during the summer and early fall of 1934. In October of 1934 the Survey submitted to the representatives of both States a report of the marking of the boundary line, together with a description thereof.

Following the receipt of this report, counsel for the States had several interviews and considerable correspondence concerning the drafting of the decree. The Attorneys General of both States, with special counsel of both States, met twice in Trenton with a view to agreeing upon the terms of a decree. Although the decree presented some matters upon which it was difficult to reconcile the views of counsel, nevertheless an agreement was finally secured and on May 17, 1935, a stipulation was signed by the Attorneys General and special counsel of both States agreeing to the form of the decree. The decree was thereupon submitted to the Supreme Court of the United States and was entered on June 3, 1935.

With the entry of the decree the case is now finally terminated.

V. QUESTIONS PRESENTED AND
SETTLED BY THE CASE.

The boundary dispute with the State of New Jersey presented two separate points of controversy, quite distinct in respect of facts and law. The first point of controversy concerned the title of the subaqueous soil of the Delaware River within the twelve mile circle from New Castle. This dispute had existed practically since statehood.

The second point of controversy concerned the title to the subaqueous soil of the lower river and bay, that is, that portion of the river and bay lying to the south of the southerly arc of the twelve mile circle. This dispute was of recent origin, having been provoked by conflicting claims of the licensed oystermen of the States to the natural oyster beds lying around Ship John Light in the Delaware Bay. This phase of the controversy broke out in 1927 and was the immediate cause of the present suit which has just been terminated.

The opinion and decree of the Supreme Court of the United States has settled the first question in favor of the State of Delaware, and the second in favor of the State of New Jersey. The effect of the decree is to adjudge to the State of Delaware title to all of the subaqueous soil of the river within a circle of twelve miles from New Castle up to mean low water mark on the New Jersey shore. The effect of the decree upon the other dispute is to adjudge to the State of New Jersey title to the subaqueous soil of the lower river and bay, up to the middle of the main ship channel, or rather to the line which has been agreed to by both States, constituting substantially the

center line of the channel. The entire boundary is delineated on the map annexed to the decree.

Attention should be invited to the fact that although the map annexed to the decree purports to show a definite boundary line, yet the decree is subject to review or alteration if it should later appear that by natural changes the boundary line shall have shifted. The terms of the decree thus recognize the applicability of the common law principle that if a water boundary changes through gradual erosion or gradual shifting of a channel, the boundary follows the shift; whereas if the change be sudden, as by avulsion, the boundary line remains unchanged.

Attention is also invited to the fact that one of the questions settled by the decree is the authenticity of the document in the State Archives at Dover, purporting to be the original patent of Charles II. to the Duke of York for the tract of land now constituting the State of Delaware. The authenticity of this document was challenged by the State of New Jersey during the trial of the case. Investigation made and evidence collected in England establish beyond doubt the genuineness of this document.

By the decree of the Supreme Court of the United States in this case, the State of Delaware has acquired title to all subaqueous land in the Delaware River, up to mean low water line on the New Jersey shore, including title to the subaqueous soil on which have been erected numerous valuable wharves on the New Jersey side of the river. A list of such structures, their extent, valuation, etc., is found in the record of the case. (See particularly Exhibits 58-92, 94-97, 130.) The title so acquired is presumably subject to the provisions of the Compact of 1905 between the States, hereinafter discussed.

Your attention is further invited to the fact that these

wharves, although (presumably) always subject to taxation as real estate within the State of Delaware, have never actually been so taxed. By a statute passed at the last session of the General Assembly and approved by the Governor, the boundaries of the several hundreds in New Castle County affected by the decision are enlarged to include the subaqueous soil of the Delaware River to low water mark on the New Jersey shore. My understanding is that the amendment carries with it some qualification of the right of New Castle County to levy taxes on the structures involved, but I have not been furnished with a copy of the Act and am merely calling this to your attention in connection with any action to be taken by the State or County looking to the taxation of these structures.

VI. QUESTIONS NOT SETTLED BY THE DECREE.

Reference has been made above to the first suit between the States filed by the State of New Jersey in 1877. After hearings had been had in this case and much testimony and many exhibits introduced, the States entered into a compact which had the effect of settling certain questions theretofore in dispute. This compact was approved by the State of Delaware on March 30, 1905, and formally entered into by the Delaware commissioners on March 31, 1905. (See Vol. 23 Laws of Del., Chap.5 and Appendix). The compact was also duly ratified by the State of New Jersey and was approved by Congress. (34 Stat. L. Pt. 1, Ch.324, p.658.)

The compact, to which your particular attention is invited, gave to New Jersey the right to serve criminal and civil process on the Delaware River to low water mark on the Delaware shore; and granted to the inhabitants of both States the common right of fishery in the waters of the river.

Article VII. of the compact provides as follows:

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

The meaning of this clause of the compact is far from clear. It is contended by the State of New Jersey that by this compact the State of Delaware recognized the right of the State of New Jersey to make actual grants or cessions of subaqueous soil in the river. This indeed has been the practice of the State of New Jersey for some years. Thus, for example, on October 17, 1921, the Board of Commerce and Navigation conveyed to French's Hotel Company, a New Jersey corporation, a certain tract of land "now or formerly flowed by tidewater, beginning at a point in high water line on the easterly shore of the Delaware River and in running about 1200 feet into the river to the pier head or bulkhead line established in 1916 by the Board of Commerce and Navigation". Many other such grants appear in the record.

I am not familiar with the exact nature of the contentions that will be made by the State of New Jersey with respect to the proper construction of the compact of 1905, but I would point out to you that there will obviously be a difference of opinion between the States on the proper construction of this compact. It will undoubtedly be contended by the State of New Jersey that the compact in some way recognized the exclusive

control of the State of New Jersey (presumably including the right to tax structures erected thereon) over the subaqueous soil covered by the grants so made. In any event, it will certainly be contended by the State of New Jersey that the compact amounts at least to a cession of jurisdiction over riparian matters, including the right to determine under what conditions wharves shall be erected or other riparian rights exercised by the owner of the upland or by others.

Presumably the State of Delaware will be justified in contending that the compact does nothing more than recognize what had already been recognized by the State of Delaware, namely, the right of owners of the upland on the New Jersey shore to wharf out to deep water, and that, in any event, the compact cannot be construed as doing more than ceding to New Jersey a certain limited amount of jurisdiction over riparian matters, and that the right to tax was not so ceded.

In this connection attention is invited to the following finding of fact of the Special Master (printed report p.77, finding No. 23):

"23. By the Compact of 1905 between the States of New Jersey and Delaware the State of Delaware recognized the rights of riparian owners to wharf out on the easterly side of the Delaware River within the twelve-mile circle. By said Compact the State of Delaware did not convey to the State of New Jersey title to any part of the Delaware River or to any part of the subaqueous soil thereof, and said Compact did not in anywise alter or affect the boundaries of the respective states."

Since all exceptions to the Master's findings were overruled, and his report was duly confirmed (Par. No. 1 of the decree of the Supreme Court), the State of Delaware may justifiably take the position that to a limited extent, at least, the construction of the Compact contended for by it has been recognized by the Master and approved by the Supreme Court.

In the argument submitted to the Supreme Court the State of New Jersey contended that the Compact of 1905 had in some way transferred title to New Jersey to certain of the subaqueous soil within the twelve-mile circle adjacent to the New Jersey shore. This contention was overruled by the Supreme Court in the following language:

"The complainant builds another argument upon a compact with the defendant which was ratified by the parties in March, 1905, and approved by Congress in January of that year. 34 Stat. c. 394, p. 858. We are told that by this compact the controversy was set at rest and the claim of Delaware abandoned. It is an argument wholly without force. The compact of 1905 provides for the enjoyment of riparian rights, for concurrent jurisdiction in respect of civil and criminal process, and for concurrent rights of fishery. Beyond that it does not go. 'Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth.'"

It is to be noted that the opinion of the Supreme Court uses the phrase "enjoyment of riparian rights", which is very far from recognizing any claim of the State of New Jersey to tax the wharf structures erected on subaqueous soil below low water mark.

Attention is also invited to the fact that if the right of the State of Delaware to tax these wharves is finally recognized, it may and probably will carry with it the obligation to police the wharves and generally protect the wharf property on Delaware soil.

VII. DISPOSITION OF DOCUMENTS
ASSEMBLED IN CONNECTION WITH
THE CASE.

During the progress of the suit a large quantity of documents, copies of documents, maps, etc., came into the custody of counsel for the State of Delaware in connection with the preparation of the case for trial. The issues presented by the second point in controversy, namely, the title to the subaqueous soil in the lower river and bay, were very simple. They depended chiefly on the physical conditions of the river and bay and little evidence could be adduced except maps showing such conditions.

The first issue in the case, however, namely, the title to the river within the twelve mile circle, involved historical research and investigation extending back to the Dutch period, i.e., at least as early as 1631. After the challenge made by New Jersey to the authenticity of the patent of Charles II. to the Duke of York, above referred to, Messrs. Taylor & Humbert, solicitors, of Gray's Inn, London, were employed on behalf of the State of Delaware, and authorized to retain such counsel and employ such clerical assistance as might be necessary to prosecute the investigation in London. Messrs. George N. Davis and Dudley C. Lunt, of the Delaware bar, were also retained and spent some time in London prosecuting these researches. As result of this work a great deal of material was collected. The greater part of it was actually introduced into evidence in the case.

There is submitted herewith, as Exhibit 1 to this report, a calendar of the papers procured in England in connec-

tion with the case, the calendar having been prepared, under the direction of the undersigned, by Mr. Dudley C. Lunt.

There is also submitted, as Exhibit 2, a list of the other documents, books, papers, maps, etc., which were assembled in the preparation of the case and are now in the custody of the undersigned as special counsel.

Particular attention is invited to the fact that there are available for distribution two complete sets of the entire record, including the pleadings, the testimony, all of the exhibits in the case, all of the briefs, the oral argument before the Master, requests for findings of fact and conclusions of law, exceptions to the Master's report, briefs in the Supreme Court of the United States, the opinion of the Court and the final decree. This record has undoubtedly some historical value and the two remaining complete copies, it is suggested, should be lodged with some representative public institutions in the State. Your instructions are requested as to the disposition of these two copies of the record.

Instructions are also requested as to the disposition of all the rest of the papers, documents, etc., enumerated in the calendar and the list above referred to.

In conclusion, I submit herewith a statement for services rendered the State of Delaware as special counsel in this case. An appropriation of \$25,000. for the payment of the costs and expenses of the boundary suit was made by Act of the General Assembly approved April 19, 1934 (Vol. 39, Del.L., Ch.3), as amended by the Act approved April 12, 1935.

In connection with this statement I desire to point out the following:

The period of time covered by my employment in the case is somewhat over five years. My work on the case started as

soon as I was retained (March 25, 1930), and has been continued from time to time down to the present. During the first three years of the pendency of the suit, a substantial proportion of my time was devoted to this case. The work was arduous and exacting. Every exhibit introduced into evidence by the defendant was prepared under my direction and was actually read, classified and digested, and its relationship to the case determined. In all there were introduced on behalf of the State of Delaware 364 exhibits, most of which were printed documents.

In addition to the Delaware exhibits, all of the New Jersey exhibits, 682 in all, had to be carefully read, examined, classified and digested, and their relationship to the main features of the case determined. In this connection your attention is invited to the "Outline of Exhibits and Testimony" annexed to the briefs of the State of Delaware before the Master and the Supreme Court, and to the briefs filed by both parties before the Special Master and the Supreme Court, which will give some idea of the amount and extent of the work performed in the preparation and trial of this case.

By agreement with Hon. Reuben Satterthwaite, Jr., Attorney General of the State prior to 1933, in association with whom most of the work was performed, the fee of special counsel in this case was fixed at \$25,000. Mr. Satterthwaite was at all times familiar with the nature and extent of the work done and the services performed in this case, and I feel that his approval of the fee is a circumstance which is entitled to much weight. I accordingly trust that the bill submitted will receive your approval.

Respectfully submitted,


Special Counsel for the
State of Delaware.

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ACTS

OF THE

SEVENTY-FIFTH LEGISLATURE

OF THE

STATE OF NEW JERSEY,

AND

SEVENTH SESSION UNDER THE NEW CONSTITUTION.



TRENTON:

PRINTED BY PHILLIPS & BOSWELL.

1851.

14. *And be it enacted*, That this act shall not take effect When act to take effect. until the public highway upon which the said turnpike road is authorized to be located and made, is vacated as a public highway according to law.

15. *And be it enacted*, That the said corporation shall Powers, restrictions, and liabilities. possess the several powers, and be subject to the restrictions and liabilities, contained in the act entitled, "An act concerning corporations," approved the fourteenth day of February, one thousand eight hundred and forty-six, so far as the same are applicable.

Approved March 18, 1851.

AN ACT to authorize the owners of lands upon tide waters, to build wharves in front of the same.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, Owners may build docks. That it shall be lawful for the owner of lands, situate along or upon tide waters, to build docks or wharves upon the shore, in front of his lands, and in any other way to improve the same, and, when so built upon or improved, to appropriate the same to his own exclusive use.

2. *And be it enacted*, That it shall be lawful for the Not to obstruct navigation. owner of lands situate along or upon tide waters to build docks, wharves, and piers in front of his lands, beyond the limits of ordinary low water, in such manner as not to hinder, interfere with, or impair the public right of navigation, upon license obtained for that purpose, as herein after provided.

3. *And be it enacted*, That any owners of lands situate upon tide waters, who may be desirous to build any dock, wharf, or pier in front of the same, to extend beyond the Notice to be given of application for dock. limits of ordinary low water, shall first obtain license for that purpose from the board of chosen freeholders of the county in which such lands may lie; and notice of the application for such license shall be given by advertisement, inserted for six weeks in a public newspaper published in said county, and if none be published therein, then in a newspaper circulating therein, published in an adjoining

county, and put up, for the same space of time in five of the most public places in the neighborhood of said lands; which notice shall specify the time and place of such application, and the location and dimensions of the dock, wharf, or pier intended to be built.

Board of freeholders to grant license.

4. *And be it enacted*, That the board of chosen freeholders of any county in this state, upon proof, made and filed with their clerk, of notice having been given, as herein before directed, shall hear such application, which shall be in writing; and if no objection shall be made thereto, and if the improvement applied for shall not appear to them to be injurious to public navigation, shall grant license to such applicant to build such dock, wharf, or pier, or so much thereof as shall appear not to conflict with the public right of navigation in said waters; and if any opposition be made to said application, said board may, at their own discretion, proceed to hear and determine the same, or may appoint a committee of three of their own number to examine the premises, and report on such application; after which hearing or report, said board shall grant to such applicant a license to build the dock, wharf, or pier applied for, if the same shall appear to them not to interfere injuriously with the public right of navigation, or so much thereof as they shall think does not so interfere.

License to be proved and recorded.

5. *And be it enacted*, That such license shall specify the limits of said improvement, shall be signed by the director and clerk of said board, and, before delivery, be recorded in the minutes of said board; and also, when the signing of the same by the director shall have been acknowledged or proved, in the same manner as the execution of deeds is now directed by law to be, shall be recorded in the county clerk's office of such county, in the records of deeds, and shall, when so recorded and delivered, authorize and empower the said applicant to erect the dock, wharf, or pier at any time within five years from the date thereof; and said docks, wharves, or piers, or so much thereof as may be erected within said five years, shall be vested in said shore owner, in the same manner, for the same estate, and with the same limitations over, in remainder or otherwise, as the lands along said tide waters in front of which the same were made may be; and such license shall not be assignable, except with, and as appurtenant to said lands, and shall pass, by any sale of said lands, as appurtenant thereto.

Proceedings in case the tide water is a boundary between counties.

6. *And be it enacted*, That when any owner of lands situated upon any tide water, which is a boundary between any two counties of this state, shall be desirous to build

any dock, wharf, or pier in front of the same, as mentioned in the third section of this act, the respective directors of the boards of freeholders of said respective counties, together with six other members of each of said boards, shall constitute a board of commissioners, to hear and determine the application for license for said purpose; and the application for any such license shall be made to the respective directors of said boards of freeholders, and the same shall be conducted and heard, and determined in the same manner and way, as is herein before provided with respect to the board of chosen freeholders, except that notice as aforesaid shall be given in each county; and the license shall be signed by the directors and clerks, and recorded in the minutes of the respective boards.

7. *And be it enacted*, That the board of chosen freeholders to whom any application shall be made, under the preceding section, through the director thereof, shall name and designate the six other members to be joined in the commission, who shall not be interested in the application; and the license granted by said board of commissioners may be acknowledged or proved, and recorded in the same manner as the license granted by the board of freeholders, and shall have the same operation, force, and effect.

Additional
commission-
ers may be
appointed.

8. *And be it enacted*, That any thing in this act contained, or any license granted by virtue thereof, shall not authorize any shore owner to extend any wharf, or other improvement, over lands on the shore or under water, beyond low water mark, the title to which, or any easement therein, by grant from this state or otherwise, may be vested in any other person than such shore owner; and nothing herein contained shall, before any improvement be actually made by virtue thereof, prevent the state from appropriating to public use the lands lying under water, in the same manner as could be done before the passage of this act; and the board of chosen freeholders of the county wherein the same may lie, may require any wharf so built beyond low water mark, or any part thereof, to be kept as a public wharf, open to all persons whatever, under such regulations and at such reasonable rates of wharfage as they may direct.

Wharf not
to extend
beyond low
water mark.

9. *And be it enacted*, That any proceedings under this act may be removed into the supreme court by certiorari, and may be there examined and reviewed upon the law and facts and merits of the case; and the said court may, whenever they may deem it necessary, cause any matter of fact involved in any case, to be tried by a jury in such county as they may see fit.

Proceedings
may be re-
moved to su-
preme court.

Construc-
tion of docks
&c.

10. *And be it enacted*, That all docks, wharves, and piers, which may be constructed by virtue of any license under this act, in any incorporated city or borough, which may have power to regulate and direct the manner of building docks, wharves, and piers within their limits, shall be built according to such order and direction made, pursuant to such powers.

Shore and
shore own-
ers, how con-
strued.

11. *And be it enacted*, That the term shore, in this act, shall be construed to mean the land between the limits of ordinary high and low water; the term shore line, to mean the edge of the water at ordinary high water, and the term shore owner, to mean the owner of the lands above and adjoining the shore line.

Approved March 18, 1851.

AN ACT to incorporate the Beverly Steam Power Company.

Names of
corporators.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That John Packer, Edmund Morris, Caleb Perkins, William Pettit, Charles C. Bowen, William Bryan, Leonard Soby, William Soby, and their associates and successors, shall be, and they are hereby made a body corporate, by the name of "the Beverly Steam Power Company," for the purpose of erecting one or more buildings in the borough of Beverly, and placing therein such and so many steam engines as may by them be deemed necessary to furnish a sufficiency of power, and such power to lease, for manufacturing purposes, to persons occupying rooms within said building or buildings, or occupying other rooms or buildings, or any portion of them, in such quantities and at such rates as may be determined on between the said company and the said lessees, as well as for the transaction of such business as may be necessarily connected with the purposes and objects of the said corporation; and the said company may hold such lands, tenements, steam and water power, and water privileges, in the borough of Beverly, and also such personal estate, as may be necessary for conducting the business of the company in a proper manner; and the said company may at any time use such portion of the steam or water power

CHAPTER CXLIII.

AN ACT to authorize Thomas D. Broadway, Charles B. Newell and Jacob M. Mitchell, to build, maintain, and keep in repair, a dock or wharf in front of their lands, in the township of Lower Penn's Neck, in the county of Salem.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That it shall and may be lawful for Thomas D. Broadway, Charles B. Newell and Jacob M. Mitchell, their heirs and assigns, to build, maintain, rebuild and keep in repair, docks, wharves, piers and other appliances, in front of their lands at Pennsville, in the township of Lower Penn's Neck, in the county of Salem, and to extend the same into the river Delaware, a sufficient distance for the accommodation of vessels navigating the said river; *provided*, this act shall not effect the legal rights of any other person or of this state; *and provided further*, that nothing in this act shall be construed to confer any right of ferry, or claim of right of ferry upon the owners of said dock or docks, wharf or wharves, nor to authorize the extension of such docks or wharves so far into said river as to injure or impede the navigation of the same.

2. *And be it enacted*, That the said Thomas D. Broadway, Charles B. Newell and Jacob M. Mitchell, their heirs and assigns, shall be entitled to demand and receive the following rates of dockage or wharfage, to wit: for each vessel under fifty tons, fifty cents per day; for each vessel of fifty tons or over, and under one hundred tons, seventy-five cents per day; for each vessel of one hundred tons or over, and under one hundred and fifty tons, one dollar per day; and for each vessel of one hundred and fifty tons and over, one dollar and fifty cents per day; and each vessel which shall be fastened to any other vessel that shall be fastened to the dock or wharf, shall pay one half the rates above mentioned; and all vessels making fast to said dock or wharf for the purpose of laying up, shall pay half dockage or wharfage.

Collection of wharfage.

Rates for unloading at dock.

T. D. Broadway and
others authorized to be
dock.

Rates of wharfage.

Commissioners for erecting wing.

Collection of wharfage.

3. *And be it enacted*, That all persons unloading their cargoes on said dock or wharf, or laying the same thereon for the purpose of being loaded, shall pay for every day the same may lay thereon, the same rates of dockage or wharfage as is hereinbefore provided.

Rates for unloading at dock.

4. *And be it enacted*, That all vessels not belonging in the state of New Jersey, which shall lay at said docks or wharves over twenty-four hours, shall pay the same rate of dockage as is hereinbefore mentioned; and on demand thereof being made by the said Thomas D. Broadway, Charles B. Newell and Jacob M. Mitchell, or either of them, their heirs or assigns, if the master, owner, or person having charge of such vessel shall refuse to pay the wharfage due by said vessels, it shall be lawful for any justice of the peace of said county, upon filing the affidavit of the owners of said wharves or docks for the time being, or either of them, of the amount due and of such demand and refusal, to issue a warrant under his hand and seal, authorizing such owners or any constable of said county to distrain any of the goods and chattels found on board of said vessel, and sell and dispose of the same for the purpose of raising such wharfage and costs, in the same manner as is provided in the act entitled "An act concerning distresses," approved April sixteenth, eighteen hundred and forty-six.

Approved March 16, 1854.

T. D. Broadway and others authorized to be dock.

Proviso.

Proviso.

Rates of wharfage.

CHAPTER CXLIV.

AN ACT to authorize the construction of an hospital for the State Prison.

Commissioners for erecting wing.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That William B. Vanderveer, Keeper, and John L. Taylor, Physician of the New Jersey

ACTS
OF THE
SEVENTY-NINTH LEGISLATURE
OF THE
STATE OF NEW JERSEY,
AND
ELEVENTH UNDER THE NEW CONSTITUTION.



TRENTON:
PRINTED BY PHILLIPS & BOSWELL.
1855.

CHAPTER CVIII.

AN ACT to change the name of the Union Presbyterian Church of Georgetown and Lambertville, in the county of Hunterdon.

Preamble.

WHEREAS the religious society heretofore known by the corporate name of "the Union Presbyterian Church of Georgetown and Lambertville," desire to change the name thereof; and whereas no such place as Georgetown is at present known in the bounds of that congregation, as there formerly was—now therefore,

Corporate name changed.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the religious society heretofore incorporated by the name of "the Union Presbyterian Church of Georgetown and Lambertville," shall hereafter be known and distinguished by the corporate name and style of "the trustees of the First Presbyterian Church of Lambertville," and by that name shall be deemed a body politic and corporate, possessing the usual powers and privileges of incorporated religious societies; and all the real and personal estate now belonging to said church shall be vested in the trustees thereof and their successors, duly elected, in trust for said society.

Approved March 15, 1855.

CHAPTER CIX.

AN ACT to incorporate the Pennsgrove Pier Company.

Names of corporators.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That Charles Elkinton, John Summerill, Samuel Plummer, Charles Kidd, William S. Vanneman, Robert Walker, Joseph H. Clark Thomas

Flanagin, Calvi John M. Smith, Wright, John R son, together with the stock hereof and they are hereby in fact and in law Company."

2. *And be it* corporation shall be divided into shares which shall be deemed books of said corporation and in such times and in such rectors of the corporation by any stockholder at any time and place thereafter, the seizure of his or her payments thereon

3. *And be it* corporation shall be more than fifteen directors, one of whom shall hold their office in their stead; the ally, at such time corporation shall be entitled to one vote of stock he may

4. *And be it* have power to buy or pier, extending ware, at the will for the accommodation from time to time purchase, lease, or necessary for that purpose dockage or wharf

Flanagin, Calvin Belden, Garnett Summerill, Uriah Sheets, John M. Smith, Francis Walker, Michael K. Dalbow, Moses Wright, John R. Justice, Matthias Kiger, and David Peterson, together with such other persons as shall subscribe to the stock hereby authorized, and their successors, shall be and they are hereby created a body politic and corporate, in fact and in law, by the name of "the Pennsgrove Pier Company."

2. *And be it enacted*, That the capital stock of the said corporation shall be seven thousand dollars, and shall be divided into shares of fifty dollars each; and the said stock shall be deemed personal property, transferable only on the books of said corporation, and shall be paid in at such times and in such manner, and upon such notice, as the directors of the corporation may appoint; and in case of failure by any stockholder to pay his or her instalments at the time and place appointed therefor, or within thirty days thereafter, the stockholder so in default shall incur a forfeiture of his or her share or shares, and of all previous payments thereon, to the use of the said corporation.

3. *And be it enacted*, That the business of the said corporation shall be conducted by not less than five, nor more than fifteen directors, all of whom shall be stockholders, one of whom shall be president; the said directors shall hold their office one year and until others are elected in their stead; the elections for directors shall be held annually, at such time and place as the by-laws of the said corporation shall provide, at which each stockholder shall be entitled to one vote, in person or by proxy, for every share of stock he may hold.

4. *And be it enacted*, That the said corporation shall have power to build, maintain, and keep in repair a wharf or pier, extending from the main land into the river Delaware, at the village of Pennsgrove, in the county of Salem, for the accommodation of boats and vessels, and the same from time to time to enlarge, extend, and rebuild, and may purchase, lease, and hold such and so much land as is necessary for that purpose, and may take, receive, and collect dockage or wharfage from all persons, boats, and vessels

Amount of capital stock.

Directors of corporation.

Corporation authorized to build wharf.

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Elkinton, John
d, William S.
lark, Thomas

Proviso. using the same; *provided*, that nothing in this act shall confer any right of ferry upon said corporation, or authorize the extension of said wharf or pier so far into said river, as to injure or impede the navigation of the same.

Annual statements to be made.

5. *And be it enacted*, That at the annual meeting of the stockholders for the election of directors, the directors shall exhibit a full and complete statement of the affairs of the said company during the preceding year; and no dividends shall be declared upon the stock of said corporation, except from the net profits thereof.

Act void if wharf is not kept in repair.

6. *And be it enacted*, That if the said corporation shall refuse or neglect to keep the said wharf and pier in sufficient repair, and shall suffer the same to become and remain unfit for use for the space of six months, their corporate powers shall cease, and this act become void.

Approved March 15, 1855.

CHAPTER CX.

A further supplement to the act entitled, "An act, authorizing the removal of certain mill dams from Rahway river and its branches, within the limits of the townships of Rahway and Woodbridge, in the counties of Essex and Middlesex," approved March third, eighteen hundred and fifty-four.

Additional trustees appointed.

1. *BE IT ENACTED by the Senate and General Assembly of the State of New Jersey*, That the number of the agents or trustees provided for by the act, to which this is a supplement, be and the same is hereby increased to five, and that, in addition to the three trustees named in said act, William B. Crowell, of the township of Rahway, in the county of Essex, and Joseph T. Crowell, of the township of Woodbridge, in the county of Middlesex, be and are hereby appointed trustees, and the said five trustees, and a

majority of the same duties required of the is a supplement by reason of the district de of the said trustees for the prior court of Essex or Middlesex said judge is under his hand and of the taxable are only three have power to posed upon or supplements t

2. *And be it* under the pro to which this and fix a valu and others, no quired in each spective mill s of the act, to commissioners which, in the owners of the said dam or d making such : ers shall, in al ner as they ar which this is making an as mill sites and damages shall owners of the by the act, to the owners of

3. *And be it enacted*, That this act shall take effect immediately, and be taken and held to be a public act.
Approved April 8, 1864.

CHAPTER CCCXCI.

An Act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York, and elsewhere in the state.

WHEREAS, it is represented to the legislature of the state that Preamble.
grants of rights to occupy land under the waters of the bay of New York and the Hudson river, and elsewhere within the state have been made and are liable to be made, without sufficient information of the rights of the state and of the riparian owners in the same, therefore, with the view of obtaining the proper information to enable the legislature to protect the rights of the state,

1. BE IT ENACTED *by the Senate and General Assembly of* Board of commissioners to be appointed.
the State of New Jersey, That a board of commissioners be nominated by the governor and confirmed by the senate, to consist of six citizens of this state, who shall have power and whose duty it shall be to cause the necessary surveys and examinations to be made by competent surveyors of the lands lying under the waters of the bay of New York and of the Hudson river, and of the lands adjacent thereto, the Kill Van Kull, Newark Bay, Arthur's Kill, the Raritan Bay, and the lands lying under the water of the Delaware river, opposite to the county of Philadelphia, the right to reclaim which has not been granted by the State, and to obtain all needful information from other sources, in order to ascertain the present rights of the state in the same, and the value of said rights; and to fix and establish an exterior line in the said bays and rivers, beyond which no pier, wharf, bulkhead, erection or permanent obstruction of any kind shall be permitted to be made, and to report to the next legislature, on or before the first day of February next, the result of the information thus obtained, and the value of the said rights, together with the evidence upon which the same is founded; and second, that they shall recommend to the legislature such plans and provisions for

the improvement, use, renting or leasing of the said lands under water as they shall deem necessary for and most conducive to the interest of the state, and to have prepared, and submit with their report, maps of said land exhibiting the exterior line fixed and established by them in said bays and rivers, and the lines of the existing piers, wharves and bulkheads, and also showing any grants of lands under the waters of said bays and rivers which have not been occupied, and also the original shore line as far as the same can be ascertained, accompanied with such field notes, measurements and elucidations as they shall deem necessary to a full exposition and understanding on the subject.

Proceedings regulated.

2. *And be it enacted*, That until such report is made no further grant, lease or sale of any of said lands shall be made, and the said commissioners may apply to the chancellor for an order to restrain and stay all proceedings, erections and obstructions until the further direction of the legislature; and if any permanent erection in or obstruction of the said waters, within the said exterior line to be fixed or established by them, be commenced or continued after such order, the said chancellor may cause the said order to be enforced, and disobedience thereof to be punished by the court of chancery, in the same manner and to the same extent as in cases of injunction issued out of said court; and any permanent erection or obstruction, made contrary to any such written order, may be removed and abated by the order of the chancellor; *provided however*, that the said commissioners or the chancellor shall not interfere with any rights already granted, or which have been or may be granted at the present session of the legislature.

Proviso.

Oath of office.

3. *And be it enacted*, That the said commissioners shall take and file in the office of the secretary of state an oath well, truly and faithfully to perform the duties of their appointment, before entering upon said duties, and they shall not be or become interested, directly or indirectly, in any water rights or rights to occupy lands under water in the said bays or rivers, nor in any real estate that can in any way be benefitted or affected by the establishment of such exterior lines, or by any measures that they may recommend; and upon proof being made to the governor of any one of said commissioners being so interested, and upon a hearing of a party so charged, he may be removed from office by the governor.

Vacancies.

4. *And be it enacted*, That any vacancies in the board of

commissioners, caused by removal, resignation, refusal to serve or otherwise, shall be filled by appointment by the governor, of a citizen of this state not interested as aforesaid.

5. *And be it enacted*, That the said commissioners may ap- ^{May appoint} point surveyors, agents, and others necessary for the dis- ^{agents-} charge of these duties, and they and their agents may enter upon any land for the purpose of surveying or obtaining any information on the subject of their appointment.

6. *And be it enacted*, That each commissioner shall receive ^{Compensation} five dollars for every day actually employed by him in the duties of his said appointment, and his actual travelling expenses, when absent from his residence.

7. *And be it enacted*, That the said commissioners shall ^{Notice of} give public notice of the time and place of their first meeting ^{meetings.} by advertisement published for ten days in each of the papers printed in the counties in which the commissioners shall make their investigation, and all subsequent meetings of the commissioners shall be publicly adjourned to some particular time and place.

8. *And be it enacted*, That this act shall be deemed a public act, and shall take effect immediately.

Approved April 11, 1864.

CHAPTER CCCXCII.

An Act to incorporate the American Dock and Improvement Company.

WHEREAS, It is represented that John S. Gilbert, Preston H. ^{Preamble.} Hodges, James Hoy, Henry L. Gilbert and Moses B. Bramhall, and others their associates, now own certain tracts of land, situate in the townships of Bergen and Greenville, in the county of Hudson, and desire to acquire from the state other tracts of land contiguous thereto, covered by water, which they desire to fill in and reclaim from the water, and to divide into suitable building and other lots, and to sell and dispose of the same for the benefit of the association, with the object of erecting a town, with docks, wharves and bulkheads, so as to afford facilities to secure to this state a portion of the commerce and shipping of

REPORT

OF

COMMISSIONERS

APPOINTED TO ASCERTAIN THE

RIGHTS OF THE STATE

AND OF RIPARIAN OWNERS

TO THE

LANDS LYING UNDER WATER.

TRENTON, N. J.:

PRINTED BY J. R. FRIESE, "STATE GAZETTE" OFFICE.

1865.

COMMISSIONERS' REPORT.

To the Senate and General Assembly of the State of New Jersey:

The Commissioners appointed under the act entitled "An Act to ascertain the rights of the State, and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in the State," approved April 11th, 1864, respectfully present the following report:

The principal duties and powers of this Board are enumerated in the first section of the act. It will be convenient here to recite the same in the words of the section.

It is there enacted, that the Board of Commissioners shall have power, and it shall be their duty "to cause the necessary surveys and examinations to be made by competent surveyors, of the lands lying under the waters of the Bay of New York, and of the Hudson River, and of the lauds adjacent thereto, the Kill Von Kull, Newark Bay, Arthur's Kill, the Karitan Bay, and the lands lying under the waters of the Delaware River, opposite to the county of Philadelphia, the right to reclaim which has not been granted by the State, and to obtain all needful information from other sources, in order to ascertain the present rights of the State in the same, and the value of said rights; and to fix and establish an exterior line in the said bays and rivers beyond which no pier, wharf, bulkhead, erection or permanent obstruction of any kind shall be permitted to be established; and to report to the next legislature on or before the first day of February next, the result of the information thus obtained, and the value of the said rights, together with the evidence upon which the same is founded.

"And second, that they shall recommend to the legislature such plans and provisions for the improvement, use, renting, or leasing of the said lands, under water, as they shall deem necessary for, and most conducive to the interest of the State, and to have prepared and submit, with their report, maps of said land, exhibiting the exterior line fixed and established by them in said bays and rivers, and the lines of the existing piers, wharves and bulkheads, and also showing any grants of land under the water of said bays and river which have not been occupied, and also the original shore line, as far as the same

can be ascertained, with such field notes, measurements and elucidations as they shall deem necessary for a full exposition and understanding on the subject."

The Commissioners, on the tenth day of May last, issued and caused to be published in the manner required by the act, a notice of the time and place for their first regular meeting. This meeting took place pursuant to the notice, at Jersey City, on the thirty-first day of the same month of May, and the subsequent sessions have been numerous and at such times and places as were found most convenient for the prosecution of the business. All these meetings have been held pursuant to public adjournments, and have been accessible to any who chose to avail themselves of the opportunity. Many valuable suggestions have been derived from individuals who have attended on such occasions.

It was soon seen that no important progress could be made in the determination of most of the matter referred to us before preliminary surveys and explorations had been made of the shore, the margin of upland adjoining the shore, and the submerged lands in front of any adjacent to the margin.

It was therefore determined that an accurate survey must be made of the shore line, and the extent and position of the water front of the numerous proprietors of the contiguous upland, and also the sounding in the waters immediately in front of such proprietors. It was also desired that examinations should be made, and information collected as to several other particulars, among which we mention, the nature and depth of the moveable deposits at the bottom of said waters, the location and extent of rocks and ledges, and the depth of these below the surface of the water, the line of the natural shore at places where the same has been obliterated by encroachments and improvements beyond the ancient margin, the dimensions, character and use of such encroachments, the positions and boundaries of the tracts that have been heretofore specifically granted by the State, or by its authority below the high water line, the positions, depths and general characteristics of channels, the deflections of the tidal currents from the general direction of the shores, with the probable causes and effects of such deflections, and under what conditions and laws the contraction of water space would effect more remote ship channels at the gates of the ocean. These constitute material elements in the proper location of such exterior lines as shall be "most conducive to the interests of the State." We believe that any considerable encroachments upon the tide waters referred to in the act, especially those in the Hudson River and the Bay, and its approaches from the ocean, if made without regard to most of the above conditions, would be hazardous to the commercial interests of New Jersey. With rivers and harbors on our borders, unsurpassed for the convenience and safety of shipping and commercial operations, by any in the world, artificial interference with their magnificent adaptations would be a calamity which no valuer of the lands reclaimed from these waters would ever compensate. Hence the propriety of extreme caution in the licensing of works that

could contract the capacity of any of these receptacles of the flood of the ocean.

A certain extent of encroachment along the shores of all good harbors and navigable rivers is of course necessary to enable ships to receive and deliver their freight at the mainland. So much of reclamation as is required for suitable piers, docks and warehouses along the margins of public waters is not ordinarily a detriment, but a benefit to navigable waters; and such improvement is therefore rather to be encouraged by public authority, than repressed.

It is clearly a mistake to assume, as some have done, that all contractions of the water space of rivers and harbors have a tendency to injure navigation. Who does not see that without considerable reclamations of the shallow flats on the margins of public waters, the commercial progress of New York, Liverpool and London would have been retarded?

But so obscure and hidden are as yet the laws of currents, eddies, and accretions, that except in rare and well defined instances, science partially fails to guide and control to certain results. Several instances are known of the ruin of harbors and rivers by filling up from slight changes and disturbances in currents. Schleswig, for about six hundred years the principal commercial city of Denmark, has lost its eminence from this cause. Yarmouth, Sunderland, Dundee, and Aberdeen are also examples in point.—*American Encyclopedia, MacMillan's, vol. 1, p. 101.*

In view of the delicacy of the responsibility implied by the above considerations we found it would not be advisable to attempt within the year to accomplish all that the act under which we were appointed contemplates. The first section above recited embraces the extensive range of shore, probably the most valuable in the State, from the Rockland County line to Constable's Hook, thence along the Kill Von Kull to Bergen Point and both sides of Newark Bay, thence continuing down Arthur's Kill to Perth Amboy, and along the long reach of Baritan Bay, besides an important district of the Delaware counties Philadelphia. It is manifest that much more than one season is needed to accomplish all this. We have limited ourselves exclusively to the districts which seemed most to need immediate attention on account of several enterprises for improvements therein being actually begun or in contemplation.

The commissioners instructed Robert C. Bacon, Esq., who had been appointed by them to direct and superintend the surveys in the early part of the State, to confine his operations during the season to those sections which extend from the Rockland County line on the Hudson down along said river and New York Bay into Kill Von Kull as far as Enyard's Dock, a short distance west of Constable's Hook. Edward H. Saunders, Esq., of Camden, was appointed to superintend the surveys on the Delaware, and to confine himself for the present to that tract which lies between Cooper's Point and Kaighn's Point in front of Camden City. Walter S. Oliphant, Esq., of Mount Holly, was appointed secretary of the commission.

It was not probable that any extensive alterations in the tide waters

would be begun or projected for the present upon the residue of the territory included in the act. We felt justified on that account in postponing all inquiry as to such localities, until we could dispose of the districts assigned to our surveyors as above stated.

The reports of Mr. Baoot, and of Mr. Saunders are hereto annexed respectively, appendix A, and appendix B. We wish to make special reference to these reports as containing a detailed description of the exterior lines adopted by us, beyond which no obstructions of any kind should hereafter be permitted, and many valuable observations upon other matters pertinent to the present investigations. We shall not repeat here the minute descriptions of lines, improvements and designs furnished by those reports, and the maps accompanying them, inasmuch as it would be needless repetition. The execution of the surveys and maps has received our decided approbation, and we take great pleasure in presenting them to the legislature for their inspection. The plan for exterior lines between Cooper's point and Kaighn's point on the Delaware, is exhibited by a single map, showing the position of the improvements at this time, the general line of original high water, an approximation to the line of low water, and such soundings as are deemed necessary to elucidate the subject of fixing exterior lines between the points designated.

This portion of the Delaware as navigable water is somewhat peculiar. The set of the tide is decidedly along the Pennsylvania side. An island stretches in front of the city of Camden at the distance of about rods from the present ferries. From this island a bar extends northwardly, nearly as far as Cooper's point. Between the island and the Camden shore, there is a weak current during the ebb, but a much stronger one during the flood. But both currents are of far less velocity than in the main channel near the Philadelphia side. It is evidently important that these currents should not be diminished in strength and velocity between the island and the main land at Camden. This is essential to prevent the channel from rapidly filling up with mud. Accretions are now going on near the Camden shore. It is said that in some places a deposit of eight feet has been made within a few years. While the Commissioners desired to avoid the removal of any permanent structures already made in the river at Cooper's point near the bend of the river, behind which the most considerable accretions were observed, and regarding the extension of the piers at Kaighn's point as sufficiently prominent, we adopted these points as the extremities of our outer line. The effect of a further extension of structures of any kind at these extreme points would, we think, be attended with a still further retardation of the movement of the ebb tide, and also of the flood between the Camden shore and the whole channel in slackened water would be expected. The exterior line as fixed by us between the extreme points above named, conforms to some extent to the fixed improvements and plan of the city, and does not injuriously contract the channel between the shore and the opposite island and bar. It is expected that this determination if adhered to will cause an acceleration of the current through the channel.

Itself this expectation should be realized, the benefit to the channel will be of great value. The example furnished by the East River at New York may be repeated to a limited degree here. While, however, in that case the acceleration of the current has for obvious reasons, proved a detriment to navigation, in this, for reasons equally obvious, the result would be an advantage. In the East river the current was always strong and rapid; while here it is weak and sluggish. At all events we see no probability of diminishing the power of the flow by extending the improvements to the line indicated on the map, provided the extremities are kept free from barriers against the entrance and passage of both tides. An examination of Mr. Saunders' map will suggest the pertinency of these observations.

Nine maps accompany the report of Mr. Baoot; all of them have reference to the district assigned to him for exploration and survey. Two of these maps (lettered A and B) are intended to furnish a general view of the whole ground. The one reaches from the State line to Castle Point, Hoboken, a distance of about eighteen miles and a half, and is protracted by a scale of 1,300 feet to the inch. The other extends from Castle Point to Enyard's Dock in Kill Von Kull, a distance of over fourteen miles, and is made upon a scale of one thousand feet to the inch. An interesting feature of these two maps, and especially of the last mentioned, is that the diverging lines of travel and transportation centre at Jersey City and Hoboken, as shown, tending to illustrate the present and prospective value of the tide waters upon which they terminate, and suggesting the importance of keeping in view the largest accommodations for shipping, and warehouses at our shores.

The other seven maps are sections of the former two, and are protracted by the scale of 400 ft. to the inch. These afford a more distinct view of the shore and the improvements and grants heretofore made, and a correct location of the docks, wharves and piers on the New York side of the river, as they exist at the present time.

Upon these maps will be found the precise positions of the exterior lines adopted by us for improvements, the descriptions of which will be found accurately noted in Mr. Baoot's report.

Open piers may in most places be thrown out beyond the bulkhead line. We have, therefore, adopted double lines--the inside one nearer the shore as the limit for solid filling or bulkhead, and the outer one for the heads or outer extremities of piers, to be constructed from the bulkhead into the river upon piles, or in such other manner as will allow a free flow of the water under them. The consent by the board to this system of pier head lines as adopted by us, is based specially upon the condition that the water currents should not be materially interrupted in their natural direction outside of the line of solid filling. But for this condition we would have been constrained to locate the lines very much further back, especially at the more contracted parts of the river.

It is intended to establish a number of permanent monuments as marks from references to which the places of these exterior lines may be correctly found. No time has as yet been had to make these reference marks.

No serious difficulties or uncertainties have attended the determination of the exterior lines between Castle Point and the State line, a distance of eighteen miles and a half. Above Castle Point there is but one cove or recess of any considerable extent, known as the Weehawken cove. It contains about one hundred and twenty acres of shallow flats. Throughout the remainder of the distance to the State line the river has but slight indentations on either side. "The average depth of the river is from thirty to fifty feet, the channel being on the New York side, and the Jersey shore being bordered by a flat of an average width of 400 yards, upon which there is at most eighteen feet of water."—*Coast survey rep. 1857, page 368.*

The deepest water is for the most part close in upon the Westchester side. From an examination of the charts of the coast survey, we found that the average depth reached by our exterior lines is a great deal less than is found within a quarter of the distance from the high-water line on the Westchester shore, and that the displacement of water by our bulkhead line is in considerable comparison with the cubic capacity of the whole river. The diminution would be scarcely appreciable. The current has a general tendency towards the New York side, the deep channel being there, and the few feet assigned to our shore for access to a useful depth of water will hardly have any perceptible effect in disturbing the body of the current at any point in this extended range. Engineers tell us that "whatever changes the direction and velocity of the current must change the regimen of the harbor for good or for evil." But it appears plainly that the direction of the current cannot be affected along this front of eighteen miles by our lines otherwise than to make it more equable near the shore, which more than counterbalances the almost imperceptible degree of acceleration that may be given to the velocity. No barriers being placed any where in the strong flood of the river, the banks being made even and more nearly parallel with the direction of the main current, and the allowed improvements occupying so little of the water space, it is to be expected that an equal bulk of water will continue to pass this portion of the river with each tide and ebb, with that which now finds its way through it. The line of solid filling may be considered as altogether within the eighteen feet curve, and the pier head line very rarely passes beyond that depth between Castle Point and the Rockland boundary. While we are satisfied to recommend these exterior lines for the sections between Castle Point and the State line as useful to that district and harmless to the river and harbor below, we much regret that there has not been sufficient time to complete the soundings which we intended should be actually made upon our exterior lines. Constant reference has indeed been made to such charts of the coast survey as were accessible to us. Yet we see that it would have enhanced the value of our maps could they have shown the present soundings along and within the pier and bulkhead lines. Usually the coast survey charts (those at least which we have seen) do not show very numerous soundings so close in to the high water mark, especially on the New Jersey side. It is true that they give general indications of the whole by the occasional figures

which are seen here and there very near the margin of the river on the shoal side. But for the purposes of our survey we desired to obtain several hundred more particulars of this kind between the water's edge and the exterior lines. Proprietors of the shore who may wish to improve and to obtain grants for that purpose would be much aided by a reliable chart of frequent soundings opposite their lands, and to the extent of grants desired by them; besides, the valuation of the grant would in some measure depend upon a minute knowledge of the same facts.

There would also have been an advantage in showing the depths of the mud or moveable deposits at short intervals along the pier lines of these sections. The stress of an inclement winter drove the sounding party from the water, before any important progress had been made in their work along these sections. The same remark will apply in part to other localities further down the river, and in the harbor. Several months more would be required to complete these, and some other details included in our plans of exploration in the river, the bay and the Kill Von Kull. The incompleteness of this portion of the proposed examination is a defect which we wish could have been avoided.

Sufficient data have been obtained however whereon to rest the conclusion that the lines established by us throughout all the sections of the survey are not too far out. It is possible that at certain points in the bay, subsequent and more extended examinations of proper relations may justify a wider range for reclaiming lands under water than has been here allowed. In the river, and the Kill Von Kull every imaginable want consistent with reason will be met by the plan as reported. We therefore, respectfully recommend to the legislature, that these lines as now fixed and determined by this board be adhered to, at least until, by further explorations and examination, departures beyond any parts of these lines shall be demonstrated to be entirely safe as well as desirable.

It may be presumed that the prominent objects of the legislature to pass the present law were in the first place the prevention of a public injury from undue encroachments upon the more important harbors and rivers of the State, and secondly, a purpose to adapt such encroachments as could be tolerated, to the development of facilities of commercial navigation to our shores.

The natural fitness of the New Jersey side of the harbor of New York, and of the lower sections of the Hudson River, for the construction of convenient accommodations for shipping, and the business of warehousing must have been observed by those enterprising pioneers in improvements on the westerly borders of these waters, who at the commencement of the present century secured lands for the sites of the cities now in the full tide of expansion and prosperity; their sagacity penetrated beyond the clamor and clangor associated with the place on these shores from the clamor and clamor associated with the trade, commerce, and artizanship of the metropolis. Mere town plots for villas and shady bowers are not the prominent ideas suggested by the reading of such charters as those of the Jersey associates, and of the land and improvement companies. The privileges so providently se-

Much stress was laid by that board upon the extension of dock and wharf room required by the growing necessities of commerce. The eminent engineers who were detailed by the consent of the President of the United States to assist that Board of Commissioners as an advisory counsel, consisting of Professor Bache, Commander Davis and General Totten, gave special attention to the same subject. They repeatedly urged most powerful reasons for liberal provisions for the enlargement of dock room to meet the present wants of shipping, and to induce the still more rapid extension of the commercial operations of the port. The examples of the magnificent erections of this kind which within the present century have stimulated the commerce of the great entrepôts of trade in England, and on the continent, were held forth to induce similar enterprises here, before the proper waters should be filled up and converted to other uses. Several hundred acres of land formerly occupied by thousands of the inhabitants of the city of London have been excavated along the margins of the Thames for the construction of docks at an expense of over fifty millions of dollars. The "London Docks," for example, occupy ground upon which stood about thirteen hundred houses; and "St. Katharine's Docks," the products of the wants of business at a later period, are located within one hundred rods from the custom house, upon the site of which we are told, twelve hundred and fifty houses (including St. Katharine's Hospital), inhabited by eleven thousand three hundred persons.

With such facts before us and the known tendency of business from all parts of the foreign world more and more to concentrate at the port of New York, as the centre of exchange and distribution for the American continent, we are led to the determination that every improvement to be permitted or encouraged in the waters of this harbor ought to be subservient to, and not in the way of the development of our opportunities for the accommodation of shipping. This policy will appear the more eligible if we look for a moment at the general map marked B, of the superintendent. Upon the New Jersey side of the harbor converge lines of travel and transportation by canal and railroads, which reach not only the more important agricultural, manufacturing and mineral districts of our own state, but penetrate and conduct to our shores a large share of the immense products of territory extending more than a thousand miles westward. Consider the ratio of the increase of these transportation from the interior to these tide waters in past years, and that the developments of the resources of the great west are confessedly only in their incipient stages, and it will not appear chimerical to think of provisions for a very large increase in the future. Nor need it be thought that these advantages are to pertain exclusively to the emolument of New York. The benefits may by a considerate policy be mutual to both States. The proper use of our advantages by us will advance both; our neglect or perversion of these advantages will be a calamity to both.

The jealousy and antagonism that Liverpool formerly manifested, in a spirit of contracted selfishness, towards the little fishing village on the opposite side of the Mersey, when Birkenhead was about to adapt

cured for erecting docks, wharves and piers in the tide water for the improvement of said town sites, and the benefits of commerce imply a great deal more good sense and intelligent fore-cast than the mere reclamation of building lots and villa sites from the domain of the State to the destruction of commerce, and the ruin of the means of great improvement. These companies would have sought their upland space inland, if more land was desired for further improvement. Nothing seems more absurd to us than the supposition that the mere enlargement of territory irrespective of the detriment to the harbor and river, and the uses to which they are adapted to all the citizens of this State, was the object of the granting of such privileges as those.

But we do understand the counsels of those corporate proprietors of upland adjoining the margin of the Hudson, when they speak of the policy of making their land, so fortunately situated, available as the depots and landing places of extensive commerce and navigation, and so far as their extensions into the water are concerned, we conceive that they are to be limited strictly to what directly pertains to that end. We by no means admit that they have the right to extend to the middle of the river, nor even to any injurious extent for the purpose of making land. The solid land over which they acquired rights by their acts of incorporation they had already from other sources. All that they acquired from the State was a liberal privilege of making the navigable waters useful to those lands as the depots of public commerce; the limit to that privilege being a discretion restrained only by the rules of public law.

Therefore the privileges granted by these charters needed not to have awakened jealousy in New York. The chartered privileges on this side used and restricted according to the understanding of them above indicated, would not prove to be a detriment to that city, but on the contrary a fortunate fact. Several years ago it had already become apparent that a hundred per cent. more of dock and wharf room was required for the shipping of the port, than existed within a convenient distance from the centre of business. It was urged by a number of merchants of the city of Brooklyn in a paper submitted to the New York Harbor Commissioners in 1856, that "The accommodations for shipping in the harbor of New York are already becoming insufficient for the business of the port, which is increasing in a ratio beyond that of any previous period. It is now a common occurrence for vessels to lie for days and sometimes for weeks after their arrival awaiting berths, and at last getting inferior accommodations from the crowded state of the wharves."

This fact tends to render the port obnoxious to ship owners and foreign merchants, and the expenses and delays of business thus occasioned have no doubt their influence in diverting commerce to neighboring ports."

The testimony of a wharfinger of thirty-five years standing, who was consulted by the same Commissioners, confirms the same view. Upon being asked whether the wharf accommodations of the city of New York, were then equal to the demands of commerce, he replied: "They are not;—they ought to be increased a hundred fold."

The

its capacities to the conveniences of the growing commerce of the great western port, have happily been driven out before the necessities of business. The greatness of Liverpool is now supported by the noble docks of Birkenhead. These are now doing most to promote the extraordinary increase in the population, commerce and wealth of both places. Under the present circumstances the progress and wealth of the one are shared by the other.

So it must be here. The city of New York has already appropriated of the deep waters of the Hudson to her own use nearly if not quite as much as the safety of the harbor and the authority of her state government will permit. These appropriations have unfortunately not been made so much for the construction of ship basins, piers and quays, as for the acquisition of solid acres for more private purposes. Owing to this perversion of her valuable water front, New York finds herself lacking room for her shipping within convenient distance from the custom house. It is not probable that the scooping out of basins in the inhabited parts of that city will be resorted to as has to be done in the city of London, so long as ample room exists on this side of her harbor for the shelter and accommodation of her shipping. The example of Birkenhead and Liverpool must surely be repeated here.

We look forward then to that kind of improvement along our whole harbor front, which will tend most directly to the landing of shipping, and the location of warehouses, as improvements that will be the most conducive to the interests of New Jersey.

The mere acquisition of solid land for building lots, irrespective of dock and wharf improvements we deem entirely too low a motive to induce the legislature to grant an acre of the water room of this harbor, with or without compensation. Lands thus acquired may indeed be to a certain extent, and incidentally devoted to such uses, but then only when the grant as a whole tends to extend the benefits of the harbor to commercial navigation. Entertaining such views we proceeded to fix the limits for filling in and for making piers in front of the shore examined by us: as to the future construction of piers, we recommend that they be at least two hundred feet apart at all places except at ferries where they may be erected nearer to each other. And we would further state that at such places as by the maps, are not provided with the pier head line, no piers are intended to be allowed. It will be seen that this exception applies chiefly to a portion of the bulkhead lines of the large basin south of South street in Jersey City. Aside from the provision for bulkheads and open piers as referred to in this report, and in appendix A with the maps accompanying that document, and the basins provided for, and described in the same papers, we are not prepared at this time to describe more particularly plans and modes of improvement. The piers, and the water space between them will afford a very extensive addition to the landing room of the harbor.

We trust however that the general observations already made in the preceding part of this report, and the well considered observations in appendix A on this subject, will be a guide to any more spe-

cial determinations that may hereafter be settled upon. It is to be presumed that the interests of those who are, or may become private proprietors of submerged lands will prompt them to adopt in several opportune localities, the suggestions made in reference to wet basins, and ware-house and storage facilities upon the margins, and within the walls of such basins. We see that there is convenient room at several points within the range of this survey for docks of at least equal magnitude and accommodations with those of the Atlantic Docks at Brooklyn. A part of what remains of Harsimus cove, as well as portions of Communipaw cove could be conveniently and profitably adapted to this use. We find that the enterprize which is reclaiming Weehawken cove, has already taken this direction.

In looking over the history of such basins in the city of London, we discover that the importunities of commerce extended these improvements towards the centres of business; that no expense that was necessary to secure this advantage was spared. The "East India Docks" were built in 1799, at the distance of about four miles from the custom house. A few years later the "West India Docks" were laid out about three miles from the same point. The "London Docks" are found within one mile from the custom house, and the "St. Katharine's Docks," commenced in 1824, are still nearer than the last. The enormous cost of the more recent of these structures which were excavated out of the improved part of the city, is an indication of the superiority of advantage to be attained by a more central and convenient location for such basins.

Is there any reasonable proof that such a system of improvement is practicable upon the shoals and flats about Jersey City and Hoboken? We beg leave to extract a passage upon this subject from a paper addressed by Professor Bache, and his distinguished colleagues in 1856. Advisory council, to the New York Harbor Commissioners in 1856. "The obvious method of turning to account this now useless and unprofitable ground (the Jersey flats) is by appropriating it to basins and their accompanying buildings." "Here, for example, the *warehousing system* might be pursued opposite New York, as it is at the Commercial Docks, opposite London, on the south side of the Thames, and at Birkenhead, on the west shore of the Mersey, opposite Liverpool." "The cartage from Jersey City to the lower part of New York is less, it seems, than from Canal street, and the repose of the ferry boat saves a great deal in wear and tear of beast and vehicle." In this connection we refer to a number of interrogations and answers found annexed to the reports of the New York Harbor Commissioners, of 1856 and 1857, which corroborated the well known facts, that the New Jersey shore is an eligible site for the harborage of vessels, quite as good as the North river side of New York in summer, and much better in winter; that it is easier of access for vessels from sea, and that vessels outward bound can sail thence with a wind from every quarter, except the east; that being a windward shore, vessels may there remain at their berths till ready for departure, and that by a peculiarity of the current, assisted by the prevailing winds, the ice in win-

ter sets on the opposite side, while our shore remains free from this obstacle.—*Appendix C.*

The exterior lines in Communipaw cove are by us placed much further out than those which were suggested by Professor Bache and his associates in 1856. These distinguished and experienced engineers laid down a line commencing at the Morris Canal pier at South street, thence running westward near to South street, as far as Van Vorst street, and thence more southwesterly to within a few rods from the village of Communipaw, and keeping near shore along the curve of three feet soundings to Constable's Hook. But it appears by the reports of the same engineers that their line was intended to be only temporary. They say: "we recommend *for the present*, to prevent encroachments, that a line of bulkheads be drawn around the eastern shore of the Bergen neck, at the three feet curve, similar to that in Gowanus bay."

Indeed no valuable purpose for the accommodation of commerce could be effected without carrying the limits of construction very far out into the cove. The eighteen feet curve lies outside of Bedloe's and Ellis's Island. These islands, by the treaty between the two States, belong to New York. Behind them and in front of the exterior lines designated by us are evidences of a natural channel, now filled up with mud, while further west are frequent obstructions of boulders and rocky reefs.

Whether the currents will be sufficiently accelerated, by the contraction of water space between the line of the islands and the Robins' Reef light-house, on the one side, and our bulkheads on the other, to open or to assist in opening this natural channel, is, perhaps, uncertain. But we think that this channel may easily be deepened by artificial means so as to give access for large vessels to the proposed piers and docks, along the whole range from Jersey City to Constable's Hook, a result, which if realized, will vastly enhance the attraction of the harbor, and promote the substantial interests of our State to an extent perhaps seldom conceived of by the most sanguine of those who have studied her resources and labored to add to her renown.

Until the merits of this plan of improvement in that cove shall have received better elucidation from experience and science, we would have the legislature adhere to the exterior lines where we have placed them. It will never do, according to the received scientific opinions of the present day, to extend the encroachments up to or even near to the line of the islands and light-house. That would involve the displacement of a water area approximating to four thousand acres of the average depth of five feet, at low tide—an experiment that would hazard the destruction of the entire harbor. At any rate we should postpone such an invasion until it shall have been demonstrated to a certainty, that so large a diminution of the influx and efflux of tidal water would not operate directly to still further contract and shoal the channels at the entrance and over the bars, between the Narrows and Sandy Hook. We know that changes have been going on there during the last seventy-five years, which are full of admonition to

those who would interfere with the arrangements of nature in these waters. We would counsel the utmost caution and moderation in such enterprises.

Nor will it be prudent to permit any part of this large cove to be crossed with solid work, from the shore to the line of the islands, or near to them. Even a narrow belt of obstructions thrown across this space would very quickly produce the same result as the deliberate reclamation of the whole cove. The forward movements of the currents being, by such a contrivance, necessarily abated, eddies would take place, from which would inevitably be deposited sediment with such rapidity as soon to fill up the whole space.

While we would deplore any unnecessary restraint to improvements as the result of our views, we conceive that a mistake in this direction will be attended with less hazard, and be more easily and readily remedied than one of the opposite nature would be. Land once reclaimed and covered with buildings and other expensive business investments would hardly be again removed, until the evil effects of their presence had become actually intolerable, and then only upon the expenditures of vast sums of money.

We direct special attention to the large basin reserved by our plans, south of the present improved part of Jersey City. For an accurate description of that part of our designs, we refer again to the maps and the reports explanatory of the same by the superintendent of the survey. We adopt that reservation of water space, with its piers, bulkheads and crossings as laid down and described in said maps and in said reports, not desiring to report the details thereof here. The cove, as will be seen by the maps, here recedes abruptly to the west a great distance. A large part of Jersey City, and an interesting and rapidly growing district of the adjoining municipality, now border upon the westerly and northwesterly shore of this abrupt recess, and unless some reservation of the kind here proposed is now secured by the firm authority of the State, which happily, as we understand it, yet controls this locality, the southwesterly part of Jersey City, and an important portion of the town of Bergen, now upon the confines of the bay, will, by the urgency of private enterprise be shut off far away from the privilege and advantage of public navigation. By the proposed basin a valuable and extensive water front will be secured on the south of the city; its facilities for commerce will be greatly enlarged; one or more public docks may be acquired to assist the present and rapidly expanding business of the city which, strange as it may seem, can lay claim at this time to but a single public wharf of moderate dimensions. The just anticipations of those who are now riparian owners along this part of the shore, will not be unreasonably disappointed, and the interests of the proprietors of corporate privileges in the vicinity liberally provided for.

An examination of the position and surroundings of this proposed reservation will readily suggest to any person all that we could desire to say in its favor.

The increasing and already very extensive business of a canal company and a railroad company, claiming a location upon deep water in

this vicinity would naturally tend to occupy the more valuable line of deep water in front of the recess, and as a consequence interpose a solid barrier of embankment on the south, and thereby heap in a very large area of the water space of the harbor from access to the public.

There is another consideration which shows the desirableness of this reservation of public water: Mill creek, which sets up from Communipaw cove, near the head of the proposed basin, is a public river. The preservation of this creek in direct communication with the open waters of the bay, may be of much value to the adjacent property. By dredging that stream it will be as usefully available to that portion of Jersey City and the town of Bergen, as what is known as the Chicago river is to the interior of that western metropolis.

While the consideration of this reservation and of other exterior lines in this part of the bay was pending, we were obliged to examine somewhat the claims of title which it was insisted should be examined from advising any measure or regulations which would interfere with work there begun or contemplated by the Morris Canal and Banking Company, and the Central Railroad Company of New Jersey. We found the former had cribbed in below South street a large basin, extending southwardly from their canal at South street toward Ellis's Island, as far as the present corporate limits of Jersey City, with narrow openings or breaks left in the easterly and westerly walls of said basin, affording ingress and egress to and from the waters of the cove behind said crib. We found at the same time the Central Railroad Company engaged in constructing a roadway by piers and solid embankments from the Communipaw shore easterly to deep water, a distance of over 5,000 feet, and cutting through the southerly portion of the Morris Canal's basin above referred to. Both companies claimed to have adjusted the difference between themselves that had formerly existed, and now urged that the powers and duties of this commission ought not to be exercised prejudicially to the works they had then in progress, or in contemplation, and that their works were located upon grounds vested in them by authority of the State.

Recognizing in both these powerful corporations valuable accessions to the wealth and enterprise of New Jersey, and special advantages to the neighborhoods where they reach the tide waters of the Hudson, this board were disposed to concede to each of them every consideration which our duty, as Commissioners under this act, would clearly permit.

Doubts, however, arose at an early stage in our proceedings, as to the sufficiency of the title of the railroad company, above named, below low-water mark, and those doubts not being removed, we felt that we would be unfaithful to the rights of the State, if by our acquiescence, as her representatives, we should conclude the State against any just claims she might have had in that place. We therefore desired that pending the proceedings of the commission, the further operations of the company could have been suspended until clearer confirmation of their right, below low-water, could be procured. We are still of the opinion that the evidence is not clear that the State's title to those lands has been extinguished, and deem it to be our duty so

to report, in order that a distinct grant may, if it should be necessary, be made upon proper terms to secure both parties.

But if we concede to both these corporations, powers, titles, rights and privileges in these waters, below South street, upon the basis on which they respectively claim to possess them, we yet hold that these are, from their nature, subordinate to the public rights of navigation. Such titles and privileges cannot, especially when they are not defined by metes and bounds by the sovereign authority, be allowed to subvert or to any important extent interfere with those things which by the public law ought to be and are implied reservations. One of such implied reservations, perhaps the principal one, consists of the substantial and more important features of a navigable river or public harbor considered as a thing for the use of public navigation and commerce. Every substantial feature of such river or harbor ought to be considered inviolable.

Inasmuch as we conceive that it is expected of us, that we are to point out plans and provisions how such use may be conserved consistently with proper liberties for private improvements and advantages, we do not hesitate to recommend that the interests of the State will require that at least as much of a reservation for navigable uses as this basin contemplates be maintained in this recess of the harbor, and that the passage thereto be required to be opened where it is artificially obstructed, unless it shall appear that the title of the State has already been extinguished as claimed.

Between thirteen and fourteen acres of basin room will be left within the bulkheads, as they now lie. This may be disposed of, if it is desired, for the private uses for which it was designed; considering its situation, such use as a still-water basin would be the most suitable.

While the act demands of us to furnish information as to submerged lands, "the right to reclaim which has not been granted by the State," and "the present right of the State therein," and "plans and provisions for the improvement, use," &c., of said lands under water, and enjoins upon us to "not interfere with any rights already granted, it cannot be possible that we were expected to settle disputed titles. That is the province of the judiciary, and we do not mean to be understood as undertaking the absurdity of usurping their functions. We inform the legislature of the modes by which we think they may consistently and beneficially improve the public waters, and promote the just, and as we conceive, the unencumbered interests of the State.

We have sought all information that came in our way, and have gladly received all that was offered, pertinent to the merits and demerits of this part of our work. What we now offer in respect to it is advisory, and we say that we have seen no clear act of cession, grant or permission, whereby the extinguishment or diminution of the right of the State has been brought about so as to prohibit the preservation of this basin as public, and its improvement as provided for in the maps and report describing them.

Upon the general subject of right in lands under tide water, but little remains to be said at this day, in New Jersey. That question

is fully settled. The State is the successor to the King of Great Britain, in this title, and at the revolution became invested with it as a sovereign, and as the representative or trustee of her people.

We have, however, the peculiar feature in the cases of the Delaware and the Hudson, that the completeness of a single river essentially depends upon and consists of portions of it resting upon the soil of two independent and coterminus States. Each of such States is entitled to the completeness of the river. Each of them has some sort of right, we think, to the good faith of the other, against the mutilation or disturbance of that completeness as a navigable highway for both; add to this the common interest that all the States may have in the maintenance of the same unit of completeness as a thing for common use.

The result of this peculiarity is, that a State, though by prerogative and as proprietor for her people, invested with the title of submerged lands within her borders, finds it necessary as a matter of good faith, to insert in, or *imply by all her grants*, to lands under the waters of public rivers, particularly those between herself and an adjoining State, the injunction or proviso, that the interests of navigation are not to be injuriously interfered with.

We are to understand then that each of these States, New Jersey, New York and Pennsylvania, while justified as the true and legal owner of the soil under water within her boundaries, to grant and convey portions of such submerged lands to individuals, the uses to which such lands are to be put are to be restrained by the same maximum which pertains to the use and enjoyment of other possessions and privileges. Each is to use his own in such a manner as will not wantonly or needlessly injure his neighbor.

Under such circumstances New Jersey stood the owner of these lands overflowed by tide waters, and under such conditions she was free, consistently with good faith, to convey them from the high water mark to her boundary. If there is any exception to this, it is found in the case of such royal patents as in a few instances may have been made to extend to the low water mark. Though the effect of such a grant, made by the royal authority, has been a subject of controversy so far as the shore or space between high and low water is concerned, we do not know that this particular question needs to arise in this investigation. There has been at least one such patent within the scope of these maps, but we apprehend no controversy can now arise concerning it.

We have had our attention directed to an opinion that some individuals hold, that the proprietary right to lands under tide water within the ancient towns of Bergen and Woodbridge, pertains to said towns and not to the State; that they hold them by charters as successors in the proprietorship to the Duke of York, and those who held under him; and that said towns became invested with said title before the surrender by the proprietors to Queen Anne, in 1702; that said lands not being included in the surrender, remain to the respective towns above named. We do not consider this position tenable, nor do we find that it has ever been seriously entertained by more than a few persons, though it still has advocates. We

think the idea takes its rise from a misapprehension of the terms employed in the ancient charters referred to.

While the State was, in strictness, the owner of these lands to high water mark, we cannot but be struck with the remarkable fact, that the State throughout the whole period of her independent legislation, so frequently by express terms, limited her grants of lands under the public water, to the space in front of the uplands of the grantees, and that so seldom the full power was attempted to be exerted to grant the submerged lands to a stranger to the opposite upland. The extreme paucity of instances of the latter kind, and the abounding number of instances of the other description had almost driven the courts to abandon the strict common law doctrine.

But the passage of the law commonly known as the "Wharf act," of March 18th, 1851, served, we think, as a very decided indication of the policy which the State had determined to establish with reference to the relation of riparian owners to submerged lands.

The Legislature finding that in innumerable instances, by her own sufferance, individuals had acquired title to reclaimed lands in contact with their upland, and that the same thing was sure to occur in countless more cases, gave a general license, in accordance with the prevailing sentiment of the people, in its favor, to all persons to improve in front of their lands to low water mark, and by express terms gave the improvements when made to the improver's own exclusive use. And it has now become a settled rule that, "if the owner of land bounded by the shore upon tide water make improvements upon or reclaim the *shore* adjoining his lands, the part of *the shore* so improved or reclaimed belongs to him." And in the other branch of the wharf act, we find that though license must be obtained under the State authority to improve beyond the low water line, yet that license must by direction of the Legislature be limited to the riparian owner alone, and cannot be extended to another.

Taking then the effect of the judicial decision, the limitations in numerous special grants made at remote periods, prior to that of the terms of the wharf act, and numerous grants subsequent thereto with the same limitation, and the absence of express legislation to the contrary effect in more recent years, especially in reference to private grantees, and we think the conclusion a fair one, that the State prefers the riparian owner to a stranger as a grantee of lands in front of such riparian owner. The effect of the above circumstance is not necessarily to debar the State from making her grants to others if she chooses so to do. Neither is it that the State is bound to convey to the riparian owner, whether she wishes to do so or not. But it certainly shows that she will prefer the shore owner to any other. To this extent, we believe, we may safely go in determining the relation in which the shore owner stands at the present time to the State in respect to submerged lands.

We advise that the present system with regard to the shore, that is, the land between high and low water mark, be continued leaving it lawful for the owner of lands situated "along or upon tide water to build docks or wharves upon the shore in front of his lands and in

any other way to improve the same, and when so built upon to appropriate the same to his own use," and further that no absolute grants be made of the State's title in such shore unimproved, except to the owner of the adjacent upland in front of which the shore lies, and that such grant, which the State is to have the option to make or not, shall if made be without compensation but under such other conditions as the interests of navigation shall seem to require in that instance.

And we also recommend that within the next succeeding five years no grants of land under tide water below low water mark shall be made to any other than to the riparian owner, in front of whose shore line such lands below low water lie, and that such grants do not extend beyond the exterior lines fixed as the limit for improvements; and that such grants be upon such conditions and such restrictions in each instance as the Legislature may choose to impose for the improvement of navigation and commerce; and that such grantee pay unto the treasury of the State as a consideration for the grant, one-fourth of the appraised marketable value of the lands, to be ascertained at the time of such grant, the remaining three-fourths to be retained by the grantee as an inducement for making the improvement; that so much of the wharf act as relates to the granting of licenses for improvements below low water be repealed; and that provision be made by law for making such grants, and appraising the compensation to be paid therefor. It should in all cases be optional with the State to convey or not as the circumstances and discretion may dictate.

We are not prepared to take the lead in advising that the shore owner has now by law an absolutely vested right to this preference, indefeasible except by force of the power of eminent domain and bringing compensation for the defeasance. We find that the opinions of learned men differ on this point, and we prefer to leave the settlement of that question to the constitutional tribunals.

Neither are we now prepared, nor can we be prepared without a great deal more time and opportunity for examination, to decide two other matters that relate to the making of future grants.

Those two matters are the following: first, what lands shall be deemed to be in front of each particular riparian owner? second, what value have these lands beyond low water as the subjects of sale? As to the first, it is found that although what is sometimes called the Massachusetts rule explained in *Deerfield vs. Anns 17, Pick 41*, which has found much favor in some states, appears to be applicable to much of the territory contained in these maps, yet there are localities where partial deviations would be unavoidable.

The equitable adjustment of those portions among proprietors as the shore is now owned, would require a great deal of care and time, and until the exterior lines shall be adopted, the apportionment will be premature; for that apportionment will be somewhat dependent upon these exterior lines.

It is manifest that equal areas could not be allotted to all who own an equal base of shore line; because the relative location of the exterior lines constantly differs throughout the whole range of the survey. This disparity is therefore unavoidable.

In the absence of any special rule in our State whereby to make such apportionment, we presume it will be proper for the Legislature to designate what the allotments shall be.

The report of Mr. Baco^t furnishes an illustration of one plan that may easily determine this matter, and we respectfully refer to what he says upon the subject. No opportunity has been had for fully testing that plan throughout the entire survey; and yet it is evident that if shore owners alone are hereafter to be grantees, the making of the very first grant that may hereafter be applied for, will involve the application of some fixed rule upon this subject.

The matter of valuation is still more minute in its details than the former. Scarcely any two consecutive areas of an acre each are of the same value as subjects of sale, and constantly changing surroundings cause continual fluctuations of values.

In very many places within the range of these maps, these variations will be perpetually going on. We do not see how a fixed appraisal could now be arranged that would not work great injustice in the future.

As was urged in the earlier part of this report, the greatest benefit which the State is to derive from such improvements as alone should be tolerated on any terms, is to arise from the commercial navigation and its incidents, which such improvements will surely stimulate on our shores. Compared with these results, any mere pecuniary compensation upon the sale of these lands would be insignificant. Still when private emolument is to be made from the acquisition of these lands and the advantages and privileges connected with them, it is not amiss that the State should receive a share of the benefit for the use of all her citizens.

Inasmuch as applications for water grants may become more and more frequent hereafter, it would perhaps be advisable that the State should constitute a board with discretion and power to investigate such applications, to determine values and conditions, and to attend minutely to all that may be necessary or desirable to be adjusted before the consummation of the transaction.

By the laws of New York there is a state board called the commissioners of the land office, and consists of the Lieutenant Governor, the Speaker of the Assembly, the Secretary of State, the Comptroller, the Treasurer, the Attorney General and Surveyor General, to whom all applications for grants of land under the navigable waters must be made, and by whom, according to certain rules grants are to be consummated.

A suitable board of fewer persons for ascertaining and settling at least all preliminaries for grants might be of much use here. We allude to the subject as one worthy of consideration.

Should the investigation of the subject referred to us by the present act be pursued hereafter more in detail, and to completion, there is no doubt that more definite information upon almost all these matters would be elicited.

We have appended abstracts of such grants and licenses for improvements as belong to the range of these surveys. Some of these

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grants have not as yet been improved, others are obsolete. These abstracts in connection with the maps will furnish all the information on this head that will be expected in a report so general as this.—Appendix D and Appendix E.

There remains but one other topic to which we are prepared to allude. We refer to the property of individuals invested in oyster beds or plantations upon ground that may be reclaimed or disturbed by dredging in making the improvements within the exterior lines.

The space within the bulkhead lines will be filled up and the bottom outside dredged and deepened for channels and recesses between piers. The oystermen have invested their money upon these lands for the purposes of a legitimate business, and by the sufferance of the State.

It should be obligatory upon all who by their improvements either destroy this property or require its removal, to make full compensation for the damage sustained by such destruction or removal, and provision should be made to ascertain such damage by fair and impartial arbitration or appraisement, or by such other mode as the legislature shall deem best, and suitable measures should be enacted to enforce the payment of such damages.

We have now laid before you such suggestions and facts as could be made by us at this time, relative to the very extensive subject comprehended in the terms of the act. The work is far from being complete, and as has already been stated, could not have been completed in detail at this time. We trust, however, that far short as it is of what may be desired or even expected, enough has been exhibited to show the importance of the whole subject, and especially to admonish us that grants in the public waters should not be made without a comprehensive understanding of their effects upon the interest of commercial navigation.

All of which is respectfully submitted.

J. R. WORTENDYKE,
F. S. LATHROP,
JOHN L. N. STRATTON,
JNO. LINN,
JAMES T. CROWELL,
JAMES B. DAYTON.

February 1st, 1865.

R E P O R T

OF

R. C. BACOT, SUPERINTENDENT OF SURVEY.

CHAPTER CCCLXXXII.

A Supplement to the act entitled "An Act to facilitate Judicial Proceedings in the County of Bergen," approved March tenth, eighteen hundred and sixty-eight.

1. BE IT ENACTED *by the Senate and General Assembly of* ^{Salary of judge} *the State of New Jersey,* That the salary of the judge for the county of Bergen, to be appointed as authorized by the first section of the said act to which this is a supplement, shall hereafter be the sum of one thousand dollars per annum, to be paid to him as provided in said first section, instead of fifteen hundred dollars per annum, as heretofore.

2. *And be it enacted,* That this act shall take effect immediately.

Approved March 31, 1869.

CHAPTER CCCLXXXIII.

Supplement to an act entitled "An Act to ascertain the rights of the state and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this state," approved April eleventh, eighteen hundred and sixty-four.

1. BE IT ENACTED *by the Senate and General Assembly of* ^{Exterior bulk heads and pier lines determined.} *the State of New Jersey,* That the bulkhead line or lines of solid filling and the pier lines in the tide-waters of the Hudson river, New York bay, and Kill Von Kull, lying between Enyard's dock, on the Kill Von Kull and the New York state line, so far as they have been recommended and reported to the legislature by the commissioners appointed under the original act, of which this is a supplement, by re-

port bearing date February first, eighteen hundred and sixty-five, are hereby adopted and declared to be fixed and established, as the exterior bulkhead and pier lines between the points above named, as such exterior bulkhead and pier lines, so fixed, established, and adopted, are shown upon the manuscript maps, accompanying said report, and filed in the office of the secretary of state, except said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company, by act approved March fourteenth, eighteen hundred and sixty-seven.

Unlawful to fill in beyond these lines.

Unlawful to erect pier.

How piers may be constructed.

Repealer.

2. *And be it enacted*, That it shall not be lawful to fill in with earth, stones or other solid material, in the tidewaters of the Hudson river, New York bay and Kill Von Kull, beyond the bulkhead line or lines of solid filling by this act adopted, fixed and established, laid down and exhibited on the aforesaid maps; and that it shall not be lawful to erect or maintain any pier or other structure exterior to the said bulkhead line or lines of solid filling in any place or places where no exterior line for piers is reported or indicated by said maps, on the Hudson river, New York bay and Kill Von Kull; and that when an exterior line for piers is recommended and shown by said report and maps, no erection or structure of any kind shall hereafter be erected, allowed or maintained beyond or exterior to the aforesaid bulkhead line or lines of solid filling, except piers which shall not exceed one hundred feet in width respectively, and which shall in no case extend beyond the line indicated for piers on said maps accompanying said report; and no piers shall hereafter be constructed in said tidewaters, when such exterior pier lines are adopted, fixed and established, at less intervals between such piers than seventy-five feet, except at places occupied and used for ferries, or to be so occupied or used, when the spaces between the piers may be less; nor shall any such pier be constructed in any other manner than on piles or on blocks and bridges; and if on blocks and bridges, such blocks and bridges shall not occupy more than one-half of the length of the pier, and they shall be so constructed as to permit a free flow or passage of water under and through them, without any other interruption or obstruction than the pile or blocks necessary to support said piers.

3. *And be it enacted*, That the act entitled "An Act to authorize the owners of lands upon tidewaters to build wharves

in front of the same," approved March eighteenth, eighteen hundred and fifty-one, be and the same is hereby repealed, as to the tidewaters of the Hudson river, New York bay and Kill Von Kull, below the line of mean high tide; but said repeal shall not be construed to restore any supposed usage, right custom, or local common law, founded upon the tacit consent of the state, or otherwise to fill in any land under water below mean high tide; and without the grant or permission of said commissioners, no person or corporation shall fill in, build upon, or make any erection on, or reclaim any of the land under the tidewaters of this state in New York bay, Hudson river, or Kill Von Kull; and in case any person or corporation so offending, shall be guilty of a purpresture, which shall be abated at the costs and expense of such person or corporation, on application of the attorney general, under decree of the court of chancery, or by indictment in the county in which the same may be, or opposite to and adjoining which said purpresture may be; *provided, however,* that neither this section, nor any provision in this act contained, shall in any wise repeal or impair any grant of land under water or right to reclaim made directly by legislative act, or grant or license power or authority, so made or given, to purchase, fill up, occupy, possess and enjoy lands covered with water fronting and adjoining lands owned, or authorized to be owned, by the corporation, or grantee or licensee, in the legislative act mentioned, its, his or their representatives, grantee or assigns, or to repeal or impair any grant, or license, power or authority to erect or build docks, wharves and piers opposite and adjoining lands owned, or authorized to be owned, by the corporation, or grantee or licensee in the legislative act mentioned, its, his or their representatives, grantees or assigns heretofore made, or given directly by legislative act, whether said acts are or are not repealable, and as to any revocable license given by the board of chosen freeholders of a county to build docks, wharves, or piers, or to fill in or reclaim any lands under water in the said New York bay, Hudson river, or Kill Von Kull, the same shall be irrevocable, so far as the land under water has been reclaimed or built upon under such license, at the time that this act takes effect; but as to the future, such revocable license is hereby revoked, and no occupation or reclamation of land under water, without such legislative act, or revocable license, shall divert the title of

No person or corporation shall fill in, &c. without grant of commissioners.

Proviso.

the state, or confer any rights upon the party who has reclaimed, or who is in possession of the same./

Proceedings
when any per-
son or corpo-
ration desires
a covenant in
regard to lands
under water
from the state

4. *And be it enacted*, That in case any person or corporation who by any legislative act, is a grantee or licensee, or has such power or authority, or any of his, her or their representatives or assigns shall desire a paper capable of being acknowledged and recorded, made by and in the name of the state of New Jersey, conveying the land in the proviso to the third section mentioned whether under water now or not, and the benefit of an express covenant, that the state will not make or give any grant or license power, or authority affecting lands under water in front of said lands, then and in either of such cases, such person or corporation, grantee or licensee, having such grant and license, power or authority, his, her or their representatives or assigns on producing a duly certified copy of such legislative act to said commissioners, and in case of a representative or assignee also satisfactory evidence of his, her or their being such representative or assignee, and requesting such grant and benefits as in this section mentioned, shall be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned; and the said commissioners or any two of them, with the governor and attorney general for the time being, to be shown by the governor signing the grant, and the attorney general attesting it, shall and may execute and deliver and acknowledge in the name and on behalf of the state, a lease in perpetuity to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his, her or their securing to be paid to the state an annual rental of three dollars for each and every lineal foot measuring on the bulkhead line, or a conveyance to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation in fee, upon his, her or their paying to the state fifty dollars for each and every lineal foot measuring on the bulkhead line, in front of the land included in said conveyance; *provided*, that no corporation to whom any such grant, license, power or authority was given by legislative act as aforesaid, in which provision was made

Proviso.

for the payment of money to the treasurer of the state for each and every foot of the shore embraced and contained in the act; nor the assigns of such corporation shall be entitled to the benefits of this section; *and provided further*, that ^{Proviso.} the said commissioners shall in no case grant lands under water beyond the exterior lines hereby established, or that may be hereafter established, but the said conveyance shall be construed to extend to any bulkhead or pier line further out on said river and bay that may hereafter be established by legislative authority in case any person or corporation taking a lease under this section, shall desire afterwards a conveyance of all or any part of the land so leased, the same shall be made upon payment of the said sum of fifty dollars for every such lineal foot, as aforesaid, of the land so desired to be conveyed, the conveyance or lease of the commissioners under this or any other section of this act, shall not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his, her or their heirs and assigns, to exclude to the exterior bulkhead line, the tidewater by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses, and so far as the upland from time to time made shall adjoin the navigable water, the said conveyance or lease shall vest in the grantee or licensee, individual or corporation, and their heirs and assigns, the rights to the perquisites of wharfage, and other like profits, tolls and charges.

5. *And be it enacted*, That no grant hereafter made, extending beyond the line of high-water mark, shall be in force or operation as to so much thereof as extends below said line of high-water mark, until the grantee or grantees shall have paid into the treasury of the state such compensation or rentals, or secured to the state such payment or rentals for the estate in the lands lying below the said line of mean high water mark, contained in and conveyed by such grant or lease as is hereinafter provided. ^{No grant in force until compensation or rentals are secured.}

6. *And be it enacted*, That four commissioners shall be appointed by the governor, by and with the advice and consent of the senate, who are hereby required and empowered to complete as much of the details of the work assigned to them by such original act, by surveys and otherwise, on the Hudson river, New York bay, and Kill Von Kull, as in their judgment the interest of the state requires. ^{Commissioners, how appointed.}

7. *And be it enacted*, That all the powers and duties of the

Powers of
commission-
ers.

said commissioners, contained in the act to which this is a supplement, be and the same are hereby continued in force, except so far as the same are superseded or modified by any of the provisions of this act.

Proceedings
when any per-
son or corpo-
ration desire a
grant for lands
under water.

8. *And be it enacted*, That if any person or persons, corporation or corporations, or associations, shall desire to obtain a grant for lands under water which have not been improved, and are not authorized to be improved under any grant or license protected by the provisions of this act, it shall be lawful for any two of the said commissioners concurring, together with the governor and attorney general of the state, upon application to them, to designate what lands under water for which a grant is desired lie within the exterior lines, and to fix such price, reasonable compensation, or annual rentals for so much of said lands as lie below high water mark, as are to be included in the grant or lease for which such application shall be made, and to certify the boundaries, and the price, compensation, or annual rentals to be paid for the same, under their hands, which shall be filed in the office of the secretary of state; and upon the payment of such price or compensation or annual rentals, or securing the same to be paid to the treasurer of this state, by such applicant, it shall be lawful for such applicant to apply to the commissioners for a conveyance, assuring to the grantee, his or her heirs and assigns, if to an individual, or to its successors and assigns, if to a corporation, the land under water so described in said certificate; and the said commissioners shall, in the name of the state, and under the great seal of the state, grant the said lands in manner last aforesaid, and said conveyance shall be subscribed by the governor and attested by the attorney general and secretary of state, and shall be prepared under the direction of the attorney general, to whom the grantee shall pay the expense of such preparation, and upon the delivery of such conveyance, the grantee may reclaim, improve, and appropriate to his and their own use, the lands contained and described in the said certificate; subject, however, to the regulations and provisions of the first and second sections of this act, and such lands shall thereupon vest in said applicant; *provided*, that no grant or license shall be granted to any other than a riparian proprietor, until six calendar months after the riparian proprietors shall have been personally notified in writing by the applicant for such grant or license, and shall have neglected to apply

for the grant or license, and neglected to pay, or secured to be paid, the price that said commission shall have fixed; the notice in the case of a minor shall be given to the guardian, and in case of a corporation to any officer doing the duties incumbent upon president, secretary, treasurer or director, and in case of a non-resident, the notice may be by publication for four weeks successively in a daily newspaper published in Hudson county, and in a daily newspaper published in New York City.

9. *And be it enacted*, That the same compensation for the time and personal expenses of said commissioners shall be allowed and paid as heretofore, and all other expenditures to be incurred by the said commissioners in the prosecution and completion of their works contemplated by the original act and this supplement, shall not exceed the sum of five thousand dollars annually, which sum is hereby appropriated out of any money in the treasury not otherwise appropriated, to be subject to the draft of said commissioners, and shall be paid upon the warrant of the comptroller, upon satisfactory vouchers being produced of such expenditures made or incurred.

10. *And be it enacted*, That the moneys so received from the sales and rentals of the said lands under water shall be first appropriated to the payment of such appropriation as the legislature may authorize from time to time, then to the payment and liquidation of the state debt, and afterwards the same shall be invested according to law, and the interest thereof be annually paid over to the trustees of the school fund, to be appropriated by them towards the maintenance of free schools.

11. *And be it enacted*, That the said commissioners shall take and file in the office of the secretary of state, an oath, well, truly and faithfully to perform the duties of their appointment before entering upon their said duties.

12. *And be it enacted*, That the said commissioners may commence proceedings in the name of the state of New Jersey, by ejectment or otherwise, against persons and corporations trespassing upon or occupying the lands of the state under water, or which were heretofore under water, and the attorney general of the state is hereby required to commence and prosecute such actions as may be instituted or directed by the said commissioners; and his expenses and disbursements, and the expenses and disbursements of such assistants as may be ap-

pointed by the governor, and their reasonable charges and counsel fees shall be taxed by the chief justice and paid by the treasurer, on presentation of the bill so taxed.

Right of riparian owner must be extinguished.

May appeal

13. *And be it enacted*, That in any case where a grant of the lands of the state under water is made by the commissioners, to any person other than the riparian owner that the state's grantee shall not fill up or improve said lands under water until the rights and interest of the riparian owner in said lands under water (if any he has) shall be extinguished, as follows: the said commissioners shall fix the amount to be paid to said riparian owner for his rights and interest therein (if any he has), and said riparian owner shall have the right, within twenty days after he has been notified of said amount, to accept said sum in full extinguishment of all his rights, or if he is dissatisfied with said award he may apply to the supreme court at the next term thereafter for a struck jury to try the question in such place as may be designated by said court, and said jury may increase or diminish the amount to be paid the said riparian owner, and their verdict shall be final as to said amount, and on the payment or tender by the state's grantee to the riparian owner of the amount fixed by said jury all the rights and interest of said riparian owner in the lands of the state under water in front of his land shall be extinguished; that the costs of the trial shall be paid as follows: if the verdict of the jury is greater than the award of the commissioners then the state shall pay the costs of the trial, if the verdict is the same as the award or less than the award of the commissioners then the riparian owner shall pay the costs.

14. *And be it enacted*, That this act shall take effect immediately.

Approved March 31, 1869.

forty-six, as are repugnant to or inconsistent with the provisions of this act, so far as relates to the township of Greenwich, in the county of Warren, shall be and the same are hereby repealed.

3. *And be it enacted*, That this act shall take effect immediately.

Approved March 1, 1870.

CHAPTER CXXXI.

An Act to authorize Robert Walker and Francis P. Walker to build wharves, piers and bulkheads in front of their lands on the Delaware river, in the township of Upper Penns Neck, Salem county, New Jersey.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That Robert Walker and Francis P. Walker be and they are hereby authorized and empowered to erect and maintain all such wharves, piers and bulkheads in front of their lands on the Delaware river, in the township of Upper Penns Neck, Salem county, New Jersey, as they may deem proper and necessary for the improvement of their property, or for the benefit of commerce, and to collect wharfage for the use thereof, and to hold, use and enjoy the same to themselves, their heirs and assigns; *provided, however*, that no such wharf, pier or bulkhead shall be erected or built by virtue of this act for a greater distance than four hundred feet from high water mark, nor in front of the land of any other person.

Proviso.

2. *And be it enacted*, That this act shall take effect immediately.

Approved March 1, 1870.

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LAWS OF NEW JERSEY 1870

LAWS OF NEW JERSEY 1870

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SPECIAL PUBLIC AND PRIVATE LAWS.

20. *And be it enacted*, That this act shall take effect immediately.

Approved March 17, 1870.

CHAPTER CCCXLIV.

An Act to authorize the construction of a Wharf or Dock at Pennsgrove.

May build a dock or wharf.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That it shall and may be lawful for Joseph Guest, his heirs and assigns, to build, maintain and keep in repair, a dock or wharf, or to lease for a term of years to any person or persons, or to any incorporated company, for the purpose of building, maintaining and keeping in repair, a dock or wharf, upon and in front of his lands, in the township of Upper Penns Neck, in the county of Salem, extending the same a sufficient distance into the Delaware river for the accommodation of vessels navigating the same, and from time to time to rebuild and repair the same as may be necessary for the improvement of his property and the benefit of commerce, and to demand and receive wharfage therefor from all persons using the same; *provided*, that said dock or wharf shall not obstruct the navigation of said river.

Proviso.

Penalty for injury to dock

2. *And be it enacted*, That if any person or persons shall wilfully destroy, or in any way injure the said dock or wharf, such person or persons shall be responsible therefor, said damages to be recovered in any court having jurisdiction.

3. *And be it enacted*, That this act shall take effect immediately.

Approved March 17, 1870.

GENERAL PUBLIC LAWS.

Testimony of deceased witness may be proved on new trial.

other or surviving party, and also such legal representatives, shall be competent witnesses on such new trial, and the testimony of such deceased party on the former trial of said action or suit, may also be proved and admitted on the new trial thereof.

2. *And be it enacted*, That this act shall take effect immediately.

Approved March 21, 1871.

CHAPTER CCLVI.

A Further Supplement to an act entitled "An act to ascertain the rights of the State and riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State," approved April eleventh, one thousand eight hundred and sixty-four.

1. *BE IT ENACTED by the Senate and General Assembly of the State of New Jersey*, That any riparian owner on tide waters in this State who is desirous to obtain a lease, grant or conveyance from the State of New Jersey of any lands under water in front of his lands, may apply to the commissioners appointed under the act to which this is a supplement and the supplements thereto, who may make such lease, grant or conveyance with due regard to the interests of navigation, upon such compensation therefor, to be paid to the State of New Jersey, as shall be determined by said commissioners, which lease, conveyance or grant shall be executed as directed in the act to which this is a supplement and the supplements thereto, and shall vest all the rights of the State in said lands in said lessee or grantee.

Lands under water may be leased.

Where not to apply.

2. *And be it enacted*, That this act shall not interfere with the original act or its supplements as to the waters of the Hudson river, New York bay or Kill Von Kull, easterly of Enyards dock.

3. *And be it enacted*, That this act shall be a public act, and shall take effect immediately.

Approved March 21, 1871.

6. *And be it enacted*, That this act shall take effect immediately.

Approved March 23, 1871.

CHAPTER CCOVI.

An Act to change the name of the Clinton Avenue Methodist Episcopal Church of Newark.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the name of the "Clinton Avenue Methodist Episcopal Church of Newark," be and the same is hereby changed to "Saint Luke's Methodist Episcopal Church of Newark."

2. *And be it enacted*, That all the legal rights and liabilities of said corporation shall remain the same as if this act had not passed; and that this act shall take effect immediately.

Approved March 23, 1871.

CHAPTER CCCVII.

An Act to authorize Henry Barber to build wharves, piers and bulkheads in front of his lands, on the Delaware river, in the township of Upper Penns Neck, Salem county, New Jersey.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That Henry Barber be, and he is hereby authorized and empowered to erect and maintain all such wharves, piers and bulkheads in front of his

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lands, on the Delaware river, in the township of Upper Penns Neck, Salem county, New Jersey, as he may deem proper and necessary for the improvement of his property, or for the benefit of commerce, and to collect wharfage for the use thereof, and to hold, use and enjoy the same to himself, his heirs and assigns; *provided however*, that no such wharf, pier or bulkhead shall be erected or built, by virtue of this act, for a greater distance than one hundred feet beyond low water mark, nor in front of the land of any other person; *provided further*, that nothing in this act shall affect the rights of the State to lands lying under water.

2. *And be it enacted*, That this act shall take effect immediately.

Approved March 23, 1871.

CHAPTER CCCVIII.

An Act to incorporate the Central Insurance Company, of New Jersey.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That all such persons as shall become stockholders in the capital stock hereinafter mentioned, their successors and assigns, are hereby made and constituted a body politic and corporate, by the name and style of "The Central Insurance Company of New Jersey," and by that name shall be known in law, and have power to sue and be sued, and to defend and be defended in all courts, whether in law or equity; and by that name may also have, purchase, possess and enjoy, and to them and their successors, lands, tenements and hereditaments, goods, chattels and effects, of what nature or kind soever, necessary for the purposes of this corporation, and the same to grant, demise, alien and dispose of at pleasure for the benefit of said company; and may also have a common seal, and alter and renew the same at pleasure; and may create and establish such by-laws and regulations as shall seem necessary and expedient for the government of the said corporation, and

Corporate name:

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And whereas the said trustees incorporated by the said act, under the name of "The Trustees of the State Industrial School for Girls," have, by resolution, informed me that the buildings and premises of the said reform school are now so prepared for the reception of pupils:

Now, therefore, I, Theodore F. Randolph, governor of the State of New Jersey, by virtue of authority in me vested, and in conformity with the provisions of an act of the legislature entitled "An act to establish a State Industrial School for Girls," do issue this my proclamation, and hereby proclaim and declare the fact that the buildings and premises of the Industrial School, authorized by the said act, are now prepared for the reception of pupils, and that the provision of the said act relative to commitments do go into effect from and after the date hereof.

Given under my hand and the great seal of the State
[L. S.] of New Jersey, at Trenton, this twenty-fifth day
of November, eighteen hundred and seventy-one.

By the Governor,

THEO. F. RANDOLPH.

HENRY C. KELSEY, *Secretary of State.*

A Proclamation by the Governor of New Jersey.

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

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

And whereas, disputes in relation to jurisdiction between states should be submitted to the legal tribunal created with especial reference to such disagreements, and should not be

PROCLAMATIONS.

permitted to result in a collision of opposing local authorities, or in individual retaliation.

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

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

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

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

JOEL PARKER.

Attest :

JNO. A. HALL, *Private Secretary.*

N. J. Laws 1876, p. 418.

NUMBER II.

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

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

1. BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey*, That the governor of his state be, and he is hereby authorized to cause to be instituted and prosecuted, in the supreme court of the United States, a suit in equity, or an action at law, by the State of New Jersey against the State of Delaware, to ascertain, determine and settle the true territorial boundary line between said states and the extent of the

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

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

Approved March 30, 1876.

Minutes of the Votes and Proceedings of the One Hundred and Twenty-seventh General Assembly of the State of New Jersey, Trenton, 1903, pp. 422-424.
(March 3, 1903.)

A message was received from the Governor by the hand of his Secretary, and was read as follows:

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT,
TRENTON, March 3d, 1903.

To the Legislature:

In the year 1871 the Legislature of the State of Delaware passed an act entitled "An act for the protection of fishermen," in and by the terms of which it sought to prohibit non-residents from catching fish in the Delaware river or bay within the limits of the State of Delaware without obtaining a license therefor from the State of Delaware. Subsequently certain residents of this State were arrested by the authorities of Delaware while fishing on the easterly side of the Delaware river, for alleged

ACTS

OF THE

One Hundred and Fifteenth Legislature

OF THE

STATE OF NEW JERSEY,

AND

Forty-Seventh Under the New Constitution.



TRENTON, N. J. :
MACCRELLISH & QUIGLEY, STATE PRINTERS.

1891.

improved, and in anticipation of the receipt of license fees as provided for by section eighteen of this act, sufficient to pay for the said improvement.

20. *And be it enacted*, That no work on any such proposed improvement or improvements shall be commenced until the governing body of such municipality shall have deposited in such special fund, as provided for by section eighteen of this act, twenty-five per centum of the estimated cost thereof. Improvements not to be commenced until 25 per cent is deposited.

21. *And be it enacted*, That the powers herein conferred shall be construed as being in addition to, and not in lieu of, any powers to pave, macadamize or otherwise improve streets or avenues, or to issue bonds contained in the provisions of any charter or act creating any municipality. Powers conferred in addition to charter.

22. *And be it enacted*, That all acts and part of acts, general or special, public or private, inconsistent with or repugnant to the provisions of this act be and the same are hereby repealed. Repealer

23. *And be it enacted*, That this act shall take effect immediately.

Approved March 20, 1891.

CHAPTER CXXIII.

A Further Supplement to an act entitled "An act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state," approved April eleventh, one thousand eight hundred and sixty-four.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That no person or corporation shall dig, dredge or remove any deposits of sand or other license of persons or corporations to dig, dredge, &c.,

from lands of the
state under tidal
waters.

material from the lands of the state lying under tidal waters without a license so to do first obtained as provided in the second section of this act, and any person or corporation who shall so unlawfully dig, dredge or remove any deposit of sand or other material as aforesaid shall forfeit and pay for each and every such offense the sum of one hundred dollars, to be prosecuted for and recovered by an action on contract by any person or persons in any court of competent jurisdiction with costs of suit, the one-half the amount so recovered to be for the use of the state, and the other half to the use of the person or persons who shall sue for and prosecute the same to effect; *provided, however,* that nothing in this section contained shall prevent the owner of any grant or lease from the state, or the assignee or lessee thereof, from digging, dredging, removing, and taking sand and other material within the lines of, or in front of, such grant or lease, for the purpose of improving lands granted or leased to them, or their grantors or lessors, by the state, nor prevent such owner, assignee or lessee from digging or dredging a channel or channels to the main channels, and removing and taking the material therefrom.

Proviso

Commissioners
to license.

2. *And be it enacted,* That the riparian commissioners or a majority of them therein concurring with the approval of the governor, may, under such terms and restrictions as to duration, compensation to be paid, and such other conditions and restrictions as the interests of the state may require, license by an instrument in writing, executed in the same manner as grants of lands under water are required to be executed, any person, persons or corporations to dig, dredge or remove any deposits of sand or other material from the lands of the state under tidal waters; and the moneys received from any such licenses as aforesaid shall be paid to the treasurer of the state for state purposes.

Moneys received
for licenses to be
paid to state
treasurer

Commissioners
may lease lands
under water.

3. *And be it enacted,* That the riparian commissioners, with the approval of the governor, may lease or grant the lands of the state below mean high-water mark and immediately adjoining the shore, to any applicant or applicants therefor other than the riparian or shore owner or owners, provided the riparian or shore owner or owners shall have received six months' previous notice of the

intention to take said lease or grant such notice given by the applicant or applicants therefor, and the riparian or shore owner or owners shall have failed or neglected within said period of six months to apply for and complete such lease or grant; the notice herein required shall be in writing and shall describe the lands for which such lease or grant is desired, and it shall be served upon the riparian or shore owner or owners personally; and in the case of a minor it shall be served upon the guardian; in case of a corporation upon any officer performing the duties of president, secretary, treasurer or director, and in the case of a non-resident owner the notice may be by publication for four weeks successively at least once a week in a newspaper or newspapers published in the county or counties wherein the lands are situate, and in case of such publication, a copy of such notice shall be mailed to such non-resident owner (or in case such non-resident owner be a corporation, then to the president of such corporation, directed to him at his post-office address, if the same can be ascertained, with the postage prepaid); but nothing in the provisions of this act contained shall be construed as repealing, altering, abridging, or in any manner limiting the provisions and power conferred upon the riparian commissioners and governor by the act entitled "A further supplement to an act entitled "An act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state," approved April eleventh, one thousand eight hundred and sixty-four, which supplement was approved February tenth, one thousand eight hundred and ninety-one.

Notice to be served.

Not to repeal act of February 10, 1891.

4. *And be it enacted*, That the riparian commissioners, or a majority of them, together with the governor, shall not hereafter be required to give leases for lands of the state under water, convertible into grants upon payment of the principal sum mentioned therein, but may sell or let any of the lands of the state below mean high-water mark, upon such terms as to purchase money or rental, and under such conditions and restrictions as to time and manner of payment the duration and removal of any lease, the occupation and use of the land sold or leased, and such other conditions and restrictions as the interest

Commissioners may sell lands.

of the state may require, as may be fixed and determined by said riparian commissioners, or a majority of them, together with the governor.

Repealer.

5. *And be it enacted*, That all acts and parts of acts inconsistent with this act be and the same are hereby repealed, and that this act shall take effect immediately.

Approved March 20, 1891.

to take the property of such corporations under any existing law of this state, and agreeing further that all laws affecting such corporations shall be subject to alteration or repeal by the legislature.

2. This act shall be deemed a public act, and shall take effect immediately.

Approved March 5, 1903.

JOINT RESOLUTION No. 1.

Joint Resolution relating to the boundary controversy between the states of New Jersey and Delaware.

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

1. Franklin Murphy, governor, Thomas N. McCarter, attorney-general, and Edward C. Stokes be and they hereby are appointed and constituted commissioners of the state of New Jersey to confer with like commissioners representing the state of Delaware for the purpose of framing a compact or agreement between the said states and legislation consequent thereon, to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the supreme court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware river.

Commissioners to confer regarding state line.

Approved March 5, 1903.

ACTS

OF THE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE

OF THE

STATE OF NEW JERSEY

AND

Fifty-Ninth Under the New Constitution.



TRENTON, N. J.:
MACCRELLISH & QUIGLEY, STATE PRINTERS.

1903.

CHAPTER 242.

A Supplement to an act entitled "An act relating to the court of common pleas" (Revision of 1900), approved March twenty-third, one thousand nine hundred.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Every judge of the court of common pleas who has heretofore been or who hereafter shall be designated and requested by any justice of the supreme court, under and by virtue of the tenth section of the act to which this is a supplement, to perform the duties of a judge of the court of common pleas of any county, other than that for which he is appointed and commissioned, shall be paid for every day he shall preside in the said courts in which he is designated to preside under and by virtue of said appointment the sum of twenty dollars; which sum shall be paid by the county to which the courts in which he is so designated to preside appertain, upon the certificate of the justice of the supreme court who made such designation and request.

Compensation of judge of court of common pleas assigned to another county.

2. This act shall take effect immediately.

Approved April 8, 1903.

CHAPTER 243.

An Act to ratify and confirm a compact or agreement between the states of New Jersey and Delaware respecting the Delaware river, and to authorize the execution thereof.

WHEREAS, By joint resolution of the legislature of the state of New Jersey, approved March fifth, nineteen

Preamble.

hundred and three, Franklin Murphy, Thomas N. McCarter and Edward C. Stokes were appointed to represent the said state as commissioners to confer with like commissioners to be appointed on the part of the state of Delaware for the purpose of framing an agreement or compact between the said states respecting certain controversies between them concerning the Delaware river, lying between the said states, and their respective rights therein; and

WHEREAS, By joint resolution of the general assembly of the state of Delaware, approved March , nineteen hundred and three, John Hunn, Herbert H. Ward and George H. Bates were appointed to represent the said state as commissioners to confer with the commissioners of the state of New Jersey for the purpose before recited; and

WHEREAS, The commissioners of the said two states, having duly conferred as directed by said resolution, have framed and submitted to this legislature a proposed compact or agreement between the said states; and

WHEREAS, The compact or agreement so framed and submitted is in the words following, that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY AND THE
STATE OF DELAWARE RELATING TO THE BOUNDARY
CONTROVERSY BETWEEN SAID STATES.

Preamble of
compact.

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

WHEREAS, There is now pending in the supreme court of the United States a cause wherein the said state of New Jersey is the complainant and the said state of Delaware is the defendant, in which cause an injunction has been issued against the state of Delaware re-

straining the execution of certain statutes of the state of Delaware relating to fisheries in said river, which said litigation hath been pending for twenty-five years and upwards; and

WHEREAS, For the purpose of adjusting the differences between the said two states arising out of said conflict of jurisdiction, Franklin Murphy, Thomas N. McCarter and Edward C. Stokes have been appointed commissioners on the part of the state of New Jersey by joint resolution of the legislature of said state, and John Hunn, Herbert H. Ward and George H. Bates have been appointed commissioners on the part of the state of Delaware by joint resolution of the general assembly of said state, to frame a compact or agreement between the said states, and the legislation consequent thereon, to be submitted to the legislatures of said two states for action thereon looking to the amicable termination of said suit between said states now pending in the supreme court of the United States, and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware river;

NOW, THEREFORE, The said state of New Jersey, by its commissioners above named, and the said state of Delaware, by its commissioners above named, do hereby make and enter into a compact or agreement between said states as follows:

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

Serving
processes
issued by
New Jersey.

or the shores of said islands, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the state of Delaware.

Serving processes issued by Delaware.

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

Fishery rights.

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

Commission to draft laws regulating fishing.

ARTICLE IV. Immediately upon the execution hereof the legislature of the state of New Jersey shall appoint three commissioners to confer with three commissioners to be immediately appointed by the general assembly of the state of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware river between said two states, which said commissioners for each state respectively shall, within two years from the date of their appointment, report to the legislature of each of said states the proposed laws so framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended, or of other concurrent legis-

Report to legislatures

lation for the regulation of said common right of fishery, by the respective legislatures of said two states, said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river between said states. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two states.

Effect of such laws.

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

Pledge.

Each state shall have and exercise exclusive jurisdiction to arrest, try and punish its own inhabitants for violations of the concurrent legislation relating to the regulation of the right of common fishery herein provided for.

Each state's sole authority.

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

Which laws continue in force.

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

Oyster industry not affected.

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

Riparian rights.

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

Boundaries or jurisdiction not affected.

ARTICLE IX. This agreement shall be executed by the said commissioners, when authorized to do so by the legislatures of the said states. It shall thereupon be submitted to congress for its consent and approval. Upon the ratification thereof by congress it shall be and be-

When agreement executed.

Consent of congress.

Pending suit.

come binding in perpetuity upon both of said states; and thereupon the suit now pending in the supreme court of the United States, in which the state of New Jersey is complainant and the state of Delaware is defendant, shall be discontinued without costs to either party and without prejudice. Pending the ratification hereof by congress said suit shall remain in statu quo.

Duplicate agreement

Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the governor of that state, and the other one of which is retained by the commissioners of New Jersey, to be delivered to the governor of that state), this day of in the year of our Lord one thousand nine hundred and three.

THEREFORE,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

Compact adopted.

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

Execution authorized

Copy transmitted to the president.

2. It shall be the duty of the governor, at or before the next session of congress of the United States, to transmit a duly certified copy of this act to the president of the United States, with the request that it be communicated to congress for its action thereon.

3. This act shall take effect immediately.

Approved April 8, 1903.

9. It shall be the duty of the state oyster commission to revoke the license of any boat or vessel, the owner, captain, master or person in charge of which shall violate or cause or permit to be violated any of the provisions of this act, or the provisions of any other law of this state regulating the taking, planting or cultivating of oysters in the Delaware river, Delaware bay or Maurice river cove, in force and not repealed by this act; and said commission shall have power to refuse thereafter to allow any license to be issued to such boat or vessel for such period of time as the commission may fix and determine. Revocation
of license.

10. All acts and parts of acts inconsistent with this act are hereby repealed, and this act shall be deemed a public act and take effect immediately. Repealer.

Approved March 21, 1905.

CHAPTER 42.

An Act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Delaware river and bay, and to authorize the execution thereof.

WHEREAS, by joint resolution of the Legislature of the State of New Jersey, approved February fourteenth, one thousand nine hundred and five, Edward C. Stokes, Governor; Robert H. McCarter, Attorney-General; Franklin Murphy and Chauncey G. Parker were appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of the said two States for action thereon looking to the amicable termination of the suit between said two States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary Preamble.

line between said States and to their respective rights in the Delaware river and bay; and

WHEREAS, by like joint resolution of the General Assembly of the State of Delaware, approved February thirteenth, one thousand nine hundred and five, Preston Lea, Governor; Robert H. Richards, Attorney-General; Herbert H. Ward and George H. Bates were appointed to represent the said State as commissioners to confer with the commissioners of the State of New Jersey for the purpose before recited; and

WHEREAS, the commissioners of the said two States, having duly conferred as directed by said resolutions, have framed and submitted to this Legislature a proposed compact or agreement between the said States; and

WHEREAS, the compact or agreement so framed and submitted is in the words following, that is to say:

COMPACT BETWEEN THE STATE OF NEW JERSEY
AND THE STATE OF DELAWARE RELATING TO THE
BOUNDARY CONTROVERSY BETWEEN SAID STATES.

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

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

WHEREAS, for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction, Edward C. Stokes, Robert H.

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

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

Compact entered into.

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

Serving criminal process issued by New Jersey.

Serving
criminal
process
issued by
Delaware.

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

Common
fishing
rights.

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

Joint com-
mission to
draft laws
relative to
fishing.

ARTICLE IV. Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three commissioners to confer with three commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware river and bay between said two States, which said commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws so framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States, said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall

Report to
legisla-
tures.

remain in force until altered, amended or repealed by concurrent legislation of the said two States. Said commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States, where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

Dividing lines.

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

Pledge.

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

Exclusive jurisdiction.

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

When existing laws to continue.

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

Oyster industry not affected.

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

Riparian jurisdiction.

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

Rights in Delaware river preserved.

Execution of agreement and submission to Congress.

Suit discontinued.

Duplicate agreement.

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

Done in two parts (one of which is retained by the commissioners of Delaware, to be delivered to the Governor of that State, and the other one of which is retained by the commissioners of New Jersey, to be delivered to the Governor of that State) this day of _____, in the year of our Lord one thousand and nine hundred and five.

Therefore,

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

Compact authorized.

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

Governor to transmit copy to the President.

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

3. This act shall take effect immediately.

Approved March 21, 1905.

Restraint
by injunc-
tion.

transported by pipes, conduits, ditches or canals into other states for use therein; upon its being brought to his knowledge that it is the intention of any person or corporation to so carry or transport into any other state for use therein, the waters of any such fresh water pond, lake, brook, creek, river or stream of this state, it shall be his duty, through the attorney-general, to apply to the court of chancery for injunction to restrain the same, and the court of chancery is hereby authorized and empowered to entertain jurisdiction of a suit in equity to preserve the waters aforesaid for the use and benefit of the citizens and inhabitants of this state, and to prevent their being, by pipes, conduits, ditches or canals, carried or transported to other states for use therein; and to that end to issue such restraining order or injunction, both preliminary and final, as may be necessary, and to enforce the same in the same manner it is empowered to enforce other injunctions or orders.

3. This act shall take effect immediately.

Approved May 11, 1905.

CHAPTER 239

An Act appointing three commissioners on the part of the State of New Jersey to confer with three commissioners to be appointed on the part of the State of Delaware, in accordance with the provisions of the compact between the States of New Jersey and Delaware respecting the Delaware river and bay, defining their duties and powers and appropriating money to pay the necessary expenses thereof.

Preamble. WHEREAS, The Legislature of the State of New Jersey has passed an act entitled "An act to ratify and confirm a compact or agreement between the States of New Jersey and Delaware respecting the Dela-

ware river and bay and to authorize the execution thereof," which act has received the approval of the Governor of the State of New Jersey, and the Legislature of the State of Delaware has passed an act of the same title and of the same purport, which act has received the approval of the Governor of the State of Delaware; and

WHEREAS, Said compact or agreement between said two States has been duly signed and executed in duplicate originals by Edward C. Stokes, Robert H. McCarter, Franklin Murphy and Chauncey G. Parker, commissioners on the part of the State of New Jersey, and by Preston Lea, Robert H. Richards, Herbert H. Ward and George H. Bates, commissioners on the part of the State of Delaware, one of which duplicate originals has been retained by said commissioners of Delaware, to be delivered to the Governor of that State, and the other of which duplicate originals has been retained by the commissioners of New Jersey, to be delivered to the Governor of that State; and

WHEREAS, It is provided and agreed by said compact or agreement between said States, among other things, as follows:

ARTICLE IV. Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three commissioners to confer with three commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware river and bay between said two States, which said commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws so framed and recommended by said joint commission. Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States, said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or re-

Article
of compact
as to com-
missioners,
laws, and
boundary
line.

pealed by concurrent legislation of the said two States. Said commissioners shall also ascertain the dividing line between said river and bay, and upon each of the shores of said two States, where said dividing line extended shall intersect the same, shall, at the joint expense of said States, erect a suitable monument to mark the said dividing line. Said dividing line between said monuments shall be the division line between the said river and bay for the interpretation of and for all purposes of this compact, and of the concurrent legislation provided for therein.

Faith of
state
pledged.

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

Jurisdiction
of each
state.

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

Certain
laws to re-
main in
force.

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

Now, therefore, in pursuance of the terms of said compact:

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

Commis-
sioners.

I. William J. Bradley, James Strimple and John Boyd Avis, be and they are hereby appointed commissioners on the part of the State of New Jersey to confer with like commissioners appointed or to be appointed by the Legislature of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said compact or agreement hereinabove mentioned, to be by them done and performed. That in and upon said commissioners are hereby vested and conferred all powers and authorities necessary and convenient for the full and

Duties.

Powers.

complete performance of all the duties, acts, matters and things by this act imposed upon them. Said New Jersey commissioners shall fill any vacancies occurring in the membership of said New Jersey commission by the selection of some other suitable citizen or citizens of the State of New Jersey.

Vacancies.

2. Said commissioners shall, on or before the first day of June, anno domini nineteen hundred and five, organize by the election from their number of a president and a secretary. The president so elected shall be the presiding officer at all separate meetings of said commissioners, and the general executive head of said commission. The secretary so elected shall conduct the correspondence of said commission under its direction, and keep a record of all the meetings, acts and proceedings of said New Jersey commissioners and of all meetings, acts and proceedings of the joint commissioners in the performance of the duties, acts, matters and things stipulated for in the said compact. Said New Jersey commissioners shall have power to cause the production of books, papers and other things, and to summon before themselves, or before the said joint commission, witnesses, experts and otherwise, the testimony of which, in the opinion of said commissioners, shall be material to enable them to justly and fully perform the duties on them hereby imposed. All witnesses may be summoned upon warrants therefor signed by the president of said New Jersey commission, and shall be paid, for attendance and mileage, the fees usually paid in the State of New Jersey for the attendance of witnesses at the trial of civil causes in the circuit courts of said State. The attendance of witnesses before said New Jersey commission, or before said joint commission, may be compelled by attachments issued by said New Jersey commission to the sheriff of any county in the State of New Jersey. Said attachments shall be signed by the president of said New Jersey commission and countersigned by the secretary thereof, and shall be executed and returned by the sheriff to whom the same shall be directed. Each of said commissioners shall have power and authority to administer oaths or affirma-

Organiza-
tion.

President.

Secretary.

Right to
summon
witnesses,
etc.

Attendance
and mile-
age.

Attachment
to secure
witness.

tions to witnesses appearing before them or before said joint commission.

Appropriation.

3. The sum of two thousand dollars is hereby appropriated out of the moneys in the treasury of this State, not otherwise appropriated, to pay the necessary expenses attendant upon the execution of the duties of said commissioners. Said moneys shall be drawn from the State treasury from time to time as occasion shall require, upon the warrant of the comptroller drawn upon the State treasurer upon the certificate, in writing, to said comptroller, signed by the president and countersigned by the secretary of said New Jersey commission, giving the details of such expenditures made, or to be made, as aforesaid.

4. This act shall take effect immediately.
Approved May 11, 1905.

CHAPTER 240.

A Supplement to an act entitled "An act to establish and regulate the State Home for Girls (Revision of 1900)," approved March twenty-third, one thousand nine hundred.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

Age at commitment.

1. Hereafter it shall be lawful for any magistrate, judge, justice or court to commit to the State home established and maintained under the provisions of the act to which this act is a supplement, girls under the age of nineteen years, in the same manner, and with like authority and jurisdiction and according to the same procedure heretofore provided by said act in the case of girls under the age of sixteen years; and any girl so committed shall be received in said home and there maintained and finally discharged or paroled as now provided by said act for the reception, maintenance and discharge of the inmates heretofore committed to said institution.

Discharge.

2. This act shall take effect immediately.
Approved May 11, 1905.

Deptford and annexed to and made a part of the Third ward of the city of Woodbury, in the county of Gloucester.

2. This act shall take effect immediately.

Approved May 7, 1907.

CHAPTER 131.

An Act providing uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the State of Delaware and the State of New Jersey.

Preamble.

WHEREAS, By virtue of article four of the compact or agreement entitled "A compact between the State of New Jersey and the State of Delaware, relating to the boundary controversy between said States," which was ratified and confirmed by an act of the Legislature of the State of New Jersey, approved March twenty-first, one thousand nine hundred and five, and by an act of the General Assembly of the State of Delaware, approved March twentieth, one thousand nine hundred and five, the State of New Jersey, by an act of the Legislature thereof, approved May eleventh, one thousand nine hundred and five, appointed William J. Bradley, James Strimple and John Boyd Avis commissioners on the part of the State of New Jersey to confer with like commissioners appointed, or to be appointed, by the General Assembly of the State of Delaware, to do and perform all the duties, acts, matters and things required and stipulated in the said compact or agreement; and

WHEREAS, By a similar act of the General Assembly of the State of Delaware, approved March twenty-third, one thousand nine hundred and five, Alexander B. Cooper, William S. Hilles and Walter H. Hayes were appointed like commissioners on the part of

the State of Delaware, to confer with the said commissioners on the part of the State of New Jersey, and to do and perform the duties aforesaid; and
 WHEREAS, Each of the said commissions have been duly organized as provided and required by law; and
 WHEREAS, The said commissioners of the said respective States, in joint meeting held for that purpose, have agreed upon uniform laws to regulate the catching and taking of fish in the Delaware river and bay between the said States, and have also ascertained the dividing line between the said Delaware river and Delaware bay, and have, upon each of the shores of the said two States, where said dividing line extended intersects the same, provided for the erection of a suitable monument to mark said dividing line, in pursuance of the duties imposed upon them by law; therefore,

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The provisions of this act shall affect and apply only to the catching and taking of fish in the waters of the Delaware river and bay lying between the States of Delaware and New Jersey.

Application of act.

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

Common right to fish.

3. Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either of said States of, in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as is expressly set forth in said compact between the said States; nor shall anything herein contained affect in any way the planting, catching or taking of oysters, clams or other shell-fish, or interfere with the oyster industry as now or hereafter carried on under the laws of either of said States.

Jurisdiction, riparian rights, and oyster industry not affected.

4. Hereafter it shall be lawful for any person to catch and take from the waters aforesaid fish of any

Fishing lawful.

Proviso.

character (except shell-fish) with any net, hook and line, or other appliances; *provided*, the meshes of any net shall not be less than two and one-half inches long, stretched measure, and except as hereinafter provided; *provided further*, that nothing in this section shall apply to nets used for catching eels.

Proviso.

Shad; size of nets.

Unlawful taking of shad.

5. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, shad from the waters aforesaid with a seine or net of any character the meshes of which shall be less than five and one-quarter inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any shad from the said waters, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the fifth day of June in each and every year and the first day of March thence next ensuing. It shall also be unlawful for any person at any time to set, place or use a net of any kind, except a drifting net, for the purpose of catching and taking shad within one-half mile of the mouth of any river, creek or stream emptying into the said waters.

Carp; size of nets.

Unlawful taking of carp.

6. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, carp from the waters aforesaid with a seine or net of any character the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the said waters any carp, in any manner whatsoever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid any carp weighing less than one pound; and should any such fish be caught it shall be immediately returned to the waters, uninjured. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any carp, in any manner whatever, between the first day of May and the tenth day of August of each and every year.

7. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, rockfish from the waters aforesaid with a seine or net of any kind, the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any rockfish in any manner whatsoever between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, in any manner whatever, any rockfish weighing more than twenty pounds or measuring less than ten inches in length; and should any such fish, weighing over twenty pounds, or measuring less than ten inches in length, be caught, it shall be immediately returned to the waters, uninjured.

Rockfish; size of nets.

Unlawful taking of rockfish.

8. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any sturgeon or mamoose with a net of any character, the meshes of which shall be less than thirteen inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch or take, any sturgeon or mamoose under six feet in length, and if any such sturgeon or mamoose under six feet in length should be caught, it shall be immediately returned to the waters, uninjured. It shall also be unlawful for any person to catch and take, or attempt to catch and take, sturgeon or mamoose from the waters aforesaid, in any manner whatever, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing, and also between the first day of July in each and every year and the first day of March thence next ensuing.

Sturgeon; size of net.

Unlawful taking of sturgeon.

9. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, from the waters aforesaid, any trout or weakfish with a net of any character, the meshes of which shall be less than two and one-half inches, stretched measure. It shall also be unlawful for any person to catch and take, or to attempt to catch and take, any trout or weakfish from

Trout or weak fish; size of net.

Unlawful taking.

the waters aforesaid, with a net of any character, between the hours of twelve o'clock noon of every Saturday and twelve o'clock midnight of the Sunday next ensuing.

Set nets
unlawful.

10. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind with a net of any character which is anchored, staked or fastened down in any way across the said waters or any part thereof, or at right angles with the shore line thereof, or across the mouth of any river, creek or stream emptying into the waters aforesaid.

Damaging
nets un-
lawful.

11. Hereafter it shall be unlawful for any persons by boat, anchor, dredge, or otherwise, in the waters aforesaid, to willfully and without reasonable cause, interfere with, break, damage or destroy any drift net or gill seine being lawfully used for the taking of any fish as herein provided.

Poisonous or
destructive
substances
unlawful.

12. Hereafter it shall be unlawful for any person willfully to put or place in the waters aforesaid any explosive substance whatever, or any drug or poisoned bait for the purpose of catching and taking, killing or injuring the fish, or to allow any dye stuff, coal or gas tar, coal oil, sawdust, tan bark, coculus indicus (otherwise known as fish-berries), lime, refuse from gas-houses, oil tanks or vessels, or any other deleterious, destructive or poisonous substance to be turned into or allowed to run into any of the waters aforesaid, in quantities sufficient to destroy or impair fish life or disturb the habits of fish inhabiting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a fine of not more than five thousand dollars, or shall be imprisoned not more than one year, or both, in the discretion of the court.

Penalty.

Fishing on
Sunday
unlawful.

13. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind or description from the waters aforesaid by a net of any character on the Sabbath day, commonly called Sunday.

14. Hereafter it shall be unlawful for any person to catch and take, or to attempt to catch and take, fish of any kind from the waters aforesaid with a set line, or to have, use, erect or maintain in the waters aforesaid, for the purpose of catching and taking fish of any kind (except catfish, eels and suckers), any fish basket, eel weir, fyke net, pound net, shore net, dip net, cast net, wing-wall, wingdams, or any other device, excepting in the manner and with the means in this act provided; *provided*, that nothing contained in this section shall prevent the catching and taking of carp with shore nets, dip nets or cast nets.

Set lines,
fish baskets,
etc., unlawful.

Proviso.

15. Hereafter it shall be unlawful for any person to sell, expose for sale or have in possession, any fish caught and taken in violation of the provisions of this act.

Illegal sale
of fish.

16. Any person or persons violating any of the provisions of this act in all cases where no other specific penalty is herein provided, shall forfeit and pay a fine of not less than twenty dollars nor more than two hundred dollars and costs of prosecution, and in default of payment thereof shall be committed to the county jail or work-house for a period of not less than ten days nor more than ninety days, or until such fine and costs are paid.

Penalty for
violations.

17. Any and every boat, vessel, net, trap, pot, pound, set line, fyke, weir or other property used by any person for the unlawful taking of, or attempting to take, any fish in the waters aforesaid, in violation of the provisions of this act, shall be forfeited to the State of New Jersey, together with the tackle, apparel and furniture of said boat or vessel and all other apparatus and implements so unlawfully used; and the same shall be seized and detained by the sheriff, officer, any constable or any fish and game warden of the State, or authorized deputy or deputies, until sold or discharged, as hereinafter provided. Upon the conviction of any such person as aforesaid, the court shall, in addition to the sentence pronounced against such person, enter an order and judgment of forfeiture against said property so unlawfully used and shall order the sheriff of the

Boats, nets,
etc., seized
for illegal use
forfeited to
State.

Sale of for-
feited prop-
erty.

county, or any fish and game warden of the State, to at once seize the same wheresoever it may be found, who shall thereupon advertise and sell the same at public auction, for cash, to the highest and best bidder for the same, after giving at least ten days' notice by advertisements, posted in at least ten public places of the county, of the time and place of said sale; the proceeds of said sale, after deducting all costs, charges and expenses, shall be paid by the said sheriff or fish and game warden to the Board of Fish and Game Commissioners for the use of said commission according to law. In the event that the said person, so charged as aforesaid, shall be acquitted, the said property shall be forthwith returned to the person in whose custody it was at the time it was so seized and taken as aforesaid.

Issue of warrants.

18. Any justice of the peace, or other officer legally qualified by law, shall, upon affidavit made that any person, boat, vessel or other appliance or apparatus hereinbefore enumerated, is, are or have been violating, or used in violation of this act, issue his warrant to the sheriff or any constable of the county or any fish and game warden of the State, authorized to make such arrest, commanding him to arrest such person and to seize and detain such property for hearing, trial or other proceeding under this act. The said sheriff, constable, officer or fish and game warden, may, if necessary, summon to his aid the posse comitatus, and may require the assistance and use of any other boat, vessel or other means, by paying, or tendering, just compensation. It shall not be necessary that the affidavit shall state the name of the boat or vessel, or describe with particularity the property to be seized.

Arrest and seizure.

Officer may summon aid.

Purse nets forbidden.

19. It shall be unlawful for any person to catch and take, or to attempt to catch and take, from the said Delaware river or Delaware bay, with purse or shirred nets operated by or from steam or other vessels, fish of any kind whatsoever; *provided, however*, that this section shall not apply to the catching and taking of menhaden, sharks, porpoises and herring-hogs, by the crews of vessels licensed as provided for in this section. It shall be the duty of the Fish and Game Commission of

Proviso.

Menhaden boats licensed.

the State, upon the payment to it annually of the sum of one hundred dollars (\$100) for each and every vessel or boat, to issue a license to such vessel or boat to catch and take menhaden, sharks, porpoises and herring-hogs in the waters of the Delaware bay as far north as a straight line drawn from the center of the mouth of Mahon's river to the nearest point opposite on the New Jersey shore, from the first day of June until the thirty-first day of August, inclusive, of each year, and at no other time or times. The said money so received for said license shall be paid over to the Fish and Game Commission of the State for the use of said commission as provided by law.

20. It shall be unlawful for any person to have in his possession or to bring into this State any fish generally known as edible or food fish that has been caught and taken from the waters of the Delaware bay or river within the bounds aforesaid, for the purpose of extracting oil therefrom or of converting said fish into fertilizer; and it shall also be unlawful for any person to extract oil, or to convert, or in any manner assist in extracting oil from or in converting such fish into fertilizer.

Edible fish
not to be used
for oil or
fertilizer.

21. Any fish commissioner, fish and game warden, sheriff, constable, or any officer may, upon view, arrest any person violating any of the provisions of this act without warrant or writ issued for such purpose.

Summary
arrest.

22. Each of the said States of Delaware and New Jersey shall also have concurrent jurisdiction over all offenses and violations of this act committed or attempted to be committed by any person who is not an inhabitant of either of said States.

States have
concurrent
jurisdiction.

23. The Governor of the State of Delaware shall, when and as requested by the Governor of the State of New Jersey, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of New Jersey, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey for any violation of this act; *provided, however,* that if the person so arrested

Fish wardens
named by
Delaware.

Proviso.

May revoke
commission.

shall be an inhabitant of the State of Delaware, such person shall be forthwith taken to the State of Delaware for trial and punishment. The Governor of the State of Delaware at any time shall, when and as requested by the Governor of this State, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of New Jersey.

Fish wardens
named by
New Jersey.

The Governor of the State of New Jersey shall, when and as requested by the Governor of the State of Delaware, issue a commission or commissions to such person or persons as may be named to him by the Governor of the State of Delaware, which shall authorize the person or persons to whom the same are directed to arrest the inhabitants of either the State of Delaware or the State of New Jersey, for any violation of this act; *provided, however*, that if the person so arrested shall be an inhabitant of the State of New Jersey, such person shall be forthwith taken to the State of New Jersey for trial and punishment. The Governor of this State may, at any time, and shall, when and as requested by the Governor of the State of Delaware, revoke the said commissions, or any of them. The compensation of the person or persons to whom such commission or commissions may be directed shall be paid wholly by the State of Delaware.

Proviso.

May revoke
commission.

Power of
arrest.

Nothing contained in this section shall be so construed as to prevent the arrest of any inhabitant of the State of New Jersey by any other officer or person having authority under the laws of the said state of New Jersey to make arrests for the violation of the provisions of this act.

Enforcement
of statutes.

24. The provisions of this act where the offense is designated as a misdemeanor shall be enforced in accordance with the provisions of the statutes of the State relating to misdemeanors and in all other cases shall be enforced in accordance with the provisions of an act entitled "An act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violations

thereof," approved March twenty-ninth, one thousand eight hundred and ninety-seven, and the supplements thereto and acts amendatory thereof.

25. This act shall take effect immediately, but shall not become operative until the Legislature of the State of Delaware shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the commission, as recited in the preamble of this act. The provisions in this act contained regulating the size of the meshes of fishing nets shall not become operative until October first, one thousand nine hundred and eight.

When act operative.

26. All laws, or parts of laws, inconsistent with the provisions of this act, be and the same are hereby repealed.

Repealer.

Approved May 7, 1907.

CHAPTER 132.

An Act concerning the sale of goods and to make uniform the law relating thereto.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

PART I.

FORMATION OF THE CONTRACT.

1. (1) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

Contract.

(2) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

Sale of goods.

(3) A contract to sell or a sale may be absolute or conditional.

Absolute or conditional.

they are issued pursuant to the authority of this act and of the resolution authorizing the issuance thereof. When any bonds are issued as set forth herein, it shall be the duty of said board of chosen freeholders to establish a sinking fund and to place an amount annually in the tax levy of such county and deposit the same in said sinking fund, which shall be sufficient, with its accumulations to pay off and discharge said bonds at maturity, and it shall also be the duty of said board of chosen freeholders to place in the tax levy each year a sum sufficient to pay the interest on said bonds; *provided, however, that action by said board of chosen freeholders under the provisions of this act, for the making of such extraordinary repairs or reconstruction and for the issuing of such bonds shall be by resolution adopted by a vote of at least two-thirds of all the members of such board of chosen freeholders.*

Sinking fund.

Proviso.

3. This act shall take effect immediately.
Approved April 7, 1914.

CHAPTER 123.

An Act to create the New Jersey Harbor Commission and to define its powers and duties.

205-C-123
Cf.-15-432

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey.

1. The Governor, with the advice and consent of the Senate, shall appoint five persons, not more than three of whom shall be of the same political party, residents of this State for at least five years previous to appointment, who shall constitute the New Jersey Harbor Commission. The terms of office of the persons first appointed by the Governor shall be so arranged and designated at the time

Harbor commission.

Terms.

of their appointment that the term of one member shall expire in five years, one in four years, one in three years, one in two years, and one in one year from the first day of April, nineteen hundred and fourteen. Annually thereafter the Governor, with the advice and consent of the Senate, shall appoint one member to serve for a term of five years, as the term of any member previously appointed shall expire. Any vacancy occurring shall be filled for the unexpired term by the Governor, with the advice and consent of the Senate, and in all cases a member shall continue to serve until his successor is appointed and qualified. The members of this commission shall serve without compensation, except that they shall be paid the necessary expenses incurred in the performance of their duties.

2. The commission shall be provided with suitable office accommodations by the State House Commission, in the State House, or buildings adjacent thereto owned by the State, or may, with the permission of the State House Commission, rent suitable offices elsewhere for local purposes and furnish the same with the equipment necessary to conduct the business of the commission. The commission may employ a secretary and such engineers, clerks and assistants as it shall deem necessary, and fix their compensation; *provided, however*, that this power shall not bind the State of New Jersey to the payment of any sum or sums unless the same shall be included in any annual or supplemental appropriation bill. The secretary, engineers, clerks and assistants shall be deemed to be within the Civil Service of the State, subject to the provisions of an act entitled "An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a Civil Service Commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight. The commission shall adopt a seal, and shall also adopt such rules, regula-

Annual appointment.

Vacancies.

Expenses met.

Offices.

Assistants.

Proviso.

Tenure of employees.

Seal; rules, etc.

CHAPTER 123, LAWS, SESSION OF 1914.

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tions and by-laws for the transaction of its business and the performance of its duties as may be necessary and advisable and not inconsistent with this statute, with power to alter and amend the same from time to time as it shall become necessary or advisable so to do. The commission shall keep a record of all its proceedings, and such records, together with all maps, plans and specifications on file in its office, shall be open at all reasonable times to public inspection as public records.

Records.

3. It shall be the duty of the commission to investigate and report annually to the Legislature the condition of the water front or harbor facilities, and any other matter incident to the movement of commerce upon all navigable rivers and waters in this State, or bounding thereon, and to recommend to the Legislature, and to the various municipalities of this State interested therein, such measures as may, in the judgment of the commission, be necessary or advisable for the preservation of proper navigation or its improvement, or the improvement of the movement of commerce upon such waters, and, concurrently with the Riparian Commission of this State, or any board or body which may succeed to the powers of said commission, the commission created by this act shall have power, by appropriate action in any court, to prevent encroachment or trespass upon the water front of any of the navigable waters of this State, or bounding thereon, or upon the riparian lands of this State, and to compel the removal of any such encroachment or trespass, and to restrain, prevent and remove any construction, erection or accretion injurious to the flow of any such waters which may be detrimental to the proper navigation thereof, and the maintenance and improvement of commerce thereon.

Duties and report.

Prevent encroachment on water front.

4. All plans for the development of any water front upon any navigable water or stream of this State, or bounding thereon, which is contemplated by any person, corporation or municipality, in the

Proposed developments submitted to commission.

nature of individual improvement or development, or as a part of a general plan which involves the construction, change, alteration or modification of a dock, wharf, pier, bulkhead, bridge, pipe line, cable, or any other similar or dissimilar water front development, to be undertaken subsequent to the passage of this act, shall first be submitted to the said commission, and no such development or improvement enumerated within the provisions of this section, or included within a proper interpretation thereof, shall be commenced or executed without the approval of this commission first had and received, or as hereinafter provided. Upon the presentation of plans for any such improvement, the commission shall forthwith consider the same, and shall, if necessary or desirable, hold public meetings for the consideration thereof, under such rules and regulations as the commission may establish. Before any plans are approved or disapproved, the commission shall have power, except as hereinafter provided, to direct such changes or alterations in the plans submitted as it may deem necessary or advisable, as a condition precedent to approval.

Approval.

Consideration of plans.

Local boards to submit plans.

Objection of commission to stay plans.

Where such water front is under the control of any local board, commission or other governing body, created by an act of the Legislature, now or hereafter, having power to improve or develop the water front or exercising such authority that a permit or license must be granted by it before any improvement or development may be commenced, plans proposed by it or submitted to it shall be filed with the commission created under this act. The said commission created under this act, may, with ten days after the receipt by it of plans as above provided, file notice of objections to the carrying out of such improvement or development, or to the granting of such permit or license by the local board, commission or other governing body, and the filing of such notice shall act as a stay in the carrying out of such plans or in the granting of such permit or license until a public hearing shall have

been held by the local board, commission or other governing body, sitting jointly with the commission created under this act. At such public hearing the commission created under this act may state its objections to the plans and recommend such changes, modifications or alterations as it deems necessary. The local board, commission or other governing body together with the commission created under this act shall then either approve or disapprove the plans, or grant or refuse to grant the permit or license as in their judgment seems necessary or desirable. Any development or improvement enumerated within the provisions of this section, or included within a proper interpretation thereof, which shall have been commenced or executed without first obtaining approval as provided in this section, shall be deemed to be a purpresture and a public nuisance and shall be abated in the name of the State of New Jersey in such action as shall be appropriate for that purpose; *provided, however,* this section shall not apply to, or affect, any development for docks, shipping and transportation facilities heretofore inaugurated by a municipality, which is under construction in whole or in part, if such municipality has, prior to the passage of this act, filed with the Secretary of State a map showing the lands proposed to be taken for such municipal development.

5. Any county, town, township, borough, city, or other political subdivision of this State, may request the said commission to prepare and propose for such municipality a proper plan for the development and improvement of its water front upon any navigable stream, river or waters of this State, or bounding thereon, and it shall be the duty of the said commission to prepare and submit such plan or plans for the improvement and development of the water front of such municipality, the navigation of the waters incident thereto, and the regulation and improvement of the traffic of commerce incident thereto. The said commission for the prepara-

Hearing.

Action on plans.

Improvements not authorized to be abated.

Proviso.

Municipalities may request aid in developing water fronts.

Charges.

tion and submission of such plans may make such charge against the municipality requesting the same as is equal to the actual cost of the preparation of such plans of improvement, and the municipality requesting the same is hereby authorized to pay the same from any funds in the treasury of the said municipality.

Commission to
supersede
former com-
mission.

6. When the commission shall be constituted in accordance with the provisions of this act, the commissioners appointed pursuant to the provisions of Joint Resolution No. 3, approved March twenty-ninth, one thousand nine hundred and eleven, shall deliver to this commission all maps, plans and other data and information in its possession, and the terms of office of the members of the commission created pursuant to said Joint Resolution No. 3, approved March twenty-ninth, one thousand nine hundred and eleven, shall thereupon terminate and cease, and the commission appointed under the provisions of this act shall also continue such work as the former commission was authorized to perform. The commission appointed under the provisions of this act shall carry out such contracts as have been made by the said commission appointed pursuant to the provisions of Joint Resolution No. 3, approved March twenty-ninth, one thousand nine hundred and eleven, and any unexpended moneys in the State Treasury appropriated for the use of the commission appointed pursuant to the provisions of Joint Resolution No. 3, approved March twenty-ninth, one thousand nine hundred and eleven, shall be placed to the credit of and for the use of the commission appointed under the provisions of this act.

Contracts
continued.

Appropriation.

7. The sum of twenty-five thousand dollars is hereby appropriated for the uses and purposes of the said commission, pursuant to the provisions of this act, when included in whole or in part in any annual or supplemental appropriation bill.

Riparian
board not
affected.

8. Nothing herein contained shall be construed to deprive the Board of Riparian Commissioners or

their lawful successors of the jurisdiction, power and authority conferred upon it or them by the laws of this State, but the powers conferred by this statute upon the commission hereby constituted shall be co-ordinate therewith and a addition thereto.

9. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately; *provided, however,* that if any section or parts thereof of this act shall be questioned in any court, and shall be held to be unconstitutional and void, the sections or parts thereof so declared to be invalid shall be excinded and the balance of the act shall stand as though said sections or parts thereof had never been included within the provisions of this act.

Repealer.

Proviso.

Approved April 8, 1914.

CHAPTER 124.

An Act authorizing the exchange of certain lands belonging to the State of New Jersey now used for the purpose of the State Home for Boys at Jamesburg, New Jersey, for lands of Frederick Roese, upon terms and conditions and authorizing the conveyance of the State lands as hereinafter described, to be made for that purpose.

WHEREAS, The board of trustees of the New Jersey State Home for Boys at Jamesburg, New Jersey, is possessed of certain lands situate in the township of Monroe, Middlesex county, New Jersey, adjacent to lands of Frederick Roese, containing about one acre and ninety-two hundredths of an acre, which the said New Jersey State Home for Boys had acquired for the purpose of a water supply reservoir;

Preamble.

(Form of Permit)

BOARD OF COMMERCE AND NAVIGATION
STATE HOUSE, TRENTON, N. J.

As, 1925

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BOARD OF COMMERCE AND NAVIGATION

NEW HOUSE

MR. [Name] Secretary of the Board of Commerce and Navigation, New York, New York. I have the honor to acknowledge the receipt of your letter of the 15th inst. regarding the application for a permit to [illegible] and to advise you that the same has been referred to the Board of Commerce and Navigation for their consideration. The Board will advise you of the result of their action in due season. Very respectfully,
[Signature]
Secretary

[Illegible text block containing the main body of the letter or report, including references to regulations and board actions.]

Constitution-
ality of act.

tioned in any court, and shall be held to be unconstitu-
tional and void, the sections or parts thereof so declared
to be invalid shall be excised, and the balance of the
act shall stand as though said sections or parts thereof
had never been included within the provisions of this
act.

Approved April 8, 1915.

CHAPTER 242.

An Act creating a department to be known as the Board
of Commerce and Navigation, and vesting therein all
the powers and duties now devolved, by law, upon the
Board of Riparian Commissioners, the Department
of Inland Waterways, the Inspectors of Power Ves-
sels, and the New Jersey Harbor Commission.

BE IT ENACTED by the Senate and General Assembly
of the State of New Jersey:

Name.

1. A department of commerce and navigation is
hereby established, and the same shall be governed by
a board to be known as the "Board of Commerce and
Navigation."

Membership.

2. The Board of Commerce and Navigation shall con-
sist of eight members, not more than four of whom
shall be members of the same political party, and all of
whom shall be residents of the State. No riparian leases
or grants shall be allowed by the board except when ap-
proved and signed by the Governor.

Riparian
grants ap-
proved by
Governor.

Appointment
and terms.

3. The members of the Board of Commerce and Navi-
gation shall be appointed by the Governor, by and with
the advice and consent of the Senate, for the following
terms, to commence on the first day of July, one thou-
sand nine hundred and fifteen; two for one year, two
for two years, two for three years, and two for four

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years. Annually thereafter, two members shall be appointed for a term of four years. Vacancies shall be filled for the unexpired terms. The board shall be provided with suitable offices at Trenton at which all original records shall be kept. The board may however, for local purposes establish sub-offices in other parts of the State. The board shall meet every month at Trenton and at such times as its rules may prescribe and at such other times and places within the State as in its judgment may be necessary. The board shall elect one of its members President who shall hold office for one year and until his successor shall be elected.

Vacancies.

Offices.

Meetings.

President.

The members of the board shall receive no compensation for their services, but the State Treasurer shall, upon the warrant of the State Comptroller, pay their necessary expenses.

No salary; expenses met.

4. The board shall select a person who shall be known as the "Chief Engineer of Commerce and Navigation," who shall be a resident of this State and a qualified engineer, who shall also be one of the division chiefs. In case the board cannot agree because of a tie vote therein, upon the selection of a chief engineer, the Governor shall be requested to sit with said board for the purpose of casting the deciding vote. Said Chief Engineer of Commerce and Navigation shall receive a salary of not more than five thousand dollars per annum, to be paid out of the treasury of this State as the salaries of other employees are now, or may hereafter be, paid. He shall devote his entire time to the duties of his office, and shall serve for a term of four years, and until his successor has been appointed and qualified.

Chief engineer.

In case of tie.

Salary.

Service and term.

5. The Board of Commerce and Navigation shall succeed to and exercise all the powers and perform all the duties now exercised and performed by or conferred and charged upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, appointed under chapter ninety-one of the laws of one thousand nine hundred and six, and the acts amendatory thereof and supplementary thereto, and the New Jersey Harbor Commission (with which the first-named commission the New Jersey Ship Canal Com-

Rights, powers, duties.

9. The Board of Commerce and Navigation, by its presiding officer, each of its committees by their chairman, and the Chief Engineer of Commerce and Navigation, shall have authority to administer oaths, and to examine under oath in any part of the State, witnesses in any matter relating to the powers and duties of the departments, and to the commerce and navigation of the State. For this purpose, it may issue subpoenas, signed by its president and secretary, requiring the attendance of witnesses and the production of books and papers in any part of the State before it, or before any of its committees, or before the Chief Engineer of Commerce and Navigation, and any person who, being served with a subpoena issued pursuant to the provisions of this act, shall fail to attend or who shall fail to give testimony, unless such testimony incriminate him or subject him to a fine or punishment, shall be liable to a penalty of five hundred dollars for each and every offense, to be recovered in the name of the State of New Jersey; said penalty, when recovered, to be paid into the treasury of the State of New Jersey; and it shall be the duty of the Attorney-General to prosecute any and all actions for the recovery of penalties, when requested so to do, and when, in his judgment, the facts and the law warrant such prosecution. Any person who, having been sworn by the presiding officer of the board, or the chairman of any of its committees, or by the Chief Engineer of Commerce and Navigation, and who wilfully gives false testimony, shall be guilty of perjury.

10. The Chief Engineer of Commerce and Navigation may be removed by the Governor, after a hearing; *provided*, that charges against him have been submitted, in writing, signed by a majority of the members of the board; *and provided, further*, that the Governor finds such charges to be true in fact, and their nature such that, in his opinion, the best interests of the State demand the removal of said Chief Engineer.

11. All of the employees of the Department of Commerce and Navigation shall be appointed and shall hold their positions subject to the provisions of an act entitled "An act regulating the employment, tenure and

Oaths and witnesses.

Issue subpoenas.

Penalty for not observing subpoena.

Recovery of penalty.

Removal of chief engineer.

Proviso.

Proviso.

Appointments and tenure.

discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight.

Codification
of laws of each
division.

12. Immediately upon the organization and establishment of the Board of Commerce and Navigation, it shall become the duty of the heads or chiefs of the several subdepartments to codify the various laws which have been passed, from time to time, relating to or concerning, in any way whatsoever their respective departments, which codification shall set forth, in a clear and comprehensive manner, the origin of such department, meaning, thereby, its creative act, after which shall follow, in their proper order, all existing acts amendatory thereof and supplementary thereto, and all acts relating to its consolidation (if any there have been) with any other board or boards, commission or commissions, department or departments. Said work of codification shall continue, from year to year, after the principle herein set forth, with the idea of preserving, in concrete form, the history and development, or evolution, so to speak, of each special department, and contributing materially to a better and more comprehensive understanding of all laws relating thereto, and of the powers and duties devolved upon said departments by said acts.

Object of
codification.

Explanation
of terms.

13. Whenever, in any act, the words, the "Board of Riparian Commissioners," the "Department of Inland Waterways," the "Inspectors of Power Vessels," the "New Jersey Harbor Commission," and the "New Jersey Ship Canal Commission," are used, the same shall be taken to be and to mean the Board of Commerce and Navigation.

Retention
of present
employees.

14. The officers and employees now in the employ of the old boards or commissions hereby consolidated shall be retained in their present offices or positions and shall continue as employees of the department of Commerce and Navigation, unless removed in accordance with the provisions of an act entitled "An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties

and municipalities thereof, and providing for a civil service commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight. The Chief Engineer of Commerce and Navigation, however may, with the approval of the board, abolish any office or position, which in his judgment, it may be unnecessary to retain.

May abolish positions.

15. All acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed, and this act shall take effect on the first day of July, one thousand nine hundred and fifteen; *provided, however,* that if any section, or parts thereof, of this act shall be questioned in any court, and shall be held to be unconstitutional and void, the sections or parts thereof so declared to be invalid shall be excised and the balance of the act shall stand as though said sections or parts thereof had never been included within the provisions of this act.

Repealer.

Act in effect.

Proviso; constitutionality of act.

Approved April 8, 1915.



borough shall accept as the consideration for said conveyance a deed for lands owned by said railroad company, said lands so accepted in exchange shall be used by the said borough and held and maintained for park purposes.

2. This act shall take effect immediately.

Approved March 27, 1917.

CHAPTER 189.

An Act authorizing the Governor to cede to the United States certain lands under water in the Delaware river, for the purpose of aiding in the improvement of said river.

WHEREAS, The Federal Government is engaged in dredging and otherwise improving the bed of the Delaware river under authority of Congress, and in the course of such improvement it was found necessary for the government to construct a bulkhead around portions of what are known as "Dan Baker" and "Stony Point" shoals, so as to form a basin within which the material dredged from the channel was deposited, thereby forming an island; and

WHEREAS, under authority of an act of the Legislature of the State of New Jersey, approved March twenty-ninth, one thousand nine hundred and seven (Chapter 20, Laws 1907, State of New Jersey), the Governor of the State of New Jersey, by indenture dated the twenty-eighth day of March, nineteen hundred and seven, ceded jurisdiction over and conveyed to the United States all right, title and interest of the State of New Jersey in and to the aforesaid island, except that the State of New Jersey retained its sovereignty and jurisdiction over the land conveyed so far as that all civil and criminal process issued under

authority of any law of the State of New Jersey may be executed in any part of the premises conveyed; and

Preamble. WHEREAS, A stone dike has been constructed by the United States from the southerly end of the aforesaid island to the New Jersey shore of the Delaware river at Stony Point, thereby forming a basin between the aforesaid island and the New Jersey shore of the Delaware river within which it is the intention of the United States to deposit the material dredged from the channel; and

Preamble. WHEREAS, When filled this area will form land above high water connecting the aforesaid island with the New Jersey shore of the Delaware river, which it is thought important to have in the possession and under the control of the United States; and

Preamble. WHEREAS, The government of the United States desires to acquire title to that portion of the river bottom of the Delaware river on which the aforesaid land is to be constructed; therefore,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

State to cede jurisdiction to certain submerged land.

I. The Governor of this State be and he hereby is authorized and directed to cede jurisdiction over and convey to the United States all the right, title and interest of the State in and to certain submerged land in the Delaware river lying between the aforesaid island and the high water line on the New Jersey shore of the Delaware river, the location whereof with reference to United States Engineer Department triangulation of the said river is more particularly described as follows:

Description of land ceded.

Beginning at a point A, distant four thousand three hundred and fifteen (4,315) feet from triangulation station Stony Point on a line south sixty-five (65) degrees forty-one (41) minutes west therefrom, and distant ten thousand eight hundred fifteen and nine-tenths (10,815.9) feet from triangulation station Hope on a line north sixty-two (62) degrees fifty (50) minutes and twenty-six (26) seconds west therefrom, this point A being also the point of beginning of the boundary of a parcel of land formerly ceded to the United

States by the States of Delaware and New Jersey by acts approved April fourth, one thousand nine hundred and seven, and March twenty-ninth, one thousand nine hundred and seven, respectively; thence from A along the east boundary of the said land ceded to the United States by the following courses and distances: North seven (7) degrees and thirty-three (33) minutes west, two thousand and six and two-tenths (2,006.2) feet to B; thence north five (5) degrees and forty-seven (47) minutes west, three hundred and eighty-two and six-tenths (382.6) feet to C; thence north three (3) degrees and fifty-three (53) minutes west eight thousand one hundred and fifty-five (8,155) feet to D; thence north seven (7) degrees forty-nine (49) minutes and twenty (20) seconds west, four thousand five hundred and nineteen (4,519) feet to E, the beginning of a curve the degree of which is thirty (30) degrees eleven (11) minutes and twenty-five (25) seconds; thence along said curve a distance covered by a central angle of fifty-nine (59) degrees five (5) minutes and eleven (11) seconds to F. The bearing and length of the chord from E to F is north thirty-seven (37) degrees twenty-one (21) minutes and fifty-eight (58) seconds west, one hundred and eighty-nine and thirty-four hundredths (189.34) feet; thence from F south sixty-six (66) degrees fifty-four (54) minutes and thirty-one (31) seconds east, five thousand four hundred and forty-three and sixteen-hundredths (5,443.16) feet to G on the south side of Alloway creek; thence south five (5) degrees thirty-six (36) minutes and thirty-five (35) seconds east, thirteen thousand four hundred and fifty-two and ninety-five-hundredths (13,452.95) feet, approximately parallel to the present shore line and between it and the high water line to H at Stony Point; thence south eighty-nine (89) degrees fifty-six (56) minutes and three (3) seconds west, five thousand and eighty-four and three-tenths (5,084.3) feet to K on a sixteen (16) degree twenty-five (25) minutes and thirty-six (36) seconds curve, which point is on the boundary of the above-mentioned land formerly ceded to the United States; thence along said curve a distance

covered by a central angle of ninety-seven (97) degrees twenty-nine (29) minutes and three (3) seconds to the point of beginning. The bearing and length of the chord from K to A, the place of beginning, is north forty-one (41) degrees eleven (11) minutes and twenty-seven (27) seconds east, five hundred and twenty-six and twenty-two-hundredths (526.22) feet. This tract of submerged land covers an area of one thousand five hundred and forty-one (1,541) acres, more or less.

Civil and criminal authority remain in State.

2. The sovereignty and jurisdiction of this State over the land herein authorized to be conveyed is hereby retained so far as that all civil and criminal process issued under authority of any law of this State may be executed in any part of the premises so conveyed.

3. This act shall take effect immediately.

Approved March 27, 1917.

CHAPTER 190.

An Act to incorporate the borough of Barrington, in the county of Camden.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

Part of Centre township incorporated as Barrington.

1. The inhabitants of that portion of the township of Centre, in the county of Camden, hereinafter mentioned and described, are hereby constituted and declared to be a body corporate in fact and in law by the name of "The Borough of Barrington," and as such shall be governed by the general laws of this State relating to boroughs.

Boundaries of borough of Barrington.

2. The boundaries of said borough shall be as follows: Beginning at a stone in the middle of Clements Bridge road, located at the southwesterly line of the Atlantic City railroad; thence, northwestwardly along the southerly side of said railroad to the creek forming the boundary line between Haddon Heights borough

OPINIONS

Section 170 of Chapter 1, P. L. 1903 (2nd Sp. Sess.), as amended, (R. S. 18:10-8) provides that moneys belonging to the school fund shall be invested by the trustees in bonds of the United States, of the State of New Jersey, or of any county or municipality of this State; and further provides that interest on such bonds shall become a part of the income of the school fund.

The State Investment Council and the office of the Director of the Division of Investment were established by Chapter 270, P. L. 1950 (R. S. 52:18A-70 to 52:18A-94 inc.). Section 9 of this act (R. S. 52:18A-87) vested in the Director of the Division of Investment "the functions, powers and duties vested by law in . . . the trustees for the support of public schools, of, or relating to, investment or reinvestment of moneys of, and purchase, sale or exchange of any investment or securities of or for, any funds or accounts under the control and management of such agencies . . .".

In view of the provisions of the statute last cited, it is my opinion that the provisions of Section 9 of Chapter 270, P. L. 1950 vest in the Director of the Division of Investment, investment responsibility over the specific assets referred to in this letter.

In connection with the \$5,000 mortgage that is part of the assets, I note the provisions of Chapter 18, P. L. 1953 (R. S. 18:10-2) that requires the Trustees to foreclose whenever the interest on bonds secured by mortgages shall remain unpaid for six months. It is my opinion that your responsibility is solely that touching upon the investment, and reinvestment, of moneys, and the purchase, sale or exchange of other assets of the Fund, and neither you, nor the Investment Council, have any responsibility for directly supervising the status of this mortgage, or enforcing any default.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DANIEL DE BRIER
Deputy Attorney General

ddb;b

FEBRUARY 2, 1954.

HON. CHARLES R. ERDMAN, JR.
*Commissioner, Department of Conservation
and Economic Development*
520 East State Street
Trenton, New Jersey

FORMAL OPINION 1954—No. 3.

DEAR COMMISSIONER:

You have requested a formal opinion as to the legal authority of your Department, with respect to lands below low water mark in the Delaware River within the so-called twelve-mile Delaware Circle, (1) to make riparian grants and (2) to issue licenses and fix a charge for the dredging of bottom material pursuant to R. S. 12:3-22.

As you have noted, the decree of the United States Supreme Court entered June 3, 1935 in the Delaware boundary case (*N. J. v. Delaware*, 295 U. S. 694) fixed the boundary within the Delaware Circle at the mean low water line on the New Jersey side of the Delaware River; and this decree was made without prejudice to the rights of either state under the Compact of 1905, which was enacted in New Jersey as R. S. 52:28—34, et seq. The Compact provides generally for the service of civil and criminal process by either State upon any portion of the Delaware River, for the common enjoyment of fishing rights throughout the waters of said river between the low water marks on each side thereof, and for riparian jurisdiction. This last item is covered by Article VII, which reads as follows:

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

(L. 1905, c. 42, Art. VII, p. 71.)

Article VIII of the Compact reads:

"Nothing herein contained shall affect the territorial limits, rights or jurisdiction of either state of, in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as herein expressly set forth." (L. 1905, c. 42, Art. VIII, p. 71.)

In my opinion, the State of New Jersey has by virtue of Article VII the complete and exclusive right to make grants and leases of riparian lands below low water mark on its side of the river.

In the first place, as was observed in the opinion of the United States Supreme Court in *New Jersey v. Delaware*, 291 U. S. 361, the State of Delaware has apparently never claimed to own the shore between high and low water mark on the New Jersey side; that part of the shore has always belonged to the State of New Jersey. *State v. Jersey City*, 25 N. J. L. 525, 527. Since New Jersey owned to low water mark in any event, the Article (VII) granting to each State the right to continue to exercise riparian jurisdiction of every kind and nature and to make grants and leases of riparian lands under its own laws would have had no meaning or purpose unless it applied to lands below the low water mark. An act of the Legislature should be so construed that, if it can be prevented, no part thereof shall be superfluous, void or insignificant. *Steel v. Freeholders of Passaic*, 89 N. J. L. 609, 612; *Ford Motor Company v. New Jersey Dept. of Labor and Industry*, 5 N. J. 494, 509.

In the next place, I am informed that two grants of land below low water mark were made by the predecessor of your Navigation Bureau before the Compact of 1905 was entered into. It was also noted in the opinion of the Supreme Court in the Delaware boundary case (291 U. S. 361, 375) that the riparian proprietors on the New Jersey shore had for many years exercised dominion over the land below low water mark by building wharves and piers out into the river, in accordance with licenses or privileges granted by the State of New Jersey. When the Compact provided in Article VII that New Jersey on its own side of the river might "continue to exercise riparian jurisdiction of every kind and nature and to make grants, etc.," it obviously contemplated the continuance of the exercise of riparian jurisdiction as theretofore, including the making of grants for lands below low water mark.

I am further informed that since the year 1905 thirty grants of such land have been made by the State of New Jersey, and that no claim has been made by the State of Delaware of any right to make riparian grants on the New Jersey side of the river. The practical construction thus placed by the parties upon the Compact in question, and adhered to by them for approximately fifty years, is entitled to great weight. *State v. Rogers*, 56 N. J. L. 480, 646; *Passarella v. Board of Commissioners*, 1 N. J. Super. 313, 320.

A contrary view would require a riparian owner who desired to acquire riparian lands below low water mark to undergo the cumbersome procedure of applying first to the State of New Jersey for a grant of the foreshore and then to the State of Delaware for a grant of the land below low water mark. "We cannot attribute to the Legislature a purpose so at variance with the common sense of the situation when the language used is susceptible of a construction in harmony with it." *Township Committee of Freehold Township v. Gelber*, 26 N. J. Super. 388, 391.

For these reasons we are convinced that by virtue of the Compact above referred to, the State of Delaware has given to the State of New Jersey the power to grant riparian lands adjacent to the New Jersey shore even though the title to said lands is in the State of Delaware.

As to your authority to issue licenses and fix a charge for the dredging of bottom material below low water mark, I am compelled to a different conclusion.

As we have seen, Article VIII of the Compact provides that nothing contained therein shall affect the rights of either State or the ownership of the subaqueous soil in the Delaware River except as set forth in the Compact; and the only exceptions made by the Compact to the jurisdiction of the State of Delaware over its territory in the Delaware River are the service of civil and criminal process, the common enjoyment of fishing rights, and the provisions of Article VII for the exercise of "riparian jurisdiction of every kind and nature" and the granting of "riparian lands and rights." Dredging and removing material from subaqueous soil (other than soil owned by a riparian proprietor) is not a riparian right, nor is the licensing of such activity an exercise of riparian jurisdiction. The word "riparian" is derived from the Latin word "ripa", which means "bank", and it is defined in Webster's Dictionary as "pertaining to * * * the bank of a river". Accordingly, the word "riparian" ordinarily refers to the bank and not the bed of the stream, and riparian rights are generally defined as those which grow out of the ownership of the banks, rather than the beds, of streams. *Gough v. Bell*, 22 N. J. L. 441, 464; *Rome Ry. & Light Co. v. Loeb*, 80 S. E. 785, 787, 141 Ga. 202; *United Paper Board Co. v. Iroquois Pulp & Paper Co.*, 123 N. E. 200, 202, 226 N. Y. 38; cf. *City of Paterson v. East Jersey Water Co.*, 74 N. J. Eq. 49, 63, aff'd, 77 N. J. Eq. 588.

Unlike the situation in respect to grants, New Jersey has never undertaken to issue licenses for dredging within the twelve-mile Circle. Moreover, R. S. 18:3-22 provides only for licenses to dredge or remove any deposits of sand or other material "from lands of the state" under tide waters. The lands below low water mark within the twelve-mile Circle are not lands of this State, but lands of the State of Delaware.

In view of the foregoing, I find no authority for your Department to exercise the power in question with respect to the lands under discussion.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. COOK
Deputy Attorney General

tpc;b



STATE OF DELAWARE
OFFICE OF THE ATTORNEY GENERAL
WILMINGTON, DELAWARE

HERBERT S. EDWIN
CHIEF CLERK

9017
STATE OF DELAWARE
OFFICE OF THE ATTORNEY GENERAL
WILMINGTON, DELAWARE

JUNE
13th
1956

JUN 13 1956

Mr. Peter J. Gannon
Chief of Navigation Bureau
Department of Conservation &
Economic Development
1060 Broad Street
Newark, New Jersey

Dear Mr. Gannon:

Mr. C. M. Thayer of the Real Estate Division of the DuPont Company has requested an opinion of this office as to whether the State of Delaware must give permission to that company to erect dikes in the Delaware River at the Carneys Point Works. Mr. Thayer advises he has spoken to you about this matter and you indicated that you believe the State of New Jersey has the sole right to grant these riparian rights.

This is a new problem to us and we would like all the assistance possible. I am wondering if there has been an opinion from your Legal Department bearing upon this question, as to which we might have a copy, or whether you might furnish us with any basis for your conclusion.

Thanking you for any cooperation, I am

Very truly yours

Herbert S. Edwin
CHIEF DEPUTY ATTORNEY GENERAL

HLC:kth

9017

June 19, 1958

Navigation Bureau
1060 Broad Street
Newark, New Jersey

*Tom
File
in
read*

Herbert L. Cobin, Esq.
Chief Deputy Attorney General
Office of the Attorney General
Wilmington, Delaware

Dear Mr. Cobin:

In conformance with the request contained in your June 13th letter, I am attaching two copies of Attorney General's Formal Opinion No. 3 by Grover C. Richman, Jr. Attorney General, State of New Jersey.

Very truly yours,

Peter J. Gannon, Chief
Bureau of Navigation

PJG/og

August 2, 1996

Navigation Bureau
1060 Broad Street
Newark 2, N.J.

Harbert L. Coble, Esq.
Chief Deputy Attorney General
Office of the Attorney General
Wilmington, Delaware

Application for riparian rights on Delaware
River between Deep Water Point and Carney's Point.
FILE# 2017

Dear Mr. Coble:

Will you kindly advise me of the present status
of the proposed application for riparian rights between
Deep Water Point and Carney's Point.

Is it your intention to file for the riparian
rights?

Very truly yours,

Fred C. Freeman,
Office Engineer,
Navigation Bureau

scf/pv

HOLD

SEPTEMBER 27, 1956

HON. FREDERICK J. GASSETT, JR.
 Director, Division of Motor Vehicles
 State House
 Trenton, New Jersey

FORMAL OPINION, 1956—No. 21

DEAR DIRECTOR GASSETT:

You have requested our opinion on the applicability of certain provisions of the Security-Responsibility Law and particularly as to whether R.S. 39:6-28, subsection (b) and subsection (c) should be regarded as a reciprocity statute.

R.S. 39:6-28(b) provides:

"When a nonresident's operating privilege is suspended pursuant to section three or section five of this act the director shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the State in which such nonresident resides, if the law of such other State provides for action in relation thereto similar to that provided for in subsection (c) of this section."

Subsection (b) is definitely based upon reciprocity because it requires the Director to transmit a certified copy of his official action only "if the law of such other State provides for action in relation thereto similar to that provided for in subsection (c) of this section."

R.S. 39:6-28 (c) provides as follows:

"Upon receipt of such certification that the operating privilege of a resident of this State has been suspended or revoked in any such other State pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the director to suspend a nonresident's operating privilege had the accident occurred in this State, the director shall suspend the license of such resident if he was the operator, * * *"

In both sections (b) and (c) above, it must be noted that the Director of Motor Vehicles of New Jersey is required to act only if the law of the other State concerned contains provisions similar to the New Jersey law for the suspension of the driving privileges of out-of-state drivers for failure to satisfy judgments.

Thus subsection (b) above does not become operative unless the law of the "other State provides for action in relation thereto similar to that provided for in subsection (c) of this section."

Subsection (c) requires the Director to act where the law of the foreign state provides for revocation or suspension of license "under circumstances which would require the director to suspend a nonresident's operating privilege had the accident occurred in this State, * * *"

We find no warrant in the statute for a construction that the Director of the Division of Motor Vehicles is required to suspend a New Jersey resident driver's

license because of failure to deposit security only in instances where the State where the accident occurred is required to suspend its own resident's driver's license for failure to deposit security under the New Jersey Security Responsibility Law.

Very truly yours,

GROVER C. RICHMAN, JR.
 Attorney General

By: JAMES T. KIRK
 Deputy Attorney General

JTK/LL

NOVEMBER 16, 1956

MR. SALVATORE A. BONTEMPO
 Department of Conservation and Economic Development
 State House Annex
 Trenton, New Jersey

FORMAL OPINION, 1956—No. 22

DEAR MR. BONTEMPO:

You have requested what you term a clear-cut definition as to New Jersey's boundary in the Delaware Bay and the Delaware River and advise that it is imperative that you obtain our definition because of the current activity in dredging operations in the Delaware River and the Delaware Bay. The explanation that the request has reference to dredging operations indicates that you wish to be informed on the limited topic of the territorial limits and ownership of the State of New Jersey in the soil under both bodies of water mentioned. The two states occupying the shores opposite those of New Jersey along the Delaware River and Bay are Delaware and Pennsylvania. The case with Delaware will be discussed first in view of the fact that the boundary between that state and ours has been the subject of litigation and has been adjudicated. *State of New Jersey v. State of Delaware*, 291 U.S. 361, 54 S. Ct. 407 (1934).

The State of Delaware and the State of Pennsylvania have a common boundary at the point where both states border the Delaware River, and from that point Pennsylvania bounds the Delaware River northwardly, and Delaware southwardly to the sea. In the issues involved in the case of *New Jersey v. Delaware*, sometimes called the Delaware boundary case, the Court characterizes them as follows:

"The controversy divides itself into two branches, distinct from each other in respect of facts and law. The first branch has to do with the title to the bed or subaqueous soil of the Delaware river within a circle of twelve miles about the town of New Castle. Delaware claims to be the owner of the entire bed of the river within the limits of this circle up to low-water mark on the east or New Jersey side. New Jersey claims to be the owner up to the middle of the channel. The second branch of the controversy has to do with the boundary line between the two states in the river below the circle and in the bay below the river. In that territory as in the river above, New Jersey bounds her title by the Thalweg. Delaware makes the division at the geographical center, an irregular line midway between the banks or shores."

54 S. Ct. 408

AS TO THE TWELVE-MILE CIRCLE

The arc of the circle of twelve miles about the Town of New Castle which crosses the Delaware River to the north is at a point on the river where Delaware and Pennsylvania have a common boundary. Where the arc of the circle crosses the Delaware River to the south is a point on the Delaware shore at about Bay View Beach. We will consider the boundary question within the twelve-mile circle.

In the Delaware case, the Special Master appointed by the Court in January 1930 found that Delaware traced her title to the river bed within the circle through deeds going back two and one-half centuries and more.

In 1682 the Duke of York delivered to William Penn a deed conveying the Town of New Castle and all the land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the Delaware River, together with the river and the soil thereunder, lying north of the southernmost part of the circle of twelve miles about the town.

The Master in his filed report found that William Penn's title to the lands in question was good. The Court, at pages 411, 412, said that:

"The colony of Delaware as defined by this patent was the one that declared its independence in 1776 and that succeeded in 1783 to any fragment of ownership abiding in the Crown."

"Delaware's chain of title has now been followed from the feoffment of 1682 to the early days of statehood, and has been found to be unbroken."

The Court discussed the various claims made by the State of New Jersey to title to that area of the twelve-mile circle covered by water to the low-water mark and concluded that such claims had no foundation in law or fact and upheld the title of Delaware to the land within the Circle.

Accordingly, the Court confirmed the master's report as it applied to the twelve-mile circle and decreed that:

"Within the twelve-mile circle, the river and the subaqueous soil thereof up to low-water mark on the easterly or New Jersey side will be adjudged to belong to the State of Delaware, subject to the Compact of 1905."

The Compact of 1905 gave the State of New Jersey no proprietary rights in the soil within the twelve-mile circle.

You are, therefore, advised that within the twelve-mile circle, the boundary between New Jersey and Delaware follows the low-water mark along the New Jersey shore.

AS TO THE RIVER AND BAY BELOW
THE TWELVE-MILE CIRCLE

The Delaware River extends about five miles below the twelve-mile circle and then broadens into the Delaware Bay.

With respect to the territorial limits of the State of New Jersey in the tidewaters of the Delaware River and Bay below that twelve-mile circle a different situation exists.

In *New Jersey v. Delaware*, supra, at page 413, it is stated:

"Below the twelve-mile circle there is a stretch of water about five miles long, not different in its physical characteristics from the river above, and below this is another stretch of water forty-five miles long where the river broadens into a bay.

The title to the soil of the lower river and the bay is unaffected by any to the Duke of York or others. The letters patent to James do not affect the ownership of the bed below the circle. Up to the time when New Jersey and Delaware became independent states, the title to the soil under the waters below the circle was still in the Crown of England. When independence was achieved, the precepts to be obeyed in the division of the waters were those of international law."

The Master found that neither party made any claim of title to the river or bay below the twelve-mile circle, except in succession to the rights of the Crown.

"In 1783, when the Revolutionary War was over, Delaware and New Jersey began with a clean slate. There was no treaty or convention fixing the boundary between them. There was no possessory act nor other act of dominion to give to the boundary in bay and river below the circle a practical location, or to establish a prescriptive right.
New Jersey v. Delaware, supra, at page 415.

Having determined that there was no agreement between the parties with respect to the boundary line between the states and that neither party had by any act of possession or dominion established a prescriptive right in the soil under the waters of the Delaware River below the twelve-mile circle, the Court then outlined the principles of law which it felt were controlling, and the authorities relied on for justification. It said at page 413:

"International law today divides the river boundaries between states by the middle of the main channel, when there is one, and not by the geographical center, halfway between the banks. It applies the same doctrine, now known as the doctrine of the 'Thalweg,' to estuaries and bays in which the dominant sailing channel can be followed to the sea. The 'Thalweg' or 'downway,' is the track taken by boats in their course down the stream, which is that of the strongest current."

The doctrine of "thalweg" is the test applied in determining boundaries between states.

49 Am. Jur., Sec. 20, p. 241

"The general rule is that when a river is the boundary between two states, if the original property is in neither, and there is no special convention respecting it, long use equivalent thereto, or other controlling circumstances to the contrary, each state holds to the middle of the main channel of the stream. This is known as the doctrine of 'thalweg'. In the case of navigable rivers, the doctrine is ordinarily construed to mean that each state takes to the middle of the principal channel of navigation, not necessarily the deepest channel—and it does not, therefore, mean, with respect to navigable rivers, a line equidistant from each bank. The reason for this doctrine making the

middle of the channel of commerce the boundary line, or the doctrine of 'thalweg' as it is called, rather than the middle line between the shores of the river, lies in the right of each state to equal privileges in the navigation of the river. The channel is the bed of a stream of water, especially the deeper part of a river or bay where the main current flows. When employed in treating of subjects connected with the navigation of rivers, it indicates the line of deep water which vessels follow, the space within which vessels may and usually do pass."

The Master in his report indicates that he has followed the doctrine of "thalweg", and based on that doctrine made the following findings:

"Below the twelve-mile circle there is a portion of the river of about 8,500 yards measured along the center of the main ship channel on Exhibit 3, to the division line between the river and bay established by agreement of the parties in 1907 (Exhibit 161, pp. 44-5) as a line from Liston's Point to the mouth of Hope Creek. Between this area and the mouth of the bay there is a distance of 78,750 yards, more or less, to the overfalls light at the Atlantic Ocean. (Exhibits 3 and 4.)

The question is presented as to whether through these two areas the rule of geographical center is to be applied in the ascertainment of the boundary between the two States or the rule of the thalweg.

The plaintiff contends that the rule of the thalweg, that is to say, the main sailing ship channel, controls throughout the river and bay below the circle. Defendant, on the other hand, maintains that the rule of the thalweg cannot apply because, it says, there is no main sailing channel in the bay and river, the bay and river being equally navigable in all directions.

But the proof shows that as early as Fisher's Chart of the Delaware Bay 1756 (Exhibit 99) there has been a well-defined channel of navigation up and down the river and bay. This channel, since the Revolution, has been regularly marked by the government. In the United States Coast Pilot, Section C, published 1930 by the United States Coast and Geodetic Survey, it is stated (p. 44):

'Delaware Bay is, properly speaking, only an expansion of the lower part of the Delaware River. . . . The channel is well marked by lighthouses and buoys, but strangers in deep-draft vessels should not attempt to enter by night.' (Exhibit 102.)

'The channel is well marked by lighthouses and buoys to the entrance of the dredged channel and by lighted ranges and buoys above that point. The dredged channels are generally 800 feet wide in the straight reaches, 1,000 feet wide in the bends, and 1,200 feet wide in Bulkhead Bar Channel. The buoys marking the dredged channels are usually maintained on or close to the edge, and vessels on the ranges will usually pass them at a distance of 100 to 200 yards.'

'There is a channel along the western side of Delaware Bay which is marked by a line of perpendicularly striped buoys from off the mouth of St. Jones River southward to below Old Bare Shoal. It is used by most of the

vessels frequenting the tributaries on the western side of the bay. It is said to lead clear of dangers if the buoys are followed closely, but leads close to the shoals in places.

Red sectors are established in the lighthouses to cover the dangers on both sides of the channel from Overfalls Lightship to the entrance of the dredged channel and should be observed closely if running at night.

There are many detached shoal spots with depths of 2 to 6 feet (0.6 to 11.8 m.) along the western side of Delaware Bay and Delaware Breakwater northward to Bombay Hook Point. They are generally unmarked, except in the vicinity of the main ship channel, and are subject to some change, both in depth and position. Strangers using any of the channels westward of the main ship channel should proceed with caution.

'Cape Henlopen, on the southwest side of the entrance to Delaware Bay, is a high white sand hill, bare of vegetation. The point of the cape, from a comparison of the surveys, is moving northward at a slow but uniform rate. Vessels should keep in the white sector of Delaware Breakwater light when passing north of the cape. A shoal with little depth, as shown on the chart, extends nearly $\frac{3}{4}$ mile eastward from the end of Cape Henlopen, and is marked at its easterly end by a black bell buoy.'

'Breakwater Harbor, on the west side of Cape Henlopen, southward of the inner breakwater, is easy of access both day and night and is a safe harbor for light-draft vessels in all but heavy northwesterly gales, and affords considerable protection even in such weather. Under the most favorable conditions a vessel of as much as 15 feet (4.5 m.) draft can select anchorage with sufficient swinging room in the easterly part of the harbor, but the harbor is generally crowded in heavy weather, and vessels of a greater draft than about 10 feet (3 m.) should preferably anchor westward or north-westward of the inner breakwater or in the Harbor of Refuge.'

Breakwater Harbor has depths of 10 to about 30 feet (3 to 9.1 m.) in its easterly part, eastward of a line joining the reporting station on the breakwater and the easternmost fish-oil works. The angle in the westerly part of the breakwater is shoal, depths of 9 to 10 feet (2.7 to 3 m.) extend nearly $\frac{3}{4}$ mile south-southwestward from the westerly half of the breakwater, and depths of 12 to 13 feet (3.6 to 3.9 m.) extend to shore southwestward." (pp. 53-4.)

The Court observed the following in the Delaware boundary case:

"The findings of the special master, well supported by the evidence, overcome the argument thus drawn from physical conditions. He finds that as early as Fisher's Chart of Delaware Bay (1756) there has been a well-defined channel of navigation up and down the Bay and River, in which the current of water attains its maximum velocity; that 'Delaware River and Bay, on account of shoals, are not equally navigable in all directions, but the main ship channel must be adhered to for safety in navigation'; that the Bay, according to the testimony, 'is only an expansion of the lower part of the Delaware River'; and that the fresh water of the river does not spread out uniformly when it drains into the bay, but maintains a continuing identity

through its course into the ocean. The record shows the existence of a well-defined deep water sailing channel in Delaware River and Bay constituting a necessary track of navigation, and the boundary between the States of Delaware and New Jersey in said bay is the middle of said channel."

Concerning the date when the formula of the Thalweg is to be applied to the division between Delaware and New Jersey, the Court in the Delaware case held that it went back to the Peace of Paris as it had applied it in the boundary case between Illinois and Iowa. *Iowa v. Illinois*, 147 U.S. 1, 135 S. Ct. 239. The Court made the further observation that the difference in time between 1776 and 1783 would not affect the result in the Delaware case. The year 1776 is the one of independence for the American colonies. The year 1783 is the one in which the Treaty of Paris was signed by Great Britain and the American Colonies ending the War of Independence.

"* * * the several states which composed the Union, so far at least as regarded their municipal (internal affairs) regulations, became entitled, from the time when they declared themselves independent to all the rights and powers of sovereign states, and they did not derive them from concessions made by the British Crown. The treaty of peace contains a recognition of their independence, not a grant of it." *McIntire v. Coar's Lessee*, 8 U.S. 208. (definition within parentheses supplied)

"It is thus with the formula of the Thalweg in its application to the division between Delaware and New Jersey. We apply it to that boundary, which goes back to the Peace of Paris. * * * The line of division is to be the center of the main channel unless the physical conditions are of such a nature that a channel is unknown."

"Below the twelve-mile circle, the true boundary between the complainant and the defendant will be adjudged to be the middle of the main ship channel in Delaware River and bay."

Therefore, be advised that the true boundary between the States of New Jersey and Delaware below the twelve-mile circle is the center of the main ship channel in the river and bay.

GEOGRAPHIC LIMITS AS TO PENNSYLVANIA

As to Pennsylvania, the problem also divides itself into two branches distinct from each other in respect to facts and law.

THE DELAWARE RIVER ABOVE TRENTON

A portion of the Delaware River which lies between the States of New Jersey and Pennsylvania is tidal, a portion is above tide water. *Attorney General v. Delaware and Bound Brook RR Co.*, 27 N.J. Eq. 1, 8. In that case the Court quoted *Rundle v. Delaware and Raritan Canal Co.*, 1 Wall., Jr., 275, as follows:

"The river Delaware is the boundary between the States of Pennsylvania and New Jersey. The tide ebbs and flows to the part of the Trenton Falls where the Trenton bridge crosses the river: above that point it is a fresh water stream. * * *

Under the established law in New Jersey the State is the owner of the soil under tidal streams to the high water mark. But in non-tidal waters the riparian owners hold to the middle of the stream. The State holds no title to the lands under water in the Delaware River above Trenton.

8 Am. Jur., Sec. 19, p. 757

"Under the English Common law, the bed of all rivers as far as the flow of the tide extends is in the Crown, but the bed of all fresh-water rivers above the ebb and flow of the tide is vested in the riparian owners, and this without regard to the navigability of the rivers."

8 Am. Jur., Sec. 21, p. 759

"Under the rule of the common law which vests title to the bed of tidal rivers in the state where lands are described in a deed as bounded by a navigable river in which the tide ebbs and flows, the presumption is that the title extends merely to the waters edge and the boundaries of the tract should be drawn along the bank or shore at high watermark. Citing *Simmons v. Paterson*, 60 N.J. Eq. 385. *New Jersey Zinc & Iron Co. v. Morris Canal & Banking Co.*, 44 N.J. Eq. 398. *Arnold v. Mundy*, 6 N.J.L. 1. The common law, however, limits this rule to tidal rivers."

The boundary between the States of New Jersey and Pennsylvania in the waters of the Delaware River above the falls at Trenton is the middle of the river. The legal title to the lands in question stems from the West Jersey proprietors and is in the riparian proprietors, and not in the State.

THE DELAWARE RIVER BELOW TRENTON

The only remaining problem is to advise you concerning the Delaware River as it runs between the falls at Trenton down to the boundary line between Pennsylvania and Delaware.

While the general rule as it applies to fixing the boundaries between states in tidal waters is expressed in the New Jersey-Delaware case above, that opinion does not consider certain variations to the general rule.

In the Delaware case the State of New Jersey did set up as its basis for claiming title to the soil in part of the twelve-mile circle through principles of law involving acquiescence, estoppel, usage and the effect of the Compact between the states. The claim did not concern itself with the effect of avulsion, accretion or the possibility that the old channel as it existed in 1783 may have been relocated through dredging an artificial channel. It is assumed that there was no proof of the existence of such happenings. If any of these factors would have any influence in fixing the main ship channel between New Jersey and Pennsylvania, please consider them in the light of the following:

49 Am. Jur., Sec. 21, p. 242

"The effect upon boundaries of a state, where such boundaries are fixed by the middle of the main channel of a river, by changes in that channel through processes of accretion and avulsion is dependent upon the gradualness or suddenness of the change; when the course of the river and its channel changes gradually, the boundary follows the channel, but if the river suddenly

the sea the boundary between Delaware and New Jersey is the "thalweg" or "main sailing channel" and New Jersey owns the soil under the river and bay from its shore to said boundary.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: SIDNEY KAPLAN
Deputy Attorney General

SK:mp

DECEMBER 11, 1956

HONORABLE FREDERICK J. GASSETT, JR.
Director of the Division of Motor Vehicles
State House
Trenton, New Jersey

FORMAL OPINION, 1956—No. 23

DEAR DIRECTOR GASSETT:

You have requested our opinion concerning the applicability of R.S. 39:3-40 to a nonresident motor vehicle operator whose driver's license has been suspended or revoked or who has been prohibited from obtaining or has been refused a driver's license in his own State. For the reasons hereinafter stated, it is our opinion that R.S. 39:3-40 applies in such circumstances.

By R.S. 39:3-10 it is provided in part as follows:

"No person shall drive a motor vehicle on a public highway in this State unless licensed to do so in accordance with this article. No person under 17 years of age shall be licensed to drive motor vehicles, nor shall a person be licensed until he has passed a satisfactory examination as to his ability as an operator. . . ."

The penalties for violating this section are a fine not exceeding \$500 or imprisonment in the county jail for not more than 60 days.

By R.S. 39:3-17 this jurisdiction has extended the so-called "reciprocity privilege" to drive a New Jersey registered vehicle as well as one registered outside of New Jersey to any nonresident driver "who has complied with the law of his resident State, or country, with respect to the licensing of drivers. . . ."

R.S. 39:3-17 also provides in pertinent part as follows:

"A nonresident shall, at all times while operating a motor vehicle in this State under his reciprocity provision, have in his possession the registration certificate of the car which he shall be then operating and his driver's license, and shall exhibit them to any motor vehicle inspector, police officer or magistrate who, in the performance of the duties of his office, shall request the same. Any person violating the provisions of this section shall be subject to a fine not exceeding five hundred dollars, or to imprisonment in the county jail for not more than sixty days."

OPINIONS

changes its course, or deserts its natural channel, the boundary remains where it was before, that is, the middle of the altered or deserted river bed."

56 Am. Jur., p. 893

"But where the change takes place suddenly and perceptibly either by reliction or avulsion, as where a stream from any cause suddenly abandons its old and seeks a new bed, such a change works no change of boundary or ownership."

Cunningham v. Prentiss, 192 S.W. 2d 338, 29 Tenn. App. Co. 43, Tenn. Court of Appeals 1945.

"'Avulsion' is the sudden or violent action of the elements of the shore or bank of a river, the effect and extent of which is perceptible while the action is in progress."

McClure v. Couch, 188 S.W. 2d 550, 182 Tenn. 563, Tenn. Supreme Ct. 1945.

"Avulsion is a sudden change of channel or stream, and it does not change the boundary which remains as it was in the middle of old channel, though water no longer flows therein."

State of Arkansas v. State of Tennessee, 38 S. Ct. 557, 247 U.S. 461 (1908):

"The true boundary line between the states of Arkansas and Tennessee, aside from the question of avulsion of 1876, hereinafter mentioned, is the middle of the main channel of navigation of the Mississippi River as it existed at the Treaty of Peace concluded between the United States and Great Britain in 1783, subject to such changes as have occurred since that time through natural and gradual processes."

Whitely v. Norton, (CCA 8th) 205 F. 5. Appeal dismissed 36 S. Ct. 97.

"Nor does dredging of a new channel by the government in a river which forms the boundary between the two states change the state boundary from the middle of the former main navigable channel to the newly formed channel."

The boundary between the States of New Jersey and Pennsylvania between the falls at Trenton and the twelve-mile circle is the "thalweg" or "main sailing channel" as it existed in 1783, as changed only by natural and gradual processes.

SUMMARY

Summarizing the conclusions reached above we find that beginning at the most northerly point in New Jersey and continuing southwardly the boundary between Pennsylvania and New Jersey is the middle of the river to the falls of Trenton but that New Jersey is not the owner of the soil under those waters. From the falls of Trenton to the twelve-mile circle the boundary between New Jersey and Pennsylvania is the "thalweg" or "main sailing channel" to which point in the river the State of New Jersey is the owner of the soil beneath the river. In the twelve-mile circle the boundary between Delaware and New Jersey is the low-water mark along the New Jersey shore and New Jersey has no ownership in the soil offshore of said low-water mark. From the twelve-mile circle southwardly to

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

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

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

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

**VOLUME 3 of 7
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An Ordinance relating to the Leases of Public Wharves

Be it ordained by the City Council of Wilmington

Section 1. That Public Wharves belonging to the City of Wilmington, and being situated at the end of Public Streets, shall be leased only, for the purpose of loading and unloading of Merchandize in the course of business, and it shall not be lawful for any person or persons, leasing such wharves to store on such wharves any merchandize or other material, but shall keep the said wharf between the building lines of the street clear; nor shall any persons leasing said wharves, erect any building or structure over or on such wharves, and all leases hereafter made, shall have therein plainly expressed the provisions of this Ordinance

Section 2. Any violation of the provisions of this Ordinance, shall be punished with a fine of five dollars, and shall at the discretion of the Council work a forfeiture of the Lease

Passed at the City Hall

July 14th 1884.

(Approved by the Mayor)

July 16th 1884

Henry C. Conrad
President of the City Council

Allest H. J. Train
Clerk of the City Council

CHAPTER 179

WILMINGTON

AN ACT RELATING TO THE BOUNDARIES OF THE MAYOR
AND COUNCIL OF WILMINGTON.

Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met (two-thirds of each Branch thereof concurring therein):

Section 1. That Section 1 of Chapter 207, Volume 17, Laws of Delaware, approved April 13, A. D. 1883, and all Acts amendatory thereof or supplemental thereto, be and the same are hereby further amended by striking out said Section and inserting in lieu thereof the following:

Section 1. The City of Wilmington shall be bounded as follows:

BEGINNING at a monument upon the present westerly bank of the Delaware River, said monument being located 2688.63 feet easterly from the extension of the center line of Todds Lane (as the latter is established between Bowers Street and Edge Moor Avenue) measured perpendicularly thereto, and 4392.47 feet southerly from the center line of Edge Moor Avenue (as the latter is established between Todds Lane and Eastlawn Avenue) measured perpendicularly thereto; thence northwesterly on a direct line towards the monument located at the intersection of the center lines of Todds Lane and Edge Moor Avenue, a distance of 3200 feet more or less to its intersection with a line drawn perpendicularly to Market Street (as the latter is at present established between Thirtieth and Thirty-sixth Streets) through a point 77 feet northeasterly from the center line of Thirty-sixth Street, measured along the said center line of Market Street; thence northerly perpendicular to Market Street as aforesaid 5500 feet more or less to the northwesterly side of Market Street as the same is established at 65 feet 6 inches in width; thence northeasterly along the said northwesterly side of Market Street 2500 feet more or less to its intersection with the southwesterly property line of the Diamond State Amusement Company, said intersection being approximately 730 feet northeasterly

from the center line of F. side of Market Street; thence northwesterly along the said property line to a concrete monument; thence northwesterly along the same property line of said property; thence northwesterly along the property division line 57 degrees 21 minutes east 100 feet to a point; thence northwesterly along the property division line 26 degrees 1 minute east along the property line 220 feet more or less north 3 degrees 5 minutes northwesterly along the various courses and distances to the center line of Miller Road; thence northwesterly along the center line of Miller Road to its intersection with the center line of Thirty-eighth Streets and thence southeasterly parallel to the center line of said street and midway between the center lines of said streets between Harrison and 18th Streets established upon the center line of Market Street; thence southwestwardly along the center line of said street and Franklin Streets 10 feet northeasterly from the intersection of said street and Franklin Street at right angles thence northwesterly along the said center line of said street 600 feet more or less, to the northwesterly side of said street; thence northwesterly along the said center line of said street to the southwesterly side of said street established between Market Street and Thirty-fourth Street 30 feet more or less; thence northwesterly along the said center line of said street to the right of way of the Baltimore & Ohio Railroad right of way in the northwesterly direction following the center line of 18th Street ex-

WILMINGTON

from the center line of Forty-third Street, measured along the said side of Market Street; thence north 23 degrees 35 minutes west, along the said property line, a distance of 524.31 feet more or less to a concrete monument; thence north 19 degrees 12 minutes west, along the same property line, a distance of 823.3 feet to a corner of said property; thence north 68 degrees 28 minutes east continuing along the property division line 57.60 feet to a point; thence south 57 degrees 21 minutes east along the property division line 470.2 feet to a point; thence north 26 degrees 26 minutes east along the property division line 264 feet to a point; thence north 18 degrees 1 minute east along the property division line 369.6 feet to a point; thence north 3 degrees 53 minutes east along the property division line 220 feet more or less to the center line of Talley Road, thence northwesterly along the center line of said Talley Road following the various courses and distances thereof to its intersection with the center line of Miller Road; thence southwesterly along the center line of Miller Road following its various courses and distances to its intersection with a line drawn parallel to Thirty-seventh and Thirty-eighth Streets and midway between the said Streets; thence southeasterly parallel to Thirty-seventh and Thirty-eighth Streets and midway between them 1050 feet more or less to a point midway between Harrison and Franklin Streets, as the latter are at present established upon the official map or plan of the City of Wilmington; thence southwesterly along a line midway between Harrison and Franklin Streets 1000 feet, more or less to a point distant 600 feet northeasterly from the northeasterly side of 32nd Street measured at right angles thereto; thence northwesterly parallel to 32nd Street and distant 600 feet northwesterly therefrom 750 feet, more or less, to the northwesterly side of Miller Road; thence southwesterly along the said side of Miller Road 650 feet more or less to the southwesterly side of 34th Street extended (as the same is established between Market and Van Buren Streets; thence northwesterly along the said extension of the said southwesterly side of Thirty-fourth Street 300 feet more or less to the center line of the right of way of the Baltimore & Ohio Railroad); thence in a southwesterly direction following the said center line of the Baltimore & Ohio Railroad right of way 4100 feet more or less to the center line of 18th Street extended, as the latter is established southeast

3 OF THE MAYOR

Representatives of
(two-thirds of each

7, Volume 17, Laws
and all Acts amend-
the same are hereby
and inserting in lieu

be bounded as fol-

resent westerly bank
located 2688.63 feet
Todds Lane (as the
Edge Moor Avenue)
feet southerly from
latter is established
measured perpendicu-
larly towards the
center line of Todds
Lane 10 feet more or less
parallelly to Market
Street between Thirtieth and
Thirtieth Streets
northwesterly from
along the said center
line perpendicular to Market
Street on the northwesterly side
of 65 feet 6 inches in
width on the northwesterly side of
the intersection with the
center line of the Amusement Com-
plex 10 feet northeasterly

WILMINGTON

of Broom Street; thence westerly at right angles to Concord Avenue and along the present City boundary line 1600 feet more or less to the center line of Brandywine Creek; thence following along the center line of Brandywine Creek in a northerly and westerly direction 7800 feet more or less to its intersection with the extension of the easterly side of Rising Sun Lane; thence southwesterly along the said side of Rising Sun Lane 2600 feet more or less to a point distant 150 feet southwesterly from the southwesterly side of Pennsylvania Avenue measured at right angles thereto; thence southeasterly and parallel to the said side of Pennsylvania Avenue 1900 feet more or less to the northwesterly side of Greenhill Avenue; thence southwesterly along the said side of Greenhill Avenue 1950 feet more or less to the northeasterly side of 7th Street; thence northwesterly along the said side of 7th Street extended 2750 feet more or less to the center line of duPont Road; thence southerly along the center line of duPont Road 2200 feet more or less to the southerly side of Lancaster Avenue extended, as the latter is established between Union Street and Greenhill Avenue; thence southeasterly along the said side of Lancaster Avenue, extended, 2100 feet more or less to the southeasterly side of Greenhill Avenue extended; thence southwesterly along the said side of Greenhill Avenue extended 600 feet more or less to the center line of Linden Street extended, as the latter is established between Van Buren and Union Streets; thence southeasterly along the center line of Linden Street extended 1100 feet more or less to the center line of Woodlawn Ave. extended, as the latter is established between Lancaster and Pennsylvania Avenue; thence southwesterly along the said center line of Woodlawn Avenue extended 2700 feet more or less to the northerly side of the right of way of the P. & R. Railroad; thence southeasterly along the said northerly side of the right of way of the P. & R. Railroad 1400 feet more or less to a point on an extension of the mid distant line between Lincoln and Union Streets; thence northeasterly along said mid distant line and parallel to Union Street 1700 feet more or less to the present City boundary line; thence southerly along the present City boundary line 2800 feet more or less to the center line of Maryland Avenue; thence southerly continuing along the present City boundary line 2200 feet more or less to the center line of the right of way of the main

line of the Pennsylvania right of way center line about 2900 feet to the latter is laid out southerly along the center line of Lancaster Avenue; thence southeasterly along the center line of the latter more or less to a point distant 150 feet southwesterly from the southwesterly side of "F" Street extended; thence southeasterly parallel to the southwesterly side of the center line of the P. B. & W. R. Railroad along the said right of way of the P. B. & W. Railroad 28 minutes east of the right of way of the P. & R. Railroad between Stations 155 and 165; thence southeasterly along the said line at an angle of degrees 28 minutes east of the center line to a mark upon the easterly side of the Delaware River to a point distant 100 feet from the center line of the Delaware River to a point mentioned upon the westerly side of the Delaware River and re-crossing the Delaware River at the place of BEGINNING.

Within the limits and made part of the City of Wilmington shall be the rights, privileges and immunities long to it as a municipality and regulations in force in the City of Wilmington, as heretofore extended and applicable to the City of Wilmington as set forth hereinafter.

The real estate boundaries of the City of Wilmington hereafter residing within the City shall be assessed for municipal purposes as set forth hereinafter.

N

at angles to Concord Avenue
 line 1600 feet more or less
 ek; thence following along
 in a northerly and westerly
 intersection with the exten-
 Lane; thence southwesterly
 2600 feet more or less to
 from the southwesterly side
 ight angles thereto; thence
 de of Pennsylvania Avenue
 erly side of Greenhill Ave-
 d side of Greenhill Avenue
 ly side of 7th Street; thence
 Street extended 2750 feet
 ont Road; thence southerly
 00 feet more or less to the
 nded, as the latter is estab-
 hill Avenue; thence south-
 er Avenue, extended, 2100
 le of Greenhill Avenue ex-
 said side of Greenhill Ave-
 the center line of Linden
 d between Van Buren and
 ; the center line of Linden
 the center line of Wood-
 blished between Lancaster
 easterly along the said cen-
 2700 feet more or less to
 of the P. & R. Railroad;
 erly side of the right of
 re or less to a point on an
 incoln and Union Streets;
 ant line and parallel to
 he present City boundary
 City boundary line 2800
 Maryland Avenue; thence
 City boundary line 2200
 right of way of the main

WILMINGTON

line of the Pennsylvania Railroad; thence northeasterly along said
 right of way center line and along the present City boundary line
 about 2900 feet to the westerly side of Beech Street extended, as
 the latter is laid out southerly from and at right angles to Maryland
 Avenue; thence southerly along the said side of Beech Street exten-
 ded and along the present City boundary line 2800 feet more
 or less to a point distant 450 feet southwesterly from the south-
 westerly side of "F" Street measured at right angles thereto; thence
 southeasterly parallel to "F" Street 7800 feet more or less to the
 southeasterly side of the right of way of the New Castle Branch
 of the P. B. & W. Railroad; thence in a southeasterly direction
 along the said right of way of the New Castle Branch of the
 P. B. & W. Railroad to its intersection with the northerly side of
 the right of way of the P. & R. Railroad; thence south 37 degrees
 28 minutes east along the said northerly side of the right of way
 of the P. & R. Railroad (as the latter is established upon its plans
 between Stations 155 and 160) and continuing thence south 37
 degrees 28 minutes east across the Delaware River to low water
 mark upon the easterly side of the Delaware River; thence north-
 easterly along the said low water line of the easterly side of the
 Delaware River to a point due east of the monument first men-
 tioned upon the westerly bank of the said river; thence due west-
 erly and re-crossing the Delaware River to the monument at the
 place of BEGINNING.

Within the limits of the territory by this Act included within
 and made part of the City of Wilmington, The Mayor and Council
 of Wilmington shall be and is hereby vested with all the powers,
 rights, privileges and immunities which by law appertain and be-
 long to it as a municipal corporation, and all the laws or ordinances
 and regulations in force within the limits of the City of Wilming-
 ton, as heretofore existing, and not locally inapplicable, shall be
 extended and applied to the territory comprised within the bound-
 aries as set forth herein.

The real estate by this Act added to and included within the
 boundaries of the City of Wilmington, and all persons now or
 hereafter residing within the said boundaries shall be subject to
 assessment for municipal taxes in the same manner and subject to

WILMINGTON

the same rights, rules and restrictions as in other cases within the said City, except that no property situated within that part of the City of Wilmington which shall have become a part of the said City by virtue of this Act shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled "New Jersey v. Delaware", reported in 291 U. S. 361. The word "determination" as herein used may refer either to agreement between the said States or to a final Court adjudication.

Approved April 11, 1935.

T

Reformat

C

ADMISSION OF MINORS

AN ACT TO AMEND 2196
REVISED CODE OF THE
TO MINORS ADMITTED

*Be it enacted by the
the State of Delaware in C*

Section 1. That 2196
Code of the State of Delaware
by striking out the word "eleven",
the Paragraph headed "T",
word "eleven", and further
the same may appear in
serting in lieu thereof the
"eleven."

Approved April 12,

WILMINGTON CITY CODE

Published by Order of the City Council

Adopted June 17, 1993
Effective July 1, 1993



MUNICIPAL CODE CORPORATION

Tallahassee, Florida

1993

Supp. No. 1

OFFICIALS

of the

CITY OF

WILMINGTON, DELAWARE

AT THE TIME OF THIS CODIFICATION

James H. Sills, Jr.
Mayor

James M. Baker
Council President

Theodore Blunt, District 1	Charles L. Yates, District 7
Norman D. Griffiths, District 2	William H. Freeborn, Jr., District 8
Stephanie T. Bolden, District 3	Richard J. Bartkowski, At-Large
Norman M. Oliver, District 4	Theopalis K. Gregory, At-Large
Demetrio Ortega, Jr., District 5	Robert F. Poppiti, At-Large
Kevin F. Kelley, Sr., District 6	Loretta F. Walsh, At-Large

City Council

Henry W. Supinski
City Treasurer

Carolyn R. Schlecker
City Solicitor

Yvonne Anders-Gordan
City Auditor

Leo T. Marshall
City Clerk

CURRENT OFFICIALS
of the
CITY OF
WILMINGTON, DELAWARE

James M. Baker
Mayor

Theodore Blunt
Council President

Charles Potter, Jr., District 1	Gerard W. Kelly, District 7
Norman D. Griffiths, District 2	Gerald L. Brady, District 8
Stephanie T. Bolden, District 3	Paul J. Bartkowski, At-Large
Norman M. Oliver, District 4	Theopalis K. Gregory, At-Large
Demetrio Ortega, Jr., District 5	Charles M. Freel, At-Large
Kevin F. Kelley, Sr., District 6	Michael J. Hare, At-Large

City Council

Henry W. Supinski
City Treasurer

John R. Sheridan
City Solicitor

Robert B. Wasserbach
City Auditor

Maribel Ruiz
City Clerk

PREFACE

This Code constitutes a complete recodification of the general and permanent ordinances of the City of Wilmington, Delaware.

Source materials used in the preparation of the Code were the 1968 Code, as supplemented through March 21, 1991, and ordinances subsequently adopted by the city council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1968 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 4 is 4-1. Under this system, each section is identified with its chapter, and at the same time new sections or even whole chapters can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 3-1 and 3-2 is desired to be added, such new section would be numbered 3-1.5. New chapters may be included in the same manner. If the new material is to be included between Chapters 12 and 13, it will be designated as chapter 12.5. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix

to the Code, the letter immediately to the left of the colon indicates the letter of the appendix.

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RELATED LAWS COMPARATIVE TABLES	RLCT:1
CODE	CD:1
CODE COMPARATIVE TABLES	CCT:1
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CODE INDEX	CDi:1

Indexes

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indexes themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Roger D. Merriam, Supervising Editor, and Ronald K. McLaughlin, Code Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Mr. John R. Sheridan, Assistant City Solicitor, for his cooperation and assistance during the progress of the work on this publication. It is hoped that his efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the

city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

MUNICIPAL CODE CORPORATION
Tallahassee, Florida

Adopting Ordinance
Ordinance No. 93-035

An Ordinance Adopting and Enacting a New Code for the City of Wilmington, Delaware; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing a Penalty for the Violation Thereof; Providing for the Manner of Amending Such Code; and Providing When Such Code and This Ordinance Shall Become Effective.

Whereas, the Municipal Code Corporation and the City Solicitor's office, together with departments of City government and City Council staff have reviewed the City Code and recent amendments thereto and have authorized the republication and preparation for reenactment by the City Council of the Code of the City of Wilmington pursuant to the provisions of 1 Wilm. C. (Charter) sections 2-304 and 4-300(e) and the provisions of 1 Wilm. C. sections 19-13 and 19-14, and as set forth in the City Code hereby adopted by reference.

The Council of the City of Wilmington Hereby Ordains:

Section 1. The Code Entitled "Wilmington City Code" published by Municipal Code Corporation consisting of Chapters 1 through 48, each inclusive, is hereby adopted.

Section 2. All Ordinances of a general and permanent nature enacted on or before February 4, 1993, and not included in the Code or recognized and continued in force by reference therein, except any such Ordinance that is not affected by the Code as enumerated in 1 Wilm. C. section 1-12, are hereby repealed.

Section 3. The repeal provided for in Section 2 hereof shall not be construed to revive any Ordinance or part thereof that has been repealed by a subsequent Ordinance that is repealed by this Ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof, shall be punished by a fine not exceeding \$2,500.00, or by confinement for a term not exceeding six (6) months, or any combination thereof. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section whether or not such penalty is reenacted in the amendatory Ordinance. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisances, injunctive relief, and revocation of licenses or permits.

Section 5. Additions or amendments to the Code when passed in the form as to indicate the intention of the City to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after February 4, 1993, that amend or refer to Ordinances that have been codified in the Code, shall be construed as if they amend or refer to like provisions of the Code.

Section 7. This ordinance shall be deemed effective as of July 1, 1993.

First Reading: June 3, 1993
Second Reading: June 3, 1993
Third Reading: June 17, 1993

Passed by City Council,

/s/ James M. Baker

President of City Council

Attest:

/s/ Leo T. Marshall

City Clerk

Approved: June 18, 1993

/s/ James H. Sills, Jr.

Mayor

Approved as to form

Approved: June 18, 1993

/s/ John R. Sheridan

Assistant City Solicitor

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ARTICLE I. INCORPORATION; POWERS OF CITY GENERALLY

Sec. 1-100. Incorporation.

The inhabitants of the City of Wilmington, within the corporate limits as now established in 40 Delaware Laws, Chapter 179, as amended by 46 Delaware Laws, Chapter 236, or as hereinafter established in the manner provided by law, shall continue to be a municipal corporation and body politic under the style and name of "The City of Wilmington," and shall hereinafter be referred to as the "city."

Sec. 1-101. Powers of the city—Generally.

Pursuant to 22 Del. C. ch. 8 (53 Delaware Laws, Chapter 260), the city shall have and exercise all express and implied powers and authority of local self-government and home rule, which, under the Delaware Constitution, it would be competent for the General Assembly to grant to the city by specific enumeration and which are not denied by general statute; and the city shall have complete powers of legislation and administration in relation to its municipal functions, including any additional powers and authority which may hereafter be granted to it. The city shall have the power to enact ordinances and to make rules and regulations necessary and proper for carrying into execution of any of its express or implied powers; and such ordinances, rules and regulations may be made enforceable by the imposition of fines, forfeitures, penalties and imprisonment. The city may acquire, hold, manage and dispose of property and provide municipal services on such terms as it deems proper within or without its corporate limits for any municipal function. Any enumeration of particular powers in this Charter shall not be deemed to be exclusive, and the powers of the city under this Charter shall be construed liberally in favor of the city.

Sec. 1-102. Same—Legislative power.

The legislative power of the city, including any such power which may hereafter be conferred on the city by amendment of the Delaware Constitution or by the laws of the State of Delaware, shall be exclusively vested in and exercised by a coun-

cil, subject only to the provisions of this Charter. The council shall be elected, shall organize and shall function as provided in this Charter.

Sec. 1-103. Same—Executive and administrative power.

(1) The executive and administrative power of the city shall be exclusively vested in and exercised by a mayor and such other officers, departments, boards and commissions as are authorized and designated in this Charter or, except for the offices of city solicitor, city treasurer and city auditor, as ordained from time to time by council. The mayor and other executive or administrative officers shall be elected or appointed as provided in this Charter.

(2) Any additional executive and administrative power which may be conferred on the city by amendment of the Delaware Constitution or by the laws of the State of Delaware, or any additional function assumed by the city as within its existing executive and administrative powers, shall be vested in and exercised by the mayor and, as far as practicable, by the officers, departments, boards and commissions designated in this Charter or by council. The council shall by ordinance distribute among such officers, departments, boards and commissions such new powers, functions and duties, but to the extent that this is not practicable, it may create additional offices, boards, departments and commissions for the exercise of such powers and the performance of such duties, and provide for the appointment of new officers or members of the new boards, departments or commissions. Any such additional offices, boards, departments and commissions shall in all respects be subject to this Charter. In case of new officers whose primary duties are to assist the courts, the appointive power may be vested in the judges thereof; and if the primary duties of any new board or commission relate to the functions of any department, such board or commission shall be constituted a departmental board or commission within such department.

Sec. 1-104. Intergovernmental relations.

The city may exercise any of its powers or perform any of its functions and may participate

in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or agencies thereof, including counties, or the United States or any agency thereof.

Title 1

GENERAL PROVISIONS

Sec. 1-1. Corporate boundaries described; powers of city generally, etc.

The city shall be bounded as follows:

Beginning at a monument upon the present westerly bank of the Delaware River, said monument being located 2688.63 feet easterly from the extension of the center line of Todds Lane (as the latter is established between Bowers Street and Edge Moor Avenue) measured perpendicularly thereto, and 4392.47 feet southerly from the center line of Edge Moor Avenue (as the latter is established between Todds Lane and Eastlawn Avenue) measured perpendicularly thereto; thence northwesterly on a direct line towards the monument located at the intersection of the center lines of Todds Lane and Edge Moor Avenue, a distance of 3,200 feet more or less to its intersection with a line drawn perpendicularly to Market Street (as the latter is at present established between 30th and 36th Streets) through a point 77 feet northeasterly from the center line of 36th Street, measured along the said center line of Market Street; thence northerly perpendicular to Market Street as aforesaid 5500 feet more or less to the northwesterly side of Market Street as the same is established at 65 feet 6 inches in width; thence northeasterly along the said northwesterly side of Market Street 2500 feet more or less to its intersection with the southwesterly property line of the Diamond State Amusement Company, said intersection being approximately 730 feet northeasterly from the center line of Forty-third Street, measured along the said side of Market Street; thence north 23 degrees 35 minutes west, along the said property line, a distance of 524.31 feet more or less to a concrete monument; thence north 19 degrees 12 minutes west, along the same property line, a distance of 823.3 feet to a corner of said property; thence north 68 degrees 28 minutes east continuing along the property division line 57.60 feet to a point; thence south 57 degrees 21 minutes east along the property division line 470.2 feet to a point; thence north 26 degrees 26 minutes east

along the property division line 264 feet to a point; thence north 18 degrees 1 minute east along the property division line 369.6 feet to a point; thence north 3 degrees 53 minutes east along the property division line 220 feet more or less to the center line of Rockwood Road, thence northwesterly along the center line of said Rockwood Road following the various courses and distances thereof to its intersection with the center line of Miller Road; thence southwesterly along the center line of Miller Road following its various courses and distances to its intersection with a line drawn parallel to Thirty-seventh and Thirty-eighth Streets and midway between the said Streets; thence southeasterly parallel to Thirty-seventh and Thirty-eighth Streets and midway between them 1050 feet more or less to a point midway between Harrison and Franklin Streets, as the latter are at present established upon the official map or plan of the city, thence southwesterly along a line midway between Harrison and Franklin Streets 1000 feet, more or less to a point distant 600 feet northeasterly from the northeasterly side of 32nd Street measured at right angles thereto; thence northwesterly parallel to 32nd Street and distant 600 feet northwesterly therefrom 750 feet, more or less, to the northwesterly side of Miller Road; thence southwesterly along the said side of Miller Road 650 feet more or less to the southwesterly side of 34th Street extended (as the same is established between Market and Van Buren Streets; thence northwesterly along the said extension of the said southwesterly side of Thirty-fourth Street 300 feet more or less to the center line of the right of way of the Baltimore & Ohio Railroad); thence in a southwesterly direction following the said center line of the Baltimore & Ohio Railroad right of way 4100 feet more or less to the center line of 18th Street extended, as the latter is established southeast of Broom Street; thence westerly at right angles to Concord Avenue and along the present city boundary line 1600 feet more or less to the center line of Brandywine Creek; thence following along the center line of Brandywine Creek in a northerly and westerly direction 7800 feet more or less to its intersection with the extension of the easterly side of Rising Sun Lane; thence southwesterly along

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the said side of Rising Sun Lane 2600 feet more or less to a point distant 150 feet southwesterly from the southwesterly side of Pennsylvania Avenue measured at right angles thereto; thence southeasterly and parallel to the said side of Pennsylvania Avenue 1900 feet more or less to the northwesterly side of Greenhill Avenue; thence southwesterly along the said side of Greenhill Avenue 1950 feet more or less to the northeasterly side of 7th Street; thence northwesterly along the said side of 7th Street extended 2750 feet more or less to the center line of duPont Road; thence southerly along the center line of duPont Road 2200 feet more or less to the southerly side of Lancaster Avenue extended, as the latter is established between Union Street and Greenhill Avenue; thence southeasterly along the said side of Lancaster Avenue, extended, 2100 feet more or less to the southeasterly side of Greenhill Avenue extended; thence southwesterly along the said side of Greenhill Avenue extended 600 feet more or less to the center line of Linden Street extended, as the latter is established between Van Buren and Union Streets; thence southeasterly along the center line of Linden Street extended 1100 feet more or less to the center line of Woodlawn Ave. extended, as the latter is established between Lancaster and Pennsylvania Avenue; thence southwesterly along the said center line of Woodlawn Avenue extended 2700 feet more or less to the northerly side of the right of way of the P. & R. Railroad; thence southeasterly along the said northerly side of the right of way of the P. & R. Railroad 1400 feet more or less to a point on an extension of the mid distant line between Lincoln and Union Streets; thence northeasterly along said mid distant line and parallel to Union Street 1700 feet more or less to the present city boundary line; thence southerly along the present city boundary line 2800 feet more or less to the center line of Maryland Avenue; thence southerly continuing along the present city boundary line 2200 feet more or less to the center line of the right of way of the main line of the Pennsylvania Railroad; thence northeasterly along said right of way center line and along the present city boundary line about 2900 feet to the westerly side of Beech Street extended, as the latter is laid out southerly from

and at right angles to Maryland Avenue; thence southerly along the said side of Beech Street extended and along the present city boundary line 2800 feet more or less to a point distant 450 feet southwesterly from the southwesterly side of "F" Street measured at right angles thereto; thence southeasterly parallel to "F" Street 7800 feet more or less to the southeasterly side of the right of way of the New Castle Branch of the P. B. & W. Railroad; thence in a southeasterly direction along the said right of way of the New Castle Branch of the P. B. & W. Railroad to its intersection with the northerly side of the right of way of the P. & R. Railroad; thence south 37 degrees 28 minutes east along the said northerly side of the right of way of the P. & R. Railroad (as the latter is established upon its plans between Stations 155 and 160) and continuing thence south 37 degrees 28 minutes east across the Delaware River to low water mark upon the easterly side of the Delaware River; thence northeasterly along the said low water line of the easterly side of the Delaware River to a point due east of the monument first mentioned upon the westerly bank of the said river; thence due westerly and re-crossing the Delaware River to the monument at the place of beginning.

Within the limits of the territory by this section included within and made part of the city, the city shall be and is hereby vested with all the powers, rights, privileges and immunities which by law appertain and belong to it as a municipal corporation, and all the laws or ordinances and regulations in force within the limits of the city, as heretofore existing, and not locally inapplicable, shall be extended and applied to the territory comprised within the boundaries as set forth herein.

The real estate by this section added to and included within the boundaries of the city, and all persons now or hereafter residing within the said boundaries shall be subject to assessment for municipal taxes in the same manner and subject to the same rights, rules and restrictions as in other cases within the said city, except that no property situated within that part of the city which shall have become a part of the said city by virtue of this section shall be taxable until the final determination of the effect of an agreement or compact entered into in the year 1905 between the States

of New Jersey and Delaware, known as the compact of 1905, and referred to in the opinion of the Supreme Court of the United States in the case entitled "New Jersey v. Delaware," reported in 291 U.S. 361. The word "determination" as herein used may refer either to agreement between the said states or to a final court adjudication.

The boundaries of the city be further extended to include the territory bounded and described as follows, to wit:

Beginning at the intersection of the westerly side of Lincoln Street at 60 feet wide with the southerly side of Oak Street at 50 feet wide; thence easterly along the southerly side of Oak Street 209 feet, 6 inches more or less to a point in the city line; thence, northerly along the said city line, crossing the beds of Oak Street and Lincoln Street, 265 feet, 2 inches more or less to a point in the westerly side of Lincoln Street; thence, southerly along the westerly side of Lincoln Street 162 feet, 6 inches to the point and place of beginning.

Also, beginning at a point in the northeasterly side of Bowers Street (at 60 feet wide), said point being located the two following courses and distances from the intersection of the southeasterly side of Bowers Street (at 60 feet wide) with the northeasterly side of East 35th Street (at 50 feet wide): (1) Along the said southeasterly side of Bowers Street as aforesaid in a northeasterly direction 123 feet more or less to a point in the presently existing boundary line of the city and Brandywine Hundred; (2) thence thereby in a northwesterly direction 60 feet to the northeasterly side of Bowers Street as aforesaid; thence from said point of beginning in a northeasterly direction and along the northeasterly side of Bowers Street extended crossing a twenty-five-foot-wide right-of-way formerly of the Pennsylvania Railroad and now assigned to Delwatco, Inc., a Delaware corporation and crossing the Governor Printz Boulevard (at 100 feet wide) a distance of 1,061.30 feet more or less to a point; thence southwesterly by a line deflecting to the right of the last mentioned course by an angle of 133 degrees, 45 minutes, 10 seconds, crossing the Governor Printz Boulevard and crossing a 36-inch interceptor sewer a distance of 543.83

feet more or less to a point; thence in a southwesterly direction by a line deflecting to the right of the last mentioned course by an angle of 46 degrees, 14 minutes, 50 seconds, crossing the aforementioned 25-foot-wide right-of-way formerly of the Pennsylvania Railroad a distance of 685.21 feet more or less to a point in the said presently existing boundary line between the city and Brandywine Hundred; thence thereby in a northwesterly direction 392.10 feet to the point and place of beginning; containing therein approximately 7.549 acres more or less.

Also, beginning at the intersection of the center line of Miller Road with the center line of 43rd Street extension also known as Lea Boulevard at 100 feet wide; thence from said point and place of beginning and along the center line of Miller Road south 55 degrees, 30 minutes west 595.95 feet to a point; thence north 34 degrees, 45 minutes west 144.24 feet to a concrete monument on the southerly side of the Baltimore and Ohio Railroad Co. right-of-way; thence along said railroad right-of-way north 61 degrees 31 minutes east 426.27 feet to a concrete monument; thence continuing along said railroad right-of-way north 57 degrees, 00 minutes, 30 seconds east 322.82 feet to a concrete monument; thence south 40 degrees, 35 minutes, 30 seconds east 71.5 feet to a concrete monument on the northerly side of Miller Road; thence along said side of Miller Road south 55 degrees, 30 minutes west 156.73 feet to a concrete monument; thence south 34 degrees, 30 minutes east 20.00 feet to the point and place of beginning, containing therein 1.828 acres.

Beginning at a point located on the easterly side of a 40 foot wide easement in line of lands now or formerly of Ahmad E. Amer, said point being located the six following courses and distances from the intersection of the easterly side of Marsh Road and the centerline of Beech Street: (1) along line of lands now or formerly of Frank B. Carpenter Realty Co. and along the easterly side of Marsh Road, south 5 degrees 22 minutes, west, 44.35 feet to a point; [(2)] continuing along said line of lands now or formerly of Frank B. Carpenter Realty Co., south 82 degrees 09 minutes east, 30.02 feet to a point; (3) continuing along the said line of lands now or

formerly of Frank B. Carpenter Realty Co., south 8 degrees 52½ minutes west, 77.97 feet to a point in line of lands now or formerly of Peter A. Papa, Jr., et ux.; (4) thence along said lands of Peter A. Papa, Jr., et ux., south 5 degrees 44 minutes 30 seconds west, 11.77 feet to a point; (5) thence continuing along said lands of Peter A. Papa, Jr., et ux., south 8 degrees 52½ minutes east, 382.29 feet to a point in line of lands now or formerly of Ahmad E. Amer; (6) thence thereby north 27 degrees 17½ minutes west, 13.56 feet to the point and place of beginning, which point is located on the easterly side of a 40 foot wide easement and is also in the dividing line between the City of Wilmington and Christiana Hundred, New Castle County; thence from said point of beginning, continuing along the dividing line between the City of Wilmington and Christiana Hundred, north 27 degrees 17½ minutes west, 549.13 feet to a point in line of lands now or formerly of Delmarva Power & Light Co.; thence thereby north 82 degrees 09 minutes west, 621.79 feet to a point located on the easterly side of the Mill Creek Extension of the W.&N.R.R. Railroad; thence thereby the two following courses and distances: (1) south 12 degrees 19 minutes west, 903.48 feet to a point; and (2) south 12 degrees 21 minutes 30 seconds west, 730.03 feet to a point in other lands now or formerly of Delmarva Power & Light Co.; thence thereby the seven following courses and distances: (1) south 77 degrees 38 minutes 30 seconds east, 539.63 feet to a point located on the westerly side of a 40 foot wide private right-of-way; (2) continuing along said private right of way along the arc of a curve to the right in a southerly direction having a radius of 481.50 feet, an arc distance of 49.58 feet to a point; (3) continuing along said private right-of-way, south 0 degree 27 minutes 10 seconds west, 285.46 feet to a point; (4) continuing along said private right-of-way, south 1 degree 19 minutes 50 seconds west, 963.92 feet to a point; (5) south 74 degrees 15 minutes east, 65.18 feet to a point; (6) thence south 9 degrees 19 minutes west, 330.29 feet to a point; (7) south 17 degrees 47 minutes west, 263.11 feet to a point located on the northerly side of the Delaware River Extension of the W.&N.R.R. Railroad; thence thereby the two following courses and distances:

(1) along the arc of a curve to the left in an easterly direction having a radius of 686.78 feet, an arc distance of 34.24 feet to a point, which arc is subtended by a chord bearing south 82 degrees 38 minutes 48 seconds east, 34.24 feet; (2) south 84 degrees 4½ minutes east, 17.28 feet to a point located in other lands now or formerly of Delmarva Power & Light Co.; thence thereby the two following courses and distances: (1) north 17 degrees 47 minutes west, 698.27 feet to a point; (2) north 84 degrees 34½ minutes east, 680 feet to a point on the low-water line of the Christina River; thence following the meanderings thereof, 864 feet plus or minus, to a point in line of lands now or formerly of Ahmad E. Amer, said point being the following courses and distances from the last mentioned point: (1) north 1 degree 00 minute east, 770.28 feet to a point; (2) north 2 degrees 17¼ minutes west, 87.72 feet; thence along line of lands now or formerly of Ahmad E. Amer, the 12 following courses and distances: (1) north 89 degrees 01 minutes west, 62.53 feet to a point; (2) south 2 degrees 17¼ minutes east, 32 feet to a point; (3) north 89 degrees 01 minutes west, 54 feet to a point; (4) north 64 degrees 05½ minutes west, 35.95 feet to a point; (5) north 89 degrees 01 minute west, 395.14 feet to a point; (6) north 1 degree ½ minutes east, 324.18 feet to a point; (7) south 88 degrees 58½ minutes east, 13.56 feet to a point; (8) north 1 degree ½ minutes east, 183.64 feet to a point; (9) along the arc of a curve having a radius of 67.24 feet, an arc distance of 12.98 feet to a point, which arc is subtended by a chord bearing north 43 degrees 35 minutes 07 seconds east, 12.96 feet; (10) north 49 degrees 07 seconds east, 255.17 feet to a point; (11) along the arc of a curve to the right having a radius of 121.89 feet, an arc distance of 85.61 feet, which arc is subtended by a chord bearing north 28 degrees 59 minutes 45 seconds east, 83.86 feet; (12) north 8 degrees 52½ minutes east, 709.39 feet to point and place of beginning. Be the contents thereof what they may.

Also, all that certain piece, parcel or tract of land situate in Brandywine Hundred, New Castle County and State of Delaware, being the portion of Riverside Hospital that is located in Brandywine Hundred containing 1.175 acres, more or less, as shown on a Plan prepared by

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Howard L. Robertson, Inc., entitled "Osteopathic Hospital Association of Delaware, Riverside Hospital," dated December 12, 1985, and being more particularly bounded and described as follows, to wit: Beginning at the point of intersection of the northwesterly side of Franklin Place (at 80 feet wide) with the northeasterly side of Thirty-Seventh Street (at 80 feet wide); thence from said point of beginning by the aforementioned northeasterly side of Thirty-Seventh Street, north 22 degrees, 19 minutes, 30 seconds west, 615.91 feet to a point; thence by line of lands, now or formerly, of St. Nicholas Church, north 61 degrees, 05 minutes, 00 seconds east, 83.05 feet to a point; thence passing through Riverside Hospital property along the division line between Brandywine Hundred and the City of Wilmington, south 22 degrees, 19 minutes, 30 seconds east, 625.41 feet to a point in the aforementioned northwesterly side of Franklin Place; thence thereby south 67 degrees, 39 minutes, 00 seconds west, 82.50 feet to the place of beginning, containing within said bounds 1.175 acres, be the same, more or less. (40 Del. L. ch. 179, § 1; 46 Del. L. ch. 236, § 1; Ord. No. 68-090, § 1; Ord. No. 71-045, § 1; Ord. No. 79-045, §§ 1, 2, 7-26-79; Ord. No. 88-001, 3-7-88; Ord. No. 88-102, § 4, 1-12-89)

Sec. 1-2. Extension of city or town limits; special election; voting rights.

The general assembly shall not enact any law extending the limits of any city or incorporated town in this state so as to include any portion of the adjoining or adjacent territory until after the question of such inclusion shall have first been submitted at a special election to the qualified voters and real estate owners of the territory proposed to be annexed and included in the limits of the city or incorporated town. At such election, if the majority of the qualified voters and real estate owners in such territory shall vote approval to be included within the limits of the city or incorporated town, then and only then shall such territory be included within the limits of the city or incorporated town. Such special election shall be held by the proper election officers of the district or districts embracing the territory. Each real estate owner shall be entitled to one vote for each

one hundred dollars (\$100.00) of real estate assessed to him on the assessment records of the county in which the territory is embraced. Each qualified voter, not being the owner of real estate within the territory, shall be entitled to one vote.

However, any city or town may extend its corporate limits without an election by ordinance duly passed by the city or town's governing body if the lands to be annexed are owned wholly by the city or town which is extending its limits.

State law reference—Similar provisions, 22 Del. C. § 101.

Sec. 1-3. Annexation by large municipalities; special elections.

(a) Any municipality in the State having a population in excess of 50,000, as enumerated in the most recent federal census, may extend the boundary limits of the municipality so as to include any portion of adjoining or adjacent territory, under the following terms and conditions:

- (1) The annexation process under this section shall only be initiated by a written petition to annex adjacent or adjoining territory submitted by the municipality's chief executive officer, or by member(s) of the municipality's legislative body, or by at least 25% of the qualified voters in the territory. The petition to annex, containing a general description of the territory, must be filed with the clerk of the municipality or equivalent municipal officer who is the keeper of official municipal legislative records and with the equivalent clerk or officer of the county in which the territory is situated.
- (2) Upon the filing of a petition under subsection (a)(1) of this section, the annexation must be approved in the following order:
 - a. The legislative body of the municipality must enact an ordinance approving the proposed annexation. The ordinance must provide a legal description of the territory, adopt the corresponding changes to the boundaries of the municipality and contain such other provisions as may be required by law.
 - b. The chief executive officer of the municipality must approve the proposed annexation, as evidenced by his or her

actual signature approving the ordinance enacted by the municipality's legislative body pursuant to subparagraph a of this paragraph.

- c. The legislative body of the county in which the territory is situated must enact an ordinance approving the proposed annexation. The ordinance may incorporate by reference all or a portion of the ordinance enacted by the municipality's legislative body pursuant to subparagraph a of this paragraph.
- d. The chief executive officer of the county in which the territory is situated must approve the proposed annexation, as evidenced by his or her actual signature approving the ordinance enacted by the county's legislative body pursuant to subparagraph c of this paragraph.
- e. A majority of the qualified voters in each parcel of the territory, voting in a special election held by the proper election official, must approve of the annexation. Such special election shall be held not less than 30 days nor later than 60 days following the date of approval of the county ordinance by the chief executive officer of the county pursuant to subparagraph d of this paragraph.
- f. If the proper election official certifies that the results of the special election indicate that a majority of the qualified voters in each parcel of the territory who voted in such election approved of the proposed annexation, the annexation shall become effective on the first day of the month immediately following such certification.

(b) If either legislative body shall fail to enact the respective ordinances required under subsection (a)(2)a and c of this section, or if either chief executive officer shall fail to approve such respective ordinances as required by subsection (a)(2)b and d of this section, or if the certification of the votes cast in the special election shall indicate that a majority of the qualified voters in each parcel of the territory who voted in such election was against the annexation of the territory, the

proposed annexation of the territory shall be declared to have failed. Nothing in this section shall prohibit any interested party from resubmitting a petition for annexation of the territory, or any portion thereof, under the authority of and in accordance with this section.

(c) The following definitions shall apply to this section:

- (1) "Adjacent" means to lie upon or touch the boundary of the municipality.
- (2) "Adjoining," in addition to its general meaning, shall also mean to lie upon or touch a highway, railroad right-of-way, or watercourse which lies upon the boundary line of the municipality and separates the municipality and the territory by only the width of such highway, railroad right-of-way or watercourse. If more than 1 highway and/or railroad right-of-way and/or watercourse, or any combination of the same, separates the municipality and the territory, and such highways and/or railroad rights-of-way and/or watercourses lie upon or touch each other, then the municipality and the territory shall be deemed adjoining.
- (3) "Election official" shall mean the person designated as the judge of the election under any special election law concerning annexations which applies to the particular municipality under 15 Del. C. or otherwise.
- (4) "Parcel" shall mean the property in the territory to which is assigned a separate tax parcel number on the books and records of the county Board of Assessment.
- (5) "Qualified voter":
 - a. With respect to any petition filed by voters in the territory pursuant to subsection (a)(1) of this section, the term "qualified voter" shall mean each voter qualified to vote under any special election law concerning annexations which applies to the particular municipality under 15 Del. C. or otherwise, as of the date of filing of the petition; and
 - b. With respect to any such special election, the term "qualified voter" shall

have the meaning set forth under any special election law concerning annexations which applies to the particular municipality under 15 Del. C. or otherwise.

- (6) "Territory" shall mean the property or properties proposed to be annexed to the municipality.

State law reference—Similar provisions, 22 Del. C. § 101A.

Sec. 1-4. Withdrawal or removal of property from city or town; special election; voting rights.

The General Assembly shall not enact any law which removes real property from within the limits of any city or incorporated town in this State until after the question of such removal shall have first been submitted to the governing body of the city or incorporated town at a special election of qualified voters and real estate owners of the city or incorporated town. The governing body of the city or incorporated town must first grant its approval by affirmative vote of a majority of the members of the body. When a special election is held, a majority of the qualified voters and real estate owners in the city or incorporated town must approve the removal from within the limits of the city or incorporated town and only then shall the real property be removed from the assessment rolls of the city or incorporated town. Any special election shall be held by the proper election officers of the city or incorporated town. The voting requirements shall be the same as those that exist for all other municipal elections in the municipality involved.

State law reference—Similar provisions, 22 Del. C. § 105.

Sec. 1-5. Statutes of limitations as to challenges to zoning and subdivision actions.

(a) No action, suit or proceeding in any court, whether in law or equity or otherwise, in which the legality of any ordinance, code, regulation or map, relating to zoning, or any amendment thereto, or any regulation or ordinance relating to subdivision and land development, or any amendment thereto, enacted by the governing body of a county or municipality, is challenged, whether by direct or collateral attack or otherwise, shall be brought

after the expiration of sixty (60) days from the date of publication in a newspaper of general circulation in the county or municipality in which such adoption occurred of notice of the adoption of such ordinance, code, regulation, map or amendment.

(b) No action, suit or proceeding in any court, whether in law or equity or otherwise, in which the legality of any action of the appropriate county or municipal body finally granting or denying approval of a final or record plan submitted under the subdivision and land development regulations of such county or municipality is challenged, whether directly or by collateral attack or otherwise, shall be brought after the expiration of sixty (60) days from the date of publication in a newspaper of general circulation in the county or municipality in which such action occurred of notice of such final approval or denial of such final or record plan.

State law reference—Similar provisions, 10 Del. C. § 8126.

Sec. 1-6. General jurisdiction and powers [of Public Service Commission].

(a) The [Public Service] Commission shall have exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the provisions of this title [of the Delaware Code]. Such regulation shall include the regulation of the rates, terms and conditions for any attachment (except by a governmental agency insofar as it is acting on behalf of the public health, safety or welfare) to any pole, duct, conduit, right-of-way or other facility of any public utility, and, in so regulating, the Commission shall consider the interests of subscribers, if any, of the entity attaching to the public utility's facility, as well as the interests of the consumer of the public utility service.

(b) Further, the Commission shall have exclusive original jurisdiction and regulation of every cable television system outside the boundaries of incorporated municipalities which on June 28, 1974, have the power either express or implied under their charters to grant franchises for a cable system, and the Commission shall have supervision and review jurisdiction and regula-

tion over any action taken by incorporated municipalities, which on June 28, 1974, have the power either express or implied under their charters to grant franchises for a cable system with respect to the regulation of cable television systems, including the grant of or failure to grant franchises for a cable system by such municipality or the terms of any franchise now or hereafter granted for a cable system by such a municipality or the conduct of any franchisee holding a franchise from such a municipality, provided that the Commission's original and review jurisdiction and regulation shall be conducted solely in accordance with the provisions of subchapter VI of this chapter [of the Delaware Code].

State law reference—Similar provisions, 26 Del. C. § 201.

RELATED LAWS COMPARATIVE TABLE

DELAWARE LAWS

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181	7- 8-03	1	Added 4-301

STATE OF DELAWARE
BIENNIAL MESSAGE

OF

*HIS EXCELLENCY,
PRESTON LEA,
GOVERNOR,*

TO THE

GENERAL ASSEMBLY,

CONVENED AT DOVER,

ON TUESDAY, THE FIFTH DAY OF JANUARY,

1909.

The excellent oration of Judge James Penne-
will was one worthy of the day and occasion.

The entire association of Delaware with the
Exposition was one in which the State and its peo-
ple may justly take pride.

The appropriation made by the State was in-
adequate to the proper representation of the State
in all its branches at the Exposition. The cost of
the State building designed for the Commission
was greatly enhanced by the increased cost of
labor and material in and around Norfolk; the
Commission would have been seriously embar-
rassed but for the generous contributions by pri-
vate individuals of time and funds, notably the lib-
eral contributions of General T. Coleman duPont.

New Jersey and Delaware Fisheries Laws.

The long drawn out controversy between the
States of New Jersey and Delaware over the
boundary lines and the rights of the citizens of the
two States of fishing on the Delaware River and
Bay was definitely terminated in 1905 by a com-
pact or agreement executed by the Commissioners
of said two States and the subsequent ratification
by the Legislatures of the two States and by the
Congress of the United States.

One of the Articles of this Compact bound
each State to the enactment of statutes controlling

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the fishery rights of the citizens of said States in the waters of Delaware River and Bay.

A Joint Fisheries Commission, composed of three citizens from each said State, after full hearing of all parties interested, prepared and presented to the Legislature of each of said States in 1907 a bill which each State had covenanted concurrently to adopt. New Jersey passed said bill which will become operative immediately upon the adoption of said Act by Delaware. Unfortunately certain modifications were made in the bill as passed by the General Assembly of Delaware so that it does not conform to the bill prepared by said Joint Commission and which was passed by the State of New Jersey.

The faith and credit of the State is pledged to the enactment of said laws as will appear in Article 4 of said compact, to wit:

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

I urge upon you the enactment of the necessary amendments to Chapter 146, Volume 24, Laws of Delaware, to make said Act conform in every particular with the law agreed upon in order that it may become at once operative.

NJ 02067

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Del. Op. Atty. Gen. 77-033, 1977 WL 25804 (Del.A.G.)

(Cite as: 1977 WL 25804 (Del.A.G.))

*1 Office of the Attorney General
State of Delaware

OPINION NUMBER: 77-033
October 28, 1977

Nathan Hayward, III
Director
Office of Management, Budget and Planning

QUESTION: Does the **Delaware-New Jersey Interstate Compact of 1905** require that **Delaware's** fisheries management laws and regulations for the **Delaware River and Bay** be uniform with those in **New Jersey**?

ANSWER: No, the two State Legislatures did not pass the legislation necessary to implement the Compact provision relating to a uniform fisheries law.

DISCUSSION:

The States of **Delaware** and **New Jersey** duly entered the subject compact in 1905. Article IV of the compact provided a mechanism for drafting and implementing a uniform fisheries law which, once in place, was not to be unilaterally altered. The pertinent portion of Article IV reads as follows:

"Article IV. Immediately upon the execution hereof the Legislature of the State of New Jersey shall appoint three Commissioners to confer with three Commissioners to be immediately appointed by the General Assembly of the State of Delaware for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between said two States, which said Commissioners for each State respectively shall, within two years from the date of their appointment, report to the Legislature of each of said States the proposed laws so framed and recommended by said joint Commission. Upon the adoption and passage of said laws so recommended by the respective Legislatures of said States said laws shall constitute the sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States."

The key to implementing Article IV was "the adoption and passage of said laws so recommended by the respective legislatures of said two States." In accordance with the provisions of the compact, the commissions were duly appointed by each of the States. The commissions formed a joint fisheries law and both States soon thereafter independently passed State legislation which purported to be a "Uniform law." Both the Delaware Act and the New Jersey Act provided that their respective

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(Cite as: 1977 WL 25804 (Del.A.G.))

provisions should not become operative until passed by the Legislatures of both States.

The so-called uniform laws were in many material respects different. For example, Section 5 of the Delaware Act (Chapter 146, 24 Delaware Laws) provided that it was unlawful to fish for shad between midnight Saturday and midnight Sunday. Section 6 of the New Jersey Act (P.L.1907, Chapter 131) provided it was unlawful to fish for shad between noon Saturday and midnight Sunday. Section 6 of the Delaware Act provided that the meshes of a net used to catch carp was not to be less than two inches stretched measure, while the New Jersey Act provided for meshes not less than two and one-half inches stretched measure. There was also a discrepancy in the time during which it was unlawful to catch carp. Sections 7 and 9 of both Acts differed in the same respect as Section 6. Section 10 of the Delaware Act provided that it was unlawful to catch fish with a net which was anchored or fastened in any way across the mouth of any river, creek or stream emptying into the waters, while Section 10 of the New Jersey Act provided, in addition, that it was unlawful to catch fish with a net which was anchored or fastened at right angles with the shore line. The two Acts also differed with respect to who was authorized to make arrests and who paid the costs for proceedings to enforce the statutes.

*2 It is apparent from the above that the Acts adopted by the two States were not uniform and that, therefore, they could not have been the law which was agreed upon and "so recommended" by the joint commission as a uniform law contemplated by the compact. Nor is there any evidence that the two States subsequently enacted the recommended legislation. As such, there is no uniform fisheries law pursuant to the compact. There is, therefore, no requirement under the compact that Delaware's fisheries management laws and regulations for the Delaware River and Bay be uniform with those in New Jersey. This Opinion expressly overrules and supercedes Attorney General Opinion Number 68-058, which held there are uniform laws still binding on both States, but failed to acknowledge and address these Acts' inconsistent provisions and the effect of such inconsistency.

Very truly yours,

Jeremy W. Homer

Assistant Attorney General

Approved by:

Richard R. Wier, Jr.

Attorney General

Del. Op. Atty. Gen. 77-033, 1977 WL 25804 (Del.A.G.)

END OF DOCUMENT

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P

Wilmington 33, Delaware
Sept. 11, 1946

Board of Game and Fish Commissioners
Dover
Delaware

Attention of Mr. Frank A. Lawson, Chief Warden

Gentlemen:

This letter is written in reply to your request of August 12, 1946 concerning the laws which now govern fishing and fishing rights in the Delaware River and Bay. On examination, we found that the answer to the question required a great deal of research, which accounts for the delay in answering your letter.

In order to understand the status of the present law, it is necessary to examine the entire legislative history of the Fishery Laws of this State and of New Jersey.

As you have indicated in your letter, the starting point is found in the Compact between the States which is framed by a joint commission, the members of which were appointed by the Governors of the two States, which Compact was executed on behalf of the States on March 21, 1905 (Appendix, 23 Laws of Delaware). This Compact provided in part that upon ratification by the Congress it would become binding in perpetuity upon both of the States. It was subsequently ratified and approved by the Congress (34 U. S. Stat., p. 394), and the terms thereof became a part of the law of both States in perpetuity.

A further examination of the Compact shows that provisions were adopted (Articles 1 and 2) which give mutual rights for the service of criminal and civil process for offenses committed on the soil of the other State or upon the water of the Delaware River or aboard vessels within the exclusive jurisdiction of either State. The Compact next provided that the inhabitants of both States should have and enjoy a common right of fishery throughout, in and over the waters of the Delaware River between the low water marks except so far as either State may have theretofore granted valid and subsisting private rights of fishery (Article 3).

In Article 4, the States pledged themselves to appoint commissioners to confer for the purpose of drafting uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the two States, and provided further that within two years from the date of their appointment the commissioners should report to the Legislature of each State the proposed laws framed and recommended by the joint commission, and that upon the adoption and passage of the laws so recommended, they should constitute the sole laws for the regulation and taking and catching of fish in the River and Bay. These laws, if and when enacted, were to remain in force until altered, amended or repealed by concurrent legislation of the two States.

Article 5 provided that all of the laws of each State relating to the regulation of fisheries in the Delaware River not inconsistent with the right of common fishery mentioned in the Compact should continue in force in the respective States until the enactment of the concurrent legislation therein provided.

This analysis of the Compact shows that it was solemnly agreed that both States would enact uniform laws to regulate the catching and taking of fish in the Delaware River and Bay. It is equally clear that the joint commission in drawing the Compact recognized the necessity for uniform fishery laws and that if such uniform laws were not adopted by both States, the purpose for which the Compact was framed would be defeated. It is equally apparent that until the States adopted uniform acts, all of the laws of each State relating to the regulation of fisheries should continue in force.

These conclusions raise the question as to whether the States in fact adopted such uniform laws.

Shortly after the execution of the Compact, it was ratified and confirmed by an act of the General Assembly of the State of Delaware on March 20, 1905, and by an act of the Legislature of the State of New Jersey dated March 21, 1905. Subsequently commissioners were appointed by both States, and as appears from the preamble of Ch. 146, 24 Delaware Laws, and from the preamble of the New Jersey Act (P.L. 1907, p. 302) the commissions organized and agreed in a joint meeting held for that purpose upon uniform laws to regulate the catching and taking of fish in the Delaware River and Bay. On April 23, 1907, the Delaware Legislature adopted what purported to be the Uniform Act as framed by the joint commission. Sec. 26 of that Act expressly provided that the Act should not become operative until the Legislature of New Jersey shall have passed and the Governor of that State shall have approved of a similar law agreed upon by the commission as recited in the preamble of the Delaware Act. On May 7, 1907, the Legislature of the State of New Jersey having enacted a so-called Uniform Law, the Governor of that State approved the New Jersey Act (P.L. 1907, Ch. 131, p. 302). That Act also specifically provided that it should not take effect immediately but would not become operative until the Legislature of Delaware shall have passed and the Governor of Delaware shall have approved of a similar law, agreed upon by the commission, as recited in the preamble of that Act.

We have examined carefully the provisions of both of the so-called Uniform Acts and find there are many inconsistencies in them. For example, Sec. 5 of the Delaware Act provides that it shall be unlawful to fish for shad between the hours of twelve o'clock midnight on Saturday and twelve o'clock midnight on Sunday. Sec. 6 of the New Jersey Act provides that it shall be unlawful to fish for shad between the hours of twelve o'clock noon of Saturday and twelve o'clock midnight of Sunday. Sec. 6 of the Delaware Act provides that the meshes of a net used to catch carp shall not be less than two inches stretched measure, while the New Jersey Act provides for meshes of not less than two and one-half inches stretched measure. There is also a discrepancy in the time during which it shall be unlawful to catch carp. Sections 7 and 9 of both Acts differ in the same respect as Sec. 6. Sec. 10 of the Delaware Act provides that it is unlawful to catch fish with a net which is anchored or fastened in any way across the mouth of any river, creek or stream emptying into the waters, while Sec. 10 of the New Jersey Act also provides that it is unlawful to catch fish with a net which is anchored or fastened in any way across "the said waters or any part thereof, or at right angles with the shore line thereof," in addition to the mouth of any river, creek or stream emptying into the waters.

Sec. 18 of the Delaware Act provides that a warrant may be issued to a sheriff, county constable or officer of the county authorized to make an arrest, while the New Jersey Act provides in addition that a warrant may be issued to any fish and game warden of the State. Sec. 19 of the Delaware Act providing for the costs, charges and expenses of any proceeding for violation of the provisions of the Delaware Act is not found in the New Jersey Act. Following that Section, in the Delaware Act the sections bear different numbers. Sec. 22 of the Delaware Act provides that certain officers may arrest without a warrant where the provisions of the Delaware Act are violated. The corresponding section in the New Jersey Act (Sec. 21) does not permit the Collector of Oyster Revenue to arrest under such circumstances and substitutes the Fish and Game Warden. Sec. 23 of the Delaware Act relating to prosecutions and procedure differs substantially from the provisions of Sec. 22 of the New Jersey Act which incorporates the New Jersey provisions for prosecution and procedure.

It is apparent from the above that the acts adopted by the two States were not uniform and that, therefore, they could not have been the law which was agreed upon by the joint commission nor the Uniform Law contemplated by the Compact between the States.

We have not been able to determine which of the two States was at fault in not adopting the Uniform Law agreed to by the joint commission although the fault appears to lie with the Delaware Legislature inasmuch as the Delaware Senate Journal of the Special Session of 1914 reports on p. 79 that Delaware had not adopted the Uniform Act as it was framed.

We are not unaware of the consequences of any opinion of this office which would hold that the Uniform Act as contemplated by the Compact between the States is not effective but under the circumstances it is our opinion that the Uniform Law contemplated by the preambles of both the Compact and the subsequent legislative enactments of the States contemplated a uniformity in legislation that is not found in a comparison of the two acts. As both New Jersey and Delaware specifically provided that the legislation which they enacted would not be effective unless and until the other State adopted a Uniform Act, the conclusion is inescapable that a Uniform Law does not exist today.

While it might conceivably have been possible for the New Jersey and Delaware Legislatures to adopt uniform provisions beyond the two year period mentioned in the Compact, it appears from our further examination of the laws of both States that such has not been the case.

For example, the New Jersey Legislature in 1911 adopted an act which regulated fishing in the waters of the Delaware River and Bay lying between the two States and all the tributaries of the River and Bay within said limits wherein the tide ebbs and flows. That Act (P.L. Ch. 263, p. 550) regulates fishing for game fish enumerated in the statute, fish that were not within the contemplation of the Uniform Act and, in one instance, that of fishing for sturgeon, and lays down new restrictions. Clearly this Act does not make for uniformity.

The Delaware Legislature on the other hand carried the provisions of the Delaware Act of 1907 into the 1915 Code (Ch. 74, Sections 143 to 168 inclusive). It nevertheless repealed the provisions of Ch. 74 of the Revised Code of 1915, and by the provisions of Ch. 203 of 28 Delaware Laws, approved March 16, 1923, substituted a new act which related to fishing in the waters of the Delaware River and Bay. This Act did not purport to be a uniform act. Other changes and additions to the new sections so adopted were made by Ch. 204 and 205 of 28 Delaware Laws; Ch. 176 of 30 Delaware Laws; Ch. 175 of 32 Delaware Laws; Ch. 194 of 33 Delaware Laws; Ch. 175 and 176 of 35 Delaware Laws; and Ch. 238 of 36 Delaware Laws.

By the provisions of Ch. 248 of 32 Delaware Laws, approved Feb. 4, 1921, the Governor of the State of Delaware was authorized to appoint a commission to confer with a like commission appointed by the Governor of the State of New Jersey to draft modifications of the supposed law between the two States regulating the catching of fish in the River and Bay. By the provisions of Ch. 193 of 33 Delaware Laws, approved March 14, 1923, it was again recited that the commissions had been appointed, had met, and had agreed upon uniform laws. By Sec. 105 of that act, it was again provided that neither the Act nor any section or part thereof would be valid or become operative until a similar act was enacted by the State of New Jersey. So far as we can determine, there is no record that the Delaware Legislature ever enacted similar legislation, and the provisions of Ch. 193 of 33 Delaware Laws never became effective. *New Jersey*

Once again (Ch. 243, 35 Delaware Laws), a commission was appointed by the State of Delaware to confer with a like commission representing the State of New Jersey for the purpose of framing a Compact or agreement with the State of New Jersey concerning the respective rights of the States in the Delaware River and Bay. Ch. 278, 35 Delaware Laws contains Uniform Fishing Laws which were not to take effect unless similar legislation were adopted by New Jersey. As before, no action has been taken by New Jersey.

From this examination of the various acts, it becomes apparent that Delaware and New Jersey have not enacted uniform legislation which is binding upon both states and their citizens. The provisions of the original Compact of 1905 in so far as they relate to the rights of the States in the issuance of process and with respect to the common right of fishery not having been amended by joint action of the States remain in full force and effect. In the absence of any further uniform laws, each State has retained the right to enact legislation which will be effective within its territorial jurisdiction which includes, of course, the waters of the Delaware River and Bay which belong to each.

Ch. 146, 24 Laws of Delaware is not effective since it was not a uniform provision. Likewise the provisions of Ch. 74 of the Revised Code of Delaware, 1915, do not represent the Uniform Law adopted by New Jersey or which was in effect in New Jersey in 1915. The first provisions which purport to enact legislation covering the rights of Delaware and its citizens are found in Ch. 203, 28 Delaware Laws. That Chapter expressly provides that it should become effective "upon the approval hereof by the Governor of the State of Delaware." The Act was approved by the Governor on March 16, 1915. At the time of its approval, it became the only specific legislation covering fishing rights in the Delaware River and Bay. The subsequent enactments of the Delaware Legislature do not purport to repeal that entire Chapter although there were, as set forth above, numerous amendments to the law in Volumes 30, 32, 33, 35 and 36 Delaware Laws. These amendments are set forth and incorporated in the law as it appears in Ch. 74 of the Revised Code of Delaware, Sections 181 to 211 inclusive. These provisions represent the law of the State of Delaware with respect to fishing rights in the Delaware River and Bay. In the absence of any uniform law which would, under the Compact between the States, be superior, the provisions of Ch. 74 must be considered by your Board as the laws which you are to enforce.

In reading the last paragraph appearing on page 2 of your letter, it appears that you have misconstrued the effect to be given to Ch. 74, Art. 7 of the Revised Code of 1915. Under our law, the codifiers of our statutes do not enact legislation by incorporating acts into a single volume. When they spoke as appears on p. 1219 of that Code of the Uniform Law (appearing as Sections 143 to 168 inclusive), they did not give that legislation any effect beyond that which it had prior to its codification. The sections did not represent a uniform law between the States before their insertion in the 1915 Code and did not acquire uniformity by any reference which might have been made thereto by the codifiers. Sections 143 to 168 were not uniform provisions at any time and were, therefore, not effective as provided by Sec. 168.

The fact that after the enactment of Ch. 203, 28 Delaware Laws, uniform commissions were appointed by the Governor of this State does not mean that Delaware did not have laws regulating fishing in the waters over which it has jurisdiction. This action should be interpreted to mean that we did not have Uniform Laws enforceable by both Delaware and New Jersey.

To sum up this lengthy letter, it is our opinion that the statement appearing in the Revised Code of Delaware, 1935, is correct, that at the present time there is no Uniform Law, and that Ch. 203, 28 Delaware Laws as amended governs the regulation of fishing in the Delaware River and Bay within the jurisdiction of the State of Delaware over such waters.

Very truly yours,

Attorney General

VAT:F

COPY

No. 11, Original

In The
Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

**AFFIDAVIT OF RICHARD G. CASTAGNA
IN SUPPORT OF PLAINTIFF'S MOTION
TO REOPEN AND FOR
A SUPPLEMENTAL DECREE**

State of New Jersey:

SS

County of Mercer :

Richard G. Castagna, being duly sworn, deposes and says:

1. I am the Supervisor of the Southern Region of the Bureau of Tidelands Management of the New Jersey Department of Environmental Protection. I have held this position since 1993. For 16 years before that, I was consecutively a Senior Environmental Specialist, a Principal Environmental Specialist and a Supervising Environmental Specialist. I have a total of 28 years experience in identifying State tidelands claims and in assisting in the administration of the tidelands program of the State of New Jersey. The Bureau of Tidelands serves as staff to the Tidelands Resource Council in the Department of Environmental Protection of the State of New Jersey. N.J. Stat. Ann. § 13:1B-10 (1979). The Council has been designated by the Legislature as "the public body responsible for the stewardship of the State's riparian lands." N.J. Stat. Ann. § 12:3-12.1 (Supp. 2005). Since 1869, the Council (and its predecessors) has been the agency initially responsible for determining whether the State should make any grant, lease or conveyance of State riparian lands and rights under the laws of New Jersey.

2. The staff of the Bureau is the custodian of the records of the actions of the Council and its predecessor agencies. In preparing this Affidavit, I have reviewed those records, the laws of New Jersey concerning legislative riparian grants, the record compiled in *New Jersey v. Delaware*, 291 U.S. 361 (1934) ("the 1934 proceedings"), and the response of Delaware to the Division of Law's May 2005 Freedom of Information Act request concerning Riverwalk in Penns Grove.

Riparian Rights in New Jersey in 1905 and Today

3. Riparian rights in New Jersey have been delineated by statute. Riparian owners have no constitutional riparian rights. *Stevens v. Patterson and Newark Railroad Company*, 34 N.J.L. 532, 3 Am. Rep. 269 (E. & A. 1870). Before 1851, the State of New Jersey recognized a "local custom" of riparian owners to fill the tidally flowed lands ("tidelands") outshore of their properties. *Bell v. Gough*, 23 N.J.L. 624 (E. & A. 1852). Starting in 1851, this common law right was circumscribed by statute to allow such filling without state permission only from the mean high water line to the mean low water line. 1851 N.J. Laws p.335. ("The Wharf Act"). This statutory riparian right to fill to the low water line was abolished in the Hudson River area in 1869, 1869 N.J. Laws ch. 383, p.1018, § 3, and was abolished elsewhere in New Jersey in 1891. 1891 N.J. Laws ch. 124, p.216, § 1, codified as N.J. Stat. Ann. § 12:3-4. (1979). State regulation of riparian lands in New Jersey began in 1851 with the adoption of the Wharf Act. From 1851 to 1891, riparian owners in New

Jersey, under the Wharf Act, could construct piers and fill offshore of low water provided they obtained the approval of their respective counties. The counties could approve such structures or fill only if there was no hazard to navigation.

5. Riparian laws in New Jersey are compiled in N.J. Stat. Ann. §§ 12:3-1 (1979), et seq., first known as The General Riparian Act of 1869. Riparian owners have a preemptive right to apply to the State of New Jersey to lease or purchase the State's tidal land in front of their upland. N.J. Stat. Ann. § 12:3-7 (enacted in 1869). A sale or lease to one who is not an upland owner must be with the consent of the upland owner or on six month's notice to the upland owner. N.J. Stat. Ann. § 12:3-9 (enacted 1869). Otherwise, the grant or lease will be void. *Shamberg v. Board of Riparian Commissioners*, 43 N.J.L. 132, 60 A. 43 (Sup. Ct. 1905). Since 1916, state or local governments planning parks or highways have not needed the upland owner's prior consent, the lone exception to this consent requirement. N.J. Stat. Ann. § 12:3-33 (enacted in 1916). If a right of way, such as a street or railroad line, separates a property owner from the shoreline, that owner nevertheless has the right of an upland owner or a riparian owner to apply for a state tidelands grant or lease. N.J. Stat. Ann. § 12:3-18 (enacted 1877). Riparian owners, once they have a grant or lease, may dredge out from the area of their grant in order to reach the navigable channel. N.J. Stat. Ann. § 12:3-21 (enacted 1891). The exercise of this right is subject to obtaining applicable State environmental permits and a tidelands license. Riparian owners also have a common law right to accretion to their properties and suffer loss of their lands by erosion. Artificial filling of State tidelands is prohibited without permission from the State and requires a conveyance or lease of the tidelands involved. N.J. Stat. Ann. § 12:3-4 (as amended in 1891). Unauthorized filling does not divest the State of its title. N.J. Stat. Ann. § 12:3-4 (enacted 1877).

6. Such in general were the riparian rights of property owners in New Jersey in 1905, or shortly thereafter, rights which continue to be in effect to the present day.

Actions of the State of New Jersey Asserting Its Riparian Jurisdiction Over the Lands of the Delaware River Within the Twelve Mile Circle

7. The State of New Jersey, first through its Legislature and its Governors, and then after 1871 through the Council and its predecessors, has approved numerous conveyances and leases of riparian lands extending waterward from the present or former mean high water line of the Delaware River within the Twelve Mile Circle defined in *New Jersey v. Delaware*, 295 U.S. 694 (1935) (decree). Indeed, a pier or dock must extend a sufficient distance beyond the low-water mark in order that vessels at low tide can freely traverse between the channel and the landing. Without such access, riparian rights would be largely illusory.

8. Typically, the Council's actions anticipated the construction of piers and were, for the period 1914 to approximately 1978, accompanied by the State's regulatory authorization to build the structures, or by permits issued to legalize structures already in place.

Henry J. Sherman, a Consulting Engineer with the Board of Commerce and Navigation, one of the predecessor agencies to the present Council, described this permitting authority in his testimony before the Special Master in the 1934 proceedings. (Stip. Rec. at 85.)¹

From 1978 to the present, the Council conditioned its approval of a grant, license or easement on the applicant's obtaining a New Jersey regulatory permit, together with all other required federal, New Jersey and local regulatory permits.

9. On at least eight occasions between 1854 and 1905, the State of New Jersey exercised its riparian jurisdiction by approving State tidelands conveyances beyond the low water line within the Twelve Mile Circle. I further found 33 instances between 1905 and the present in which the State of New Jersey continued to exercise its riparian jurisdiction on the New Jersey side of the River within the Twelve-Mile Circle. These actions from 1854 to the present involved 48 separate tracts of land that were granted, leased or licensed by the State to private or governmental entities. Consistent with New Jersey's conveyances before 1905 and with the provisions of the Compact of 1905, the State of New Jersey, acting through the Board of Riparian Commissioners and its successors, approved and delivered each of these State tidelands grants and leases without limiting the grant or conveyance to the low-water line. The Board of Riparian Commissioners and its successors typically relied on previously established or then modified pierhead and bulkhead lines as the limit to which the grantees could extend their riparian structures. The pierhead lines established in 1877 and in 1916 in this area were located well beyond the mean low water line.

Actions of the State of New Jersey Asserting its Riparian Jurisdiction Over the Lands of the Delaware River in the Twelve Mile Circle Before the Compact of 1905.

A map depicting the grants identified below is annexed as an exhibit to this affidavit. The numbers on the map correspond to the following numbered paragraphs. In all of the riparian grants listed, the State granted riparian rights extending beyond the mean low water line.

(1) 1854 N.J. Laws ch. 143, p.375. This Act authorized Thomas D. Broadway, et al., to build and maintain docks, piers or wharves in front of their lands at Pennsville in the Township of Lower Penns Neck, Salem County.² (Record, No. 11, Orig., Pl. Exs. 41, 131.)³ The Act provided that Broadway was authorized to extend these structures into the Delaware River "a sufficient distance for the accommodation of vessels navigating" the River, but not "so far into the said river as to injure or impede the navigation of the same." 1854 N.J. Laws ch. 143, p.375, § 1. This pier was at the foot of Main Street in Pennsville. It was included

1 *New Jersey v. Delaware*, No. 11, Orig., Volume 1, Stipulated Record Testimony, United States National Archives & Records Admin., Record Group 267, Box 155, location: 17E4/06/23/05 - 24/01.

2 Lower Penns Neck Township is now called Pennsville Township.

3 References to "Record, No. 11, Orig., Pl. Ex." are citations to exhibits admitted into evidence in the 1934 proceedings. See *New Jersey v. Delaware*, No. 11, Orig., Volumes 3-13, United States National Archives & Records Admin., Record Group 267, Boxes 156-165, location: 17E4/06/23/05 - 24/01

within the 1923 State grant to William D. Acton. (Record, No. 11, Orig., Pl. Exs. 3, 57 (Grant "P").)

Mr. Sherman testified during the 1934 proceedings that a wharf existed at this location, owned by the Wilson Line. (Stip. Rec. at 279-80.)

(2) 1855 N.J. Laws ch. 109, p.274. This Act incorporated the Pennsgrove Pier Company and authorized it to build and maintain "a wharf or pier extending from the mainland into the river Delaware at the Village of Pennsgrove," Salem County.⁴ The Act authorized the Company to enlarge, extend and rebuild the pier and to "purchase, lease and hold such and so much land as is necessary for that purpose." (*Id.*, § 4; *see also* Record, No. 11, Orig., Pl. Exs. 42, 132.) This pier was at the foot of Main Street in Penns Grove. It was included within the 1916 State grant to the Pennsgrove Pier Company. (Record, No. 11, Orig., Pl. Exs. 3, 57 (Grant "B").)

Mr. Sherman testified in the 1934 proceedings about the wharf on this property. (Stip. Rec. at 281.)

This pier was also the site of the gambling offense over which the State of New Jersey's jurisdiction was upheld in *New Jersey v. Federanko*, 29 N.J. 119, 139 A.2d. 30 (1958).

This pier is identified on the tax map of the Borough of Penns Grove as Block 57, Lot 6. It is substantially outshore of the mean low water line, and it is taxed by Penns Grove.

(3) 1870 N.J. Laws ch. 131, p.346. This Act authorized Robert Walker, et al., to build wharves, piers and bulkheads in front of their lands in the Township of Upper Penns Neck.⁵ (Record, No. 11, Orig., Pl. Exs. 48, 135.) The Act permitted the pier to extend up to 400 feet from the high water mark into the River, but not in the front of the land of any other person.

(4) 1870 N.J. Laws ch. 344, p.726. This Act authorized Joseph Guest to build and maintain a dock or wharf in front of his lands in the Township of Upper Penns Neck. The Act authorized Guest to extend the dock or wharf "a sufficient distance into the Delaware River for the accommodation of vessels navigating the same, and from time to time to rebuild and repair the same." This wharf once extended 100 feet outshore of the high water line. (Record, No. 11, Orig., Pl. Exs. 44, 134.)

(5) 1871 N.J. Laws ch. 307, p.758. This Act authorized Henry Barber to build wharves, piers and bulkheads in front of his lands in the Township of Upper Penns Neck. (Record, No. 11, Orig., Pl. Ex. 43.) The Act allowed Barber to extend his pier up to 100 feet below the low water mark into the River. (*Id.*) The wharf was located at the foot of West Harmony Street, and was known as Barber's Wharf. A sketch in 1931 showed that it extended 430 feet outshore of the low water line, not the 100 feet called for in the statute. (*Id.* Ex. 133.) Mr.

⁴ The Village of Pennsgrove is now called Penns Grove Borough.

⁵ Upper Penns Neck Township is now called Carneys Point Township.

Sherman testified in the 1934 proceedings that the Barber Wharf once extended 400 feet offshore of the low water line. (Stip. Rec. at 282.)

(6) In 1871, the State of New Jersey expanded the authority of the Board of Riparian Commissioners to the lands under the tidal waters of the entire State, including the submerged tidal lands of the Delaware River in the area of the Twelve Mile Circle. 1871 N.J. Laws ch. 256, p.44, § 1, now codified as N.J. Stat. Ann. § 12:3-10. Thereafter, the Legislature no longer approved grants and leases of the State riparian interest but instead delegated that responsibility to the Board and its successors, and to the Governor, where that authority currently resides. N.J. Stat. Ann. § 13:1B-13 (2003).

(7) The State of New Jersey exercised its regulatory jurisdiction over the riparian lands on its side of the Delaware River not only by approving conveyances of riparian lands but also by setting pierhead and bulkhead lines. On November 3, 1877, the Board of Riparian Commissioners of the State of New Jersey adopted pierhead and bulkhead exterior lines for a portion of the Delaware River within the Twelve Mile Circle in the County of Gloucester and the County of Salem. 1934 Plaintiff's Exhibit 144. By virtue of this action, the Board advised that it would look with favor upon applicants whose construction plans for piers and filling were within these lines, and look with disfavor upon those which were not.

(8) Grant⁶ to Daniel H. Kent of Wilmington, Delaware by the State of New Jersey, dated February 17, 1883, now offshore of Block 2 Lot 1, Elsinboro Township. Tract 1 extends 300 feet on one side and 400 feet on the other to the exterior line established by the Riparian Commissioners in the Delaware River and Salem Cove. (Record, No. 11, Orig., Pl. Ex. 92; *id* Exs. 3, 57 (Grant "R"); Liber I, page 218.)⁷

When a mortgage on the upland on this property was foreclosed, this riparian grant was held to be included in the area foreclosed upon. *Boon v. Kent*, 42 N.J.Eq. 131, 7 A. 344 (Ch. 1886).

This grant also indicates that the Board of Riparian Commissioners adopted Pierhead and Bulkhead lines in the Delaware River in the Twelve Mile Circle before the Compact of 1905 was approved. (Record, No. 11, Orig., Pl. Ex. 92 at 2-3.)

(9) Grant to Annie E. Brown by the State of New Jersey dated August 28, 1891, now offshore of Block 2801 Lot 4, Pennsville Township. This grant extended 850 feet on one side into Delaware Bay and 850 feet on the other to the Exterior Line of the New Jersey Board of Riparian Commissioners. (Record, No. 11, Orig., Pl. Exs. 84, 85; *see also id.* Exs. 3, 57 (Grant "N"); Liber G, page 380.)

⁶ In New Jersey riparian law, fee simple conveyances of the State's riparian interests are by recordable deeds called "grants." N.J. Stat. Ann. § 12:3-7.

⁷ References to "Liber I page 218," and the like are references to the location of an official copy of New Jersey State tidelands instruments in the records of the Bureau of Tidelands Management, Trenton, New Jersey. All such documents typically are also recorded in the records of the County Clerks or Registers of the counties involved.

Mr. Sherman testified in the 1934 proceedings that the low water line was 50 to 75 feet below the high water line at this grant location, and that the property was used for amusement park purposes, in conjunction with adjacent grants. (Stip. Rec. at 274.) Thus, the upland owner could develop the waterfront at this location to the maximum extent of 804 feet beyond mean low water. This grant also indicates that the Board of Riparian Commissioners adopted Pierhead and Bulkhead lines in the Delaware River in the Twelve Mile Circle before the Compact of 1905 was approved.

(10) Grant to Eugene Dupont, et al., all of New Castle County, Delaware, trading as E.I. Dupont de Nemours and Company, by the State of New Jersey dated November 27, 1891. Now in the Township of Carneys Point, just south of Carneys Point, this grant extends from high water into the Delaware River 550 feet to the Commissioners' Exterior Line. (Record, No. 11, Orig., Pl. Exs. 70-72; *see also id.* Exs. 3 and 57 (Grant "E"); Liber G, page 386.) This grant also indicates that the Board of Riparian Commissioners adopted Pierhead and Bulkhead lines in the Delaware River in the Twelve Mile Circle before the Compact of 1905 was approved.

Actions of the State of New Jersey Asserting its Riparian Jurisdiction in the Delaware River Within the Twelve Mile Circle After the Compact of 1905.

(11) Grant to James A. Denny, et al., by the State of New Jersey dated April 26, 1906. Now offshore of Block 1 Lot 4, Penns Grove Borough, this grant extends 500 feet waterward of high water into the Delaware River. (Record, No. 11, Orig., Pl. Exs. 58, 59; *id.* Exs. 3, 57 (Grant "A"); Liber Q, page 721.)

Mr. Sherman testified that the "low water line at this location is 50 feet beyond the high water line, so that 450 feet of the area conveyed by the Riparian Commissioners [of New Jersey] to Denny would be beyond the low water line." (Stip. Rec. at 122.) The structure built within this grant is identified as Denny's Wharf on Riparian Atlas Sheet No. 710.⁸

(12) Grant to Pennsgrove Pier Co. by the State of New Jersey dated March 21, 1916. Now offshore of Block 57, Lot 1, Penns Grove Borough, this grant extends 885 feet outshore of high water on one side and 975 feet on the other to the New Jersey Pierhead and Bulkhead line. (Record, No. 11, Orig., Pl. Exs. 60, 62 and 63; *see also id.* Exs. 3, 57 (Grant "B"); Liber U, page 684). This grant is recorded in the records of deeds of Salem County, New Jersey, in Deed Book 130, page 383.

This pier is identified on the tax map of the Borough of Penns Grove as Block 57, Lot 6. It is substantially outshore of mean low water, and it is taxed by Penns Grove.

⁸ Riparian Atlas Sheets are on file with the Bureau of Tidelands, Trenton, New Jersey, and are a record of the actions of the State regarding riparian matters by location. The current versions of these indexes are called Conveyance Overlays.

This pier has been assessed for New Jersey municipal taxes since at least 1915. (Stip. Rec. at 116). Riparian Atlas Sheet No. 710 identifies this as the Wilson Line Pier.

The taxability of this granted area by Penns Grove was the subject of the court's decision in *Main Assocs. Inc. v. B&R Enters., Inc.*, 74 N.J. Super. 483, 181 A.2d 541, 543-44 (Ch. Div. 1962).

On July 13, 2004 Fenwick Commons, LLC, applied to DNREC for a Subaqueous Lands Lease and Water Quality Certification to refurbish a 750 foot long pier and other structures and to fill 1,882 square feet of tidal lands at Penns Grove, Salem County, New Jersey. The Fenwick Commons application states that a portion of the filled area is lands between mean high water and mean low water. These lands are entirely in the State of New Jersey and appear to be approximately 722 square feet based on data in the application.

(13) Lease to Harry S. Barber by the State of New Jersey dated March 21, 1916. Now outshore of Block 54, Lots 1 and 2, Penns Grove Borough, this lease extends 575 feet from the original high water line into the Delaware River. (Liber U, page 699.) This lease was convertible into a grant. A further fifteen year lease is dated July 17, 1916. (Liber V, page 57.) This lease was foreclosed upon on November 2, 1926. (Case 2652).⁹

(14) On August 21, 1916, the Board of Commerce and Navigation, a successor agency to the Board of Riparian Commissioners, adopted exterior pierhead and bulkhead lines on portions of the eastern side of the Delaware River. By doing so, the Board asserted New Jersey's riparian jurisdiction over the entire area landward of the pierhead lines. The entire area, including the portion landward of the exterior line for piers within the Twelve Mile Circle, extended well offshore of mean low water. By virtue of this action, the Board advised that it would look with favor upon applicants whose construction plans for filling and piers were within these lines, and look with disfavor upon those which were not. Plaintiff's Exhibit 145 in No. 11, Orig., shows the lines adopted between Penns Grove, New Jersey and Cedar Point, New Jersey. (Record, No. 11, Orig., Pl. Ex. 145.) The distances between low water and the exterior line scale from 375 feet at Deep Water Point (its nearest approach) to 3,550 feet waterward of low water at Helm's Cove, New Jersey.¹⁰

(15) Grant to E. I. Dupont de Nemours & Co. ("Dupont") by the State of New Jersey, dated August 21, 1916. There are nine tracts, all within the Twelve Mile Circle in either Pennsville Township, Carneys Point Township or Penns Grove Township. The tracts extend from the high water mark into the Delaware River various distances from 202 feet on one side of Tract One to 4,222.1 feet (0.80 of a mile) on one side of Tract Seven. (Record, No. 11, Orig., Pl. Exs. 64, 68-69, 71-72; *id.* Exs. 2, 57 (Grant "D"); Liber V, page 92; Case No. 148.)

⁹ References to "Case No." or "Tidelands Application No." are references to files now or formerly in the Bureau of Tidelands Management, Trenton, New Jersey. Not all files referenced have survived.

¹⁰ Plaintiff's Brief Before the Special Master 95, *New Jersey v. Delaware*, No. 11, Orig. (1933).

Mr. Sherman testified that the improvements on these properties included a sewer outfall, a seawall and a wharf. (Stip. Rec. at 135-36.) There also was a water intake pipe which extended a “substantial distance” into the River beyond the low water mark. (*Id.* at 138.)

(16) Grant to Dupont by the State of New Jersey dated November 20, 1916, now offshore of Block 301, Lot 1, Pennsville Township, at Deep Water Point. This grant extends 661.3 feet from high water on one side and 650 feet on the other, into the Delaware River, both to New Jersey’s Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Exs. 66, 68, 69; *id.* Exs. 3, 57 (Grant “G”); Liber V, page 161; Case No. 493.)

(17) Grant to Dupont by the State of New Jersey dated July 16, 1917, consisting of two tracts, now offshore of Block 1 or 301, Lot 1, Pennsville Township. This grant extends 668 feet on one side of tract 1, and 648 feet on both sides of tract 2, outshore of the high water line and into the Delaware River, all to New Jersey’s Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Exs. 65, 68; *id.* Ex. 3, 57 (Grant “F”); Liber W, page 62.)

(18) Lease to Dupont by the State of New Jersey dated May 20, 1918, now outshore of Block 301, Lot 1, Pennsville Township. This lease extended 736.21 feet waterward of the high water line of the Delaware River on one side and 718 feet on the other, both to New Jersey’s Pierhead and Bulkhead Line (1916). This lease was cancelled February 6, 1939 at Dupont’s request, and riparian rights thereto reverted to the State of New Jersey by operation of law. N.J. Stat. Ann. § 12:3-10 (as amended 1938). (Case No. 785A.)

(19) Grant to French’s Hotel Company by the State of New Jersey dated October 17, 1921, now offshore of Block 57, Lot 1, Penns Grove Borough. This grant extends outshore from the high water mark 1,135.38 feet (0.21 miles) on one side and 1,283.86 feet (0.24 miles) on the other, and into the River. (Record, No. 11, Orig., Pl. Exs. 61-63; *id.* Exs. 3, 57 (Grant “C”); Liber C-1, page 217.) This grant is recorded in the records of deeds of Salem County, New Jersey, in Deed Book 166 page 330.

The area of this grant is identified on the tax map of the Borough of Penns Grove as Block 57, Lot 6.01. This tax lot is all or nearly all outshore of mean low water, and it is taxed by the Borough of Penns Grove.

(20) Grant to William D. Acton by the State of New Jersey dated February 19, 1923, now offshore of Pennsville Township. This grant extends 333.52 feet from the original high water line to the corner of a pre-existing pier, and another 580 feet further waterward to New Jersey’s Pierhead and Bulkhead line (1916) on one side, and 360.75 feet from the original high water line to a corner of a pre-existing pier, and another 572.66 feet further waterward to New Jersey’s Pierhead and Bulkhead line (1916), on the other side. This pier was at the foot of Main Street in what was then Lower Penns Neck. (Record, No. 11, Orig., Pl. Exs. 89, 91; *id.* Exs. 3, 57 (Grant “P”); Liber D-1, page 459.)

In 1934, this grant was used as a pier for the operation of the Delaware and New Jersey Ferry Company's ferry between Pennsville, New Jersey and New Castle, Delaware. Mr. Sherman further testified that this grant extended a "substantial distance" below the low water mark. (Stip. Rec. at 147.)

(21) Grant to William D. Acton by the State of New Jersey dated November 19, 1923, now offshore of Block 1091, Lot 2, Pennsville Township. This grant is within a tax lot in the records of Pennsville Township: Block 1091, Lot 2.01. It extends 970 feet on one side from the high water mark into the River, and 964 feet from the former high water line on the other side to New Jersey's Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Exs. 86, 87; *id.* Exs. 3, 57 (Grant "L"); Liber E-1, page 245; Case No. 2040.)

Mr. Sherman testified there was a pier on the granted tract used for landing boats to carry people to and from a park adjoining the pier. This pier extended 494 feet below the low water mark. (Stip. Rec. at 145.) This was the pier used by the Riverview Beach Company. (Stip. Rec. at 275.) Riparian Atlas Sheet No. 704 identifies the upland parcel as Riverview Beach Park.

(22) Lease to Fogg and Hires Company for 15 years by the State of New Jersey dated August 18, 1924, now offshore of Block 2801, Lot 6, Pennsville Township, at the foot of Ferry Road. This lease extends 985.44 feet offshore from the former high water line of the Delaware River on one side and an approximately equal distance offshore on the other side to New Jersey's Pierhead and Bulkhead line (1916). (Liber G-1, page 135.)

This lease was cancelled May 18, 1930. In its place the State of New Jersey issued a grant to the Delaware - New Jersey Ferry Company dated May 19, 1930, with the same dimensions. (Record, No. 11, Orig., Pl. Ex. 90; *id.* Ex. 3, 57 (Grant "O"); Liber T-1, page 75; Case No. 2304.)

(22) Grant to William D. Acton by the State of New Jersey dated August 17, 1925, now offshore of Block 1091 Lot 2, Pennsville Township. This grant is within a tax lot in the records of Pennsville Township: Block 1091, Lot 2.01. This grant extends 863.21 feet from the former high water line into the Delaware River on one side, and 853.87 feet on the other, both to New Jersey's Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Exs. 80-81; *id.* Exs. 3, 57 (Grant "J"); Liber H-1, page 81; Case No. 2609.)

Mr. Sherman testified that this grant extended approximately 800 feet below the low water line. (Stip. Rec. at 142.) At that time there was a jetty in place to protect a beach from erosion, and an adjacent pier. The site was called Riverview Beach Park at Pennsville, an amusement park with bathing and boating. The adjacent dock was used for steamships, and the structures were assessed for local property taxes in New Jersey. (Stip. Rec. at 272-273.)

(23) Grant to William D. Acton by the State of New Jersey dated August 17, 1925, the same date as the previous grant, now offshore of Block 2801, Lot 1, Pennsville Township. This grant extends 965.40 feet on one side and 966.63 feet on the other beyond the former

high water line of the Delaware River to New Jersey's Pierhead and Bulkhead line (1916). The grant is just south of the foot of Pittsfield Street, in what was then Lower Penns Neck Township. (Record, No. 11, Orig., Pl. Ex. 83; *id.* Exs. 3, 57 (Grant M"); Liber K-1, page 58; Case No. 2204.)

(24) Grant to the Township of Lower Penns Neck by the State of New Jersey dated September 21, 1925, now offshore of Pennsville Township. This grant extends 966.83 feet on one side and 969.91 feet on the other, outshore of the former high water line of the Delaware River. This grant is at the foot of Pittsfield Street, in what was then Lower Penns Neck. (Record, No. 11, Orig., Pl. Ex. 82; *id.* Exs. 3, 57 (Grant "K"); Liber K1, page 94; Case No. 2204A.)

(25) Grant to William D. Acton by the State of New Jersey dated October 19, 1925, now outshore of Pennsville Township. This grant extends from the former high water line 360.75 feet to a point on an adjoining pier, and then another 572.68 feet into the Delaware River on one side to New Jersey's Pierhead and Bulkhead line (1916), then 375.41 feet to a point waterward and then another 565.67 feet further waterward to New Jersey's Pierhead and Bulkhead line (1916) on the other side. (Record, No. 11, Orig., Pl. Ex. 88; *id.* Exs. 3, 57 (Grant "O"); Liber H-1, page 171; Case No. 2717.)

(26) Grant to The Franklin Real Estate Company by the State of New Jersey dated June 18, 1928, now offshore of Block 301, Lot 13, Pennsville Township. This grant extends 991.46 feet from high water into the Delaware River on one side and 827.70 feet on the other, both to the New Jersey Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Ex. 73; *id.* Exs. 3, 57 (Grant "H").) The Deep Water Power Plant was constructed on the upland at this site. (*Id.* Ex. 74; Liber P-1, page 223.) This grant abuts the Delaware Memorial Bridge.

A confirmatory grant, as authorized by N.J. Stat. Ann. § 12:3-38, was approved for this property by the State of New Jersey on January 20, 1930. (Liber W-1, page 114.) There had been an error in identifying the name of the grantee in the 1928 grant. (Case No. 3446.)

(27) Grant to Anna C.B. Locuson by the State of New Jersey dated April 15, 1929, now offshore of Block 301, Lot 6, Pennsville Township. This grant extends 813.97 feet into the Delaware River from the high water line on one side and 809.16 feet on the other, both to New Jersey's Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Ex. 76; *id.* Exs. 3, 57 (Grant "I-2"); Liber Q-1, page 169; Case No. 3851.)

(28) Grant to Josephine Grace Locuson, et al., by the State of New Jersey, dated April 15, 1929, now offshore of Block 301, Lot 7, Pennsville Township. This grant extends from the high water line of the Delaware River waterward 813.97 feet on one side and approximately 818.78 feet on the other, both to New Jersey's Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Ex. 77; *id.* Exs. 3, 57 (Grant "I-3"); Liber Q-1, page 155; Case No. 3852-1.)

(29) Grant to Josephine Grace Locuson, et al., by the State of New Jersey, dated April 15, 1929, now offshore of Block 301, Lot 8, Pennsville Township. This grant extends from the high water mark 823.60 feet on one side and 818.78 feet on the other, into the Delaware River, both to New Jersey's Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Ex. 78; *id.* Exs. 3, 57 (Grant "I-4"); Liber Q-1, page 149; Case No. 3854.)

Mr. Sherman testified that the low water line was 75 feet beyond the high water line at this location. (Stip. Rec. at 141-2.) Thus, the upland owner could develop the waterfront at this location to the maximum extent of 748 feet beyond the mean low water line.

(30) Grant to William G. Locuson by the State of New Jersey, dated April 15, 1929, now offshore of Block 301, Lot 9, Pennsville Township. This grant extends 827.70 feet waterward of the high water line on one side and 823.60 feet on the other, both to New Jersey's Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Ex. 79; *id.* Exs. 3, 57 (Grant "I-5"; Liber S-1, page 251; Case No. 3855.)

Mr. Sherman testified that low water was 75 feet beyond the high water mark at this grant location. (Stip. Rec. at 141-142.) Thus, the upland owner could develop the waterfront at this location to the maximum extent of 752 feet beyond mean low water.

(31) Grant to Josephine Grace Locuson, et al., by the State of New Jersey, dated June 17, 1929, now offshore of Block 310, Lots 4 and 5, Pennsville Township. This grant extends from the high water line 809.16 feet into the Delaware River on one side and 797.42 feet on the other, both to New Jersey's Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Ex. 75; *id.* Exs. 3, 57 (Grant "I-1"); Liber Q-1, page 217; Case No. 3552-2.)

Mr. Sherman testified in the 1934 proceedings that low water was 75 feet beyond the high water mark at this grant location. (Stip. Rec. at 140.) Thus, the upland owner could develop the waterfront at this location to the maximum extent of 734 feet beyond the mean low water line.

(32) Grant to Dupont by the State of New Jersey dated October 21, 1929, now offshore of Block 1 or 301, Lot 1, Pennsville Township. This grant extends from the mean high water mark 648 feet into the Delaware River to New Jersey's Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Ex. 94; *id.* Exs. 3, 57 (Grant "T"); Liber Q-1, page 285.)

(33) License to the Delaware River Power Company by the State of New Jersey dated October 21, 1929, now offshore of Pennsville Township. This license accommodates eight armored submarine electric cables at Deep Water Point. The map attached to the grant shows both the high water line and the low water line, and shows the cables and the license extending well offshore of low water, 648 feet from high water to the exterior line. The distance from high water to low water at the time of this license was 75 feet. (Record, No. 11, Orig., Pl. Exs. 67, 68, 97; *id.* Exs. 3, 57 (Grant "U"); Case No. 4050.)

Mr. Sherman testified that several concrete icebreakers were installed at this location "a substantial distance" below the low water mark for the purpose of protecting the cables. (Stip. Rec. at 151.)

(34) Lease to the Penn Beach Property Owners' Association by the State of New Jersey dated October 21, 1929, now outshore of Block 3524, Lot 1, Pennsville Township. This lease extended 429.49 feet beyond the mean high water line on one side and 430.70 feet on the other to New Jersey's Pierhead and Bulkhead line (1916). (Record, No. 11, Orig., Pl. Ex. 95; *id.* Exs. 3, 57 (Grant "V"); Liber V-1, page 268.)

A sketch of the property at the time of the 1934 proceedings showed a timber pier extending in this lease area 80 feet beyond the low water mark and 130 feet beyond the high water mark. (Record, No. 11, Orig., Pl. Ex. 96.) A clubhouse was situated at the back of the pier, which was also used for boating and fishing. (Stip. Rec. at 277-78.)

This lease was converted into a grant on November 20, 1933 by the State of New Jersey. The dimensions of the grant remained the same as for the lease. (Liber C-2, page 33; Case No. 4008.)

Actions of the State of New Jersey Asserting its Riparian Jurisdiction Over the Lands of the Delaware River in the Twelve Mile Circle After the 1935 Decree.

(35) Grant to J. Landis Strickler by the State of New Jersey dated September 16, 1935, now outshore of Block 54, Lot 1, Penns Grove Borough. This grant extends 249.36 feet waterward of the center line of Delaware Avenue but follows the line of a previously existing sea wall. Although all of the lands conveyed in this grant were then upland, it appears that a portion of the granted land is waterward of the original former mean low water line. (Liber D-2, page 150.)

Portions of this property are within areas leased to Harry S. Barber in 1916 in two leases. The 1916 fifteen-year lease was foreclosed upon in 1926.

(36) Grant to Dupont by the State of New Jersey dated September 13, 1943, now outshore of the Salem Canal, immediately north of Block 301, Lot 13.01, Township of Pennsville. A portion of these granted lands is outshore of mean low water measuring on the State's Conveyance Overlay to be approximately 210 feet. (Liber R-2, page 55; Case No. 4927-A.)

(37) Grant to Sun Oil Company by the State of New Jersey dated October 14, 1957, now outshore of Block 101, Lots 2 and 5, Logan Township, Gloucester County. This grant extends 1,245 feet from the mean high water line on one side and 1,245.82 feet on the other into the Delaware River. (Liber A-4, page 248; Case No. 8928-A.)

The tax map for Logan Township shows the area granted to the Sun Oil Company, an area nearly all below mean low water, as Block 101, Lots 2.01 and 2.02. Lot 2.01 appears to be upland, while Lot 2.02 is substantially below mean low water. Lot 2.02 is depicted and

taxed by Logan Township even though it is substantially waterward of the state boundary line.

(38) Grant to Dupont by the State of New Jersey dated March 31, 1960, now outshore of Block 1, Lot 1, Pennsville Township. This grant extends 1,027.61 feet waterward of the high water line of the Delaware River on one side and 1,096 feet on the other, both out to New Jersey's Pierhead and Bulkhead line (1916). The grant, includes as a second tract, a further area 100 feet waterward of that pierhead line. The grant is expressly subject to approval by the United States Army Corps of Engineers. (Case No. 9490.)

(39) Grant to Dupont by the State of New Jersey dated September 29, 1967. This grant is outshore of Block 1, Lot 1, Pennsville Township and abuts to the north the 1960 grant to Dupont, *supra*. It extends 1,096 feet offshore of the high water line of the Delaware River on one side and 1,155 feet on the other. The mean low water line measures on the State's Conveyance Overlay to be approximately 20 feet waterward of mean high water at this grant's location. (Liber R-5, page 80; Tidelands Application No. 66-43.) Thus, the upland owner could develop the waterfront at this location to the maximum extent of 1,135 feet beyond the mean low water line.

(40) A lease to Keystone Urban Renewal Limited Partnership by the State of New Jersey dated June 12, 1992. This lease is outshore of Block 101, Lots 2 and 5, Logan Township, Gloucester County and outshore of part of the State's 1957 Grant to the Sun Oil Company. (Liber H-8, page 79; Tidelands Application No. 91-0190.) This lease area extends approximately 1,600 feet offshore of the original or natural mean high water line into the Delaware River.

The tax map for Logan Township shows the area granted to Sun Oil Company, an area nearly all below mean low water, as Block 101, Lots 2.01 and 2.02. The tax map further shows the area leased to Keystone, an area which is outshore of the Sun Oil grant, and therefore even further below mean low water, as Block 101, Lot 2.03. These lots are assessed and taxed by Logan Township. On September 30, 1991, the State of Delaware granted Keystone Cogeneration Systems, Inc. permission to construct a coal unloading pier and to conduct dredging at this location. The document included a Subaqueous Lands Lease for ten years, which may be renewed in the public interest.

(41) A lease to William J. Bergmann, et al., by the State of New Jersey initially dated January 11, 1999, and renewed February 13, 2002. This lease extends 35 feet waterward of the Delaware River from the high water line. It is located offshore of Block 1601, Lot 25, on North River Drive in the Township of Pennsville.

At this location, mean low water measures approximately 10 feet waterward of mean high water on the State's Conveyance Overlay. (Tidelands Application No. 87-1261). Thus, the upland owner could develop the waterfront at this location to the maximum extent of 25 feet beyond the mean low water line.

(42) A lease to the Township of Pennsville by the State of New Jersey dated April 25, 2000. This lease is offshore of Block 3428, part of Lot 1 at the foot of Dartmouth Road. The leased area extends 95 feet offshore of the existing bulkhead and mean high water line (1999). (Tidelands Application No. 00-0012.)

At this location, the low water line measures not more than 60 feet waterward of the high water line on the State's Conveyance Overlay. Thus, the upland owner could develop the waterfront at this location to the maximum extent of 35 feet beyond the mean low water line.

(43) Assignment of Management Rights (lease) to the New Jersey Division of Parks and Forestry by the State of New Jersey dated January 24, 2001, now offshore of Block 5301, Lot 3, Elsinboro Township. The project site includes a pier offshore of the property. This pier extends 350 feet waterward of the high water line into the Delaware River. The lands involved are part of Fort Mott State Park, and the pier was rebuilt to its footprint as of 1898. (Liber M-9, page 74; Tidelands Application No. 95-0306.) New Jersey's Department of Environmental Protection approved a Waterfront Development Permit and Water Quality Certificate (No. 1708-95-0014.1) on January 26, 1996. One of the Administrative Conditions in this permit imposed by New Jersey was that certain aspects of this project were subject to approval by the State of Delaware, specifically, the installation of floating ferry moorings, associated pilings and the removal of rip-rap against the crib structure below mean low water. Delaware's Department of Natural Resources and Environmental Control approved a subaqueous lands lease for this project on February 7, 1996.

The Adverse Impact of Delaware's Actions on the State of New Jersey and on Private Property Owners in the Twelve Mile Circle

10. The Twelve Mile Circle intersects the eastern bank of the Delaware River so that the State and local boundaries of six New Jersey municipalities are all or partially at the mean low water line of the River. Those municipalities are Logan Township, Gloucester County, whose shoreline is partially within the Circle, and Oldmans Township, Penns Grove Borough, Carneys Point Township, Pennsville Township and Elsinboro Township, all in Salem County, whose River shorelines are entirely within the Circle.

11. Because the shoreline is naturally irregular, the total length of the Delaware River shoreline in New Jersey between the northern intersection of the Circle and the southern intersection of the Circle with the low water line is approximately 29 miles. The State of New Jersey owns Fort Mott State Park in Pennsville which has substantial waterfrontage on the Delaware River within the Twelve Mile Circle.

12. The State of New Jersey can, as a waterfront owner, seek State tidelands licenses for piers to be built along the eastern shore of the Delaware River within the Twelve Mile Circle. If it must also receive regulatory approval from the State of Delaware and secure a Delaware Submerged Lands conveyance, then there could be a significant negative effect on the State and its potential development of its public areas. For example, if the State of New Jersey

wished to construct public fishing piers offshore of its lands or boardwalk trails to enhance public access in these State-owned upland areas, it would have to seek approval from Delaware regulatory officials as well as those of the State of New Jersey. This could lead to contradictory determinations from the permitting authorities.

13. Private riparian owners on the Delaware River in the Twelve Mile Circle would face the same problem. The prospect of contradictory determinations from the two States can reasonably be expected to discourage development applications.

14. The Bureau of Tidelands Management administers the State's riparian lands program. In turn, the income from the State's riparian lands program has been dedicated to the Fund for the Support of Free Public Schools by State constitutional provision since at least 1898. N.J. Stat. Ann. §§ 18A:56-5 and -6 (1999); N.J. Const. (1947) Art. VIII § 4 ¶ 2. Long term, a negative effect on development of the Twelve Mile Circle will have a direct negative impact on the income received by the Bureau for conveyances and leases and reduce the income received by the State's School Fund.

/s/
Richard G. Castagna
Supervisor, Southern Region
Bureau of Tidelands Management
Post Office Box 439
Trenton, New Jersey 08625-0439
(609) 292-2573

Subscribed and sworn
to before me this
27th day of June, 2005

/s/
Mary Ann Herman
Notary Public of the
State of New Jersey

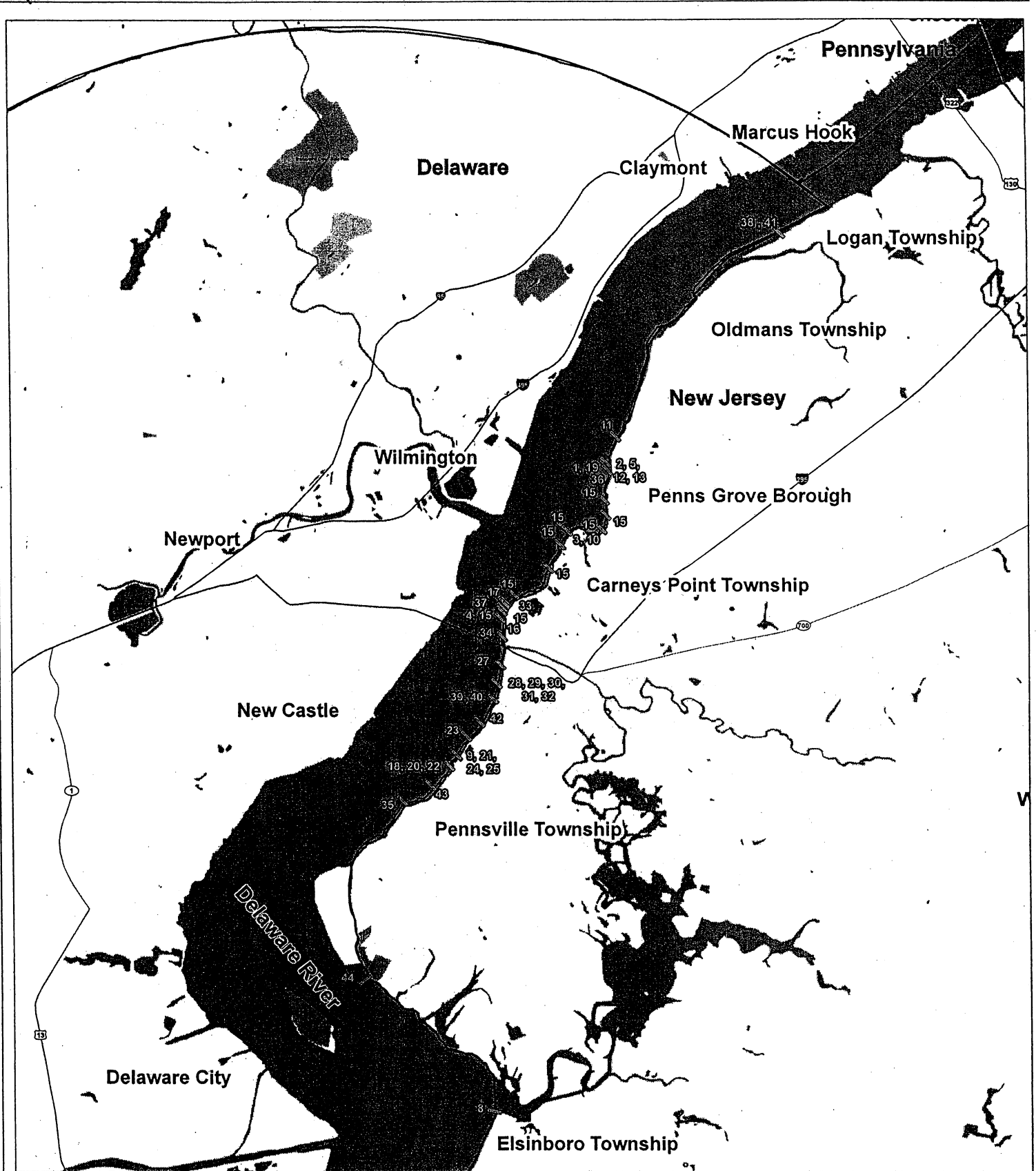
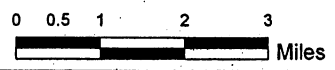


Exhibit
 New Jersey Riparian Grants Extending
 Beyond Mean Low Water Line Within
 the Twelve Mile Circle of New Castle



THE STATE OF NEW JERSEY to all whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved March 21st, 1871, entitled, "a further supplement to an act entitled 'an act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,' " approved April eleventh, one thousand eight hundred and sixty-four,

Daniel H. Kent of Wilmington Delaware - - -
being the owner of lands fronting on the Salem Cove where the tide ebbs and flows therein, and being said riparian owner on tide waters in this State, and desirous of obtaining a grant from the said State of the lands under water hereinafter mentioned, which lie in front of the said lands, did apply to the commissioners, to wit: Thomas McKeen Bennington F. Randolph Amzi Dodd and Gershom Mott for a grant of the lands hereinafter conveyed. And whereas, the said commissioners having regard to the interests of navigation, have agreed to grant the lands hereinafter mentioned, and determined that One hundred and eighty nine dollars and seventy five cents is a proper compensation to be paid to the State for the lands hereinafter conveyed.

Now, therefore, The said State of New Jersey, by the said Thomas McKeen Bennington F. Randolph Amzi Dodd and Gershom Mott commissioners aforesaid, the Governor of said State concurring, in consideration of the monies aforesaid and of the said sum of One hundred and eighty nine dollars and seventy five cents duly paid to the said Daniel H. Kent to the said State, the receipt of which is hereby acknowledged, doth hereby grant, bar, sell and convey unto the said Daniel H. Kent and to his heirs and assigns forever.

All those two parcels of land flowed by tide water in the Township of Elsinboro in the County of Salem State of New Jersey described as follows:

First tract—Beginning at a point in the high water mark of the southerly shore of Salem Cove where the same is intersected by a course of North twelve degrees east from the easterly chimney on Daniel K. Kents house and thence running North two degrees West three hundred feet to the exterior line established by the Commissioners appointed under the authority of the Act entitled "An Act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State," approved 11th A. D. 1864 and the supplements thereto—thence westerly along said exterior line as shown on the map hereto annexed five hundred and thirty four feet more or less to a point—thence south two degrees east four hundred feet to the high water mark of the southerly shore of Salem Cove at a point distant along said shore one hundred and twenty five feet westerly from the place of beginning thence easterly along said high water mark to the place of beginning.

Second tract—Beginning at a point in the high water mark of the Southerly shore of Salem Cove where the same is intersected by a course of North twenty six degrees and fifty minutes east from the easterly chimney on Daniel H. Kents house and from thence running North fifty three degrees and twenty five minutes east two hundred and seventy five feet to the exterior line established by the Commissioners appointed under the authority of the act aforesaid and the supplements thereto—thence southerly along said exterior line as shown on the map hereto annexed two hundred and twenty five feet more or less to a point thence south fifty three degrees and twenty five minutes west three hundred and thirty feet to the high water mark of the southerly shore of Salem Cove

thence north west to the place of beginning. With the right to include the tide water described as lies upon improving the same described to his heirs. And if and when other points or any and all land exterior line above or lines that may agreeably to the all and singular thereunto belong lands.

To have and to hold and described unto the said Daniel Kents forever.

In Witness Whereof presents to be signed and to be subscribed of said State, attested by Henry C. Kent, this seventeenth day of August one thousand eight hundred and eighty four.

The words "to be" on 8th line 2d line and the word "to" are omitted.

(L. s.)
Attest
Henry C. Kent
Secretary

thence north westerly along said high water mark to the place of beginning.

With the right, liberty, privilege and franchise to exclude the tide water from so much of the lands above described as lies under tide water by filling in or otherwise improving the same and to appropriate the lands above described to his exclusive private uses.

And if and when said exterior line shall be fixed at any other points or places further out into said Cove—Also any and all lands under water lying between the present exterior line above described and the new exterior line or lines that may be hereafter fixed—the same to be used agreeably to the terms of such extension—Together with all and singular the hereditaments and appurtenances thereunto belonging and all the rights of the State in said lands.

To have and to hold all and singular the above granted and described lands covered with water and premises unto the said Daniel H. Kent and to his heirs and assigns forever.

In Witness Whereof, The said State has caused these presents to be sealed with the great seal of the said State, and to be subscribed by George C. Ludlow the Governor of said State, and by three of the said Commissioners, and attested by Henry C. Kelsey the Secretary of State thereof, this seventeenth day of February in the year one thousand eight hundred and eighty three.

The words "twenty-one" on 8th line 2d page erased and the word twelve interlined.

R. C. Bacot

(L. s.)

Witness

R. C. Bacot

Attest

Henry C. Kelsey
Secretary of State

G. C. Ludlow, Gov.
Thomas McKeen
Bennington F. Randolph
Gershom Mott

State of New Jersey }
County of Hudson } ss.

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Be it Remembered, That on this twenty third day of February eighteen hundred and eighty three before me the subscriber a Commissioner of Deeds for Hudson County—personally appeared Robert C. Bacot of full age who being be me duly sworn on his oath, said that he saw Thomas McKeen Bennington F. Randolph and Gershom Mott three of the within named Commissioners sign and deliver the within deed as their voluntary act, and that he, the said Robert C. Bacot thereupon subscribed his name as an attesting witness thereto.

R. C. Bacot

Sworn and subscribed before me, at Jersey City the date aforesaid

John V. Bacot
Commr. as aforesaid

I, Victor Gelineau, Director and Secretary of the Board of Commerce and Navigation of the State of New Jersey, do hereby certify that the foregoing is a true copy of a Grant made on the 17th day of February, A. D. 1883, through its Riparian Commissioners (predecessors of the Board of Commerce and Navigation) to DANIEL H. KENT of Wilmington Delaware, as the same is recorded in Liber I of Grants and Leases of Lands under Water at folio 218 &c, in the records of the said Board of Commerce and Navigation.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Board of Commerce and Navigation this 17th day of March, A. D. 1931.

VICTOR GELINEAU
Director and Secretary,
Board of Commerce and Navigation,
State of New Jersey.

THE RIPARIAN COMMISSIONERS
of the
STATE OF NEW JERSEY

Recorded in Liber I
Folio 218 &c.

THE STATE OF NEW JERSEY
TO
DANIEL H. KENT

CERTIFIED COPY OF
GRANT

Dated 17th February, 1883.

R. C. Bacon

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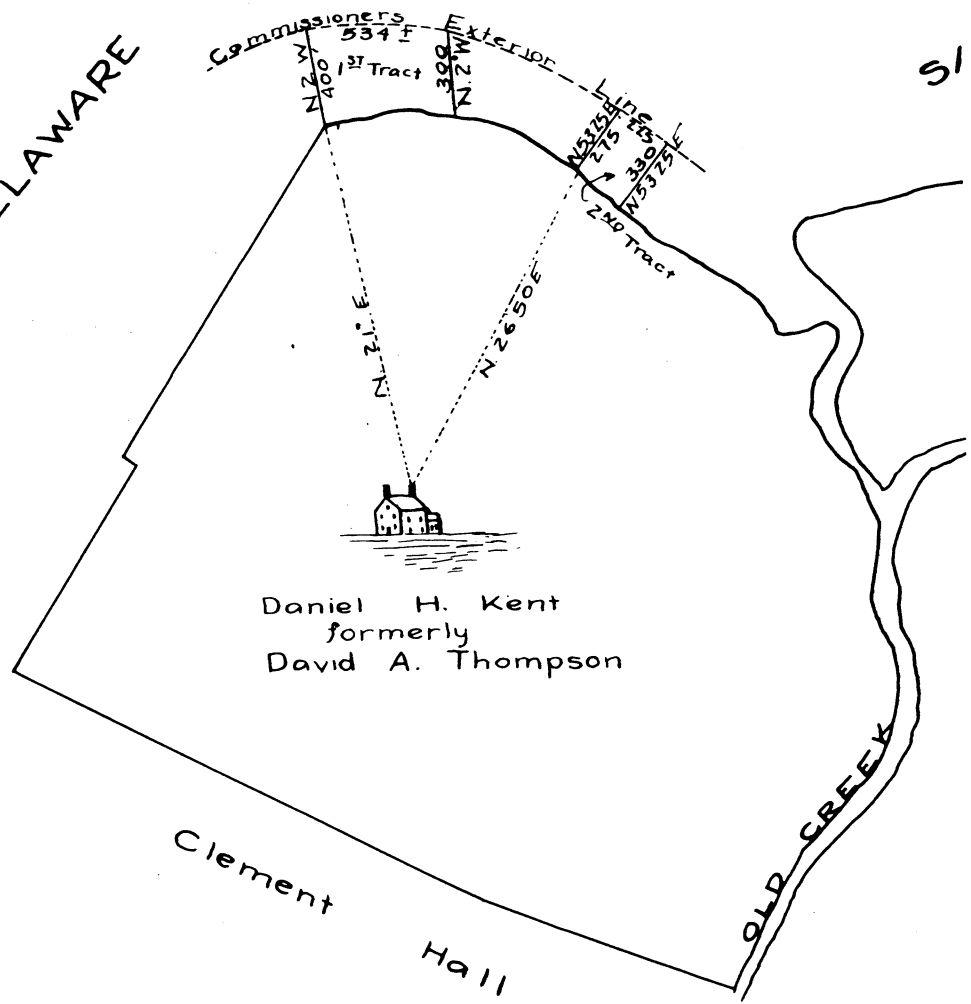
nto set my h
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1931.

ELINEAU
nd Secretary,
nd Navigation
Jersey.



DELAWARE RIVER

SALEM COVE



Daniel H. Kent
formerly
David A. Thompson

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Hall

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Grant N.

Plaintiff's Exhibit No. 84.

THE STATE OF NEW JERSEY:

To all to whom these Presents shall come or may concern,
GREETING:

WHEREAS, pursuant to an act of the Legislature of said State, approved March 21st, 1871, entitled "A further supplement to an act entitled 'An Act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,'" approved April eleventh, one thousand eight hundred and sixty four, and other statutes and joint resolutions of said State, Annie E. Brown being the owner of lands fronting on the Easterly shore of Delaware Bay and State of New Jersey, which lie above high water mark, and in front of which the lands hereinafter granted lie, and so being an applicant within the said acts and joint resolutions; and being desirous of obtaining a grant upon the terms set forth in this instrument for the lands under water hereinafter described which lie in front of the lands of said applicant, and having applied to the Riparian Commissioners appointed under said acts and joint resolutions, and to the Governor of said State, for a grant of the lands hereinafter described, and to fix the boundaries, price or reasonable compensation and terms for the grant of so much of said lands under water as lie below high water mark and may properly be included in this grant;

And Whereas the Governor of the State of New Jersey and said Commissioners, to wit: Willard C. Fisk, Miles Ross, Richard B. Reading and Richard N. Herring having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands hereinafter mentioned upon the terms herein set forth, and have determined the sum of Sixty dollars as the price of reasonable compensation to be paid to the State for the lands hereinafter granted.

Now Therefore, the said State of New Jersey, by the said Commissioners, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained and the said sum of Sixty dollars duly paid by the said Annie E. Brown to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey subject to the terms, covenants, conditions and limitations herein contained unto the said Annie E. Brown and to her heirs and assigns forever,—All that parcel of land flowed by tide water lying at Pennsville in the Township of Lower Penn's Neck in the County of Salem and State of New Jersey described as follows:—Beginning at a point in the high water line of the easterly shore of Delaware Bay at a point distant forty feet southwestly along said high water line from the center line of a new street, and from thence north forty seven degrees West eight hundred and fifty feet to the exterior line established by the Commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the State and of Riparian owners of the lands lying under the waters of the Bay of New York and elsewhere in this State" approved April 11th 1847 and the supplements thereto, thence Southwestly along said exterior line twenty feet, thence South forty seven degrees east eight hundred and fifty feet to the high water line of the easterly shore of Delaware Bay, thence Northwestly along said high water line to the place of beginning.

Subject however to the rights of the public if any exist to an easement or right of way over and across any part of the above described premises.

With the right and privilege under the covenants and conditions of this grant to exclude the tide water from so much of the lands above described, as lie under tide water by filling in, or otherwise improving the same, and to appropriate the lands under water above described to any other exclusive private uses.

Provided, however, that the same shall prevent the said riparian owners from having an ample right of access to the front of said lands. And also provided that no grant or lease and no portion of the exterior line or referred to in this deed or other fish or food shall be taken out of a water space interrupted navigation between the exterior line for purposes established, and no grant or lease or may be hereinafter made of the aforesaid in favor of any person or persons the same now or hereafter of which water the said Commissioners in their present or future report to the Governor. And also provided that the said Riparian Commissioners shall from time to time mark the exterior lines for purposes of navigation and if such lines may affect the State may determine and if such lines are further from the exterior lines of the parties claiming title within such period as shall be determined by the said Riparian Commissioners, they have the authority, have the right to add to such addition: the exterior line.

Provided, however that nothing in this instrument contained shall prevent or in any way interfere with the full and ample right of the State to hereafter give license, power or authority affecting lands under water whether in front of said lands or elsewhere in the State.

And also provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever provided, that a water space of suitable width for free and uninterrupted navigation be left open and unobstructed between the exterior line for solid filling or between the exterior line for piers when the same has been or shall be established, and the lands which have heretofore been or may be hereafter leased or granted by the State as aforesaid in front of any exterior or pier lines as the same now or may hereafter exist, the dimensions and uses of which waterway shall be determined and regulated by the said Commissioners or other authority under any present or future law of the State with the assent of the Governor.

And also provided, that the State of New Jersey by its Riparian Commissioners or any other law or authority may, from time to time, determine, fix and change the exterior lines for solid filling and piers, even though such action may affect the lands hereby granted whenever the State may deem it necessary for its interests so to do; and if such exterior or pier lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument or grant may within such period as may be fixed by the State, either through said Riparian Commissioners or any other lawful authority, have the right to apply for a lease or grant of such additional land under water lying between the present exterior lines above described and the new ex-

terior line or lines that may be hereafter fixed. Such additional land to be used for solid filling and for piers respectively as directed by the said Commissioners or their successors or other lawful authority under any present or future law of this State, upon payment of such additional rental or compensation, and upon such terms as shall be fixed by said Commissioners or under any present or future law of this State.

And also provided that if the said Annie E. Brown is not the owner of the land adjoining the land under water hereby granted then, and in that case, this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State shall be void as affecting any part or parts of said land joining land not owned by the said Annie E. Brown.

And also provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established or lines that may be hereafter established by the Riparian Commissioners or other lawful authority of the State of New Jersey.

shall be hereafter changed by the action of the authorities of the United States Government, and the grantee hereunder or any party claiming hereunder shall suffer damage that the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands covered with water and premises subject to the terms, conditions and limitations aforesaid unto the said Annie E. Brown, her heirs and assigns forever.

In

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to be erased before

Witness R. C.

(State Seal)

HENRY C. KE
Secretary of

STATE OF NEW JERSEY
COUNTY OF HUDSON,

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JOHN V. BACOT
Master in Chan
of New

IN WITNESS WHEREOF, The said Commissioners have hereunto respectively set their hands and these presents have been signed by the Governor the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State this twenty eighth day of August in the year eighteen hundred and ninety one.

Seven printed lines on 3d page erased before execution
Witness R. C. BACOT

LEON ABBETT Governor
WILLARD C. FISH
RICHARD B. READING
RICHARD N. HERRING
Witness: R. C. BACOT

(State Seal)
Attest HENRY C. KELSEY
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } SS.:

Be it remembered That on this fifteenth day of September eighteen hundred and ninety one, before me, the undersigned a Master in Chancery of New Jersey personally appeared Robert C. Bacot, who being by me duly sworn on his oath, saith that he saw Willard C. Fisk, Richard B. Reading and Richard N. Herring, three of the within named Commissioners sign and deliver the within deed as their voluntary act, and that he, the said Robert C. Bacot, thereupon subscribed his name as an attesting witness thereto.

R. C. BACOT

Sworn and subscribed before me)
(at Jersey City the day and year)
aforesaid.)

JOHN V. BACOT
Master in Chancery
of New Jersey

I, Victor Gelineau, Director and Secretary of the Board of Commerce and Navigation of the State of New Jersey do hereby certify that the foregoing is a true copy of a Grant made on the 28th day of August, A. D. 1891, by the said Board of Commerce and Navigation (predecessors of the Board of Commerce and Navigation) to ANNIE E. BROWN, and the same is recorded in Liber G of Grants and Leases of Lands under Water at folio 380 &c, in the records of the said Board of Commerce and Navigation.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said Board of Commerce and Navigation this 10th day of March, A. D. 1931.

VICTOR GELINEAU
 Director and Secretary,
 Board of Commerce and Navigation
 State of New Jersey.

THE RIPARIAN COMMISSIONERS
 of the
 STATE OF NEW JERSEY

Recorded in Liber G
 Folio 380 &c.

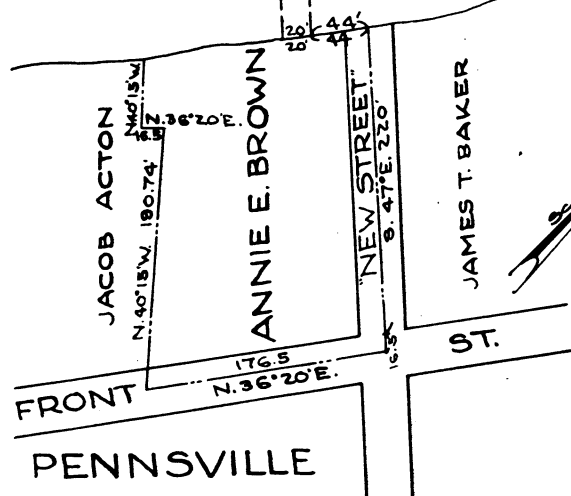
THE STATE OF NEW JERSEY
 to
 ANNIE E. BROWN.

CERTIFIED COPY OF
 GRANT.

Dated 28th August, 1891.

COMMISSIONERS EXTERIOR LINE

DELAWARE BAY



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The State of New Jersey:

To all to whom these Presents shall come, or may concern
greeting:

Whereas pursuant to an act of the Legislature of said State, approved March 21st 1871 entitled "to further supplement to an act entitled 'An act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York and adjacent in this State'" approved April Eleventh, One thousand eight hundred and sixty four, and other Statutes and joint resolutions of said State, Eugene Du Pont, Francis G. Du Pont, Henry A. Du Pont, Alexis J. Du Pont, Charles J. Du Pont and Wilson Pittcock of New Castle County, State of Delaware, partners trading under the firm name of C. W. Keel and Company being the owners of lands fronting on the south side, shore of Delaware River at Carriage Point in the Township of Upper Meriden in the county of Delaware, and State of New Jersey, which lie above high water mark, and in part of which the lands hereinafter granted lie, and so being an applicant within the said acts and joint resolutions; and being desirous of obtaining a grant upon the terms set forth in this instrument for the lands under water hereinafter described which lie in part of the lands of said applicant, and having applied to the Riparian Commissioners appointed under said acts and joint resolutions, and to the Governor of the said State, for a grant of the lands hereinafter described, and to fix the boundaries, price or reasonable compensation ~~for~~ and terms for the grant of so much of said lands under water as lie below high water mark and may properly be included in this grant:

And Whereas the Governor of the State of New Jersey and said Commissioners to wit: John Abbott Governor, and Edward C. Kirk, Minot Ross, Richard B. Reading and Richard M. Hoopes Commissioners; having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands hereinafter mentioned upon the terms herein set forth, and have determined the sum of Two Hundred Dollars as the price or reasonable compensation to be paid to the State for the lands hereinafter granted.

Now therefore, the said State of New Jersey, by the said Commissioners, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained and the said sum of Two hundred dollars duly paid by the said Eugene Du Pont, Francis G. Du Pont, Henry A. Du Pont, Alexis J. Du Pont, Charles J. Du Pont and Alfred J. Du Pont to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey subject to the terms, covenants, conditions and limitations herein contained unto the said Eugene Du Pont, Francis G. Du Pont, Henry A. Du Pont, Alexis J. Du Pont, Charles J. Du Pont and Alfred J. Du Pont

Duplicates

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as joint-tenants and not as tenants in common, and to the survivor
or survivors of them and the heirs and assigns of the survivor
forever. All that parcel of land situate by tide water lying
at Carnoy's Point in the Township of Upper Merion West in the
County of Salem and State of New Jersey, described as follows:
beginning at a point in the high water line of the Southwicks
Shoals of Delaware River distant seven hundred and twenty feet
on a course south fifty eight degrees and twenty eight minutes or less
from where the center of the dike separating the marsh from the
upland, intersects the high water line of Delaware River at
Carnoy's Point and from thence north thirty three degrees and
thirty minutes west four hundred and fifty feet to the exterior
line established by the Commissioners appointed under the
authority of the act entitled "an act to ascertain the rights of
the State and of New Jersey owners in the lands lying under the
waters of the Bay of New York and adjacent in this State" approved
April 11th 1836 and the supplements thereto, thence along
said exterior line north fifty six degrees and thirty minutes
East three hundred feet, thence South thirty three degrees and
thirty minutes east four hundred and fifty feet more or less
to the high water line of the Southwicks Shoals of Delaware River,
thence South along said high water line to the place of
beginning.

Subjed however, to the rights of the public if any exist
to an easement or right of way over, and across any part
of the above described premises.

With the right and privilege under the covenants and
conditions of this grant, to exclude the tide water from so
much of the lands above described, as lie under tide water,
by filling up or otherwise improving the same, and to appropriate
the lands under water above described to the said grantees and
their assigns private use.

Provided, however, that nothing in this instrument con-
tained shall prevent or in any way interfere with the full and
complete right of the State to license, give license, power or authority
affecting lands under water whether in front of main lands or
otherwise in the State.

And also provided, that the State of New Jersey may
grant or lease any of the lands of the State lying in front of
the exterior line for solid filling or pier is mentioned as referred to
herein, for the cultivation of oysters or other fish or for any other
purpose whatever provided, that a water space of suitable
width for free and uninterrupted navigation be left open and
unobstructed between the exterior line for solid filling or between
the exterior line for piers when the same has or shall be es-
tablished, and the lands which have heretofore been or may be
hereafter be leased or granted by the State as aforesaid
in front of any exterior or pier line as the same now or may

38
hereafter, exist, the dominion and use of which waterway shall be determined and regulated by the said Commissioners or other authority under any present or future law of the State with the assent of the Governor.

And also provided, that the State of New Jersey by its Riparian Commissioners or any other law or authority body, from time to time, determine, fix and change the exterior lines for solid filling and pier, even though such action may affect the lands hereby granted whenever the State may deem necessary for its interests, so to do, and if such exterior, or pier lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument or grant, may, within such period as may be fixed by the State, either through said Riparian Commissioners or any other lawful authority, have the right to apply for a lease or grant of such additional land under water lying between the present exterior lines above described and the new exterior line or lines that may be hereafter fixed. Such additional land to be used for solid filling and for pier respectively as directed by the said Commissioners or their successors or other lawful authority under any present or future law of this State, upon payment of such additional rental or compensation, and upon such terms as shall be fixed by said Commissioners or under any present or future law of this State.

And also provided that if the said Eugene Du Pont Francis G. Du Pont, Henry G. Du Pont, Alexis S. Du Pont, Charles S. Du Pont and Alfred S. Du Pont, are not the owners of the land adjoining the land under water hereby granted them, and in that case, this instrument and covenants, so far as the same binds the State, and all the covenants herein on the part of the State shall be void as affecting any part or parts of said land, joining land not owned by the said Eugene Du Pont, Francis G. Du Pont, Henry G. Du Pont, Alexis S. Du Pont, Charles S. Du Pont and Alfred S. Du Pont.

And also provided, that if the exterior line for solid filling and the exterior line for pier, or either of said lines, now established or lines that may be hereafter established by the Riparian Commissioners or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, that the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereto following.

To Have and to Hold all and singular the above granted and described lands covered with water and premises subject

to the terms, conditions and limitations aforesaid unto the said
 Esquire Wm. Post, Francis G. New Post, Henry A. Du Post, Adesie S. Du
 Post, Charles J. New Post and Alfred S. Du Post as joint tenants and
 not as tenants in common and to the survivor or survivors of them,
 and to the heirs and assigns of the survivor forever.

Severally printed lines on
 3d page, signed before
 Esquire Wm. Post

Great Seal
 of the
 State of
 New Jersey

Attest
 Hiram C. Nelson
 Secretary of State

And Witness Whereof, The said Commissioners
 have hereunto respectively set their hands and
 these presents have been signed by the Governor
 and the Great Seal of the said State has been
 hereunto affixed, and attested by the Secretary of
 State this twentieth day of November in
 the year eighteen hundred and ninety one.

Leon Abbett Governor
 Willard C. Fiske
 Miles Noss
 Richard B. Reading
 Richard W. Herring

Witness
 W. C. Post

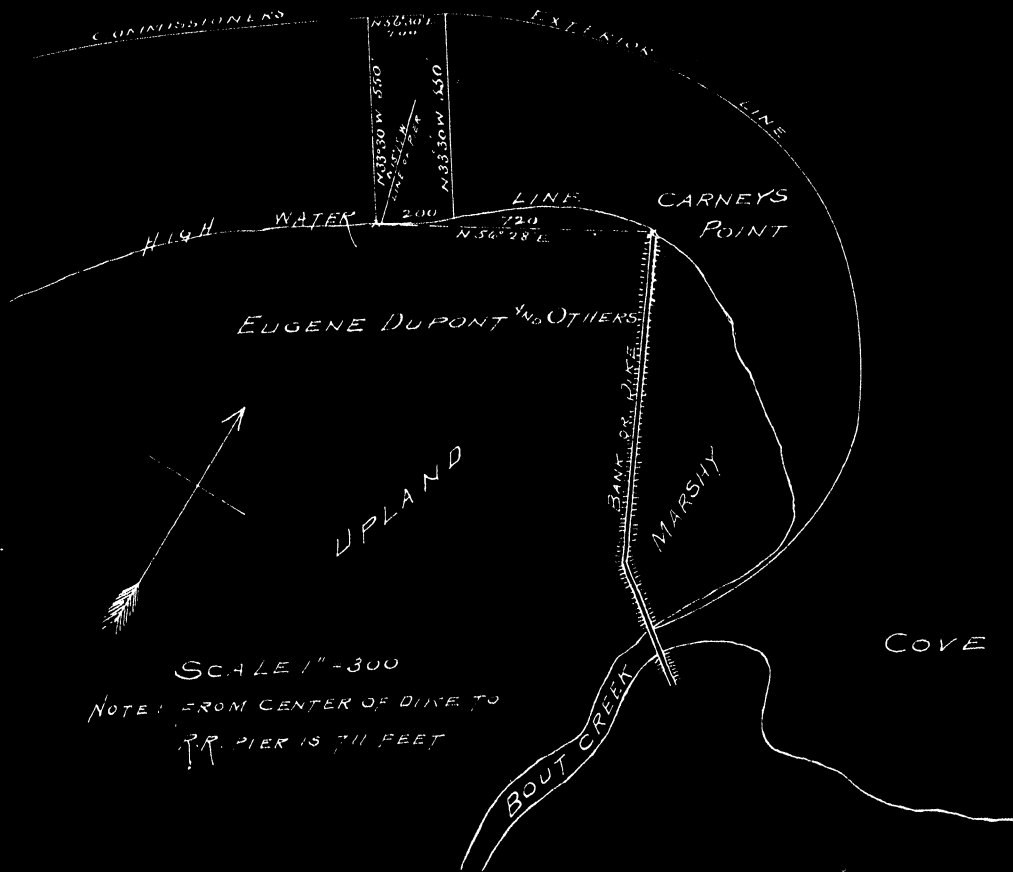
State of New Jersey } ss.
 County of Hudson }

Be it Remembered, that on this seventh day of
 December eighteen hundred and ninety one, before me the subscriber,
 a Master in Chancery of New Jersey personally appeared Robert C.
 Post who being by me duly sworn in his oath, saith that he
 saw Willard C. Fiske, Miles Noss, Richard B. Reading and Richard
 W. Herring the within named commissioners, sign and deliver the
 within deed as their voluntary act, and that he, the said Robert
 C. Post thereupon subscribed his name as attesting witness thereto.
 Done and subscribed before me }
 at Jersey City the day and year }
 aforesaid.

R. C. Post

John V. Post
 Master in Chancery
 of New Jersey

DELAWARE RIVER



SCALE 1" = 300
 NOTE: FROM CENTER OF DUNE TO
 RR. PIER IS 711 FEET

Grant A.

THE STATE OF NEW JERSEY:

To all to whom the Presents shall come, or may Concern,
GREETING:

Whereas, Pursuant to an act of the Legislature of said State, approved March 21st, 1871, entitled "A further supplement to an act entitled, 'A act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,'" approved April eleventh, one thousand eight hundred and sixty-four, and other acts and joint resolutions of the Legislature of said State, James A Denny and Samuel M. Denny of Penns Grove in the County of Salem and State of New Jersey being the owner of lands fronting on Delaware River in the Borough of Penns Grove in the County of Salem and State of New Jersey, which lie above high water mark and in front of which the lands under water hereinafter described are situated, has applied to the Riparian Commissioners of said State for a grant of the said lands under water, and to have the said Commissioners fix the boundaries of the said lands under water, and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Riparian Commissioners, to wit: Edward C. Stokes Governor, William Cloke, Robert Williams, M. F. McLaughlin and John R. Reynolds having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of ninety five 00/100 (\$95.00/100) Dollars as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Riparian Commissioners, the Governor approving,

in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of Ninety five 00/100 (\$95.00/100) Dollars duly paid by the said James A. Denny and Samuel M. Denny to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said James A. Denny and Samuel M. Denny and to their heirs, and assigns forever—

All that parcel of land flowed by tide water lying in the Borough of Penns Grove in the County Salem and State of New Jersey described as follows:

Beginning at a point in the high water line of the southeasterly shore of the Delaware River, distant one hundred feet northeasterly from the division line between lands of William A. Wentisch and Annie E. his wife and Andrew Wentisch, and lands of the said James A. Denny and Samuel M. Denny; and from said beginning point northwesterly parallel with said division line above referred to, extended, Five hundred (500) feet to the Exterior Wharf Line established by the Commissioners appointed under the authority of the act entitled "An Act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State", approved April 11th, A. D. 1864, and the supplements thereto, thence northeasterly along said Exterior Wharf Line, as shown and located on the map hereto annexed, One hundred and ninety (190) feet; thence southeasterly, parallel with the line first run down to said Exterior Wharf Line, Five hundred (500) feet to the high water line of the southeasterly shore of Delaware River; thence southwesterly along said high water line to the place of beginning.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide

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water by filling in or otherwise improving the same, and to appropriate the lands under water above described to their exclusive private uses.

Provided, that the State of New Jersey by its Riparian Commissioners or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do, and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Riparian Commissioners or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Commissioners or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Commissioners or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said River.

And Also Provided, that if the said James A. Denny and Samuel M. Denny are not the owners of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said James A. Denny and Samuel M. Denny.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers or either of said lines, now established, or lines, that may be hereafter established by the Riparian Commissioners or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any part claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said James A. Denny and Samuel M. Denny and to their heirs and assigns forever.

A. Denny
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In Witness Whereof, The said Com-
missioners have hereunto re-
spectively set their hands,
and these presents have been
signed by the Governor, and
the Great Seal of the said
State has been hereunto af-
fixed and attested by the
Secretary of State, this
Twenty-sixth day of April in
the year nineteen hundred
and six.

E. C. STOKES Governor
WM. CLOKE
ROBERT WILLIAMS
M. F. McLAUGHLIN
J. R. REYNOLDS
Witness JOHN C. PAYNE

The Great
Seal of the
State of
New Jersey

Attest
S. D. DICKINSON
Secy of State.

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

Be it Remembered That on this Sixteenth day of May
nineteen hundred and six before me the subscriber a
Master in Chancery of New Jersey personally appeared
John C. Payne who being by me duly sworn on his oath,
saith that he saw - - - - -
Edward C. Stokes, Governor, William Cloke, Robert Wil-
liams, M. F. McLaughlin and John R. Reynolds, the with-
in named Commissioners, sign and deliver the within deed
as their voluntary act and that he the said John C. Payne
thereupon subscribed his name as an attesting witness
thereto.

JOHN C. PAYNE

Sworn and subscribed before me
at Jersey City the day and
year aforesaid

M. J. CURRIE
Master in Chancery
of New Jersey

I, Victor Gelineau, Director and Secretary of the Board of Commerce and Navigation of the State of New Jersey, do hereby certify that the foregoing is a true copy of a Grant made on the 26th day of April, A. D. 1906, through its Riparian Commissioners (predecessors of the Board of Commerce and Navigation) to JAMES A. DENNY and SAMUEL M. DENNY of Penns Grove in the County of Salem and State of New Jersey, as the same is recorded in Liber Q of Grants and Leases of Lands under Water at folio 721 &c., in the records of the said Board of Commerce and Navigation.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said Board of Commerce and Navigation this 17th day of March, A. D. 1931.

VICTOR GELINEAU
Director and Secretary,
Board of Commerce and Navigation,
State of New Jersey.

RIPARIAN COMMISSION
of the
STATE OF NEW JERSEY

Recorded in Liber Q
Folio 721 &c.

THE STATE OF NEW JERSEY
TO

JAMES A. DENNY
and
SAMUEL M. DENNY

GRANT

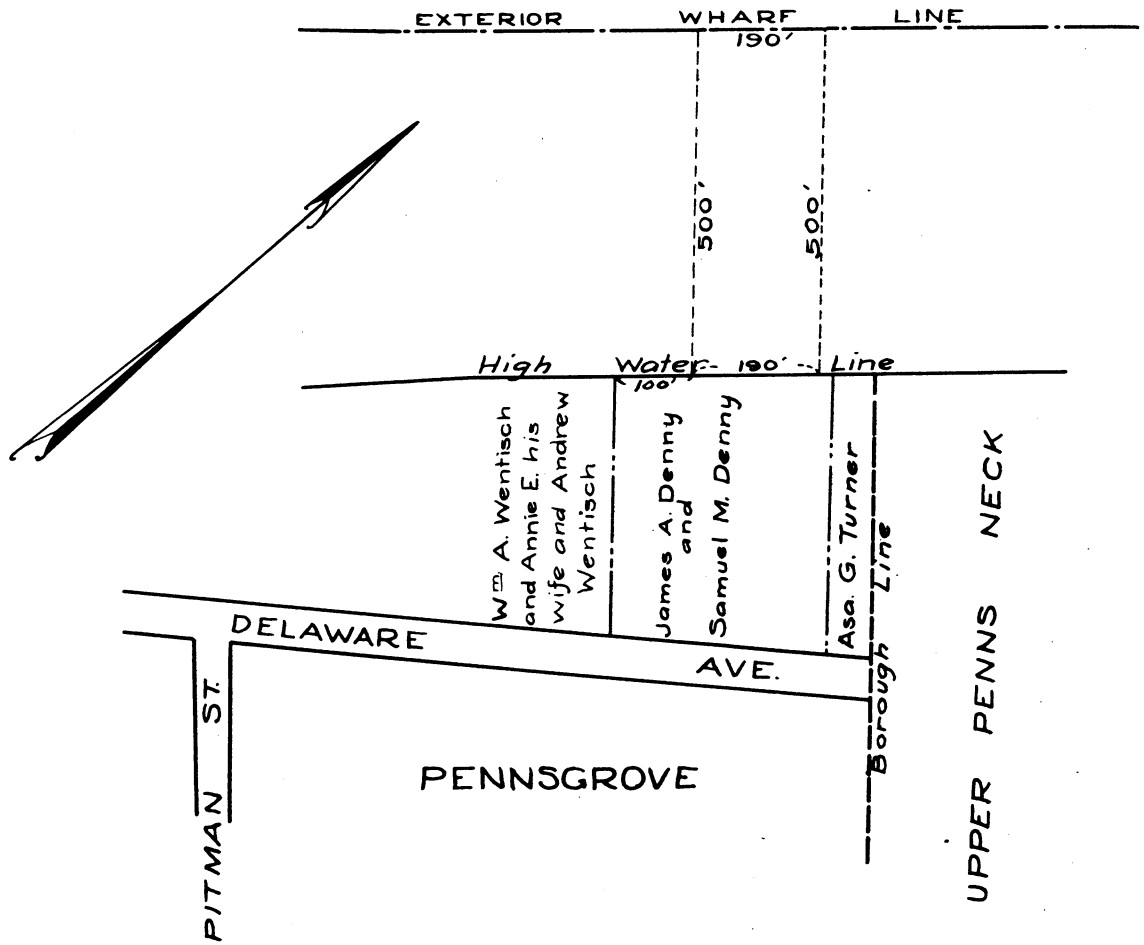
Dated 26th April, 1906.

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DELAWARE RIVER



58

The State of New Jersey:

To all to whom these Presents shall Come, or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

PENNSGROVE PIER COMPANY, a corporation of the State of New Jersey,

being the owner of lands fronting on Delaware River
in the Borough of Pennsgrove in the County of Salem
and State of New Jersey, which lie above high water mark and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water, and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water, and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENNINSON, W. PARKER RUMYON, JOHN M. WARD, WILLIAM D. SAUNDERS, J. WARD RICHARDSON, WILLIAM T. FIERK, and ALLEN K. WHITE

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

TWO THOUSAND 00/100 (\$2,000.00) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

TWO THOUSAND 00/100 (\$2,000.00) DOLLARS

duly paid by the said

PENNSGROVE PIER COMPANY

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said

PENNSGROVE PIER COMPANY

and to its successors and assigns forever—All that parcel of land now or formerly flowed by tidewater lying in the Borough of Pennsgrove, in the County of Salem and State of New Jersey, described as follows:-

B E G I N N I N G at a point in the original high water line

by the northerly line of Main Street, and from thence northwesterly a straight line, passing by the northerly face of the most northerly of the present pier constructed and in use by the Pennsgrove Pier Company on which is erected the present waiting room and store room and continuing in a straight line, eight hundred and eighty-five (885) feet, more or less, from the said beginning point to the Exterior Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners etc.", approved April 8th, 1915; thence southwesterly along said Exterior Line and at right angles with the line first run down to the same, two hundred (200) feet; thence southeasterly, parallel with the line first run down to said Exterior Line and two hundred (200) feet southwest at right angles therefrom, nine hundred and seventy-five (975) feet or less, to the original high water line of the easterly shore of Delaware River; thence northerly along said original high water line to the point of beginning.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to **its and their** exclusive private uses.

~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the _____ and _____ lines of the first described tract extended _____ to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said PENNSGROVE PIER COMPANY is

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said PENNSGROVE PIER COMPANY.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established, by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said

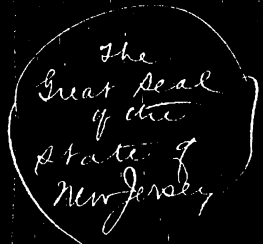
PENNSGROVE PIER COMPANY, and to its successors and assigns forever.

Note: Seven printed lines on 3rd page stricken out before execution.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this *Twenty - first* day of *March* in the year nineteen hundred and *sixteen*.

B. F. Cresson Jr.

James F. Fielder
Governor.
Spencer Smith
R. C. Jenkins
W. L. Saunders
Allert White
Ward Richardson
W. P. Runyon
William T. Kirk
Witness
B. F. Cresson Jr.



Attest
Thomas F. Martin

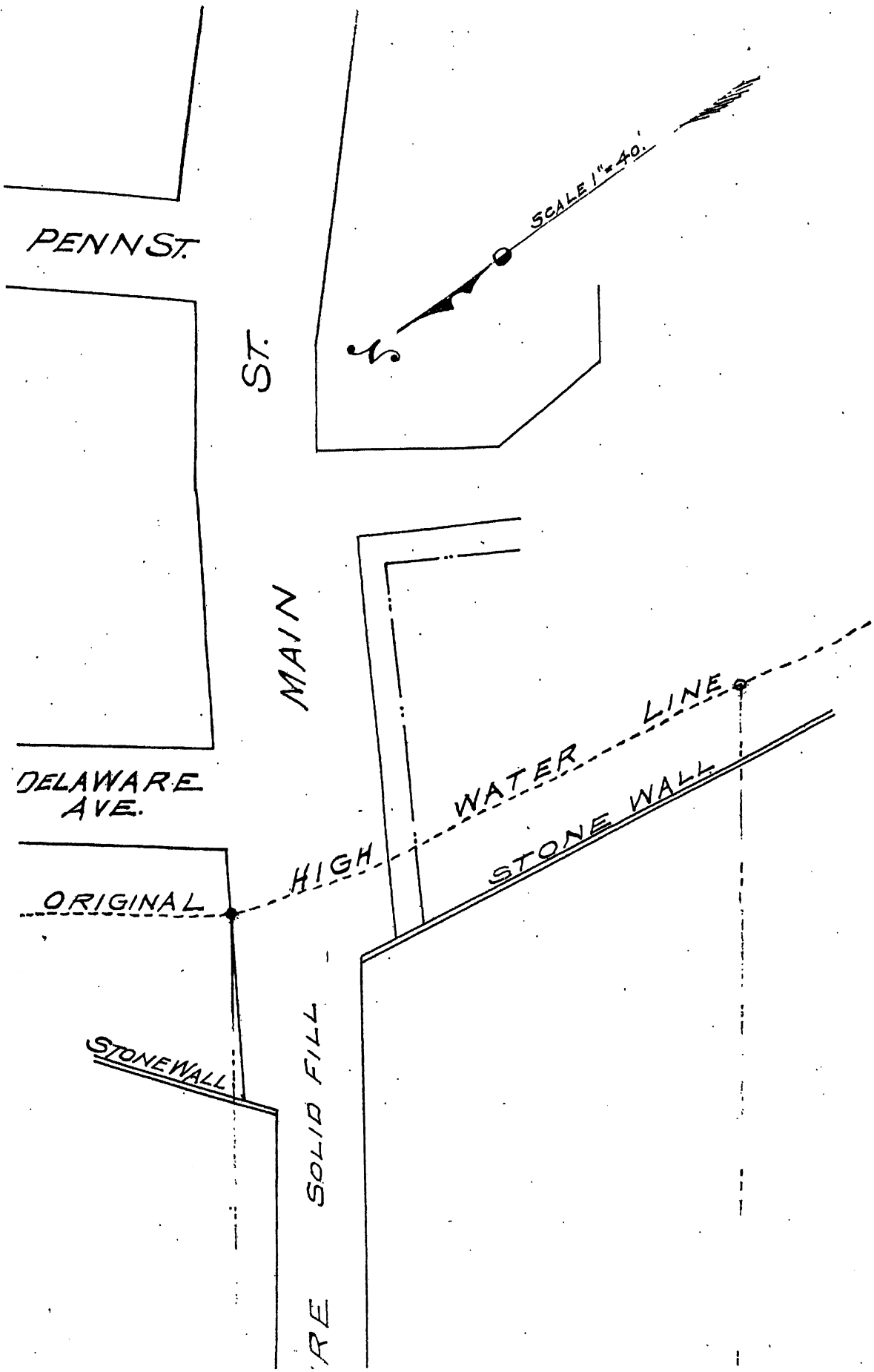
STATE OF NEW JERSEY }
COUNTY OF Hudson }

We it Remembered, That on this *twenty - seventh* day of *March* nineteen hundred and *sixteen*, before me the subscriber a Master in Chancery of New Jersey, personally appeared *B. F. Cresson Jr.* who being by me duly sworn on his oath, saith that he saw *James F. Fielder, Governor, and Spencer Smith, Richard C. Jenkins, William L. Saunders, Allert White, Ward Richardson, W. Parker Runyon and William T. Kirk*, seven of the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said *B. F. Cresson Jr.* thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

B. F. Cresson Jr.

William L. Rae
Master in Chancery
of New Jersey.



PENN ST.

ST.

SCALE 1" = 40'

MAIN

DELAWARE AVE.

HIGH WATER LINE

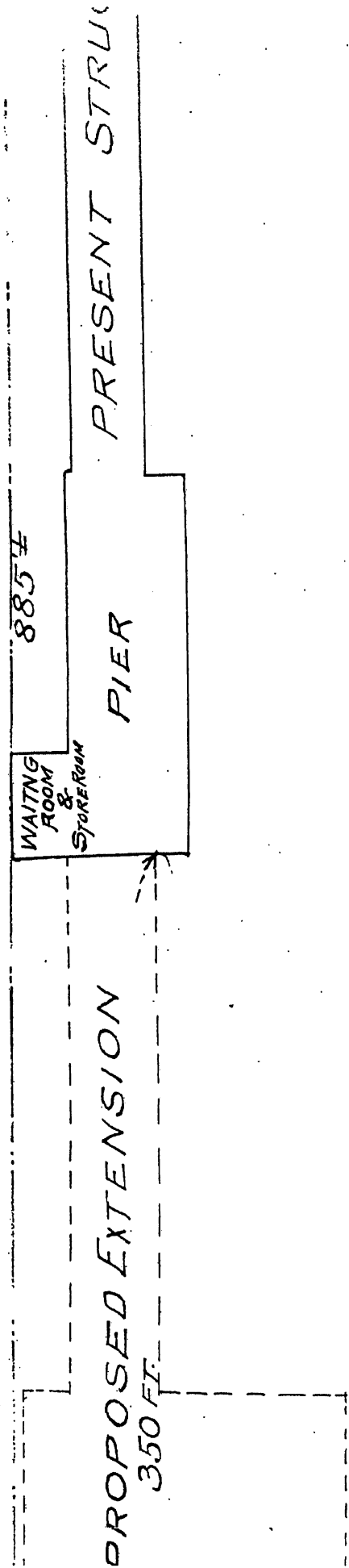
ORIGINAL

STONE WALL

STONEWALL

SOLID FILL

RE



885 FT

WAITING ROOM & STORE ROOM

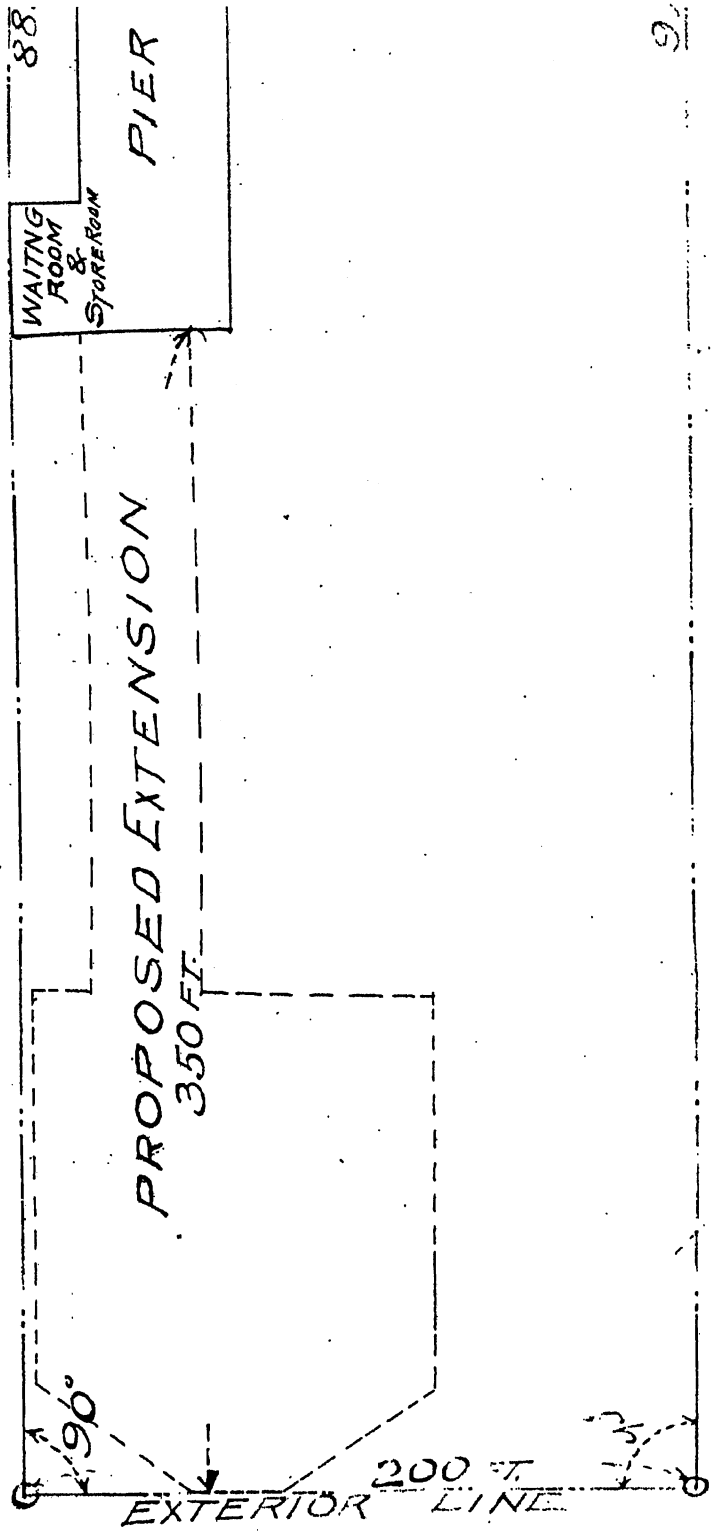
PRESENT STRUCTURE

PIER

PROPOSED EXTENSION

350 FT

975 FT



DELAWARE RIVER

The State of New Jersey:

To all to whom these Presents shall Come, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

HARRY S. BARBER, of the Borough of Penns Grove, in the County of Salem and State of New Jersey,

being the owner of lands fronting on the Delaware River in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a lease of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water, and determine the price or compensation and the annual rental to be paid to the State therefor, and the terms and conditions of said lease:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENNINSON, W. PARKER RUBYOE, JOHN E. WARD, WILLIAM L. SAUNDERS, J. WARD RICHARDSON, WILLIAM T. KIRK and ALLEN K. WHITE,

having due regard to the interests of navigation and the interests of the State, have agreed to lease the lands hereinafter mentioned upon the terms herein set forth and have determined the sum of ONE HUNDRED AND THIRTY-THREE 00/100 (\$133.00) DOLLARS

to be the annual rental to be paid for said lands under water so designated, subject as hereinafter stated, and have fixed the sum of ONE THOUSAND AND NINE HUNDRED 00/100 (\$1,900.00) DOLLARS

as the price or reasonable compensation, on payment of which the State will make a conveyance of all of the said lands hereby leased as hereinafter set forth, provided that as a condition precedent to such conveyance all the rentals must have been paid on or before the days on which they fell due, and all the terms and covenants hereof shall have in addition thereto been fully and punctually performed.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises and of the rents, covenants and conditions herein contained, does hereby demise, lease and to farm let unto the said

HARRY S. BARBER, and to his heirs

and assigns, until default is made in the punctual payment of the annual rentals herein fixed, or until this instrument and all estate or rights arising thereunder has been declared forfeited by said Board of Commerce and Navigation or their successors in office, for breach of any of the covenants or conditions herein contained, or until the same has been in any other manner forfeited or terminated.

All that parcel of land now or formerly flowed by tide water, lying at Penns Grove, in the County of Salem and State of New Jersey, described as follows:-

B E G I N N I N G at a point in the original high water line of

by the division line between lands of Job Barber and lands of the said Harry S. Barber, said point being marked by a large stone; and from thence north fifty-six degrees and eight minutes west (N. 56° 08' W.) five hundred and seventy-five (575) feet to the Exterior Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a Department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, etc." approved April 8th, 1915; thence northeasterly along said Exterior Line, at right angles to the line first above run down to said Exterior Line, one hundred and ninety (190) feet; thence south fifty-six degrees and eight minutes east (S. 56° 08' E.), parallel with the line first run down to said Exterior Line and one hundred and ninety (190) feet northeasterly at right angles therefrom, five hundred and seventy-five (575) feet, more or less, to the original high water line of the easterly shore of Delaware River; thence southwesterly along said original high water line to the place of Beginning.

With the right and privilege, under the covenants and conditions of this lease, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to **his and their** exclusive private uses.

— And also for a like term, and subject to the same terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the _____ and _____ lines of the first described tract extended to said pier line, but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow, and no solid filling shall be placed thereon.

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby leased, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby leased and with the free and uninterrupted navigation between said lands under water and the main channel of the said **Delaware River**.

And Also Provided, that if the said **HARRY S. BARBER** is not the owner of the land adjoining the land under water hereby leased, then, and in that case, this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void, as affecting any part or parts of said land, joining land not owned by the said **HARRY S. BARBER**.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

To take, have, hold, use, exercise and enjoy, as lessee for the term aforesaid, the said lands and premises, and all the rights and privileges aforesaid, exercisable within and over, or with reference to the same, to and for the said several uses, intents and purposes, and in the manner and form that they are above leased unto the said

HARRY S. BARBER

and to his heirs and assigns, subject to the regulations now imposed by law on the exercise of said rights of property hereby leased, and to such as shall hereafter be made by the Legislature or the said Board of Commerce and Navigation or a majority thereof, yielding and paying therefor unto the State of New Jersey the annual rent of ONE HUNDRED AND THIRTY-THREE 00/100 (\$133.00) DOLLARS

to be paid to the State of New Jersey by the said HARRY S. BARBER, his heirs

and assigns in two equal half yearly payments in advance, the first half yearly rental to be paid on the delivery of this lease and thereafter the half yearly rentals shall be paid in advance on the days of and in each and every year.

And the said HARRY S. BARBER -

do es hereby for himself, his heirs - and assigns covenant and agree to and with the State of New Jersey, that he the said HARRY S. BARBER, his heirs -

and assigns shall and will from time to time, and at all times well and truly pay, or cause to be paid to the State of New Jersey, the yearly rent or sum of ONE HUNDRED AND THIRTY-THREE 00/100 (\$133.00) DOLLARS hereinbefore reserved, upon and before the several days and times hereinbefore appointed for the payment thereof, and that if it shall happen that the said yearly rent, or any part thereof, shall at any time hereafter be behind and unpaid after the same shall become due, it shall be lawful, immediately and without demand for such rent in arrear, for the State of New Jersey, by its officers and agents or otherwise, into the said tract of land and every part thereof to enter and distrain all things on said premises for said annual rent, or such part thereof as shall be behind and unpaid, and the distress and distresses there found to take and convey away and detain and keep, or otherwise dispose of according to law until the said rent and all arrears thereof and the costs and charges occasioned by the non-payment thereof at the time in that behalf above mentioned shall be fully paid and satisfied; and also that in such case it shall be lawful, without demand for such rent in arrear, for the said State of New Jersey, by its officers or agents or otherwise, into the said tract of land hereby leased to re-enter and the same and every part thereof, and all improvements, and all the rights, liberties, privileges and franchises aforesaid to have, possess and enjoy as of its first and former estate, anything herein contained to the contrary notwithstanding, and upon such re-entry by the State all covenants herein on the part of the State shall forthwith cease and determine and the said lease and this instrument shall become null and void.

It is distinctly understood and mutually agreed between the parties to these presents that the payment of the annual rentals on the days and times appointed shall be of the essence of this contract, and that the State of New Jersey does not covenant and is not bound by any law, obligation, lease or contract to make any grant or conveyance of said lands unless said annual rentals are paid on or before the days and times appointed, and this lease and agreement shall end and determine at the option of the said Board of Commerce and Navigation or a majority of them (the Governor assenting) on failure to punctually pay the rentals when due or upon breach of any of the covenants herein contained.

And the said State of New Jersey does hereby covenant and agree to and with the said

HARRY S. BARBER, his heirs - and assigns that if as a condition precedent all of said rentals are paid on or before the date when the same fall due and all the covenants herein are faithfully and punctually complied with, and this lease still exists, it will upon proper application therefor cause to be delivered to said HARRY S. BARBER, his heirs

or assigns, a grant or conveyance to the said HARRY S. BARBER, his heirs -

of the said lands, rights and privileges hereby leased and given, or of any part thereof, free and discharged of any future rent, so far as it can lawfully do so at the time of such grant, on payment being made to the said State of New Jersey of the said sum of

ONE THOUSAND AND FINE HUNDRED 00/100 (\$1,900.00) - - - - - dollars
or an equitable part thereof.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, and the said HARRY S. BARBER has hereunto set his hand and seal - - - - -

Note: Eight printed lines on 3rd page, struck out before execution.
R. H. ...

this twenty-first day of MARCH - - - - -
in the year nineteen hundred and sixteen.

JAMES P. FIELDER, Governor

J. SPENCER SMITH

R. C. JEFFINSON

WILLIAM T. KIRK

W. I. BAUNDERS

ALLEN K. WHITE

J. WARD RICHARDSON

H. P. RINYON

Witness:

B. F. CRESSON, JR.

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY.)

Attest

THOMAS P. MARTIN
Secretary of State.

State of New Jersey, }
County of HUDSON } SS.:

Be it Remembered, That on this twenty-seventh day of MARCH
nineteen hundred and sixteen before me the subscriber, a Master in
Chancery of New Jersey, personally appeared B. F. CRESSON, JR.
who being by me duly sworn on his oath, saith that he saw JAMES W. FULMER, Govern-
or, and J. SPENCER SMITH, RICHARD C. JENKINSON, WILLIAM T. KIRK,
WILLIAM L. SAUNDERS, ALLEN V. WHITE, J. WARD RICHARDSON and T. PARKER
RUNYON, seven of

the within named Board of Commerce and Navigation, sign and deliver the within lease as their
voluntary act, and that he, the said B. F. CRESSON, JR.
thereupon subscribed his name as the attesting witness.

Sworn and subscribed before me
at Jersey City, the day and
year aforesaid.

B. F. CRESSON, JR.

WILLIAM L. RAE

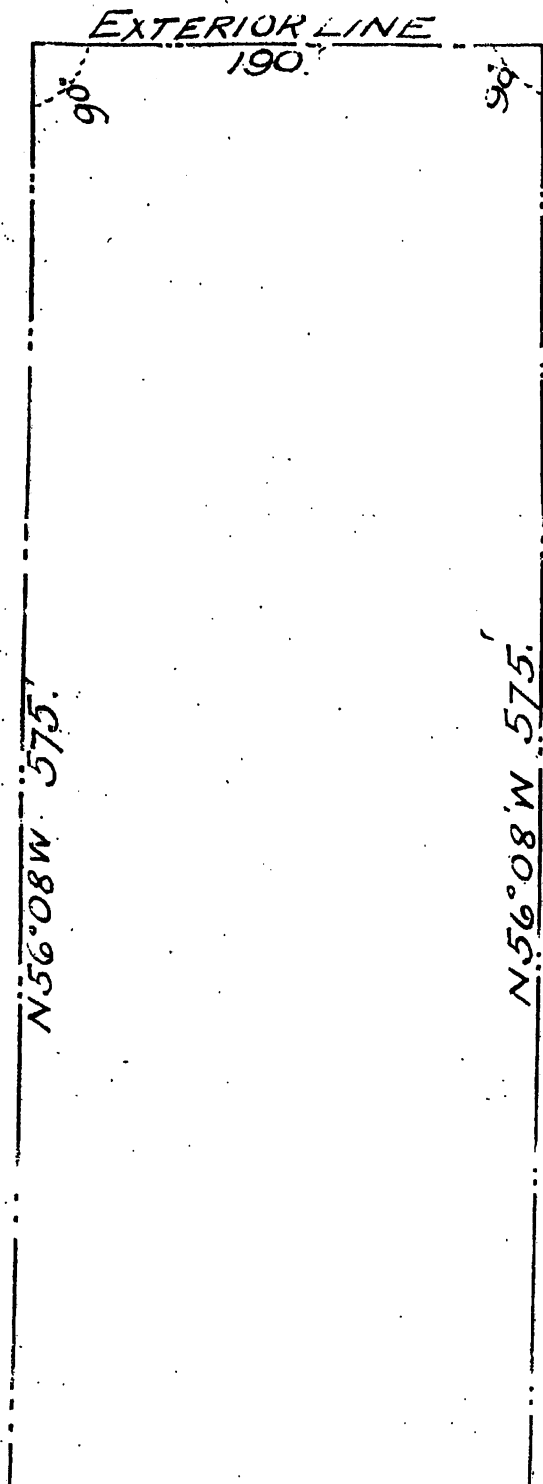
Master in Chancery
of New Jersey

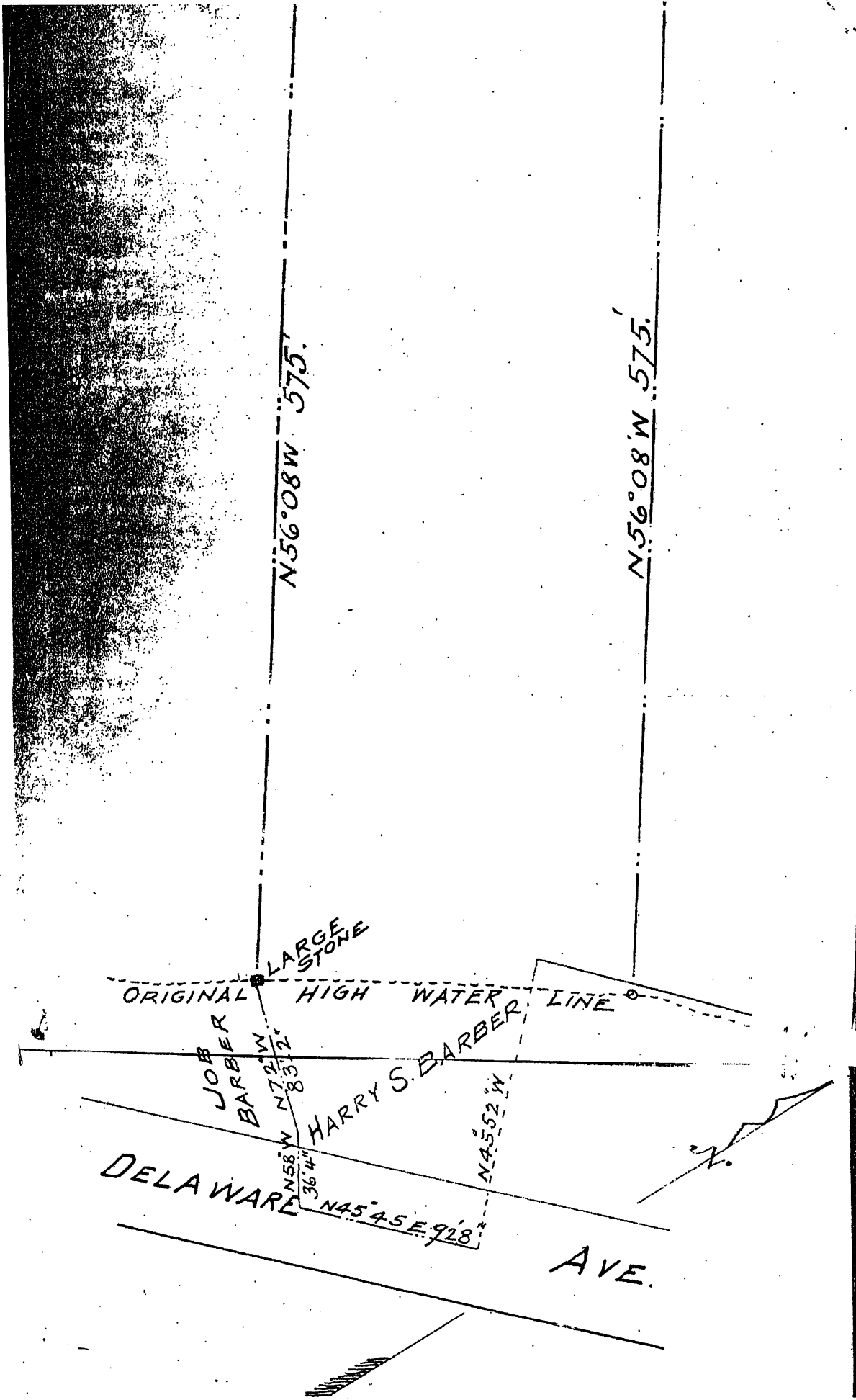
State of }
County of } SS.:

Be it Remembered, That on this _____ day of _____ in the
year nineteen hundred and _____ before me, the subscriber, a
personally appeared _____
who I am satisfied is the lessee named in and who executed the within instrument, and I having
first made known to _____ the contents thereof, acknowledged that he signed, sealed and
delivered the same as _____ voluntary act and deed.

Sworn and subscribed before me at
the day and year aforesaid.

DELAWARE RIVER





The State of New Jersey:

To all to whom these Presents shall Come, or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

E. I. DU PONT DE NEMOURS AND COMPANY, a corporation of the State of Delaware and doing business in the State of New Jersey,

being the owner of lands fronting on the Delaware River, lying between Deep Water Point and South Penns Grove in the County of Salem

and State of New Jersey, which lie above high water mark and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water, and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water, and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SEYMOUR SMITH, RICHARD C. J. JACKSON, A. PARKER RUSTON, JOHN H. WARD, WILLIAM H. SANDERS, S. WARD RICHARDSON, WILLIAM E. KING and ANNE M. WELLS,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

TWENTY-SIX THOUSAND FOUR HUNDRED AND THIRTY 00/100 (\$26,430.00) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

TWENTY-SIX THOUSAND FOUR HUNDRED AND THIRTY 00/100 (\$26,430.00) DOLLARS

duly paid by the said

E. I. DU PONT DE NEMOURS AND COMPANY

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said

E. I. DU PONT DE NEMOURS AND COMPANY

and to its successors and assigns forever—All those nine tracts or parcels of land now or formerly flowed by tide water, lying between Deep Water Point and South Penns Grove, in the County of Salem and State of New Jersey, described as follows:-

THE FIRST TRACT: Designated in the application of J. I. du Pont de Nemours and Company dated July 10th, 1916, as Tract "K", B D G I N- W I N G at a point in the high water line of the easterly shore of the Delaware River distant two hundred and two (202) feet on a course of North two degrees, thirty-six minutes and twenty-nine seconds West (N. 2°36'29" W.)(United States Government meridian at Camden, New Jersey, which is the meridian used in this description and the map attached to this grant), from Monument A., as shown on the map hereto annexed, and from said beginning point North seventy-three degrees, four minutes and thirty-three seconds East (N. 73° 04' 33" E.) six hundred and twenty-seven and thirty-three one hundredths (627.33) feet to the Pierhead and Bullhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Navigation Commissioners etc." approved April 8th, 1915; thence along said Pierhead and Bullhead Line North six degrees and fifty-five minutes East (N. 6°55' E.) One hundred and one and fifty-five one hundredths (101.55) feet, more or less, to a point; thence South seventy-three degrees, four minutes and thirty-three seconds East (N. 73° 04' 33" E.), parallel with the line first run down to said Pierhead and Bullhead Line and one hundred (100) feet northerly at right angles therefrom, Six hundred and sixty-eight (668) feet, more or less, to the high water line of the easterly shore of the Delaware River; thence southerly along said high water line to the place of Beginning.

THE SECOND TRACT: Designated in the application of J. I. du Pont de Nemours and Company dated July 10th, 1916, as Tract "G", B D G I N- W I N G at a point in the high water line of the easterly shore of the Delaware River distant five hundred and sixty and nine tenths (560.9) feet on a course North two degrees, eleven minutes and one second East (N. 2° 11' 01" E.) from Monument A., as shown on the map hereto annexed; thence North seventy-three degrees, four minutes and thirty-three seconds East, (N. 73° 04' 33" E.) Six hundred and fourteen and thirty-four one hundredths (614.34) feet to the Pierhead and Bullhead Line established by the Board of Commerce and Navigation appointed under the authority of the act aforesaid; thence along said Pierhead and

Bullhead Line North six degrees and fifty-five minutes East (N. 6° 55' E.) Nine hundred and four and fifty-one one hundredths (904.51) feet to a point; thence still along said Pierhead and Bullhead Line North thirty-two degrees forty-eight minutes and twenty-three seconds East (N. 32° 48' 23" E.) thirty-five and sixty-one one hundredths (35.61) feet to a point; thence North seventy-three degrees, four minutes and thirty-three seconds East (N. 73° 04' 33" E.) six hundred and forty-one feet (641) feet, more or less, to the high water line of the easterly shore of Delaware River; thence northwesterly along said high water line to the place of beginning.

WILKINSON BRIDGE: Designated in the application of L. E. Edwards & Company dated July 10th, 1910, as Point 177, from Monument B. E. I. C. at a point in the high water line of the easterly shore of Delaware River distant two thousand three hundred and thirty-three and seven tenths (2333.7) feet on a course North seventy-three degrees, thirty minutes and thirty-one seconds East (N. 73° 13' 31" E.) from Monument B., and from thence North seventy-three degrees, four minutes and thirty-three seconds East (N. 73° 04' 33" E.) six hundred and seventy-one and one hundredths (671.1) feet to the Pierhead and Bullhead Line established by the Board of Commissioners and said high water line; thence North thirty-two degrees, thirty-eight minutes and thirty-three seconds East (N. 32° 38' 33" E.) one hundred and thirty-one and 97/100 (103.97) feet; thence North seventy-three degrees, four minutes and thirty-three seconds East (N. 73° 04' 33" E.) two thousand one hundred and forty-one (2141) feet, more or less, to the high water line of the easterly shore of Delaware River; thence northwesterly along said high water line to the place of beginning.

WILKINSON BRIDGE: Designated in the application of L. E. Edwards & Company dated July 10th, 1910, as Point 177, from Monument B. E. I. C. at a point in the high water line of the easterly shore of Delaware River distant two thousand and thirty-one and eight tenths (2031.8) feet on a course North twenty-one degrees, eight minutes and one second East (N. 21° 08' 01" E.) from Monument B.; and from thence North seventy-three degrees, four minutes and thirty-three seconds East (N. 73° 04' 33" E.) two thousand one hundred and forty-one (2,141) feet to the Pierhead and Bullhead Line established by the Board

of Commerce and Navigation under the authority of the act aforesaid; thence along said Pierhead and Bullhead Line North thirty-two degrees, forty-eight minutes and twenty-three seconds East (N. 32° 48' 23" E.) One hundred and three and ninety-seven one hundredths (103.97) feet; thence South seventy-three degrees, four minutes and thirty-three seconds East (S. 73° 04' 33" E.) Two thousand and seventy-five (2,075) feet, more or less, to the high water line of the easterly shore of Delaware River; thence South-south-west and high water line to the line of Beginning.

MONUMENT B: Designated in the publication of U. S. Du Pont de Nemours and Company dated July 14th, 1815, as Tract "B", at a point in the high water line of the easterly shore of Delaware River distant three thousand eight hundred and fifty and one tenth (3,850.1) feet on a course of North twenty-two degrees, sixteen minutes and one second East (N. 22° 16' 01" E.) from Monument A.; thence North seventy-three degrees, four minutes and thirty-three seconds East (S. 73° 04' 33" E.) one thousand seven hundred and ninety-four and one tenth (1,794.1) feet to the Pierhead and Bullhead Line established by the Board of Commerce and Navigation appointed under the authority of the act aforesaid; thence along said Pierhead and Bullhead Line North thirty-two degrees, forty-eight minutes and twenty-three seconds East (N. 32° 48' 23" E.) One hundred and three and ninety-seven one hundredths (103.97) feet; thence South seventy-three degrees, four minutes and thirty-three seconds East (S. 73° 04' 33" E.) Two thousand and seventy-five (2,075) feet, more or less, to the high water line of the easterly shore of Delaware River; thence South-south-west and high water line to the line of Beginning.

MONUMENT C: Designated in the publication of U. S. Du Pont de Nemours and Company dated July 14th, 1815, as Tract "C", at a point in the high water line of the easterly shore of Delaware River distant forty (40) feet on a course North seventy-one degrees, fifty-three minutes and thirty-one seconds East (N. 71° 53' 31" E.) from Monument B.; thence North seventy-three degrees, four minutes and thirty-three seconds East (N. 73° 04' 33" E.) three thousand and thirteen and nine tenths (3013.9) feet to the Pierhead and Bullhead Line established by the Board of Commerce and Navigation appointed under the authority of the act aforesaid; thence along said Pierhead and Bullhead Line North thirty-two degrees

Forty-eight minutes and twenty-three seconds East (N. 82° 03' 33" E.) one thousand and thirty-nine and sixty-nine one hundredths (1,039.69) feet; thence north seventy-three degrees, four minutes and thirty-three seconds East (S. 73° 04' 33" E.) four thousand four hundred and thirty (4,430) feet, more or less, to the high water line of the easterly shore of the Delaware River; thence southwesterly along said high water line to the place of Beginning.

MONUMENT THREE: Designated in the application of J. H. De Mont de Comours and Company dated July 10th, 1916, as Tract "H", Block "A" of the "H" at a point in the high water line of the easterly shore of the Delaware River distant two thousand eight hundred and sixty-two and seven tenths (2,862.7) feet on a course of North forty-nine degrees, twenty-three minutes and thirty-one seconds East (N. 49° 23' 31" E.) from Monument 2.; thence North seventy-three degrees, four minutes and thirty-three seconds East (N. 73° 04' 33" E.) four thousand one hundred and sixty (4,160) feet, more or less, to the high water line of the easterly shore of the Delaware River; thence southerly along said high water line to the place of Beginning.

MONUMENT FOUR: Designated in the application of J. H. De Mont de Comours and Company dated July 10th, 1916, as Tract "H", Block "A" of the "H" at a point in the high water line of the easterly shore of the Delaware River distant two thousand eight hundred and twenty-two and seven tenths (2,862.7) feet on a course of North forty-nine degrees, twenty-three minutes and thirty-one seconds East (N. 49° 23' 31" E.) from Monument 3.; thence North seventy-three degrees, four minutes and thirty-three seconds East (N. 73° 04' 33" E.) three thousand eight hundred and twenty-eight and two tenths (3,828.2) feet to the Pierhead and Bulthead Line established by the Board of Commerce and

Navigation appointed under the authority of the act aforesaid; thence along said line and bearing five North thirty-two degrees, forty-eight minutes and twenty-three seconds East (N. 32° 48' 23" E.) one hundred and thirty-seven and hundredths (137.97) feet; thence south seventy-three degrees, four minutes and thirty-three seconds East (S. 73° 04' 33" E.) three thousand seven hundred and twenty-five (3,725) feet, more or less, to the high water line of the easterly shore of the Delaware River; thence south westerly along said high water line to the place of beginning.

THIRD COURSE: Designated in the application of J. F. Du Pont Gunpowder Company dated July 1st, 1850, as Tract IV, D. D. & F. N. 1850, as a point in the high water line of the easterly shore of the Delaware River distant nine thousand six hundred and ten and seven tenths (9,610.7) feet or a course North thirty degrees, twenty-one minutes and sixteen seconds East (N. 30° 21' 16" E.) three thousand eight hundred and thirty-one (3,831) feet; thence North and bearing five North thirty-two degrees, forty-eight minutes and twenty-three seconds East (N. 32° 48' 23" E.) two thousand nine hundred and sixty-one (2,961) feet; thence along said line and bearing five North thirty-two degrees, forty-eight minutes and twenty-three seconds East (N. 32° 48' 23" E.) one thousand and twenty-two and eight hundredths (1,022.8) feet; thence South seventy-three degrees, four minutes and thirty-three seconds East (S. 73° 04' 33" E.) one thousand nine hundred and forty (1,940) feet, more or less, to the high water line of the easterly shore of the Delaware River; thence southerly along said high water line to the place of beginning.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to ~~the use of the said~~ exclusive private uses.

~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the~~ ~~and~~ ~~lines of the first described tract extended~~ ~~to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said ~~Bay~~.

And Also Provided, that if the said ~~U. S. DEPT. OF COMMERCE AND NAVIGATION~~ ~~is~~ not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said ~~U. S. DEPT. OF COMMERCE AND NAVIGATION~~.

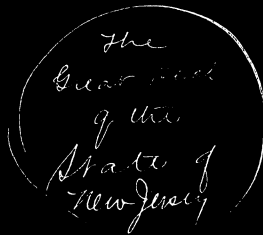
And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established, by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said ~~U. S. DEPT. OF COMMERCE AND NAVIGATION~~, and to his successors - - - and assigns forever.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this Twenty-first day of August in the year nineteen hundred and sixteen.

John B. Payne



Thomas F. Martin
Secretary of State

Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this Twenty-first day of August in the year nineteen hundred and sixteen.

James F. Fielder

Spencer Smith Gov. 1902

R. B. Jenkinson

W. L. Saunders

Allen K. White

John M. Ward

William T. Kirk

Witness John B. Payne

STATE OF NEW JERSEY, }
COUNTY OF Hudson } ss.

Be it Remembered, That on this Twenty-first day of August nineteen hundred and sixteen, before me, the undersigned, a Master in Chancery of New Jersey, personally appeared John B. Payne who being by me duly sworn on his oath, saith that he saw ~~James F. Fielder, Governor, and Spencer Smith, R. B. Jenkinson, W. L. Saunders, Allen K. White, John M. Ward, and William T. Kirk~~ James F. Fielder, Governor, and Spencer Smith, R. B. Jenkinson, W. L. Saunders, Allen K. White, John M. Ward, and William T. Kirk six of the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said

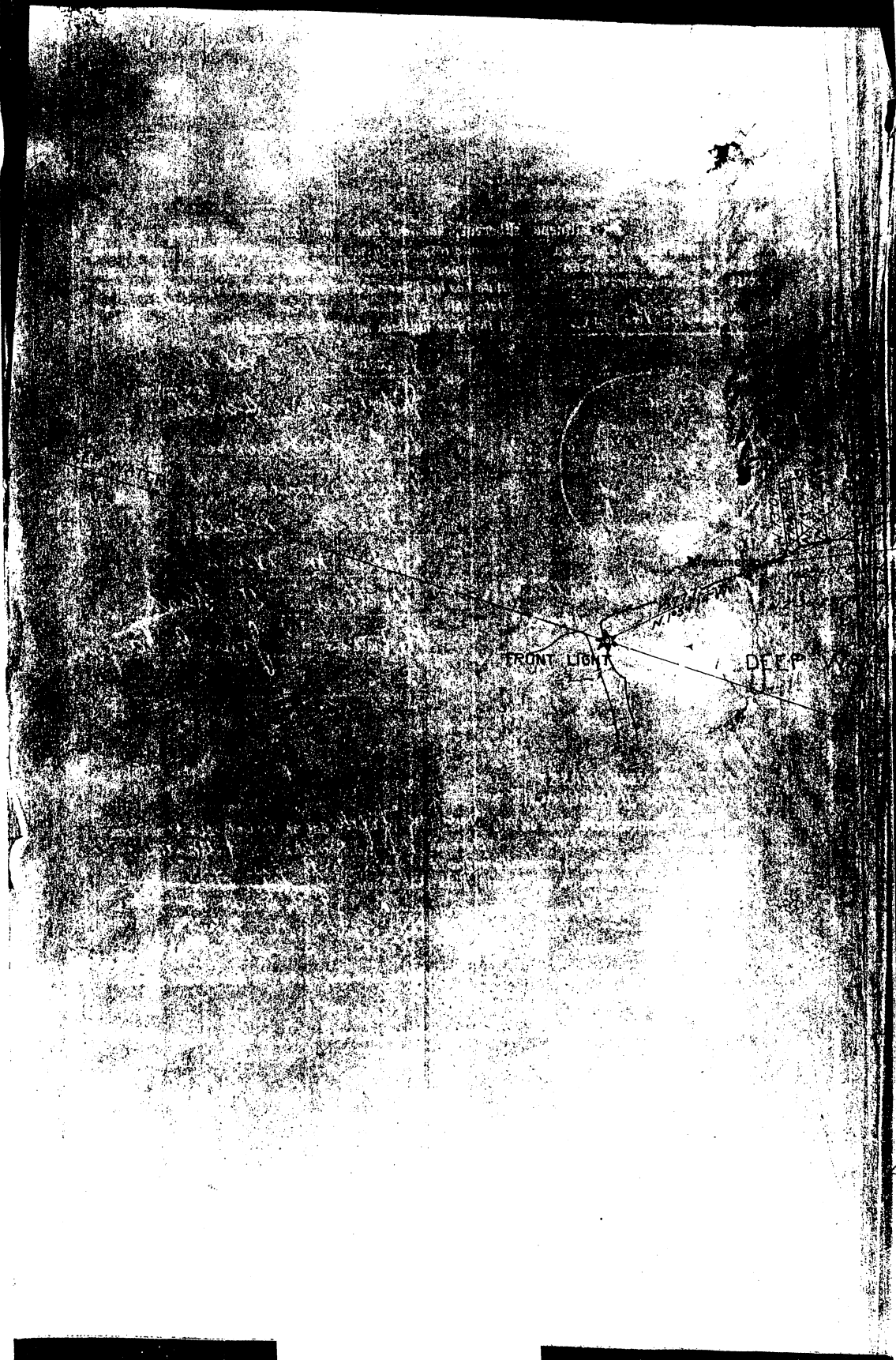
John B. Payne
thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

Charles E. Hendricks Jr
Master in Chancery
of New Jersey

John B. Payne

100



CHERRY ISLAND RANGE

East Channel Line

DELAWARE

N 32° 48' 25" E PIERHEAD

AND

POINT

Monument D

REAR LIGHT

GARREY

E. I. J u p o n t d e N e m o

ND RANGE

Line

AWAKE

RIVER

UNITED STATES MERIDIAN AT COOPER
SCALE

AND

BULLHEAD

LINE

1039.69

103.97

103.97

N. 22° 18' 01" E. 3850.7

0° 49' 49" E

N. 28° 57' 39" E

GARNEY

TRACT 6

N. 73° 04' 33" W. 3016.9

N. 73° 04' 33" W. 4480.2

N. 73° 04' 33" W. 4522.1

N. 73° 04' 33" W. 3828.2

N. 73° 04' 33" W. 3725.5

N. 73° 04' 33" W. 3725.5

Monument c

96107

N. 71° 53' 31" E
40.0

N. 49° 23' 31" E
2822.7

N. 61° 33' 31" E
2416.6

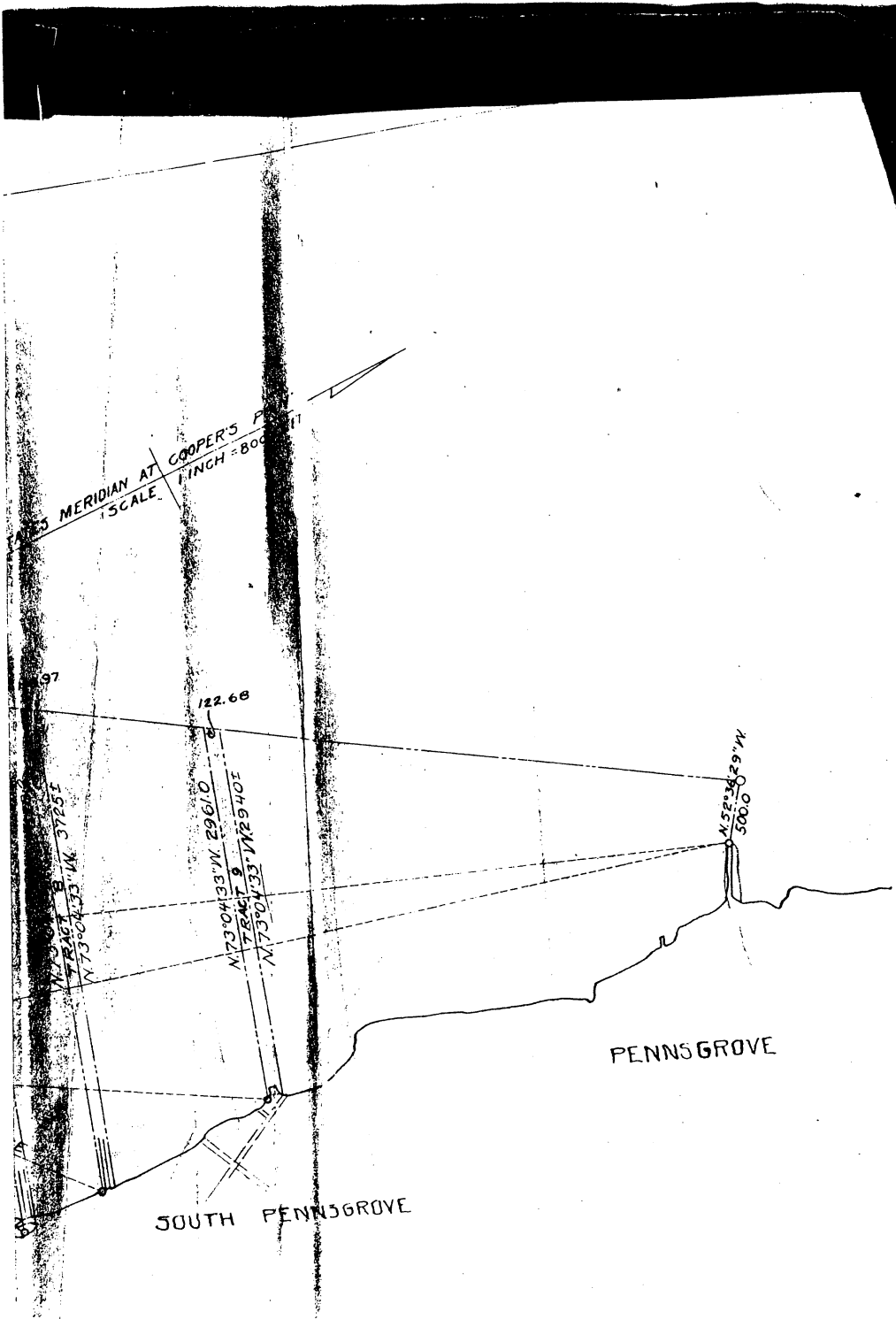
SOUTH

m

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a

n d C o m p a



Company

Board of Commerce and Navigation
of the State of New Jersey

Recorded in Liber. ✓
Folio 161 rc

THE STATE OF NEW JERSEY

TO

**E. I. DU PONT DE NEMOURS AND
COMPANY.**

GRANT.

Dated November 20th 1916.

The State of New Jersey:

To all to whom these Presents shall Come, or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

E. I. DU PONT DE NEMOURS AND COMPANY, a corporation of the State of Delaware, and doing business in the State of New Jersey,

being the owner of lands fronting on the Delaware River
at Deep Water Point in the County of Salem
and State of New Jersey, which lie above high water mark and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water, and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water, and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: **J. SPENCER SMITH, RICHARD C. JENKINSON, W. PARKER RUBYON, JOHN M. WARD, WILLIAM L. SAUNDERS, J. WARD RICHARDSON, WILLIAM T. KIRK and ALLEN K. WHITE**,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

ONE THOUSAND 00/100 (\$1,000.00) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

ONE THOUSAND 00/100 (\$1,000.00) DOLLARS

duly paid by the said

E. I. DU PONT DE NEMOURS AND COMPANY

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said

E. I. DU PONT DE NEMOURS AND COMPANY

and to its successors and assigns forever—All that parcel of land flowed by tide water situate at Deep Water Point, in the County of Salem and State of New Jersey, designated in the application of **E. I. du Pont de Nemours and Company** dated September 27th, 1916, as Tract "L", and described as follows:—

... at a point in the high water line of the easterly shore of the Delaware River where the same is intersected by the division line between lands of Fenton Beach Improvement Company and lands of the said E. I. du Pont de Nemours and Company, and from thence north seventy-three degrees, four minutes and thirty-three seconds west (N. 73°04'33" W.), (United States Government meridian at Camden, N.J. which is the meridian used in this description and the map attached to this grant), six hundred and sixty-one and three tenths (661.3) feet to the Pierhead and Bulkhead Line established August 31st, 1916, by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, etc." approved April 8th, 1916; thence along said Pierhead and Bulkhead Line north six degrees and fifty-five minutes east (N. 6° 55' E.) one hundred and one and fifty-five one hundredths (101.55) feet to a point; thence south seventy-three degrees, four minutes and thirty-three seconds east (S. 73° 04' 33" E.), parallel with the line first run down to said Pierhead and Bulkhead Line and one hundred (100) feet northerly at right angles therefrom, six hundred and fifty (650) feet, more or less, to the high water line of the easterly shore of the Delaware River; thence southerly along said high water line to the place of beginning.



With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to **its and their** exclusive private uses.

~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the _____ and _____ lines of the first described tract aforesaid _____ to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between sea lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said **E. I. DU PONT DE NEMOURS AND COMPANY** is not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said **E. I. DU PONT DE NEMOURS AND COMPANY**.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established, by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter claimed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

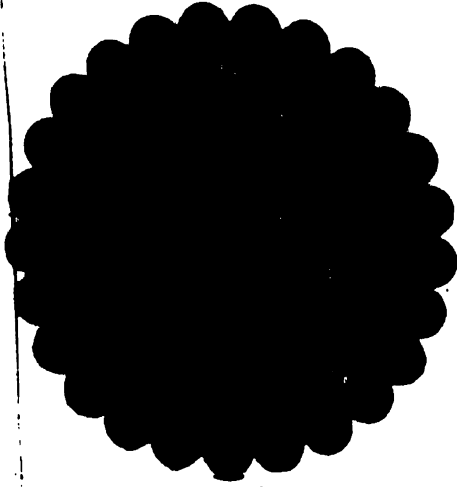
Together with all and singular the hereditaments and appurtenances thereto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said **E. I. DU PONT DE NEMOURS AND COMPANY**, and to its successors - - - and assigns forever.

Note: Seven printed lines on third page stricken out before execution.

John C. Payne

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this *Twenty* day of *November*, in the year nineteen hundred and sixteen.



James F. Fielder
Governor.
Spencer Smith
Richard B. Furman
William D. Saunders
J. Ward Richardson
W. Parker Ransom
William J. Kirk
Witness *John C. Payne*

Howard H. Main
SECRETARY OF STATE

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. }

Be it Remembered, That on this *Twenty* day of *November*, nineteen hundred and *sixteen*, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared *John C. Payne*, who being by me duly sworn on his oath, saith that he saw *James F. Fielder, Gov.*, *Spencer Smith*, *Richard B. Furman*, *William D. Saunders*, *J. Ward Richardson*, *W. Parker Ransom* and *William J. Kirk*, six of the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said *John C. Payne*

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

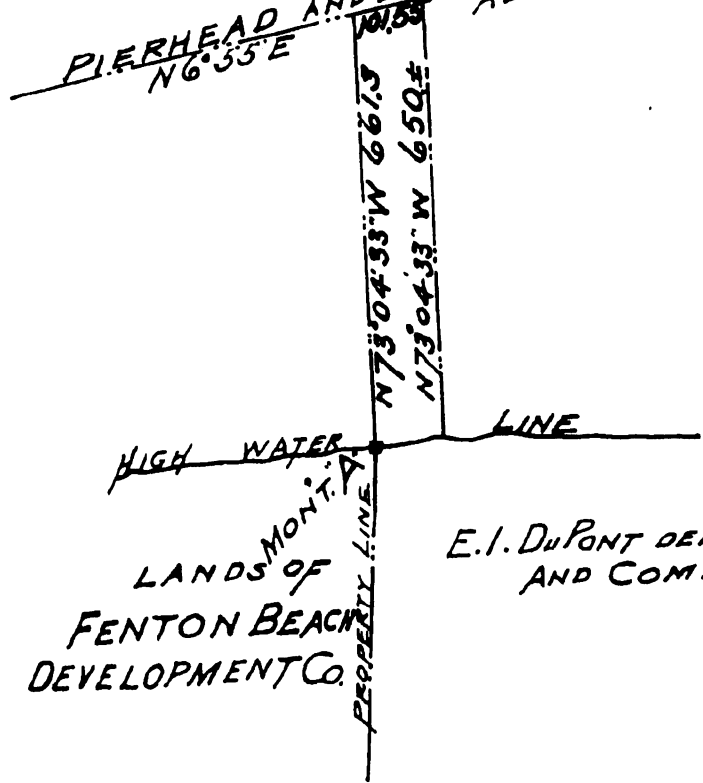
John C. Payne

Francis Voorhees
Master in Chancery
of New Jersey.

U.S. MERIDIAN AT
COOPERS POINT

DELAWARE RIVER

PIERHEAD AND BULKHEAD LINE
ADOPTED AUG 21, 1916



HIGH WATER
LANDS OF
FENTON BEACH
DEVELOPMENT CO.

E. I. DUPONT DE NEMOURS
AND COMPANY

The State of New Jersey:

To all to whom these Presents shall Come, or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspector of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

B. I. DU PONT DE NEMOURS AND COMPANY, a corporation of the State of Delaware,

being the owner of lands fronting on the Delaware River at Dogwater Point in the County of Salem and State of New Jersey, which lie above High water mark and a grant of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water, and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water, and determine the price of compensation to be paid to the said State therefor, and the terms and conditions of said grant;

And Whereas, the said Board of Commerce and Navigation, to-wit: J. W. HICKEY, Chairman, H. C. J. HITCHCOCK, Secretary, and JOHN H. BENTLEY, J. H. BENTLEY, JOHN B. BENTLEY, ROBERT M. BENTLEY, and JOHN L. BENTLEY,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms hereinafter set forth, and have determined the sum of

THREE THOUSAND AND FIVE HUNDRED 00/100 (\$3,500.00) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands,

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

THREE THOUSAND AND FIVE HUNDRED 00/100 (\$3,500.00) DOLLARS

duly paid by the said B. I. DU PONT DE NEMOURS AND COMPANY

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said

B. I. DU PONT DE NEMOURS AND COMPANY

and to its successors and assigns forever—All those two parcels of land flowed by tide water situate at Dog Water Point, in the County of Salem and State of New Jersey, described as follows:-

FIRST TRACT: BEING THAT PART of a point in the high water line of the easterly shore of the Delaware River where the same is intersected by the northerly line of the first tract of land under water

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under the water, by piling in or otherwise improving the same, and to appropriate the lands under water above described to the use and to their exclusive private uses.

And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid piling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the _____ and _____ lines of the first described tract extended _____ to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may rise and flow and no solid masonry shall be placed thereon.

Provided, that the State of New Jersey by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior line for solid piling and piers, and shall cause further from the shore than the exterior line for solid piling and piers the lands hereby granted, whenever the State may deem it necessary for its interest so to do, and if such exterior lines shall be placed out further from the shore than aforesaid, then the party or parties claiming under the aforesaid grant, within such period of time as shall be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, to be included a full and complete plan and precise a base or record of the additional land under water lying between the present exterior lines above described and the new exterior line or lines last mentioned, after the land, upon payment of such additional consideration, and upon such terms and conditions shall be used by said Board of Commerce and Navigation or other lawful authority, under and upon such conditions as the State may think proper, and shall be used for all purposes whatsoever, as may be directed by the said Board of Commerce and Navigation or other lawful authority, and the land shall be used for any part or parts of or future use of the same.

And Also Provided, that the State of New Jersey may, from time to time, from the lands in the State lying in front of the exterior line for solid piling or piers contained or referred to herein, use the collection of oysters or other shellfish for any other purpose whatsoever, provided that such oyster banks shall not operate to interfere with the navigation, and no access be made to the lands under water hereby granted or to any pile and wharf structure hereon, in violation of said laws under and under and the same shall be held to be null and void.

And Also Provided, that if the said

... and the interest of the land adjoining the limit of the same, hereby intended, shall not be that covered thus instrument and contained, so far as the same regards the State, and all the interests herein in the part of the State, shall be void as to the same part or parts of said land which are hereby conveyed by the said

And Also Provided, that if the exterior line for solid piling and the exterior line for piers, or either of said lines, now established, or hereafter to be established, here by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee here or any party claiming hereunder shall suffer damage, the claim or claims therefor shall be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereinaforesaid and appertaining thereto belonging, **To have and to hold** all and singular the above recited and described land under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said ... and assigns forever.

of the printed lines on
which are stricken out
in the margin.

In Witness Whereof, the said Board of Commerce and Navigation here-
before respectively set their hands, and these presents here-
been signed by the Governor, and the Great Seal of the said
State, has been hereunto affixed and attested by the Secretary of
State, this *sixteenth* day of *July*
in the year nineteen hundred and *one*.

John C. Payne

The
Great Seal
of the
State of
New Jersey

John C. Payne
Secretary of State

Walter S. Edger
J. Spencer Smith
R. C. Robinson
William J. Kirk
M. S. Saunders
R. F. Engle
Wm. Parker Dunsen
Witness *John C. Payne*
Witness *John C. Payne*

STATE OF NEW JERSEY
COUNTY OF _____

Be it Remembered, That on the *fourth* day of *July* *1901*
London and W. Allen subscribed, a *Master in Chancery*
of *New Jersey* personal appeared *John C. Payne*
who being lawfully sworn in his office, with the said *Wm. Parker Dunsen*
J. Spencer Smith, *R. C. Robinson*, *William J. Kirk*, *M. S. Saunders*, *R. F. Engle* and *Wm. Parker Dunsen*, S. of

the within named Board of Commerce and Navigation, and believe the within deed as their
own act, and that he, the said *John C. Payne*

John C. Payne subscribed his name as attesting witness thereto.
Signed and subscribed before me
in presence of the within
parties aforesaid.

John C. Payne

Wm. Parker Dunsen
Master in Chancery
of New Jersey.



DELAWARE

RIVER

Grant by State to
E. I. du Pont de Nemours & Co.
August 21, 1916 Tract 1

N 73° 04' 33" W 668' ±

1st Tract

N 73° 04' 33" W 614.34'

Bulkhead
N 6° 55' E
253.87'

and

Grant by State to
E. I. du Pont de Nemours & Co.
August 21st 1916.
Tract 2

Tract 2

N 73° 04' 33" W 648' ±

2nd Tract

N 73° 04' 33" W 648' ±

Bulkhead
Line
N 32° 48' 23" E
103.97'

E. I. DU PONT DE NEMOURS & COMPANY

Water

Line

Cancelled as of February 5, 1939
 Pursuant to Chapter 418 Laws of 1938
 official copy

Consigned
 E. I. D. P.
 1938

The State of New Jersey:

To all to whom these Presents shall Come, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

E. I. DU PONT DE NEMOURS AND COMPANY, a corporation of the State of Delaware and doing business in the State of New Jersey,

being the owner of lands fronting on Delaware River
 at Deep Water Point
 in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a lease of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water, and determine the annual rental to be paid to the State therefor, and the terms and conditions of said lease:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. PARKER RUNYON, JOHN M. WARD, WILLIAM L.

SAUNDERS, ROBERT P. WIGLE, WILLIAM T. KIRK and ALLEN K. WHITE, having due regard to the interests of navigation and the interests of the State, have agreed to lease the lands hereinafter mentioned upon the terms herein set forth and have determined the sum of SEVENTY 00/100 (\$70.00) DOLLARS

to be the annual rental to be paid for said lands under water so designated, from the day of the date hereof, for and during and until the full end and term of sixty (60) years, except as otherwise hereinafter provided as to revaluation and increase of such annual rental at and for the periods hereinafter specified and set forth.

Now, Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises and of the rents, covenants and conditions herein contained, does hereby demise, lease and to farm let unto the said

E. I. DU PONT DE NEMOURS AND COMPANY, and to its successors

and assigns, for the full term of sixty (60) years, or until default is made in the punctual payment of the annual rentals herein fixed, or until this instrument and all estate or rights arising thereunder has been declared forfeited by said Board of Commerce and Navigation or their successors in office, for breach of any of the covenants or conditions herein contained, or until the same has been in any other manner forfeited or terminated.

All that parcel of land flowed by tide water situate at Deep Water Point, in the County of Salem and State of New Jersey, described as follows:-

BEGINNING at a point in the high water line of the easterly shore of the Delaware River, distant three hundred seventy-nine and twenty-six hundredths (379.26) feet on a course of N. 19° 24' 19" W. (United States Government meridian at Camden, New Jersey, which is the meridian used in this description and map attached to this grant) from Front Light, and from said beginning point S. 75° 04' 23" W.,

Cancelled

seven hundred thirty-six and twenty-one hundredths (736.21) feet to the Pierhead and Bulkhead Line adopted August 21, 1916, by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, etc.", approved April 8, 1915; thence along said Pierhead and Bulkhead Line as adopted N. 6° 55' E., one hundred one and fifty-five hundredths (101.55) feet to a point; thence S. 73° 04' 33" E., seven hundred and eighteen (718) feet, more or less, to the high water line of the easterly shore of Delaware River; thence southerly along said high water line to the place of beginning.

Cancelled

With the right and privilege, under the covenants and conditions of this lease, to exclude the public from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to **its**
and their - - - exclusive private uses.

1 ~~And also for a like term, and subject to the same terms, covenants, conditions and limitations,~~
2 ~~all and singular the lands under water lying between the exterior line for solid filling and the~~
3 ~~exterior line for piers, as found by the Board of Commerce and Navigation appointed under the~~
4 ~~authority of the act aforesaid, and bounded by the~~ and
5 ~~lines of the first described tract aforesaid~~
6 ~~to said premises, but said land not bounded is not to be used for any purpose whatsoever except~~
7 ~~the erection of a pier or piers thereon, under water, which the tide may ebb and flow, and no solid~~
8 ~~filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands herein leased, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties leasing under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby leased and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said E. I. DU PONT DE NEMOURS AND COMPANY
18 - - -
not the owner of the land adjoining the land under water hereby leased, then, and in that case, this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void, as affecting any part or parts of said land, joining land not owned by the said

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

3

Cancelled

To take, have, hold, use, exercise and enjoy, as lessee for the term aforesaid, the said lands and premises, and all the rights and privileges aforesaid, exercisable within and over, or with reference to the same, to and for the said several uses, intents and purposes, and in the manner and form that they are above leased unto the said

E. I. DU PONT DE NEMOURS AND COMPANY
and to **its successors** and assigns, subject to the regulations now imposed by law on the exercise of said rights of property hereby leased, and to such as shall hereafter be made by the Legislature or the said Board of Commerce and Navigation or a majority thereof, yielding and paying therefor unto the State of New Jersey the annual rent of

SEVENTY 00/100 (\$70.00) DOLLARS

to be paid to the State of New Jersey by the said

E. I. DU PONT DE NEMOURS AND COMPANY, its successors

and assigns in equal half yearly payments in advance, the first payment to be made on the delivery of this lease, and to be for the rental from the date of this lease until the then next first day of January or July as the case may be, and thereafter the half yearly rentals shall be paid in advance on the first days of January and July, in each and every year; provided, however, and it is expressly covenanted and agreed, that the Board of Commerce and Navigation, or their successors, may, at the expiration of twenty years from the date hereof, and each ten years thereafter until the expiration of the full term hereby granted, make, or cause to be made, a revaluation of the lands hereby leased, and may, in its discretion, after and upon such revaluation, such revaluation showing an increase in the value of the lands, increase the annual rental to be paid for the then commencing period of ten years at a sum to be fixed by the Board of Commerce and Navigation, or their successors.

And the said **E. I. DU PONT DE NEMOURS AND COMPANY**

do hereby for **itself, its successors** - - - and assigns covenant and agree to and with the State of New Jersey, that **it** the said

E. I. DU PONT DE NEMOURS AND COMPANY, its successors

and assigns shall and will from time to time, and at all times well and truly pay, or cause to be paid to the State of New Jersey, the yearly rent or sum of

SEVENTY 00/100 (\$70.00) DOLLARS - - - herebefore reserved, and all increased rentals made and determined by the Board of Commerce and Navigation, or their successors, as hereinbefore provided, upon and before the several days and times hereinbefore appointed for the payment thereof, and on the last day of the said term, or other sooner determination of the estate hereby granted, shall and will peaceably and quietly leave, surrender and yield up unto the State of New Jersey all and singular the demised premises and all the appurtenances, betterments and improvements thereto and thereon, and that if it shall happen that the said yearly rent, or any part thereof, shall at any time hereafter be behind and unpaid after the same shall become due, it shall be lawful, immediately and without demand for such rent in arrear, for the State of New Jersey, by its officers and agents or otherwise, into the said tract of land and every part thereof to enter and distrain all things on said premises for said annual rent, or such part thereof as shall be behind and unpaid, and the distress and distresses there found to take and convey away and detain and keep, or otherwise dispose of according to law until the said rent and all arrears thereof and the costs and charges occasioned by the non-payment thereof at the time in that behalf above mentioned shall be fully paid and satisfied; and also that in such case it shall be lawful, without demand for such rent in arrear, for the said State of New Jersey, by its officers or agents or otherwise, into the said tract of land hereby leased to re-enter and the same and every part thereof, and all improvements, and all the rights, liberties, privileges and franchises aforesaid to have, possess and enjoy as of its first and former estate, anything herein contained to the contrary notwithstanding, and upon such re-entry by the State all covenants herein on the part of the State shall forthwith cease and determine and the said lease and this instrument shall become null and void.

It is distinctly understood and mutually agreed between the parties to these presents that the payment of the annual rentals on the days and times appointed shall be of the essence of this contract.

Cancelled as of February 6, 1939

And it is also provided, that at the expiration of the said sixty (60) years herein fixed as the duration of this lease, or at any previous time by reason of the non-payment of rentals as herein provided, the estate hereby granted shall terminate and the lands hereby leased and all the appurtenances, betterments and improvements thereto, shall revert to the State of New Jersey and belong to the said State, without any entry or re-entry by the said State.

The term "successor" as used herein in connection with the Board of Commerce and Navigation shall be construed to include any board, body, commission, officer and other State agency, hereinafter exercising the powers and performing the duties with relation to the riparian lands of the State now devolving upon the Board of Commerce and Navigation.

In witness whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, and the said E. I. DU PONT DE NEMOURS AND COMPANY has caused these presents to be signed by its Vice President and its corporate seal, duly attested by its Secretary, to be hereunto affixed this ~~twentieth~~ ^{twentieth} day of May, in the year nineteen hundred and ~~eighteen~~ ^{eighteen}.

Victor Gelman

Walter Edge Governor.

Spencer Smith

Richard L. Jenkinson

Allen K. White

William T. Kirk

R. F. Engle

Witness: Victor Gelman

E. I. du Pont de Nemours and Company

By H. F. Brown Vice President

Alfred Alexis J. DuPont Secretary

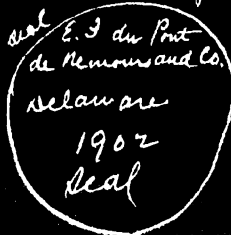


Thomas J. Martin Secretary of State

Approved for execution of Rec State Dept.

OK RBR

-5-



Cancelled February 6, 1939
Pursuant to Chapter 418
Laws of 1938

State of New Jersey,
County of HUDSON, SS:

Be it Remembered, That on this 4th day of June
nineteen hundred and eighteen, before me, the subscriber, a Master in
Chancery of New Jersey, personally appeared Victor Gelman
who being by me duly sworn on his oath, saith that he saw
Richard G. Jenkinson, Allen H. White,
William J. Kirk and Robert F. Engle, five of
the within named Board of Commerce and Navigation, sign and deliver the within lease as their
voluntary act, and that he, the said Victor Gelman
thereupon subscribed his name as the attesting witness.

Sworn and subscribed before me
at Jersey City, the day and
year aforesaid.

John M. Enright
Master in Chancery
of New Jersey.

STATE OF DELAWARE,)
NEW CASTLE COUNTY,)

(SEAL
Superior Court
of Delaware.
New Castle.)

I, Joseph Wigglesworth, Prothonotary of
the Superior Court of the State of Dela-
ware, in and for New Castle County, which
Court is a Court of Record, do hereby certi-
fy that G. D. Hopkins before whom the an-
nexed acknowledgment was taken, was at the
time of taking such affidavit, affirmation
or acknowledgment a G. D. Hopkins, Notary
Public, in the State of Delaware, of the
County of New Castle, duly commissioned
and sworn, and authorized to take and
certify affidavits, affirmations and

acknowledgments and proofs of Deeds or Conveyance of lands,
tenements and hereditaments, in the State of Delaware and to
all of whose acts as such full faith and credit are, and ought
to be given, as well in Courts of Justice as elsewhere.

That I am well acquainted with the handwriting of said
Notary Public and verily believe that the signature to said
affidavit, affirmation or acknowledgment, purporting to be the
signature of said Notary Public is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
seal of the said Superior Court, at Wilmington, this First day
of July in the year of our Lord one thousand nine hundred and
eighteen.

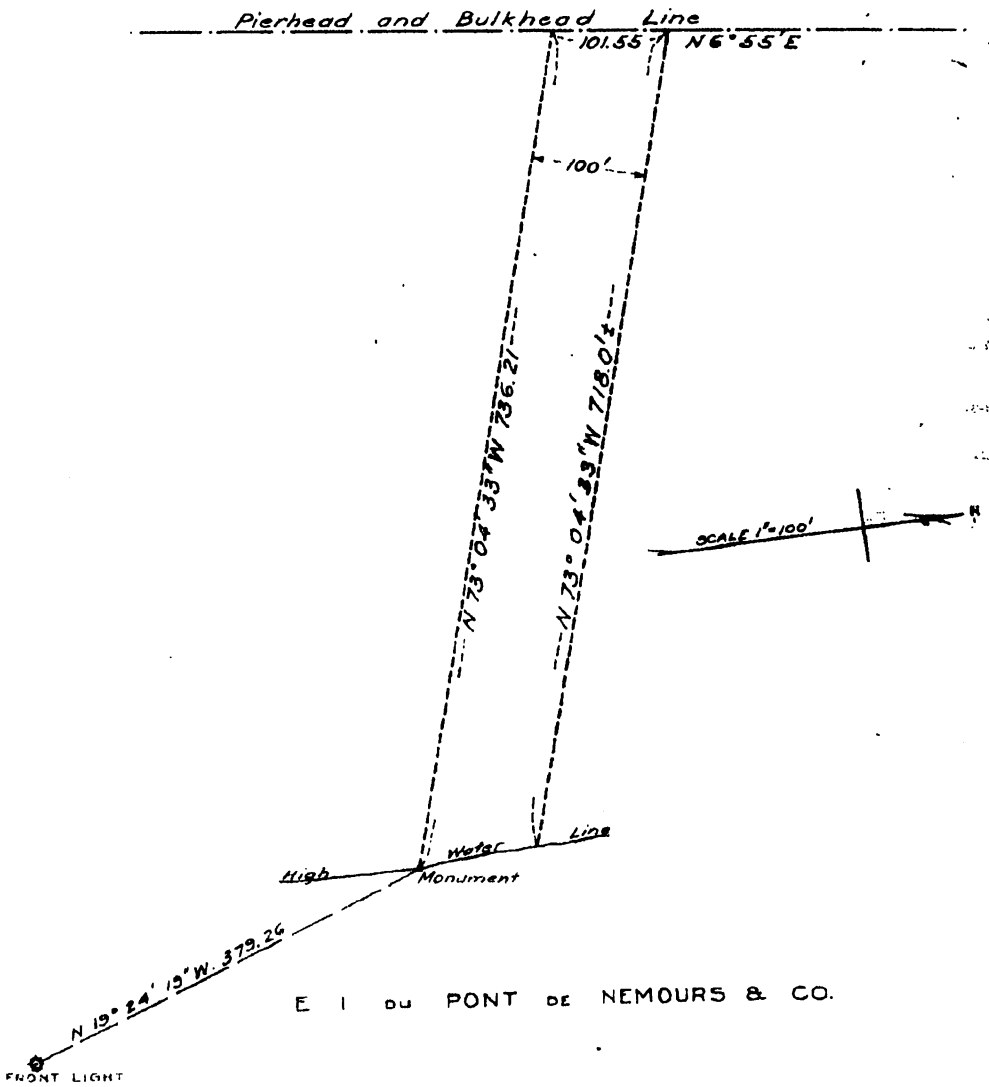
JOSEPH WIGGLESWORTH
Prothonotary.

the
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Company
rpo-
med

Tom-

S. D. Hopkins Notary in...
Notary Public
for the State of
Delaware
Appointed Decem-
ber 21/1917
for two years

DELAWARE RIVER



E I DU PONT DE NEMOURS & CO.

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

FRENCH'S HOTEL COMPANY, a corporation of the State of New Jersey,

being the owner of lands fronting on Delaware River, in Borough of Pennsgrove, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, WILLIAM L. SAUNDERS, W. PARKER RUNYON, WILLIAM T. KIRK, ROBERT F. ENGLE, HENRY C. BROKING and DAVID W. McCREA, having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of TWO THOUSAND SIX HUNDRED AND TWENTY-TWO DOLLARS AND THIRTY CENTS (\$2,622.30)

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of TWO THOUSAND SIX HUNDRED AND TWENTY-TWO DOLLARS AND THIRTY CENTS (\$2,622.30)

duly paid by the said

FRENCH'S HOTEL COMPANY

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

FRENCH'S HOTEL COMPANY

(19) 40A Appendix 5

of the easterly shore of Delaware River, said point being South $34^{\circ} 02' 20''$ East, three hundred thirty-one and ninety hundredths (331.90) feet from a brass bolt set as a monument by the Board of Commerce and Navigation in the southwest corner of the stone retaining wall of the wharf situate at West Main Street;

Thence (1) North $60^{\circ} 38' 40''$ West, binding in part upon the southwesterly line of grant made by the State of New Jersey on March 21, 1916 to Pennsgrove Pier Company, one thousand one hundred thirty-five and thirty-eight hundredths (1135.38) feet to the Pierhead and Bulkhead Line established August 21, 1916 by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act, creating a department to be known as the Board of Commerce and Navigation and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, etc.," approved April 8, 1915;

Thence (2) along said Pierhead and Bulkhead Line South $32^{\circ} 48' 23''$ West, two hundred sixty-two and twenty-three hundredths (262.23) feet to a point;

Thence (3) South $60^{\circ} 38' 40''$ East, one thousand two hundred eighty-three and eighty-six hundredths (1283.86) feet to the former high water line of the easterly shore of Delaware River;

Thence (4) Northwardly along said high water line to the place of beginning.

All as shown on map hereto annexed and made part hereof.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to its and their - - - exclusive private uses.

- 1 ~~And also under like terms, covenants, conditions and limitations, all and singular the lands~~
- 2 ~~under water lying between the exterior line for solid filling and the exterior line for piers, as fixed~~
- 3 ~~by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and~~
- 4 ~~bounded by the _____ and _____ lines of the~~
- 5 ~~first described tract extended _____ to said pier line; but said land last described~~
- 6 ~~is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath~~
- 7 ~~which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same farther from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said FRENCH'S HOTEL COMPANY is - - -

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said FRENCH'S HOTEL COMPANY.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said

FRENCH'S HOTEL COMPANY, and to its successors

and assigns forever.

Note: Seven printed lines on third page stricken out before execution.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this seventeenth day of October, in the year nineteen hundred and twenty-one.

VICTOR GELINEAU

E. I. EDWARDS
Governor,

RICHARD C. JENKINSON

W. L. SAUNDERS

W. PARKER RUNYON

WILLIAM T. KIRK

HENRY C. BROKING

DAVID W. McCREA

Witness: VICTOR GELINEAU

(THE GREAT SEAL
OF THE
STATE OF NEW JERSEY)

THOMAS F. MARTIN
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

Be it Remembered, That on this sixteenth day of November, nineteen hundred and twenty-one, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared VICTOR GELINEAU who being by me duly sworn on his oath, saith that he saw E. I. EDWARDS, Governor, and RICHARD C. JENKINSON, W. L. SAUNDERS, W. PARKER HUNYON, WILLIAM T. KIRK, HENRY C. BROKING, DAVID W. McCREA

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

VICTOR GELINEAU

MEYER EICHMANN
Master in Chancery
of New Jersey.

N 60° 38' 40" W 1283.86'

N 60° 38' 40" W 1135.38'

Grant by the State of New Jersey to
Pennsgrove Pier Company March 21, 1916

PIER

TRUE MERIDIAN COOPERS PT. U.S. MERIDIAN
Scale: 100' = 1"

Monument

N 34° 02' 20" W 331.96'

Former high water line?
wells
Stone

Brass plug

FRENCH'S HOTEL COMPANY

MAIN ST.

DELAWARE AV.

STATE OF NEW JERSEY
BOARD OF COMMERCE AND N.
MAP SHOWING
LANDS UNDER TIDEWATER
IN THE BOROUGH OF PENN:
COUNTY OF SALEM
GRANTED TO FRENCH'S HOTEL
OCTOBER 17, 1921

Victor Delina

DELAWARE RIVER

PIERHEAD AND BULKHEAD LINE

N 32° 48' 23" E 262.23'

N 60° 38' 40" W 1283.86'

N 60° 38' 40" W 1135.38'

Grant by the State of New Jersey to
Pennsgrave Pier Company March 21, 1916

PIER

TRUE MERIDIAN COOPERS PT. U.S. MERI
Scale: 100' = 1"

Monument

N 34° 02' 30" W 337.90'

Former high water line
wall
Stone

THE HOTEL COMPANY

MAIN ST.

DELAWARE AV.

Copy made
M.S. + M.L.A.
March 10, 1922

716 B.

D-1
Pg 459

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

WILLIAM D. ACTON, of Pennsville, in Salem County, New Jersey,

being the owner of lands fronting on Delaware River, in Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, WILLIAM L. SAUNDERS, W. PARKER RUNYON, WILLIAM T. KIRK, ROBERT F. ENGLE, HENRY C. BROKING and DAVID W. McCREA, having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

FIVE HUNDRED AND SEVENTY-TWO AND 04/100 (\$572.04) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

FIVE HUNDRED AND SEVENTY-TWO AND 04/100 (\$572.04) DOLLARS

duly paid by the said

WILLIAM D. ACTON

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

WILLIAM D. ACTON,

and to his heirs and assigns forever—All that tract of land flowed by tide water, situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:-

BEGINNING at a point in the original high water line of the southeasterly shore of Delaware River where the same is intersected

(20) 40A + 41A APPENDIX E

by the division line between lands of Fogg and Hires Company and lands of said William D. Acton, said beginning point being located as follows from an iron pipe in the center of Main Street where the center line thereof is intersected by the northwesterly line of lands of C. Norman Callahan; (a) North $55^{\circ} 11'$ West through Main Street, fifty-nine and seventy-five hundredths (59.75) feet to an old Stone near the Hotel; (b) North $53^{\circ} 13'$ West, still through Main Street and by line of Fogg and Hires Company's land, one hundred forty-nine and thirty-three hundredths (149.33) feet to a point in Main Street; (c) South $36^{\circ} 04'$ West, still along line of Fogg and Hires Company's land, fourteen and seventy-two hundredths (14.72) feet to said beginning point; and from said beginning point

(1) North $53^{\circ} 56'$ West, along the southwesterly edge of the old pier at the foot of Main Street, three hundred thirty-three and fifty-two hundredths (333.52) feet to a corner of the pier;

Thence (2) South $36^{\circ} 13'$ West, along the edge of said pier, six and fifty hundredths (6.50) feet to a corner thereof;

Thence (3) North $52^{\circ} 08'$ West, along the edge of said pier, twenty-nine and ninety hundredths (29.90) feet to a corner thereof;

Thence (4) North $45^{\circ} 48'$ West, five hundred and eighty (580) feet to the Pierhead and Bulkhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, etc." approved April 8, 1915;

Thence (5) North $44^{\circ} 12'$ East, following said Pierhead and Bulkhead Line, sixty-nine and eleven hundredths (69.11) feet to a point;

Thence (6) South $45^{\circ} 48'$ East, five hundred seventy-two and sixty-six hundredths (572.66) feet to a corner of the said pier;

Thence (7) South $53^{\circ} 48'$ East and in part following the edge of said pier, three hundred sixty and seventy-five hundredths (360.75) feet to the original high water line of the southeasterly shore of Delaware River;

Thence (8) Southwestwardly, following said original high water line to the place of beginning.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to his and their exclusive private uses.

- 1 ~~And also under like terms, covenants, conditions and limitations, all and singular the lands~~
- 2 ~~under water lying between the exterior line for solid filling and the exterior line for piers, as fixed~~
- 3 ~~by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and~~
- 4 ~~bounded by the _____ and _____ lines of the~~
- 5 ~~first described tract extended _____ to said pier line; but said land last described~~
- 6 ~~is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath~~
- 7 ~~which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same farther from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said WILLIAM D. ACTON is - - -

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said WILLIAM D. ACTON.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said WILLIAM D. ACTON, and to his heirs

and assigns forever.

Note:

Seven printed lines on third page stricken out before execution.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this nineteenth day of February, in the year nineteen hundred and twenty-three.

VICTOR GELINEAU

GEO. S. SILZER Governor,

J. SPENCER SMITH

RICHARD C. JENKINSON

W. PARKER RUNYON

R. F. ENGLE

HENRY C. BROKING

D. W. McCREA

W. L. SAUNDERS

WILLIAM T. KIRK

Witness: VICTOR GELINEAU

(THE GREAT SEAL OF THE STATE OF NEW JERSEY MDCCLXXVI)

THOMAS F. MARTIN Secretary of State

STATE OF NEW JERSEY, } ss.
COUNTY OF HUDSON.

Be it Remembered, That on this 27th day of February, nineteen hundred and twenty-three, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared VICTOR GELINEAU, who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH,

RICHARD C. JENKINSON, W. PARKER RUNYON, R. F. ENGLE, HENRY C. BROKING, D. W. McCREA, W. L. SAUNDERS, WILLIAM T. KIRK,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said

VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me, at Jersey City, the day and year aforesaid.

VICTOR GELINEAU

WILLIAM T. GRIFFIN

Master in Chancery of New Jersey.

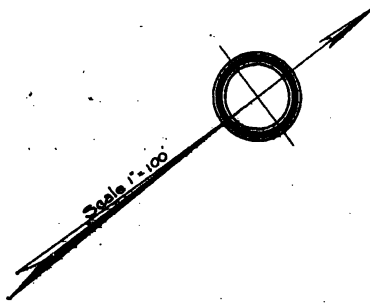
DELAWARE

RIVER

PIERHEAD AND BULKHEAD LINE
N. 44° 12' E. 69.11'

N. 45° 48' W. - 300.0'

N. 45° 48' W. - 572.66'



N. 36° 04' E. 34.0'
N. 51° 52' W. 25.50'
N. 36° 06' E. 32.0'
N. 52° 08' W. 25.30'
S. 36° 15' W. 65.0'

S. 51° 52' E. 23.50'
N. 36° 06' E. 32.70'
S. 55° 46' E. 27.60'

N. 53° 15' W. - 558.92'

PIER

N. 55° 45' W. - 360.75'

N. 55° 45' W. - 360.75'

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FOGG AND HIRES COMPANY

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N. 56° 04' E. 14.75'

N. 50° 34' E. 180.90'

N. 40° 04' E. 156.75'

N. 39° 28' W. 17.0'

N. 55° 23' E. 164.35'

N. 45° 18' E. 72.40'

S. 53° 21' E. 118.60'

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WILLIAM D. ACTON

MAIN ST.

FRONT ST.

M.A. ACTON

G. NORMAN CALLAHAN

PITTFIELD AVE.

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STATE OF NEW JERSEY
BOARD OF COMMERCE & MARITIME
MAP SHOWING
LANDS UNDER WATER OF
TOWNSHIP OF LOWER
SALEM COUNTY
GRANTED TO WILSON
FERRO

2 E 1 P G 245 ETC
2000

E 1 P G 245 ETC

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

WILLIAM D. ACTON, of Pennsville, in the County of Salem and State of New Jersey,

being the owner of lands fronting on Delaware River, in Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, he applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, WILLIAM L. SAUNDERS, W. PARKER RUNYON, WILLIAM T. KIRK, ROBERT F. ENGLE, HENRY C. BROKING and DAVID W. MCCREA,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

ONE THOUSAND (\$1,000.00) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

ONE THOUSAND (\$1,000.00) DOLLARS

duly paid by the said

WILLIAM D. ACTON

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

WILLIAM D. ACTON,

and to his heirs and assigns forever—All that tract of land now or formerly flowed by tide water, situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey bounded and described as follows:-

(21) 41A A

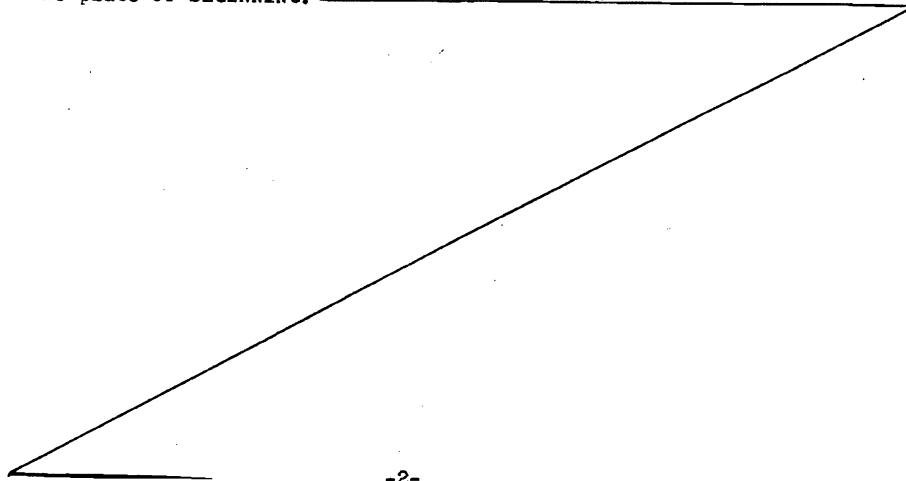
B E G I N N I N G at a point in the former high water line of the southeasterly shore of Delaware River where the same is intersected by the northeasterly line of Pittfield Street; distant North $53^{\circ} 15'$ West two hundred and fifty-three (253) feet from an iron pipe set in the northeasterly line of Pittfield Street in line with the southeasterly line of Front Street extended;

Thence (1) North $53^{\circ} 15'$ West, in line with the northeasterly line of Pittfield Street, nine hundred and seventy (970) feet to the Pierhead and Bulkhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8th, 1915;

Thence (2) North $36^{\circ} 45'$ East, following said Pierhead and Bulkhead Line, one hundred (100) feet to a point;

Thence (3) South $55^{\circ} 15'$ East, nine hundred and sixty-four (964) feet to the former high water line of the southeasterly shore of Delaware River;

Thence (4) southwestwardly, following said former high water line to the place of BEGINNING.



With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to his and their exclusive private uses.

~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the _____ and _____ lines of the first described tract extended _____ to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same farther from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said WILLIAM D. ACTON is - - -

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said WILLIAM D. ACTON.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said WILLIAM D. ACTON, and to his heirs

and assigns forever.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this nineteenth day of November, in the year nineteen hundred and twenty-three.

Note: Seven printed lines on third page stricken out before execution.

VICTOR GELINEAU

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY)

THOMAS F. MARTIN
Secretary of State

GEO. S. SILZER Governor,
J. SPENCER SMITH
W. PARKER RUNYON
R. F. ENGLE
D. W. McCREA
HENRY C. BROKING
WILLIAM T. KIRK
Witness: VICTOR GELINEAU

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

Be it Remembered, That on this 22nd day of November, nineteen hundred and twenty-three, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared VICTOR GELINEAU who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH, W. PARKER RUNYON, R. F. ENGLE, D. W. McCREA, HENRY C. BROKING, WILLIAM T. KIRK,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me, at Jersey City, the day and year aforesaid.

VICTOR GELINEAU

J. STANLEY GRIFFIN
Master in Chancery of
New Jersey.

Check
C. D. M.
12/14/23

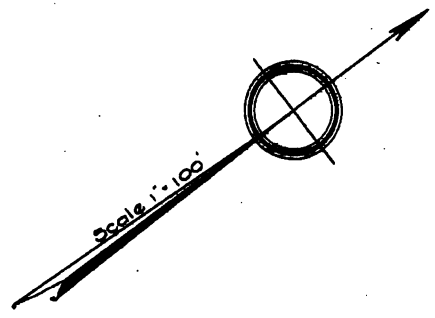
PIERHEAD AND BULKHEAD LINE
100' N. 36° 45' E.

DELAWARE

RIVER

N. 53° 15' W. - 970.0'

N. 53° 15' W. - 964.0'



WILLIAM

D.

ACTON

FRONT ST.

PITTFIELD ST.
N. 53° 15' W. - 256'

Iron Pipe

STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP SHOWING
LANDS UNDER TIDEWATER SITUATE IN
THE TOWNSHIP OF LOWER PENNS
NECK IN THE COUNTY OF SALEM
GRANTED
TO
WILLIAM D. ACTON
NOVEMBER 19, 1923

Victor Galinau

Compared
Sept. 924
B.C. = B.M.

Superseded by grant to Delaware-New Jersey
Ferry Company, dated May 19, 1930
recorded Liber T1, folio 75vc.

THE STATE OF NEW JERSEY:

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, Pursuant to an act of the Legislature of said State, approved April 8th, 1915 entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State, FOGG AND HIRES COMPANY, a corporation of the State of New Jersey, being the owner of lands fronting on Delaware River, in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a lease of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water, and determine the price or compensation and the annual rental to be paid to the State therefor, and the terms and conditions of said lease:

AND WHEREAS, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, WILLIAM L. SAUNDERS, W. PARKER RUNYON, ROBERT F. ENGLE, HENRY C. BROKING, AUGUSTUS SMITH, having due regard to the interests of navigation and the interests of the State, have agreed to lease the lands hereinafter mentioned upon the terms herein set forth and have determined the sum of ONE HUNDRED AND SEVENTY-SIX AND 69/100 (\$176.69) DOLLARS to be the annual rental to be paid for said lands under water so designated, subject as hereinafter stated, from the day of the date hereof, for and during and until the full end and term of fifteen (15) years, except as otherwise provided.

NOW THEREFORE, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises and of the rents, covenants and conditions herein contained, does hereby demise, lease and to farm let unto the said FOGG AND HIRES COMPANY, and to its successors and assigns, until default is made in the punctual payment of the annual rentals herein fixed, or until this instrument and all estate or rights arising thereunder has been declared forfeited by said Board of Commerce and Navigation or their

(22) 41A+

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successors in office, for breach of any of the covenants or conditions herein contained, or until the same has been in any other manner forfeited or terminated.

A L L that certain tract of land flowed by tide water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:-

B E G I N N I N G at a point in the former high water line of the southeasterly shore of Delaware River where the same is intersected by the southwesterly line of the grant made by the State of New Jersey February 19, 1923, to William D. Acton;

Thence (1) North $53^{\circ} 56'$ West, binding upon the southwesterly line of the grant to William D. Acton aforesaid and the southwesterly edge of the old pier at the foot of Main Street, three hundred and thirty-three and fifty-two one-hundredths (333.52) feet to a point;

Thence (2) South $36^{\circ} 13'$ West, still along the edge of the old pier and binding upon the grant to William D. Acton aforesaid, six and fifty one-hundredths feet (6.50') to a point;

Thence (3) North $52^{\circ} 08'$ West, still along the edge of said pier and binding upon the southwesterly line of the grant to William D. Acton aforesaid, twenty-nine and ninety one-hundredths (29.90) feet to a point;

Thence (4) North $45^{\circ} 48'$ West, still binding upon the grant to William D. Acton aforesaid, five hundred and eighty (580) feet to the Pierhead and Bulkhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915; and other acts and joint resolutions of the Legislature of said State;

Thence (5) South $44^{\circ} 12'$ West, following said Pierhead and Bulkhead Line, two hundred and fifty-two and forty-one hundredths (252.41) feet to a point;

Thence (6) South $45^{\circ} 48'$ East, nine hundred and eighty-five and forty-four one hundredths (985.44) feet to a point in the former high water line of the southeasterly shore of Delaware River;

Thence (7) Northeastwardly, following said former high water line the various courses and distances thereof to the place of BEGINNING.

With the right and privilege, under the covenants and conditions of this lease, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to its and their exclusive private uses.

~~And also for a like term, and subject to the same terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the and lines of the first described tract extended to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow, and no solid filling shall be placed thereon.~~

PROVIDED, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby leased, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by the said Board of Commerce and Navigation, or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

AND ALSO PROVIDED, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided

that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby leased and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

AND ALSO PROVIDED, that if the said FOGG AND HIRES COMPANY is not the owner of the land adjoining the land under water hereby leased, then, and in that case, this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void, as affecting any part or parts of said land, joining land not owned by the said FOGG AND HIRES COMPANY.

AND ALSO PROVIDED, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

TO TAKE, HAVE, HOLD, use, exercise and enjoy, as lessee for the term aforesaid, the said lands and premises, and all the rights and privileges aforesaid, exercisable within and over, or with reference to the same, to and for the said several uses, intents and purposes, and in the manner and form that they are above leased unto the said FOGG AND HIRES COMPANY, and to its successors and assigns, subject to the regulations now imposed by law on the exercise of said rights of property hereby leased, and to such as shall hereafter be made by the Legislature or the said Board of Commerce and Navigation or a majority thereof, yielding and paying therefor unto the State of New Jersey the annual rent of ONE HUNDRED AND SEVENTY-SIX AND 69/100 (\$176.69) DOLLARS, to be paid to the State of New Jersey by the said FOGG AND HIRES COMPANY, its successors and assigns in two equal half yearly payments in advance, the first half yearly rental to be paid on the delivery of this lease and thereafter the half yearly rentals shall be paid in advance on the eighteenth days of February and August in each and every year. And the said FOGG AND HIRES COMPANY does hereby for itself, its successors and assigns covenant and agree to and with the State of New Jersey, that it the said FOGG

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AND HIRES COMPANY, its successors and assigns shall and will from time to time, and at all times well and truly pay, or cause to be paid to the State of New Jersey, the yearly rent or sum of ONE HUNDRED AND SEVENTY-SIX AND 69/100 (\$176.69) DOLLARS hereinbefore reserved, upon and before the several days and times hereinbefore appointed for the payment thereof, and that if it shall happen that the said yearly rent, or any part thereof, shall at any time hereafter be behind and unpaid after the same shall become due, it shall be lawful, immediately and without demand for such rent in arrear, for the State of New Jersey, by its officers and agents or otherwise, into the said tract of land and every part thereof to enter and distrain all things on said premises for said annual rent, or such part thereof as shall be behind and unpaid, and the distress and distresses there found to take and convey away and detain and keep, or otherwise dispose of according to law until the said rent and all arrears thereof and the costs and charges occasioned by the non-payment thereof at the time in that behalf above mentioned shall be fully paid and satisfied; and also that in such case it shall be lawful, without demand for such rent in arrear, for the said State of New Jersey, by its officers or agents or otherwise, into the said tract of land hereby leased to re-enter and the same and every part thereof, and all improvements, and all the rights, liberties, privileges and franchises aforesaid to have, possess and enjoy as of its first and former estate, anything herein contained to the contrary notwithstanding, and upon such re-entry by the State all covenants herein on the part of the State shall forthwith cease and determine and the said lease and this instrument shall become null and void.

It is distinctly understood and mutually agreed between the parties to these presents that the payment of the annual rentals on the days and times appointed shall be of the essence of this contract, and that the State of New Jersey does not covenant and is not bound by any law, obligation, lease or contract to make any renewal of the lease of said lands within the said period of fifteen (15) years except at such valuation and terms as may be fixed by the said Board of Commerce and Navigation.

PROVIDED, however, that the said FOGG AND HIRES COMPANY, its successors or assigns, may, within five (5) years of the day of the date

hereof, upon application duly made to the Board of Commerce and Navigation and as a condition precedent the rentals having been paid on the days appointed therefor, have the right to convert this lease into a grant in fee upon payment of a principal sum, which shall be the capitalization of the said yearly rental of ONE HUNDRED AND SEVENTY-SIX AND 69/100^(\$176.69) DOLLARS at seven per cent. (7%), being the sum of TWO THOUSAND FIVE HUNDRED AND TWENTY-FOUR AND 10/100 (\$2,524.10) DOLLARS.

AND ALSO PROVIDED, that at the expiration of the said fifteen (15) years herein fixed as the duration of this lease, or at any previous time by reason of the non-payment of rentals as herein provided, the estate hereby granted shall terminate and the lands hereby leased and all the appurtenances, betterments and improvements thereto, shall revert to the State of New Jersey and belong to the said State, without any entry or re-entry by the said State.

That at the expiration of the term of this lease, the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall have the power to fix the terms and conditions for a subsequent lease. _____

Superseded by grant to Delaware -
New Jersey Ferry Company, dated
May 19, 1930 - Liber T1 - folio 75^{re}.

Note: Eight printed
lines on third
page stricken
out before execution.

VICTOR GELINEAU

IN WITNESS WHEREOF, the said
Board of Commerce and Navigation have
hereunto respectively set their hands,
and these presents have been signed by
the Governor, and the Great Seal of the
said State has been hereunto affixed and
attested by the Secretary of State, and
the said FOGG AND HIRES COMPANY has caused
these presents to be signed by its President and
its corporate seal, duly attested by its
Secretary to be hereunto affixed, this
eighteenth day of August, in the year nine-
teen hundred and twenty-four.

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY)

THOMAS F. MARTIN
Secretary of State

GEO. S. SILZER
Governor

J. SPENCER SMITH

RICHARD C. JENKINSON

W.L. SAUNDERS

R.F. ENGLE

W. PARKER RUNYON

AUGUSTUS SMITH

Witness: VICTOR GELINEAU

(Seal) (FOGG AND HIRES COMPANY
1895
Quinton, N.J.)

Attest:
ELIZABETH W. GREEN
Secretary

FOGG & HIRES CO.

By LUCIUS E. HIRES PREST.

STATE OF NEW JERSEY)
) SS.:
 COUNTY OF HUDSON.)

BE IT REMEMBERED, That on this 18th day of August, nineteen hundred and twenty-four, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared VICTOR GELINEAU, who being by me duly sworn on his oath, saith that he saw J.SPENCER SMITH, RICHARD C. JENKINSON, W.L. SAUNDERS, R.F. ENGLE, W. PARKER RUNYON, AUGUSTUS SMITH, the within named Board of Commerce and Navigation, sign and deliver the within lease as their voluntary act, and that he, the said VICTOR GELINEAU, thereupon subscribed his name as the attesting witness.

Sworn and subscribed before me
 at Jersey City, the day and
 year aforesaid.

VICTOR GELINEAU

HENRY J. GAEDE
 Master in Chancery
 of New Jersey.

STATE OF NEW JERSEY)
) SS.:
 COUNTY OF SALEM.)

BE IT REMEMBERED, That on this 17th day of September in the year nineteen hundred and twenty-four before me, the subscriber, a Master in Chancery of New Jersey, personally appears Elizabeth W. Green who, being by me duly sworn, doth depose and make proof to my satisfaction, that she well knows the corporate seal of FOGG & HIRES COMPANY the lessee named in the foregoing instrument; that the seal thereof affixed is the proper corporate seal of the said Company; that the same was so affixed thereto and the said instrument signed and delivered by LUCIUS E. HIRES who was at the date and execution thereof the President of said Company, in the presence of said deponent as the voluntary act and deed of the said Company, and that the said deponent thereupon signed the same as subscribing witness.

Sworn and subscribed before me at
 the date aforesaid.

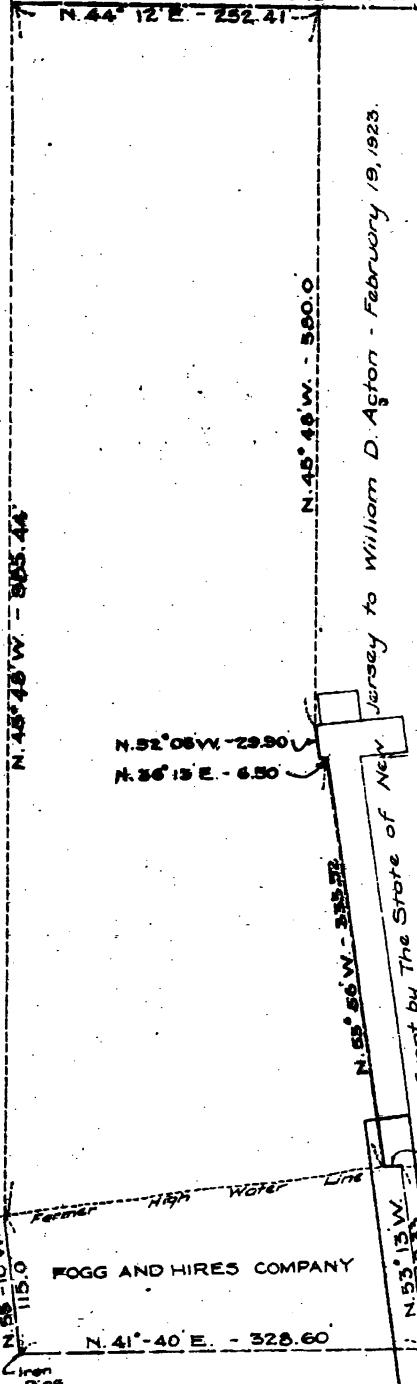
ELIZABETH W. GREEN

J. FORMAN SINNICKSON

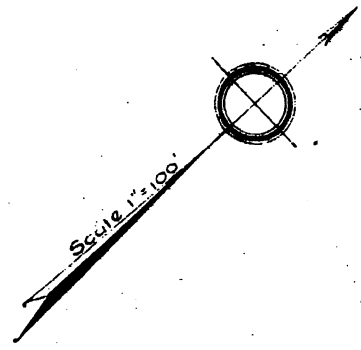
M. C. C. of N. J.

DELAWARE RIVER

PIERHEAD AND BULKHEAD LINE



Jersey to William D. Acton - February 19, 1923.
Grant by The State of New Jersey



Lands Now or Formerly of William H. H. Wheaton

FOGG AND HIRES COMPANY

Lands Now or Formerly of William D. Acton.

STATE OF NEW JERSEY
 BOARD OF COMMERCE AND NAVIGATION
 MAP SHOWING
 LANDS UNDER FIREWATER SITUATION
 IN THE TOWNSHIP OF LOWER PEAKS
 NECK, COUNTY OF SALEM,
 LEASED TO
 FOGG AND HIRES COMPANY
 AUGUST 18, 1924.

Victor Galbreath
 DIRECTOR AND CHIEF ENGINEER

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State, DELAWARE-NEW JERSEY FERRY COMPANY, a corporation of the State of Delaware,

being the owner of lands fronting on Delaware River, in Township of Lower Penns Neck, in the County of Salem, and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER

SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, WILLIAM T. KIRK, AUGUSTUS SMITH, THOMAS H. THROPP, FRANK DORSEY, and JOHN MURLAND,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

TWO THOUSAND FIVE HUNDRED TWENTY-FOUR and 10/100 (\$2,524.10) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

TWO THOUSAND FIVE HUNDRED TWENTY-FOUR and 10/100 (\$2,524.10) DOLLARS duly paid by the said

DELAWARE-NEW JERSEY FERRY COMPANY

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

DELAWARE-NEW JERSEY FERRY COMPANY

and to its successors and assigns forever—All that tract of land flowed by tide-water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:-

B E G I N N I N G at a point in the former high water line of the southeasterly shore of Delaware River where the same is intersected by the southwesterly line of the grant made by the State of New Jersey February 19, 1923, to William D. Acton;

Thence (1) North $53^{\circ} 56'$ West, binding upon the southwesterly line of the grant to William D. Acton aforesaid and the southwesterly edge of the old pier at the foot of Main Street, three hundred and thirty-three and fifty-two one-hundredths (333.52) feet to a point;

Thence (2) South $36^{\circ} 13'$ West, still along the edge of the old pier and binding upon the grant to William D. Acton aforesaid, six and fifty one-hundredths feet (6.50) feet to a point;

Thence (3) North $52^{\circ} 08'$ West, still along the edge of said pier and binding upon the southwesterly line of the grant to William D. Acton aforesaid, twenty-nine and ninety one-hundredths (29.90) feet to a point;

Thence (4) North $45^{\circ} 48'$ West, still binding upon the grant to William D. Acton aforesaid, five hundred and eighty (580) feet to the Pierhead and Bulkhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915; and other acts and joint resolutions of the Legislature of said State;

Thence (5) South $44^{\circ} 12'$ West, following Pierhead and Bulkhead Line, two hundred and fifty-two and forty-one hundredths (252.41) feet to a point;

Thence (6) South $45^{\circ} 48'$ East, nine hundred and eighty-five and forty-four one-hundredths (985.44) feet to a point in the former high water line of the southeasterly shore of Delaware River;

Thence (7) Northeastwardly, following said former high water line the various courses and distances thereof to the place of BEGINNING.

The lands hereby granted and conveyed being the same lands leased by the State of New Jersey to Fogg and Hires Company by instrument dated the eighteenth day of August, in the year nineteen hundred and twenty-four, which lease is hereby cancelled and terminated.

In Witness Whereof, the said Board of Commerce and Navigation have hereinio respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this nineteenth day of May, in the year nineteen hundred and thirty.

Note: Seven printed lines on page four stricken out before execution.

VICTOR GELINEAU

-----MORGAN F. LARSON-----
Governor,

-----J. SPENCER SMITH-----

-----RICHARD C. JENKINSON-----

-----WILLIAM T. KIRK-----

-----THOS. H. THROPP-----

-----JOHN MURLAND-----

-----AUGUSTUS SMITH-----

-----Witness: VICTOR GELINEAU-----

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY)

JOSEPH F. S. FITZPATRICK
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON } ss.

Be it Remembered, That on this twentieth day of May, nineteen hundred and thirty before me, the subscriber, a Master in Chancery of New Jersey, personally appeared VICTOR GELINEAU who being by me duly sworn on his oath, saith that he saw: J. SPENCER SMITH, RICHARD C.

JENKINSON, WILLIAM T. KIRK, THOS. H. THROPP, JOHN MURLAND, AUGUSTUS SMITH,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

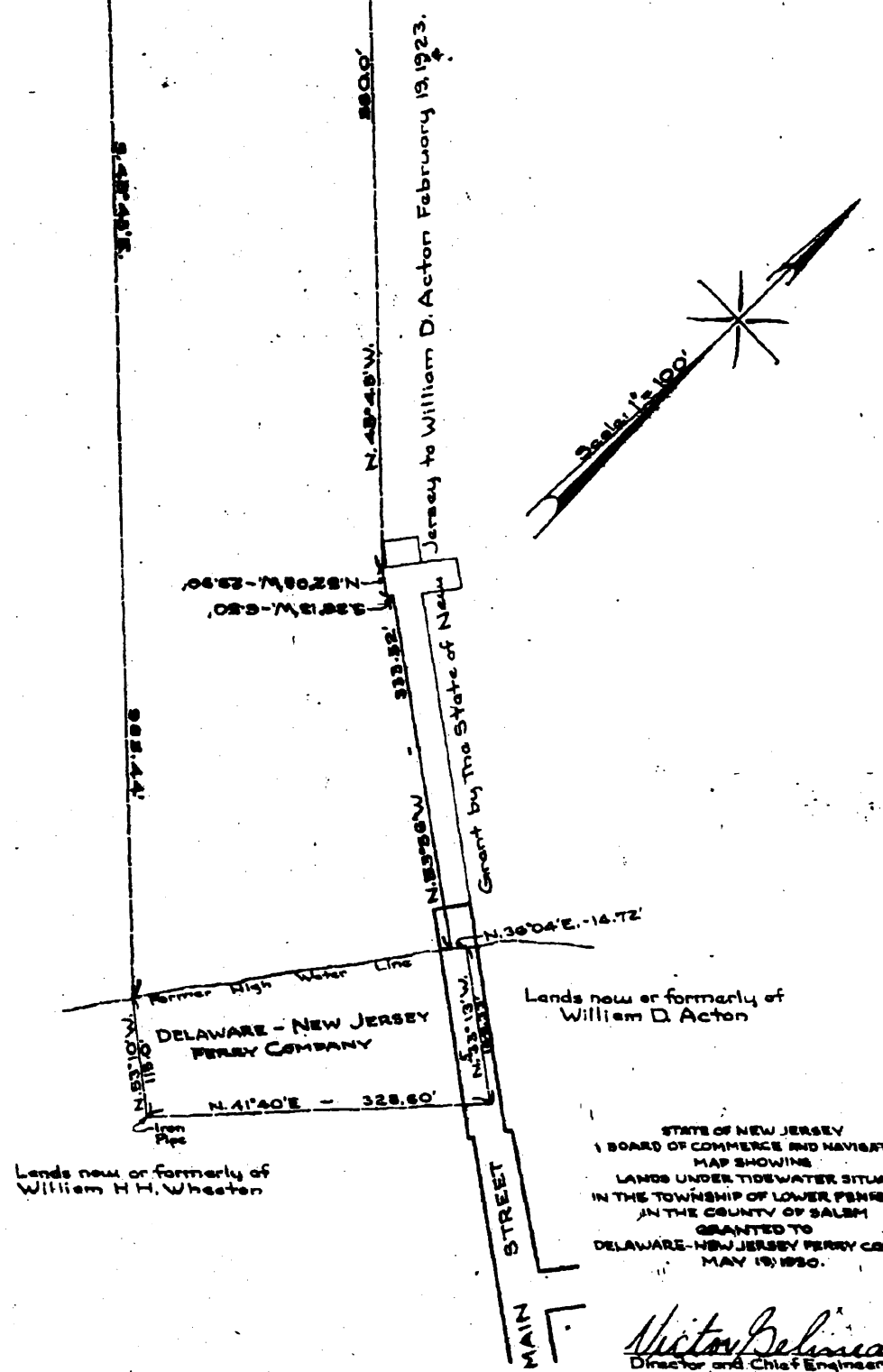
-----VICTOR GELINEAU-----

J. RAYMOND TIFFANY
Master in Chancery
of New Jersey

DELAWARE RIVER

Adjusted by
for 1910

PIERHEAD AND BULKHEAD LINE
1755.5 - 1751.5



Lands now or formerly of
William H. H. Wheaton

Lands now or formerly of
William D. Acton

DELAWARE - NEW JERSEY
FERRY COMPANY

STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP SHOWING
LANDS UNDER TIDEWATER SITUATE
IN THE TOWNSHIP OF LOWER PENNSYLVANIA
IN THE COUNTY OF SALEM
GRANTED TO
DELAWARE-NEW JERSEY FERRY COMPANY
MAY 19, 1930.

Victor Beliveau
Director and Chief Engineer

Completed
RE/10 m
9/3/25

2609

17-1 Pgs 1 Etc

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

WILLIAM D. ACTON of Pennsville in the County of Salem and State of New Jersey,

being the owner of lands fronting on Delaware River, in the Township of Lower Penns Neck in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, ha applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, W. PARKER RUNYON, WILLIAM T. KIRK, HENRY C. BROKING, AUGUSTUS SMITH and HARRISON COOK,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

SEVEN HUNDRED AND FIFTY 00/100 (\$750.00) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

SEVEN HUNDRED AND FIFTY 00/100 (\$750.00) DOLLARS

duly paid by the said

WILLIAM D. ACTON

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

WILLIAM D. ACTON

and to h i s h e i r s and assigns forever—All that tract of land flowed by tide water situate in the Township of Lower Penns Neck in the County of Salem and State of New Jersey, bounded and described as follows:-

B E G I N N I N G at a point in the former high water line of the southeasterly shore of Delaware River distant North $22^{\circ} 41' 53''$ East one thousand four hundred and eighty and forty-four hundredths (1480.44) feet from an iron pipe set in the northeasterly line of Pittfield Street where the same is intersected by the southeasterly line of Front Street extended;

Thence (1) North $82^{\circ} 15'$ West, parallel with Pittfield Street, eight hundred and sixty-three and twenty-one hundredths (863.21) feet to the Pierhead and Bulkhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) North $36^{\circ} 45'$ East, following said Pierhead and Bulkhead Line seventy-five (75) feet to a point;

Thence (3) South $53^{\circ} 15'$ East, parallel with the first course, eight hundred and fifty-three and eighty-seven hundredths (853.87) feet to the former high water line of the southeasterly shore of Delaware River;

Thence (4) Southwestwardly, following said former high water line to the place of BEGINNING.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to his and their exclusive private uses.

¹ And also under like terms, covenants, conditions and limitations, all and singular the lands
² under water lying between the exterior line for solid filling and the exterior line for piers, as fixed
³ by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and
⁴ bounded by the _____ and _____ lines of the
 first described tract extended _____ to said pier line: but said land last described
 is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath
 which the tides may ebb and flow and no solid filling shall be placed thereon.

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said WILLIAM D. ACTON is - - - -

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said WILLIAM D. ACTON.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims thereof must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said

WILLIAM D. ACTON, and to his heirs

and assigns forever.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this seventeenth day of August, in the year nineteen hundred and twenty-five.

Note: Eight printed lines on third page stricken out before execution.

VICTOR GELINEAU

GEO. S. SILZER
----- Governor

J. SPENCER SMITH

RICHARD C. JENKINSON

W. PARKER RUNYON

AUGUSTUS SMITH

HARRISON COOK

WILLIAM T. KIRK

Witness: VICTOR GELINEAU

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY)
THOMAS F. MARTIN
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

Be it Remembered, That on this seventeenth day of August, nineteen hundred and twenty-five, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared VICTOR GELINEAU, who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH, RICHARD C. JENKINSON, W. PARKER RUNYON, AUGUSTUS SMITH, HARRISON COOK, WILLIAM T. KIRK,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

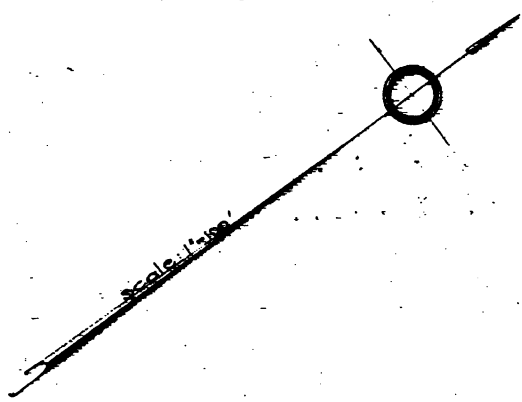
VICTOR GELINEAU

HENRY J. GAEDE
Master in Chancery
of New Jersey

PIERHEAD AND BULKHEAD LINE
78° 11' 36" 45" E

DELAWARE

RIVER



145.52'

145.07'

N. 85° 15' 15" W

N. 85° 15' 15" W

FRONT ST.
PITTFIELD ST.
140.44'

N. 122° 41' 55" E

140.44'

STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP SHOWING
LANDS UNDER TUGBOAT GEAR
IN THE TOWNSHIP OF LANES, BERGEN CO., N.J.
WILLIAM E. BROWN
AUGUST 17, 1905
Victor Putnam
ENGINEER AND CHART DRAFTER

11/11/15
L.S. & J.M.C.
1915

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 5th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

WILLIAM D. ACTON of Pennsville in the County of Salem and State of New Jersey,

being the owner of lands fronting on Delaware River in Township of Lower Penn Neck, Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. HUNDRETT, W. PARKER HUNYON, WILLIAM T. KIRK, HENRY C. BROKING, AUGUSTUS SMITH and HARRISON COOK,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

TWO HUNDRED AND FOURTEEN AND 90/100 (\$214.90) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands,

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

TWO HUNDRED AND FOURTEEN AND 90/100 (\$214.90) DOLLARS

duly paid by the said

WILLIAM D. ACTON

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said

WILLIAM D. ACTON,

and to his heirs and assigns forever--All that tract of land flowed by tide water, situate in the Township of Lower Penn Neck, in the County of Salem and State of New Jersey, bounded and described as follows:-

BEGINNING at a point in the former high water line of the southeasterly shore of Delaware River where the same is intersected by the southwesterly line of Pittfield Street, said point being distant North $53^{\circ} 15'$ West, two hundred and sixty-one and fifty-seven hundredths (261.57) feet from the intersection of the southeasterly line of Front Street with the southwesterly line of Pittfield Street;

Thence (1) North $53^{\circ} 15'$ West, in line with the southwesterly line of Pittfield Street, nine hundred and sixty-six and eighty-three hundredths (966.83) feet to the Pierhead and Bulkhead line established by the Board of Commerce and Navigation appointed under the authority of the Act entitled "An Act creating a Department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Fish and Game Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 1, 1912, and other acts and joint resolutions of the Legislature of said State;

Thence (2) South $33^{\circ} 45'$ West, following the Pierhead and Bulkhead Line, twenty-one and forty-nine hundredths (21.49) feet to a point;

Thence (3) South $33^{\circ} 45'$ West, placing in part upon the monumentally defined line established by the State of New Jersey to Annie E. Brown on the 26th day of August, 1924, nine hundred and sixty-five and forty hundredths (965.40) feet to the former high water line of the southeasterly shore of Delaware River;

Thence (4) North $53^{\circ} 15'$ West following the high water line to the place of BEGINNING.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to **his and their** exclusive private uses.

~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the _____ and _____ lines of the first described tract extended _____ to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said WILLIAM D. ACTON is - - -

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said WILLIAM D. ACTON.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances therunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said WILLIAM D. ACTON, and to his heirs

and assigns forever.

Note: Eight printed lines on third page stricken out before execution.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this seventeenth day of August, in the year nineteen hundred and twenty-five.

VICTOR GLINEAU

GEO. W. SILVER Governor,
J. SPENCER SMITH
RICHARD C. JENKINSON
W. PARKER FUNYON
ADAMUS SMITH
HARRISON COOK
WILLIAM T. KIRK

(THE GREAT SEAL OF THE STATE OF NEW JERSEY)
THOMAS F. MARTIN Secretary of State

Witness: VICTOR GLINEAU

STATE OF NEW JERSEY,
COUNTY OF HUDSON.

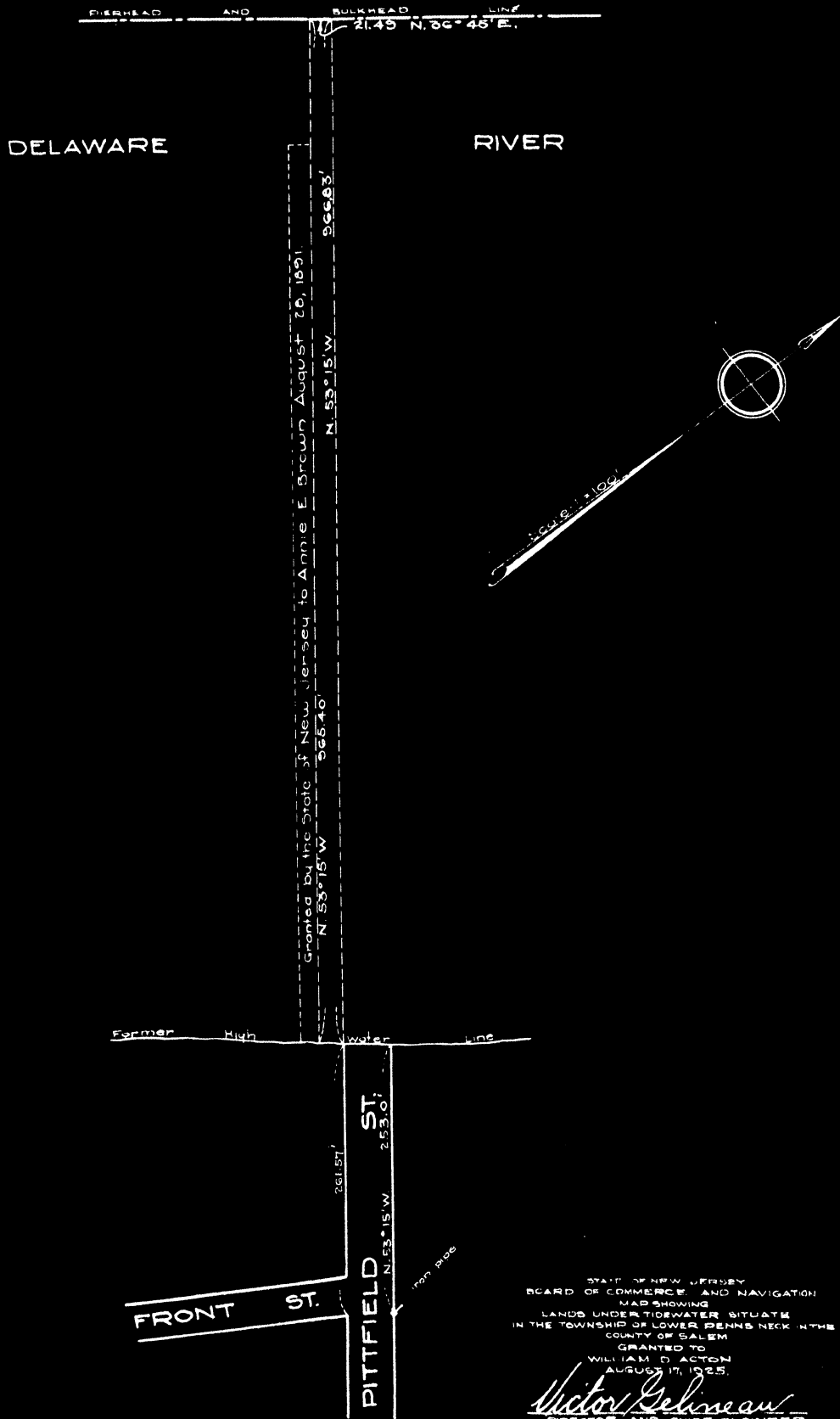
Be it Remembered, That on this seventeenth day of August, nineteen hundred and twenty-five, before me the undersigned, Notary in Chancery of New Jersey, personally appeared VICTOR GLINEAU, who being by me duly sworn on his oath, said that he saw J. SPENCER SMITH, RICHARD C. JENKINSON, W. PARKER FUNYON, ADAMUS SMITH, HARRISON COOK, WILLIAM T. KIRK,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their volitional act, and that he, the said VICTOR GLINEAU,

the coupon subscribed has come as an attesting witness thereto.

Subscribed and subscribed to before me, at Hudson, N.J., the day and year aforesaid, VICTOR GLINEAU

HENRY J. GAEDE
Notary in Chancery of New Jersey



STATE OF NEW JERSEY
 BOARD OF COMMERCE AND NAVIGATION
 MAP SHOWING
 LANDS UNDER TIDEWATER SITUATE
 IN THE TOWNSHIP OF LOWER PENNS NECK IN THE
 COUNTY OF SALEM
 GRANTED TO
 WILLIAM D. ACTON
 AUGUST 17, 1925.
Victor Gelineau
 DIRECTOR AND CHIEF ENGINEER.

2704 - A
Official Copy
94

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

TOWNSHIP OF LOWER PENNS NECK, a municipal corporation of the State of New Jersey,

being the owner of lands fronting on Delaware River, in Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, W. PARKER HUNTON, WILLIAM T. KIRK, HENRY C. BROKING, AUGUSTUS SMITH and HARRISON COOK,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

FOUR HUNDRED AND FIFTY AND 00/100 (\$450.00) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

FOUR HUNDRED AND FIFTY AND 00/100 (\$450.00) DOLLARS

duly paid by the said

TOWNSHIP OF LOWER PENNS NECK

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said

TOWNSHIP OF LOWER PENNS NECK,

and to its successors and assigns forever—All that tract of land flowed by tide water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:-

B E G I N N I N G at a point in the former high water line of the southeasterly shore of Delaware River where the same is intersected by the southwesterly line of Pittfield Street, said point being distant North $53^{\circ} 15'$ West two hundred and sixty-one and fifty-seven hundredths (261.57) feet from the intersection of the southeasterly line of Front Street with the southwesterly line of Pittfield Street;

Thence (1) North $53^{\circ} 15'$ West in line with the southwesterly line of Pittfield Street, binding upon the grant made by the State of New Jersey August 17, 1925 to William D. Acton, nine hundred and sixty-six and eighty-three hundredths (966.83) feet to the Pierhead and Bulkhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) North $36^{\circ} 45'$ East, following said Pierhead and Bulkhead Line, forty-five (45) feet to a point;

Thence (3) South $53^{\circ} 15'$ East, parallel with the first course and in line with the northeasterly line of Pittfield Street, nine hundred and sixty-nine and ninety-one (969.91) feet to the former high water line of the southeasterly shore of Delaware River;

Thence (4) Southwestwardly, following said former high water line to the place of BEGINNING.



With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to **its** **and their** **exclusive private uses.**

¹ ~~And also under like terms, covenants, conditions and limitations, all and singular the lands~~
² ~~under water lying between the exterior line for solid filling and the exterior line for piers, as fixed~~
³ ~~by the Board of Commerce and Navigation appointed under the authority of the act aforesaid,~~
⁴ ~~and bounded by the _____ and _____~~ ⁵ ~~lines of the~~
~~first described tract extended _____ to said pier line, but said land last described is~~
~~not to be used for any purpose whatsoever except the erection of a pier or piers thereon, under-~~
~~neath which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said TOWNSHIP OF LOWER PENNS NECK is not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said TOWNSHIP OF LOWER PENNS NECK.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging. **To have and to hold** all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said TOWNSHIP OF LOWER PENNS NECK, and to its successors and assigns forever.

Note: Eight printed lines on third page stricken out before execution.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this ~~twenty-first~~ ^{twenty-first} day of September

VICTOR GELINEAU

in the year nineteen hundred and twenty-five.

GEO. S. SILZER

Governor.

J. SPENCER SMITH

RICHARD C. JENKINSON

W. L. SAUNDERS

W. PARKER RUNYON

AUGUSTUS SMITH

WILLIAM T. KIRK

HARRISON COOK

Witness: VICTOR GELINEAU

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY)

Thomas F. Martin
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

Be it Remembered, That on this ~~twenty-first~~ ^{twenty-first} day of September ~~nineteen~~ ^{nineteen} hundred and ~~twenty-five,~~ ^{twenty-five,} before me, the subscriber, a Master in Chancery of New Jersey, personally appeared VICTOR GELINEAU who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, W. PARKER RUNYON, AUGUSTUS SMITH, WILLIAM T. KIRK, HARRISON COOK,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

VICTOR GELINEAU

HENRY J. GAEDE

Master in Chancery
of New Jersey.

BULKHEAD AND BULKHEAD LINE
48° N. 36° 45' E.

DELAWARE

RIVER

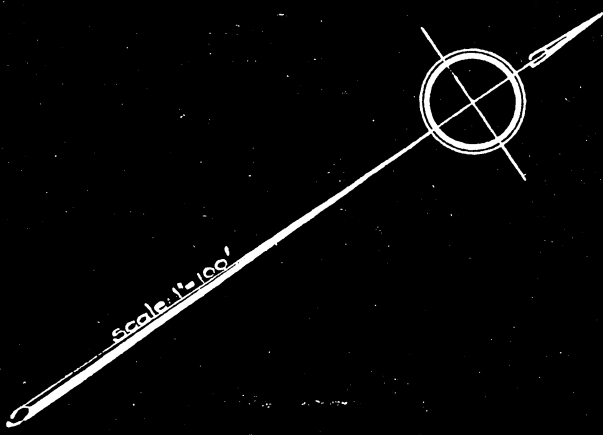
Granted by the State of New Jersey to William D. Acton August 17, 1925.
088.63'

N. 58° 18' W.

088.31'

N. 53° 15' W.

Scale: 1" = 100'



Former High Water Line

FRONT ST.

N. 53° 15' W. 261.57'

PITFIELD ST.

N. 53° 15' W. 253.00'

Iron Pipe

500a

STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP DRAWING
LANDS UNDER TIDEWATER, SITUATE
TOWNSHIP OF LOWER PENNS NECK IN THE
COUNTY OF DALEM
GRANTED TO
TOWNSHIP OF LOWER PENNS NECK
SEPTEMBER 2, 1825

Copy made
I 1/15 AM
1/11/11

H-1 Pg 171
ETC

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

WILLIAM D. ACTON of Pennsville, in the County of Salem and State of New Jersey,

being the owner of lands fronting on Delaware River, in the Township of Lower Penns Neck in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, W. PARKER RUNYON, WILLIAM T. KIRK, HENRY C. BROCKING, AUGUSTUS SMITH and HARRISON COOK,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

ONE THOUSAND 00/100 (\$1,000.00) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

ONE THOUSAND 00/100 (\$1,000.00) DOLLARS

duly paid by the said

WILLIAM D. ACTON

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

WILLIAM D. ACTON,

and to his heirs and assigns forever—All that tract of land now and formerly flooded by tide water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:-

(26) 43a

BEGINNING at a point in the former high water line of the southeasterly shore of Delaware River where the same is intersected by the northeasterly line of lands under water granted by the State of New Jersey February 19, 1923 to William L. Acton;

Thence (1) North $23^{\circ} 45'$ West, binding upon the grant to William L. Acton aforesaid, three hundred and sixty and seventy-five hundredths (360.75) feet to a point;

Thence (2) North $45^{\circ} 45'$ West still binding upon the grant to William L. Acton aforesaid, five hundred and seventy-two and sixty-six hundredths (572.66) feet to the Pierhead and Bulkhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1918, and other acts and joint resolutions of the Legislature of said State;

Thence (3) North $44^{\circ} 12'$ East, following said Pierhead and Bulkhead Line, one hundred (100) feet to a point;

Thence (4) South $45^{\circ} 48'$ East, parallel with the second course, five hundred and sixty-five and sixty-seven hundredths (565.67) feet to a point;

Thence (5) South $35^{\circ} 48'$ East, parallel with the first course, three hundred and seventy-five and forty-one hundredths (375.41) feet to the former high water line of the southeasterly shore of Delaware river;

Thence (6) Southwestwardly, following said former high water line to the place of BEGINNING.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to his and their exclusive private uses.

~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the _____ and _____ lines of the first described tract extended _____ to said pier, line, but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same farther from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said WILLIAM D. ACTON is - - - - -

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said WILLIAM D. ACTON.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said

WILLIAM D. ACTON, and to his heirs

and assigns forever.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this nineteenth day of October, in the year nineteen hundred and twenty-five.

Note: Eight printed lines on third page stricken out before execution.

VICTOR GELINEAU

GEO. S. SILZER

Governor,

J. SPENCER SMITH

RICHARD C. JENKINSON

WILLIAM T. KIRK

AUGUSTUS SMITH

HARRISON COOK

W. L. SAUNDERS

Witness: VICTOR GELINEAU

(THE GREAT SEAL OF THE STATE OF NEW JERSEY)

THOMAS F. MARTIN
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON } ss.

Be it Remembered, That on this nineteenth day of October, nineteen hundred and twenty-five, before me, the subscriber, a Master in Chancery of New Jersey personally appeared VICTOR GELINEAU who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH, RICHARD C. JENKINSON, W. PERREA RUNYON, WILLIAM T. KIRK, AUGUSTUS SMITH, HARRISON COOK, W. L. SAUNDERS,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me, at Jersey City, the day and year aforesaid.

HENRY J. GAEDE

Master in Chancery
of New Jersey

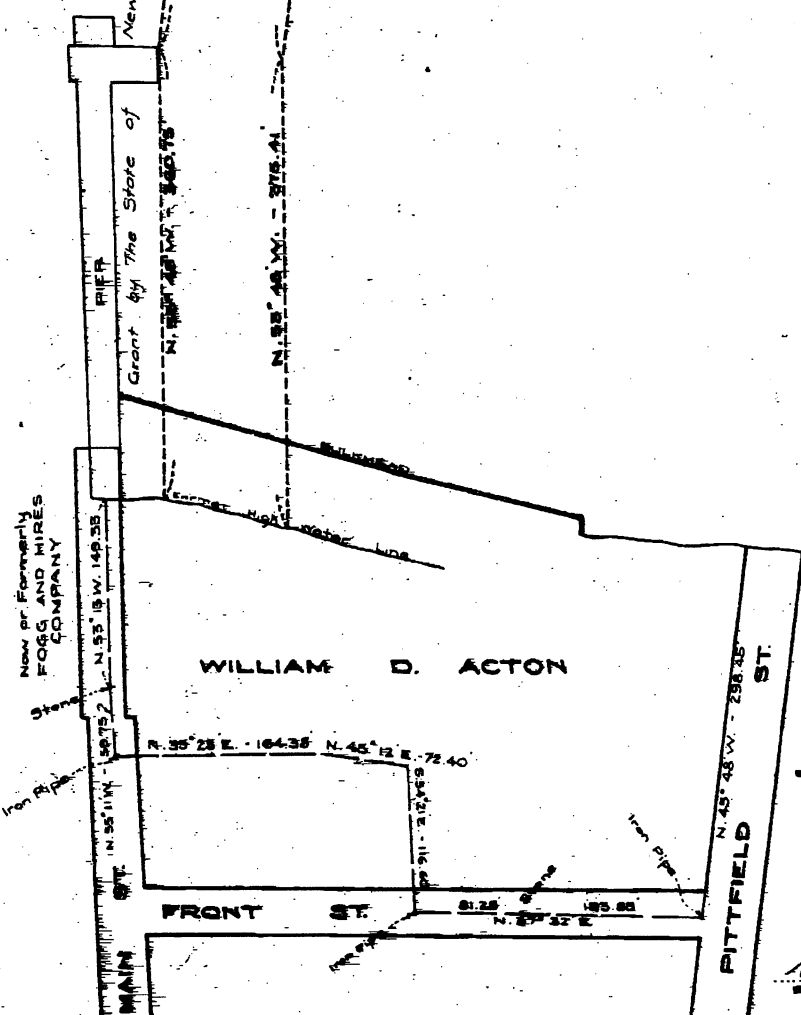
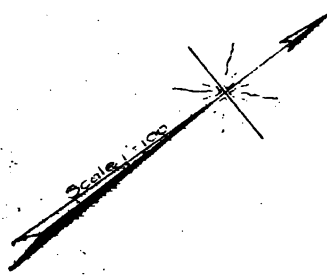
VICTOR GELINEAU

DELAWARE

RIVER

PIERHEAD AND BULKHEAD
N. 54° 15' E. - 106.8

New Jersey to William D. Acton, February 19, 1923



New or Formerly
FOSS AND MIRE
COMPANY

Grant by The State of
New Jersey

WILLIAM D. ACTON

R. 35° 25' E. - 164.35 N. 45° 12' E. - 72.40

FRONT ST.

PITTFIELD ST.

STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP SHOWING
LANDS UNDER TIDEWATER SITUATION
THE TOWNSHIP OF LOWER PENNSYLVANIA
COUNTY OF SALEM
GRANTED TO
WILLIAM D. ACTON
OCTOBER 19, 1923.

Victor J. Linares
DIRECTOR AND CHIEF ENGINEER

B1-223 E40

The State of New Jersey:

To all to whom these Presents shall come or may concern,

Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State, THE FRANKLIN REAL ESTATE COMPANY, a corporation of the State of New Jersey,

being the owner of lands fronting on Delaware River, in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated; has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, WILLIAM T. KIRK, AUGUSTUS SMITH, HARRISON COOK, THOMAS H. THROPP, FRANK DORSEY, having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of THIRTY-ONE THOUSAND FIVE HUNDRED EIGHTY-FOUR AND 50/100 (\$31,584.50) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands:

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of THIRTY-ONE THOUSAND FIVE HUNDRED EIGHTY-FOUR AND 50/100 (\$31,584.50) DOLLARS

duly paid by the said

THE FRANKLIN REAL ESTATE COMPANY

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said

THE FRANKLIN REAL ESTATE COMPANY,

and to its successors and assigns forever—All that tract of land flowed by tide-water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:-

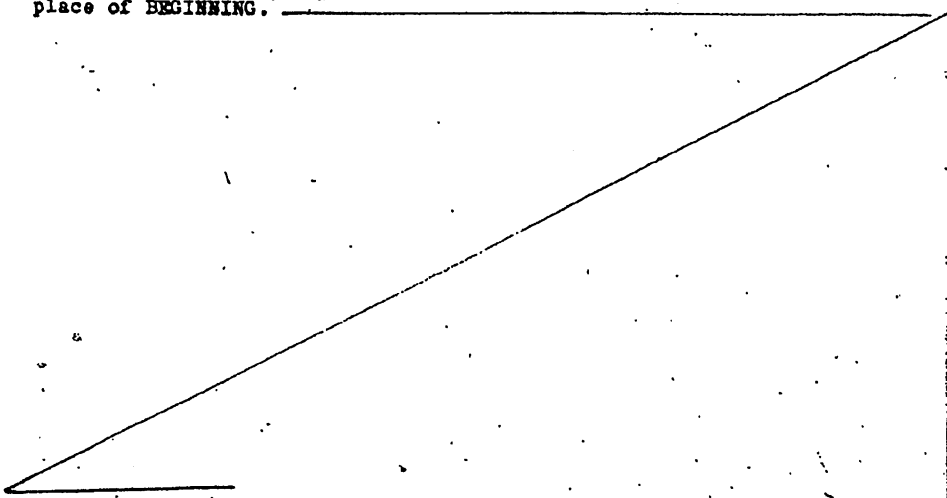
B E G I N N I N G in the mean high water line of the easterly shore of Delaware River, said point being distant South $21^{\circ} 11' 29''$ East one hundred and ninety-eight and fifty-one hundredths (198.51) feet from the front light of Deep Water Point Range;

Thence (1) North $77^{\circ} 26' 29''$ West, nine hundred and ninety-one and forty-six hundredths (991.46) feet to the Pierhead and Bulkhead Line adopted August 21, 1916 by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) South $6^{\circ} 55'$ West following said Pierhead and Bulkhead Line three thousand one hundred and fifty-eight and forty-five hundredths (3158.45) feet to a point;

Thence (3) South $77^{\circ} 26' 29''$ East, in line with the division line between lands now or formerly of Josephine Locuson and lands of the said The Franklin Real Estate Company, eight hundred and twenty-seven and seventy hundredths (827.70) feet to the mean high water line of the easterly shore of Delaware River;

Thence (4) Northwardly following said mean high water line to the place of **BEGINNING**.



With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to **it s** **and t h e i r** exclusive private uses.

- 1 ~~And also under like terms, covenants, conditions and limitations, all and singular the lands under~~
- 2 ~~water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the~~
- 3 ~~Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded~~
- 4 ~~by the~~ and ~~lines of the~~
- 5 ~~first described tract extended~~ to said pier line; but said land last described
- 6 ~~is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath~~
- 7 ~~which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same farther from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation; and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation, or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said **THE FRANKLIN REAL ESTATE COMPANY** is

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said **THE FRANKLIN REAL ESTATE COMPANY**.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said

THE FRANKLIN REAL ESTATE COMPANY, and to its successors

and assigns forever.

Note: Seven printed lines on third page stricken out before execution.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been herewith affixed and attested by the Secretary of State, this eighteenth day of June, in the year nineteen hundred and twenty-eight.

VICTOR GELINEAU

A. HARRY MOORE
Governor,

J. SPENCER SMITH

RICHARD C. JENKINSON

W. L. SAUNDERS

WILLIAM T. KIRK

HARRISON COOK

THOS. H. TEROPP

AUGUSTUS SMITH

FRANK DORSEY

Witness: VICTOR GELINEAU

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY)

JOSEPH F. S. FITZPATRICK
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

It is Remembered, That on this nineteenth day of June, nineteen
hundred and twenty-eight, before me, the subscriber, a Master in Chancery of
New Jersey, personally appeared VICTOR GELINEAU
who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH,
RICHARD C. JENKINSON, W. L. SAUNDERS, WILLIAM T. KIRK, HARRISON COOK,
THOS. H. TEROPP, AUGUSTUS SMITH, FRANK DORSEY,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said

VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid:

VICTOR GELINEAU

HENRY J. GAERD
Master in Chancery
of New Jersey

RIVER

DELAWARE

LINE
BULKHEAD
AND
PIERHEAD
71,550.9
37,831.6

FRONT LIGHT

Now or formerly
E.I. Du Pont
De Nemours Co.

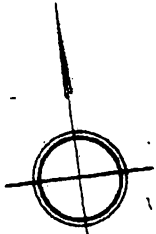
SALEM CANAL

DEEP WATER

High
water
line

THE FRANKLIN REAL ESTATE COMPANY

Now or formerly
Josephine Locuston.



Scale 1" = 400'

STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP SHOWING
LANDS UNDER TIDEWATER SITUATE
IN THE TOWNSHIP OF LOWER PENNS NECK
IN THE COUNTY OF SALEM
GRANTED TO
THE FRANKLIN REAL ESTATE COMPANY,
JUNE 18, 1928.

Victor Pelissier
DIRECTOR AND CHIEF ENGINEER

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1913, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

ANNA C. B. LOCUSON of the Township of Lower Penns Neck, in the County of Salem and State of New Jersey,

being the owner of lands fronting on Delaware River, in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water herein after described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH,

RICHARD C. JENKINSON, W. L. SAUNDERS, WILLIAM T. KIRK, AUGUSTUS SMITH, HARRISON COOK, THOMAS H. THROPP and FRANK DORSEY;

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

ONE THOUSAND AND TWENTY-FIVE AND 70/100 (\$1025.70) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions herein after contained, and the said sum of

ONE THOUSAND AND TWENTY-FIVE and 70/100 (\$1025.70) DOLLARS

duly paid by the said

ANNA C. B. LOCUSON

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

ANNA C. B. LOCUSON

and to **h e r h e i r s** and assigns forever—All that tract of land flowed by tide-water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:-

B E G I N N I N G in the mean high water line of the easterly shore of Delaware River where the same is intersected by the northerly division line between lands now or formerly of Josephine Grace Locuson and Anna C. B. Locuson and lands of the said Anna C. B. Locuson;

Thence (1) North $77^{\circ} 18'$ West, eight hundred and thirteen and $97/100$ (813.97) feet to the Pierhead and Bulkhead Line adopted August 21, 1916, by the Board of Commerce and Navigation appointed under the authority of the Act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) South $7^{\circ} 03' 29''$ West, following said Pierhead and Bulkhead Line, one hundred and two and $57/100$ (102.57) feet to a point;

Thence (3) South $77^{\circ} 18'$ East eight hundred and nine and $16/100$ (809.16) feet to the mean high water line of the easterly shore of Delaware River where the same is intersected by the southerly division line between lands now or formerly of Josephine Grace Locuson and Anna C. B. Locuson and lands of the said Anna C. B. Locuson;

Thence (4) Northwardly following said mean high water line to the place of BEGINNING.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to ~~her and their~~ exclusive private use.

~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the ~~front described tract enclosed~~ and ~~to said pier line~~ lines of the ~~front described tract enclosed~~ to said pier line, but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, under which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same farther from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said ANNA C. B. LOCUSON is -----

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said ANNA C. B. LOCUSON.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereto belonging

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said

ANNA C. B. LOCUSON and to her heirs

and assigns forever.

Note: Eight printed lines on third page stricken out before execution.

In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this **fifteenth** day of **April**, in the year nineteen hundred and **twenty-nine**.

VICTOR GELINEAU

MORGAN F. LARSON

Governor,

J. SPENCER SMITH

RICHARD C. JENKINSON

WILLIAM T. KIRK

THOS. H. THROPP

HARRISON COOK

FRANK DORSEY

W. L. SAUNDERS

AUGUSTUS SMITH

Witness: VICTOR GELINEAU

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY)

JOSEPH P. S. FITZPATRICK
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

Be it Remembered, That on this **18th** day of **April**, **nineteen** hundred and **twenty-nine**, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared **VICTOR GELINEAU, J. SPENCER SMITH, RICHARD C. JENKINSON, WILLIAM T. KIRK, THOS. H. THROPP, HARRISON COOK, FRANK DORSEY, W. L. SAUNDERS, AUGUSTUS SMITH,**

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said

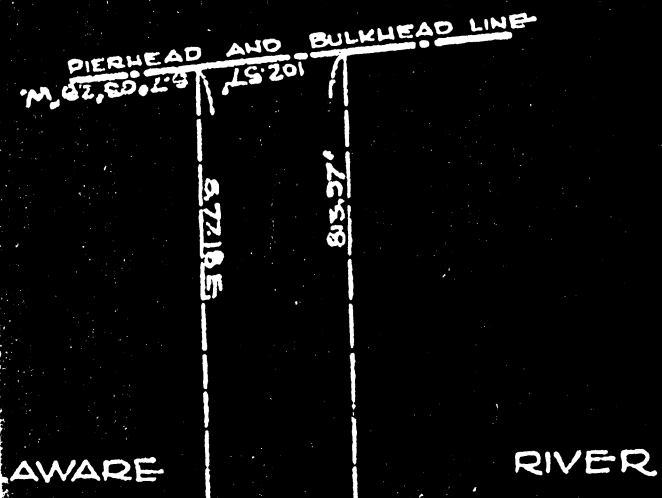
VICTOR GELINEAU

thereupon subscribed his name as an attesting witness thereto.

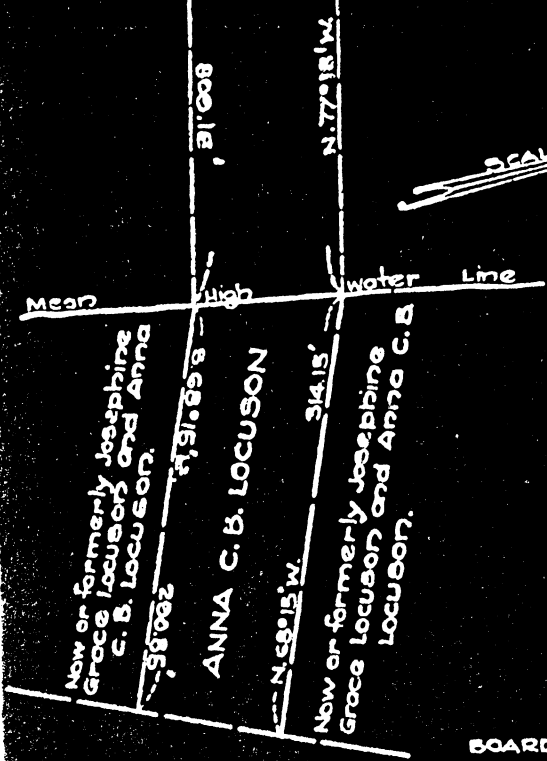
Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

VICTOR GELINEAU

J. RAYMOND TIFFANY
Master in Chancery of
New Jersey



AWARE RIVER



STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP SHOWING
LANDS UNDER TIDEWATER SITUATE-
IN THE TOWNSHIP OF LOWER PENNS NECK
IN THE COUNTY OF SALEM
GRANTED TO
ANNA C. B. LOCUSON,
JULY 15, 1822

In The
Supreme Court of the United States

STATE OF NEW JERSEY,
Plaintiff,

v.

STATE OF DELAWARE,
Defendant.

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

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

**VOLUME 4 of 7
(PAGES 516A-717A)**

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The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State, JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON of the Township of Lower Penns Neck, in the County of Salem and State of New Jersey,

being the owner^s of lands fronting on Delaware River, in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, WILLIAM T. KIRK, AUGUSTUS SMITH, HARRISON COOK, THOMAS H. THROPP and FRANK DORSEY,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

ONE THOUSAND AND TWENTY-FIVE and 80/100 (\$1025.80) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

ONE THOUSAND AND TWENTY-FIVE and 80/100 (\$1025.80) DOLLARS

duly paid by the said

JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said

JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON

and to their heirs and assigns forever—All that tract of land flowed by tide-water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:-

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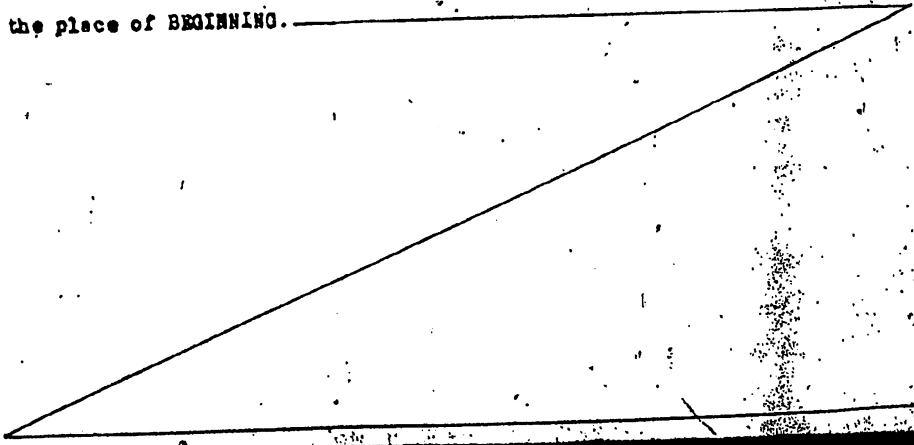
BEGINNING in the mean high water line of the easterly shore of Delaware River where the same is intersected by the division line between lands now or formerly of Josephine Grace Locuson and lands of the said Josephine Grace Locuson and Anna C. B. Locuson;

Thence (1) North $77^{\circ} 18'$ West, eight hundred and eighteen and $78/100$ (818.78) feet to the Pierhead and Bulkhead Line adopted August 21, 1916 by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) South $7^{\circ} 03' 29''$ West following said Pierhead and Bulkhead Line, one hundred and two and $58/100$ (102.58) feet to a point;

Thence (3) South $77^{\circ} 16'$ East, eight hundred and thirteen and $87/100$ (813.87) feet to the mean high water line of the easterly shore of Delaware River where the same is intersected by the division line between lands now or formerly of Anna C. B. Locuson and lands of the said Josephine Grace Locuson and Anna C. B. Locuson;

Thence (4) Northwardly, following said mean high water line to the place of BEGINNING.



(57)

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and appropriate the lands under water above described to ~~-----~~ ~~theirs~~ ----- exclusive private uses.

1 ~~And also under like terms, covenants, conditions and limitations, all and singular the lands~~
2 ~~under water lying between the exterior line for solid filling and the exterior line for piers, as~~
3 ~~fixed by the Board of Commerce and Navigation appointed under the authority of the act afore-~~
4 ~~said, and bounded by the ----- and~~
5 ~~lines of the first described tract extended ----- to said pier line,~~
6 ~~but said land last described is not to be used for any purpose whatsoever except the erection of a~~
7 ~~pier or piers thereon, underneath which the tide may ebb and flow and no solid filling shall be~~
8 ~~placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interests so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided, that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON are ----- not the owners of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereto belonging, To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON and to their heirs and assigns forever. °

Note:

Eight printed lines on third page stricken out before execution.

In witness whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State, has been hereunto affixed and attested by the Secretary of State, this 18th day of April, in the year nineteen hundred and twenty-nine.

VICTOR GELINEAU

MORGAN F. LARSON

GOVERNOR

J. SPENCER SMITH

RICHARD C. JENKINSON

WILLIAM T. KIRK

THOS. H. THROPP

HARRISON COOK

FRANK DORSEY

W. L. SAUNDERS

AUGUSTUS SMITH

Witness: VICTOR GELINEAU

(THE GREAT SEAL OF THE STATE OF NEW JERSEY)

JOSEPH F. S. FITZPATRICK, Secretary of State

STATE OF NEW JERSEY, COUNTY OF HUDSON.

Be it Remembered, That on this 18th day of April, nineteen hundred and twenty-nine, before me, the subscriber, a Master in Chancery of New Jersey personally appeared VICTOR GELINEAU, who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH, RICHARD C. JENKINSON, WILLIAM T. KIRK, THOS. H. THROPP, HARRISON COOK, FRANK DORSEY, W. L. SAUNDERS, AUGUSTUS SMITH, the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto, and he, the said VICTOR GELINEAU, has sworn and subscribed before me, at Jersey City, the day and year aforesaid.

J. RAYMOND TIFFANY

Master in Chancery of New Jersey

DELAWARE RIVER

Mean High Water Line

Now of formerly
Ann C. Locuston.

JOSEPHINE GRACE LOCUSTON
AND ANNAC B. LOCUSTON.

Now of formerly
Josephine Grace Locuston.

818.97'

N 71° 18' W

Scale 1" = 100'

STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
WAS SHOWING
LANDS UNDER TIDEWATER STATE
IN THE TOWNSHIP OF LAUREL PENNED
IN THE COUNTY OF SALLY
AS GRANTED TO
JOSEPHINE GRACE LOCUSTON AND ANNAC B. LOCUSTON

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

JOSEPHINE GRACE LOCUSON of the Township of Lower Penns Neck,
in the County of Salem and State of New Jersey,

being the owner of lands fronting on Delaware River, in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water herein after described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, WILLIAM T. KIRK, AUGUSTUS SMITH, HARRISON COOK, THOMAS H. THROPP and FRANK DORSEY,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

ONE THOUSAND AND TWENTY-FIVE and 80/100 (\$1025.80) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions herein after contained, and the said sum of

ONE THOUSAND AND TWENTY-FIVE and 80/100 (\$1025.80) DOLLARS

duly paid by the said

JOSEPHINE GRACE LOCUSON

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

JOSEPHINE GRACE LOCUSON

and to her heirs and assigns forever—All that tract of land flowed by tide-water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:

B E G I N N I N G in the mean high water line of the easterly shore of Delaware River where the same is intersected by the division line between lands now or formerly of William G. Locuson and lands of the said Josephine Grace Locuson;

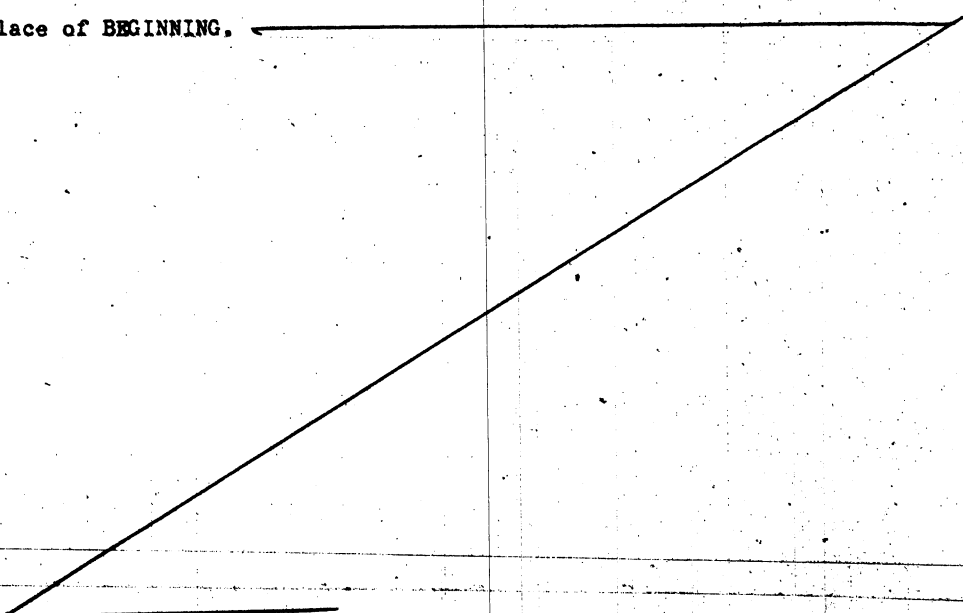
Thence (1) North $77^{\circ} 18'$ West, eight hundred and twenty-three and $60/100$ (823.60) feet to the Pierhead and Bulkhead Line adopted August 21, 1916 by the Board of Commerce and Navigation appointed under the

authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) South $7^{\circ} 03' 29''$ West, following said Pierhead and Bulkhead Line, one hundred and two and $58/100$ (102.58) feet to a point;

Thence (3) South $77^{\circ} 18'$ East, eight hundred and eighteen and $78/100$ (818.78) feet to the mean high water line of the easterly shore of Delaware River where the same is intersected by the division line between lands now or formerly of Josephine Grace Locuson and Anna C. B. Locuson, and lands of the said Josephine Grace Locuson;

Thence (4) Northwardly, following said mean high water line, to the place of BEGINNING. ←



With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to her and their exclusive private uses.

~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid and bounded by the ^{lines of the} first described tract extended to said pier line; but said land thus described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same farther from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said JOSEPHINE GRACE LOCUSON is

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said JOSEPHINE GRACE LOCUSON.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said

JOSEPHINE GRACE LOCUSON and to her heirs

and assigns forever.

Note: Eight printed lines on third page stricken out before execution.

In ~~Witness Whereof~~, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this fifteenth day of April, in the year nineteen hundred and twenty-nine.

VICTOR GELINEAU

MORGAN F. LARSON
Governor,

J. SPENCER SMITH

RICHARD C. JENKINSON

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY)

JOSEPH F. S. FITZPATRICK
Secretary of State

WILLIAM T. KIRK

THOS. H. THROPP

HARRISON COOK

FRANK DORSEY

W. L. SAUNDERS

AUGUSTUS SMITH

Witness: VICTOR GELINEAU

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

Be it Remembered, That on this 18th day of April, nineteen hundred and twenty-nine, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared VICTOR GELINEAU, who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH, RICHARD C. JENKINSON, WILLIAM T. KIRK, THOS. H. THROPP, HARRISON COOK,

FRANK DORSEY, W. L. SAUNDERS, AUGUSTUS SMITH,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said

VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

VICTOR GELINEAU

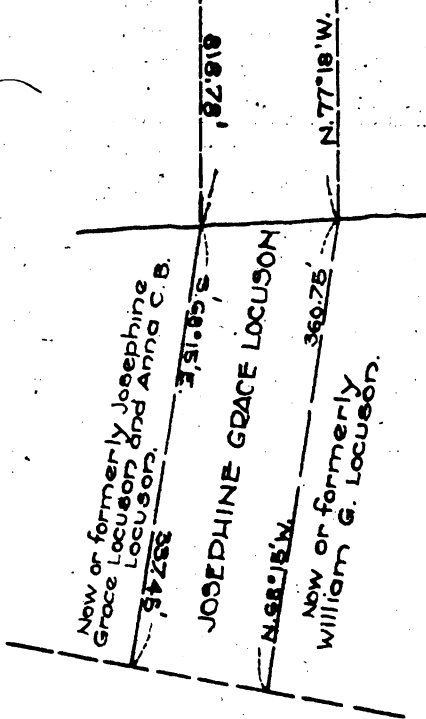
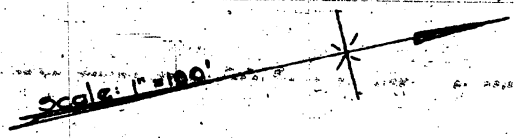
J. RAYMOND TIFFANY

Master in Chancery
of New Jersey

PIERHEAD AND BULKHEAD LINE
M. 62.80' W. 82.58' N.

DELAWARE

RIVER



STATE OF NEW JERSEY
 BOARD OF COMMERCE AND NAVIGATION
 MAP SHOWING
 LANDS UNDER TIDEWATER SITUATE
 IN THE TOWNSHIP OF LOWER PENNS NECK
 IN THE COUNTY OF SALEM
 GRANTED TO
 JOSEPHINE GRACE LOCUSON
 APRIL 15, 1929

Victor Delmar
 DIRECTOR AND CHIEF ENGINEER

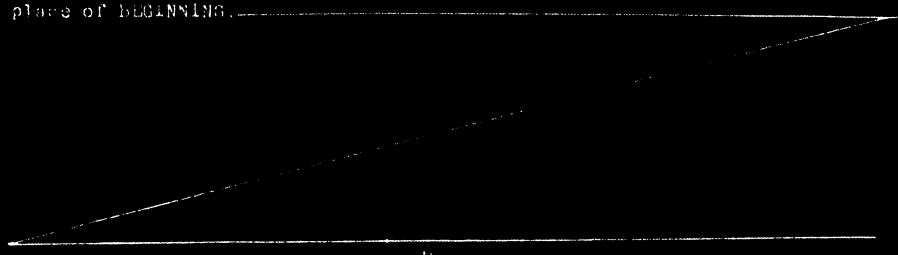
B E G I N N I N G in the mean high water line of the easterly shore of Delaware river, where the same is intersected by the division line between lands now or formerly of The Franklin Real Estate Company and lands of the said William G. Louison;

Thence (1) North 77° 18' West, along the extension of said division line, binding upon the southerly line of grant made by the State of New Jersey June 18, 1928 to The Franklin Real Estate Company eight hundred and twenty-seven and 70/100 (827.70) feet to the Pierhead and Bulkhead Line adopted August 31, 1916 by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) South 7° 08' 19" West, following said Pierhead and Bulkhead Line, eighty-seven and thirty-seven hundredths (87.37) feet to a point;

Thence (3) South 77° 18' East, eight hundred and twenty-three and 60/100 (823.60) feet to the mean high water line of the easterly shore of Delaware river where the same is intersected by the division line between lands now or formerly of Josephine Grace Louison, and lands of the said William G. Louison;

Thence (4) Northwardly, following said mean high water line, to place of BEGINNING.



In Witness Whereof, the said Board of Commerce and Navigation have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this _____ day of _____, in the year nineteen hundred and _____.

VICTOR H. HARRIS

(THE BOARD OF COMMERCE AND NAVIGATION)

STATE OF NEW JERSEY,
 COUNTY OF _____

We it Remembered, That on this _____ day of _____, nineteen hundred and _____, before me, the subscriber, a Master in Chancery of New Jersey personally appeared _____, who being by me duly sworn on his oath, saith that he saw _____

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said _____

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me,
 at Jersey City, the day and
 year aforesaid.

 Master in Chancery
 of New Jersey

PIERHEAD AND BULLHEAD LINE
M. 62.60.09.29
87.37

DELAWARE

RIVER

S. 77° 18' E.
577.18

827.70'

823.60'

N. 77° 18' W.

now on formerly the State of New Jersey to the Franklin Real Estate Company June 15, 1928

SCALE 1"=100'

Mean High Water Line

Now or formerly Josephine Grace LOCUSON
360.75'

WILLIAM G. LOCUSON

383.68'

N. 77° 18' W.
511.80'

now on formerly the Franklin Real Estate Company

STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP SHOWING
LANDS UNDER TIDEWATER SITUATE
IN THE TOWNSHIP OF LOWER PENNS NECK
IN THE COUNTY OF SALEM
GRANTED TO
WILLIAM G. LOCUSON
APRIL 15, 1929

Victor Delinauw
DIRECTOR AND CHIEF ENGINEER.

3552-2

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State,

JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON of the Township of Lower Penns Neck, in the County of Salem and State of New Jersey,

being the owner of lands fronting on Delaware River, in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water herein after described are situated, have applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SKUNLERS, WILLIAM T. KIRK, AUGUSTUS SMITH, HARRISON COOK, THOMAS H. THROPP, and FRANK DORSEI,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

TWO THOUSAND THREE HUNDRED TWENTY-ONE AND 20/100 (\$2,321.20) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions herein after contained, and the said sum of

TWO THOUSAND THREE HUNDRED TWENTY-ONE AND 20/100 (\$2,321.20) DOLLARS

duly paid by the said

JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON,

and to their heirs and assigns forever—All that tract of land flowed by tide-water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:

B E G I N N I N G in the mean high water line of the easterly shore of Delaware River where the same is intersected by the division line between lands now or formerly of Anna C. B. Locuson and lands of the said Josephine Grace Locuson and Anna C. B. Locuson;

Thence (1) North $77^{\circ} 18'$ West eight hundred and nine and sixteen hundredths (809.16) feet to the Pierhead and Bulkhead Line adopted August 21, 1916 by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) South $7^{\circ} 03' 23''$ West following said Pierhead and Bulkhead Line, two hundred thirty-two and twelve hundredths (232.12) feet to a point;

Thence (3) South $77^{\circ} 18'$ East seven hundred ninety-seven and forty-two hundredths (797.42) feet to the mean high water line of the easterly shore of Delaware River where the same is intersected by the division line between lands now or formerly of Samuel C. Sparks and lands of the said Josephine Grace Locuson and Anna C. B. Locuson;

Thence (4) Northwardly following said mean high water line to the place of BEGINNING. _____

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to their and their exclusive private uses.

~~And also under like terms, covenants, conditions and limitations, all and singular the land under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the _____ and _____ lines of the first described tract extended _____ to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, under which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers and fix the same farther from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON are - - - - - not the owners of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said JOSEPHINE GRACE LOCUSON and ANNA C. B. LOCUSON, and to their heirs and assigns forever.

In Witness Whereof, the said Board of Commerce and Navigation have printed lines on hereunto respectively set their hands, and these presents have page stricken out been signed by the Governor, and the Great Seal of the said State the execution. has been hereunto affixed and attested by the Secretary of State, this seventeenth day of June, in the year nineteen hundred and twenty-nine.

VICTOR GELINEAU

MORGAN F. LARSON
----- GOVERNOR -----

J. SPENCER SMITH

RICHARD C. JENKINSON

WILLIAM T. KIRK

HARRISON COOK

THOS. H. THROPP

FRANK DORSEY

AUGUSTUS SMITH

Witness: VICTOR GELINEAU

GREAT SEAL OF THE
STATE OF NEW JERSEY)

JOSEPH F. S. FITZPATRICK
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.

Be it Remembered, That on this eighteenth day of June, nineteen hundred and twenty-nine, before me, the subscriber, a Master in Chancery New Jersey personally appeared VICTOR GELINEAU, being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH,

RICHARD C. JENKINSON, WILLIAM T. KIRK, HARRISON COOK, THOS. H. THROPP, FRANK DORSEY, AUGUSTUS SMITH,

within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU

upon subscribed his name as an attesting witness thereto.

in and subscribed before me,
New Jersey City, the day and
aforesaid.

VICTOR GELINEAU

RAYMOND TIFFANY

Master in Chancery
of New Jersey

Sight printed lines on third page stricken out before execution.

In Witness Whereof, the said Board of Commerce and Navigation hereunto respectively set their hands, and these presents have been hereunto affixed and attested by the Secretary of State this seventeenth day of June, in the year nineteen hundred and twenty-nine.

VICTOR GELINEAU

(THE GREAT SEAL OF THE STATE OF NEW JERSEY)

JOSEPH F. S. FITZPATRICK
Secretary of State

MORGAN F. LARSON Governor

J. SPENCER SMITH

RICHARD C. JENKINSON

WILLIAM T. KIRK

HARRISON COOK

THOS. H. THROPP

FRANK DORSEY

AUGUSTUS SMITH

Witness: VICTOR GELINEAU

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } 88.

Be it Remembered, That on this eighteenth day of June, nineteen hundred and twenty-nine, before me, the subscriber, a Master in Chancery of New Jersey personally appeared VICTOR GELINEAU, who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH,

RICHARD C. JENKINSON, WILLIAM T. KIRK, HARRISON COOK, THOS. H. THROPP, FRANK DORSEY, AUGUSTUS SMITH,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU

thereupon subscribed his name as an attesting witness thereto.

Sworn and subscribed before me, at Jersey City, the day and year aforesaid.

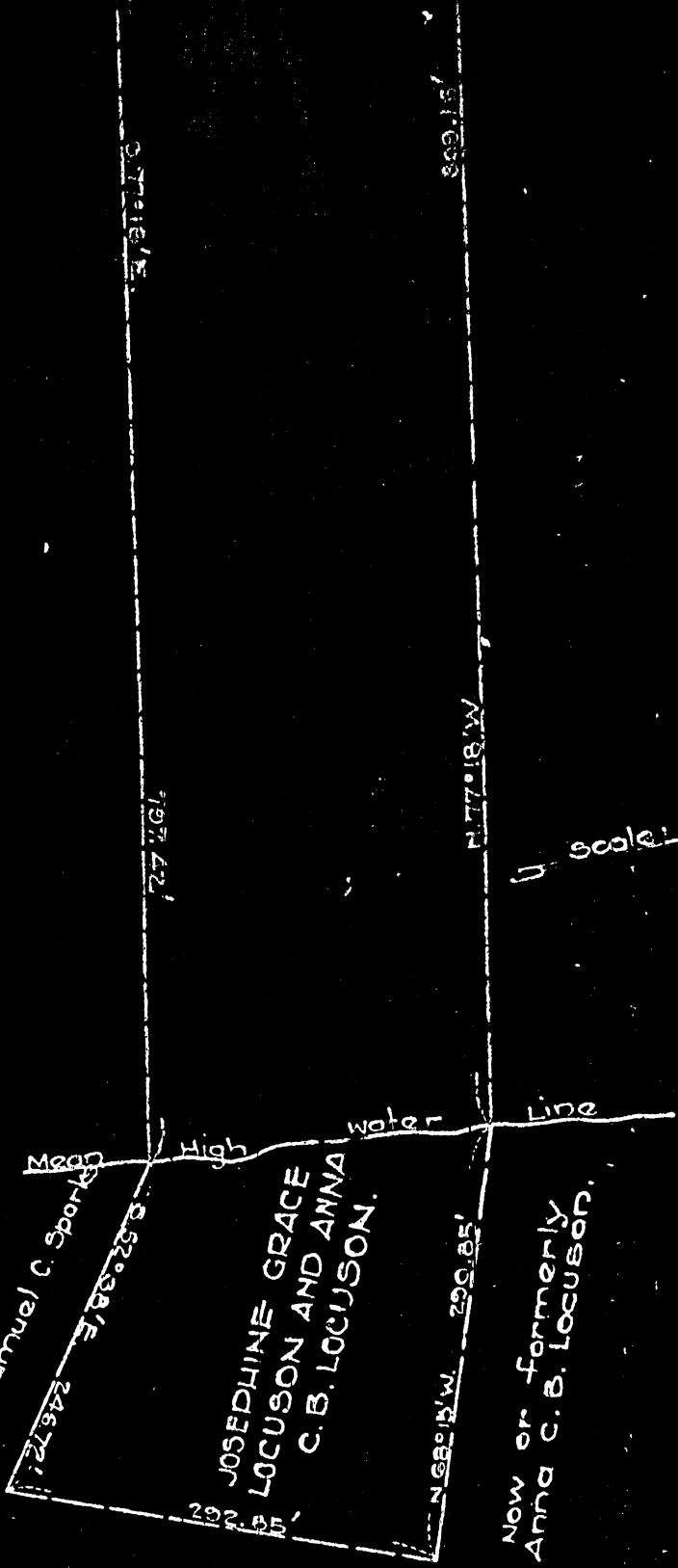
VICTOR GELINEAU

J. RAYMOND TIFFANY

Master in Chancery of New Jersey

WARE

RIVER



Now or formerly Samuel C. Sparks

JOSEPHINE GRACE
LOCUSON AND ANNA
C. B. LOCUSON.

Now or formerly
Anna C. B. Locuison.

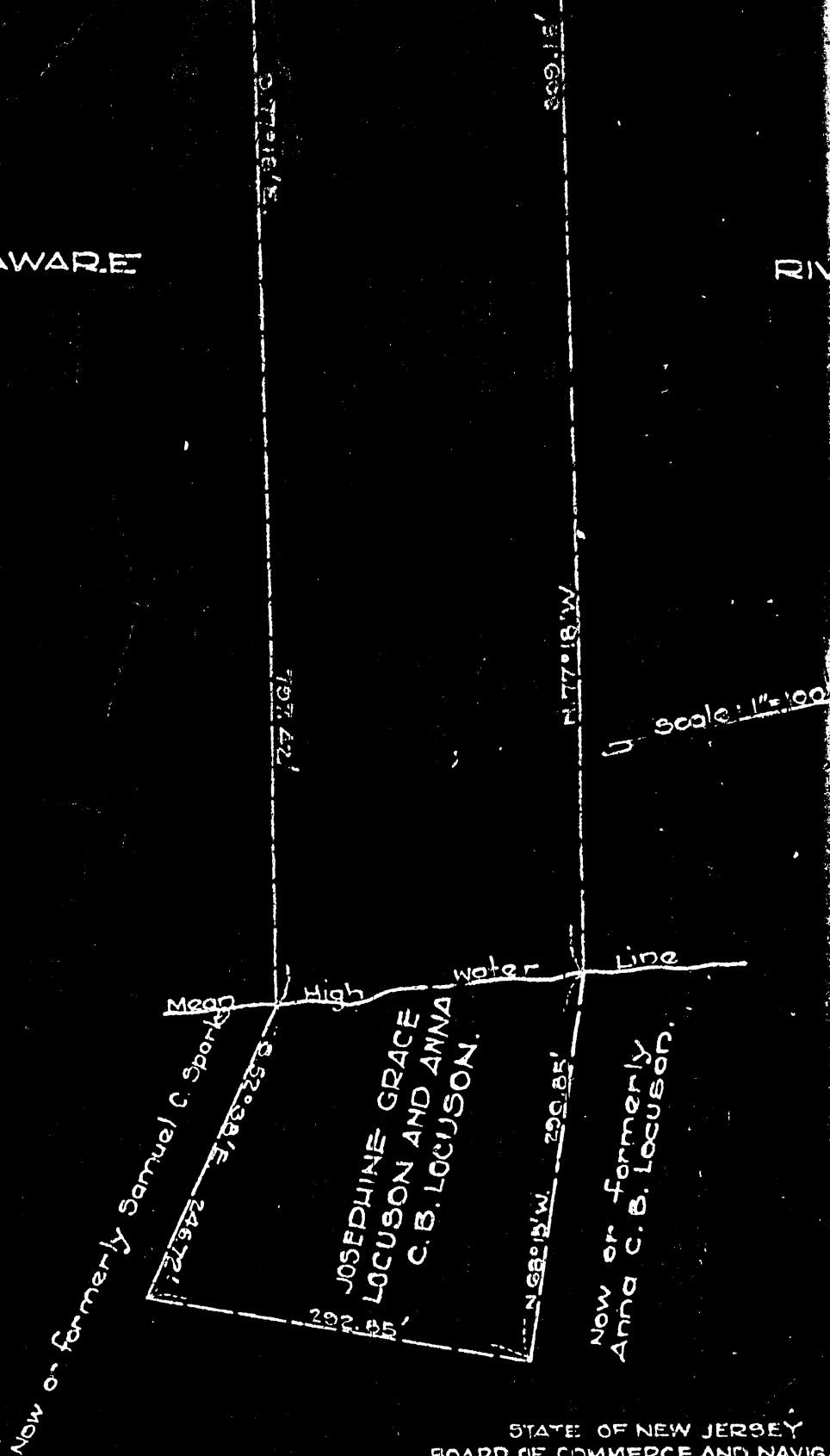
scale: 1" = 100'

STATE OF NEW JERSEY
 BOARD OF COMMERCE AND NAVIGATION
 MAP SHOWING
 LANDS UNDER TIDEWATER SITUATE
 IN THE TOWNSHIP OF LOWER PENNS NECK IN
 THE COUNTY OF SALEM
 GRANTED TO
 JOSEPHINE GRACE LOCUSON AND ANNA C. B. LOCUSON,
 JUNE 17, 1939.

Victor Belmont
 DIRECTOR AND CHIEF ENGINEER.

DELAWARE

RIN



STATE OF NEW JERSEY
 BOARD OF COMMERCE AND NAVIGATION
 MAP SHOWING
 LANDS UNDER TIDEWATER SURVEY
 IN THE TOWNSHIP OF LOWER PENNSAUCUN
 THE COUNTY OF SALEM
 GRANTED TO
 JOSEPHINE GRACE LOCUSON AND ANNA C. B. LOCUSON
 JUNE 17, 1939.

Victor Selma
 DIRECTOR AND CHIEF ENGINEER

537a

The State of New Jersey:

To all to whom these Presents shall Come or may Concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State, E. I. DU PONT DE NEMOURS AND CO., a corporation of the State of Delaware,

being the owner of lands fronting on Delaware River, in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water herein-after described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, WILLIAM T. KIRK, ROBERT B. WELCH, THOMAS H. THROPP, FRANK LOBBY and JOHN MURTLAND,

having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

ONE THOUSAND THIRTY-NINE and 70/100 (\$1039.70) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

ONE THOUSAND THIRTY-NINE and 70/100 (\$1039.70) DOLLARS

duly paid by the said

E. I. DU PONT DE NEMOURS AND CO.

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained unto the said

E. I. DU PONT DE NEMOURS AND CO.,

and to its successors and assigns forever—All that tract of land flowed by tide-water situate in the Township of Lower Penns Neck, in the County of Salem and State of New Jersey, bounded and described as follows:—

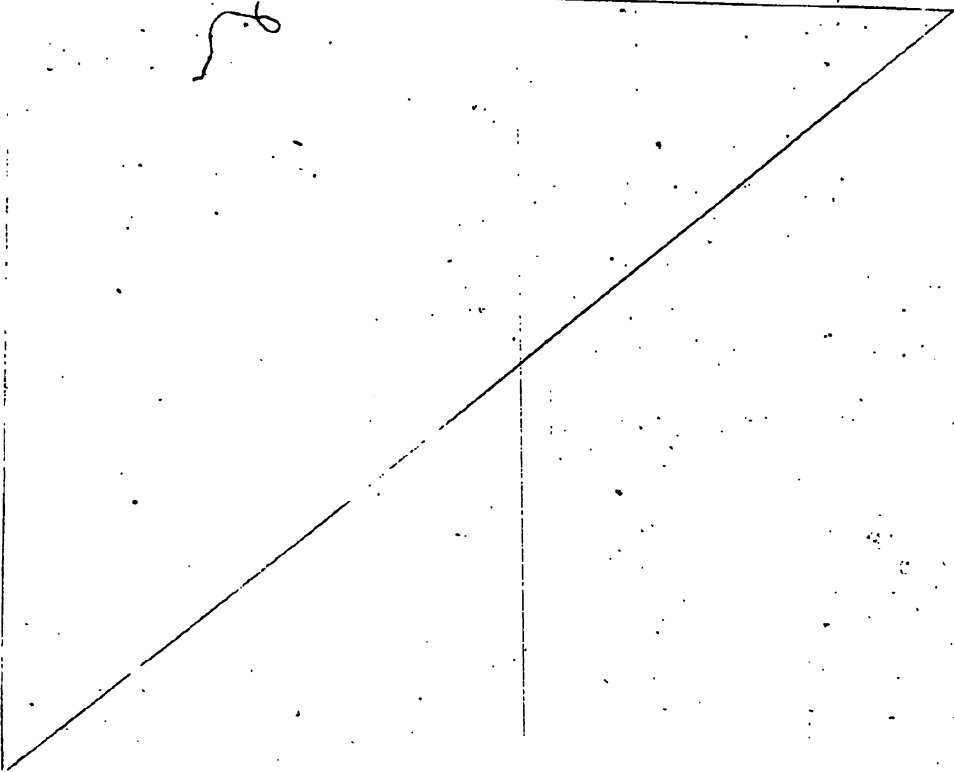
B E G I N N I N G in the mean high water line of the southeasterly shore of Delaware River where the same is intersected by the northerly line of the Second Tract of lands under water granted by the State of New Jersey July 16, 1917, to E. I. du Pont de Nemours and Co.;

Thence (1) North $73^{\circ} 04' 33''$ West (True Meridian) binding upon the northerly line of the Second Tract of lands under water granted by the State of New Jersey July 16, 1917 to E. I. du Pont de Nemours and Co. aforesaid, six hundred and forty-eight (648) feet more or less, to the Pierhead and Bulkhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled, "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of River Vessels, and the New Jersey Harbor Commission, approved April 9, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) North $62^{\circ} 49' 26''$ East (True Meridian) following said Pierhead and bulkhead line, one hundred three and ninety-seven hundredths (103.97) feet to a point;

Thence (3) South $73^{\circ} 04' 33''$ East (True Meridian) six hundred and forty-eight (648) feet, more or less, to the mean high water line of the southeasterly shore of Delaware River;

Thence (4) Southwestwardly following said mean high water line to the place of BEGINNING.



With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to its and their exclusive private uses.

And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the ~~and~~ lines of the first described tract extended to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, under which the tide may ebb and flow and no solid filling shall be placed thereon.

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same farther from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described, and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said

And Also Provided, that if the said E. I. DU PONT & CO., IS

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said E. I. DU PONT & CO.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said E. I. Du PONT & CO., and to its successors, and assigns forever.

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Note: Eight printed lines on third page stricken out before execution.

In witness whereof, the said Board of Commerce and Navigation have herewith respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been herewith affixed and attested by the Secretary of State, this twenty-first day of October, in the year nineteen hundred and

VICTOR GELINEAU

MORGAN T. LARSON
Governor.

J. SPENCER SMITH

RICHARD C. JENKINSON

W. L. SAUNDERS

WILLIAM T. RISK

AUGUSTUS SMITH

THOMAS H. THROPP

FRANK DORELY

JOHN MURTLAND

Witness: VICTOR GELINEAU

(THE GREAT SEAL OF THE STATE OF NEW JERSEY)

JOSEPH F. S. FITZPATRICK
Secretary of State

STATE OF NEW JERSEY, }
COUNTY OF HUDSON } ss.

It is Remembered, That on this twenty-first day of October, nineteen hundred and twenty-nine, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared VICTOR GELINEAU, who bring by me duly sworn on his oath, with that he saw: J. SPENCER SMITH, RICHARD

C. JENKINSON, W. L. SAUNDERS, WILLIAM T. RISK, AUGUSTUS SMITH, THOMAS H. THROPP, FRANK DORELY, JOHN MURTLAND,

the within-named Board of Commerce and Navigation; sign and deliver the within deed as their voluntary act, and that he, the said VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto.

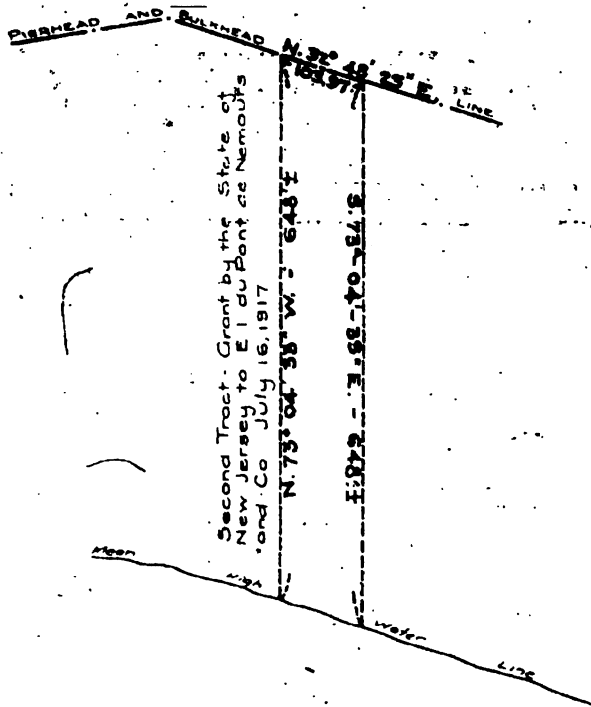
Sworn and subscribed before me, at Jersey City, the day and year aforesaid.

VICTOR GELINEAU

J. HAYLORD TIFFANY
Master in Chancery
of New Jersey



DELAWARE RIVER



E. I. DU PONT DE NEMOURS AND CO.

STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP SHOWING
LANDS UNDER TIDEWATER SITUATE
IN THE TOWNSHIP OF LOWER PENNS NECK
IN THE COUNTY OF SALEM
GRANTED TO
E. I. DU PONT DE NEMOURS AND CO.
OCTOBER 21, 1923

Victor Pelinau
DIRECTOR AND CHIEF ENGINEER

Grant U.

THE STATE OF NEW JERSEY:

To all to whom these Presents shall come, or may concern,

GREETING:

WHEREAS, Pursuant to an act of the Legislature of said State, approved April 8th, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," and other acts and joint resolutions of the Legislature of said State, DELAWARE RIVER POWER COMPANY, a corporation of the State of New Jersey, has applied to the said Board of Commerce and Navigation of said State for license and permission to use the lands under water hereinafter described and located, belonging to the State of New Jersey, for the purpose of constructing, laying, and maintaining thereon eight (8) armored submarine cables together with terminal pier.

AND WHEREAS, the said DELAWARE RIVER POWER COMPANY has received the necessary consent and permission from the shore owners, to apply for and receive the said license and permission, and has received from the United States War Department permission or consent to lay the said cables;

NOW THEREFORE, the said State of New Jersey by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the sum of FIFTY (\$50.00) DOLLARS duly paid by the said DELAWARE RIVER POWER COMPANY to the said State, and the receipt whereof is hereby acknowledged, does hereby give license and permission to the said DELAWARE RIVER POWER COMPANY forever to construct, use and main-

tain, in, through, under and over and across the lands of the State as hereinafter described;

Eight (8) submarine cables laid across the channel in Delaware River, from Deepwater Point in the direction of Pigeon Point, Delaware, to the boundary line between the States of New Jersey and Pennsylvania, in the Township of Lower Penn Neck, County of Salem, also terminal pier and tower, as shown on three plans marked #5170-B-L-22, 5170-B-L-23, 5170-B-L-24, filed with the Board of Commerce and Navigation, August 12, 1929.

Subject, however, and on the express condition that no part of the said cables shall be less than Fifty (50) feet below mean low water across the channel in Delaware River, eight hundred (800) feet wide, and expressly subject to the conditions now or hereafter imposed by the United States War Department and by the Board of Commerce and Navigation for the protection of navigation;

And upon the further express condition that if in the future it shall appear that, in the opinion of the Board of Commerce and Navigation, or their successors, or any other arm or branch of the government of the State of New Jersey it shall be found necessary to make any change of a road or waterway, or any other natural or artificial feature or structure at or near the site of said cables, so as to require a change of location of such cables, the licensee hereof shall promptly, at its own expense upon notice from the State of New Jersey immediately lower or otherwise move the said cables to such new location as is or may be determined and indicated by said State of New Jersey or any of its agencies or Boards; and upon failure or refusal so to do or upon failure to comply with any of the other terms, conditions or covenants hereinabove or hereinafter contained, then the right or easement to use and maintain such cables as aforesaid, shall immediately cease and terminate and come to an end, and this instrument shall become and be void, and all the

rights and privileges said shall cease

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The Great Se State of New JOSEPH F. S Secretary

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rights and privileges hereby given and granted as afore-
said shall cease.

And also provided, if the said DELAWARE RIVER
POWER COMPANY has not the proper authorization
from shore owners, then and in that event this instru-
ment, so far as the same binds the State and all the
covenants herein on the part of the State are void.

PROVIDED, that this license shall be subject to any and
all rights of riparian owners.

AND FURTHER PROVIDED, that nothing in this license con-
tained shall affect or be construed to affect or interfere
with in any manner the rights of any riparian or shore
owner as defined by the laws of this State.

IN WITNESS WHEREOF, the said Board
of Commerce and Navigation
have hereunto respectively
set their hands, and these
presents have been signed by
the Governor, and the Great
Seal of the said State has
been hereunto affixed and at-
tested by the Secretary of
State, this twenty-first day of
October, in the year nineteen
hundred and twenty-nine.

MORGAN F. LARSON
Governor.

J. SPENCER SMITH
RICHARD C. JENKINSON
W. L. SAUNDERS
WILLIAM T. KIRK
AUGUSTUS SMITH
THOMAS H. THROPP
FRANK DORSEY
JOHN MURTLAND

Witness: VICTOR GELINEAU

The Great Seal of the
State of New Jersey)
JOSEPH F. S. FITZPATRICK
Secretary of State

I, Victor Gelineau, Director and Secretary of the Board of Commerce and Navigation of the State of New Jersey, do hereby certify that the foregoing is a true copy of a license made on the 21st day of October, A. D. 1929 by the State of New Jersey through its Board of Commerce and Navigation to DELAWARE RIVER POWER COMPANY, a corporation of the State of New Jersey, as the same is recorded in File No. 4050 in the records of the Board of Commerce and Navigation.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said Board of Commerce and Navigation this 20th day of March, A. D. 1931.

VICTOR GELINEAU
 Director and Secretary,
 Board of Commerce and Navigation,
 State of New Jersey.

BOARD OF COMMERCE AND NAVIGATION
 of the State of New Jersey

Recorded in File No. 4050.

THE STATE OF NEW JERSEY
 TO
 DELAWARE RIVER POWER COMPANY
 LICENSE

Dated 21st October, 1929.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, }SS.:

BE IT REMEMBERED, that on this twenty-first day of October before me, the subscriber, a Master in Chancery of New Jersey, personally appeared, VICTOR GELINEAU, who, being by me duly sworn on his oath, saith that he saw, : J. SPENCER SMITH, RICHARD C. JENKINSON, W. L. SAUNDERS, WILLIAM T. KIRK, AUGUSTUS SMITH, THOMAS H. THROPP, FRANK DORSEY, JOHN MURLAND, the within named Board of Commerce and Navigation, sign and deliver the within license as their voluntary act, and that he, the said, VICTOR GELINEAU, thereupon subscribed his name as the testing witness thereto.

VICTOR GELINEAU

Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

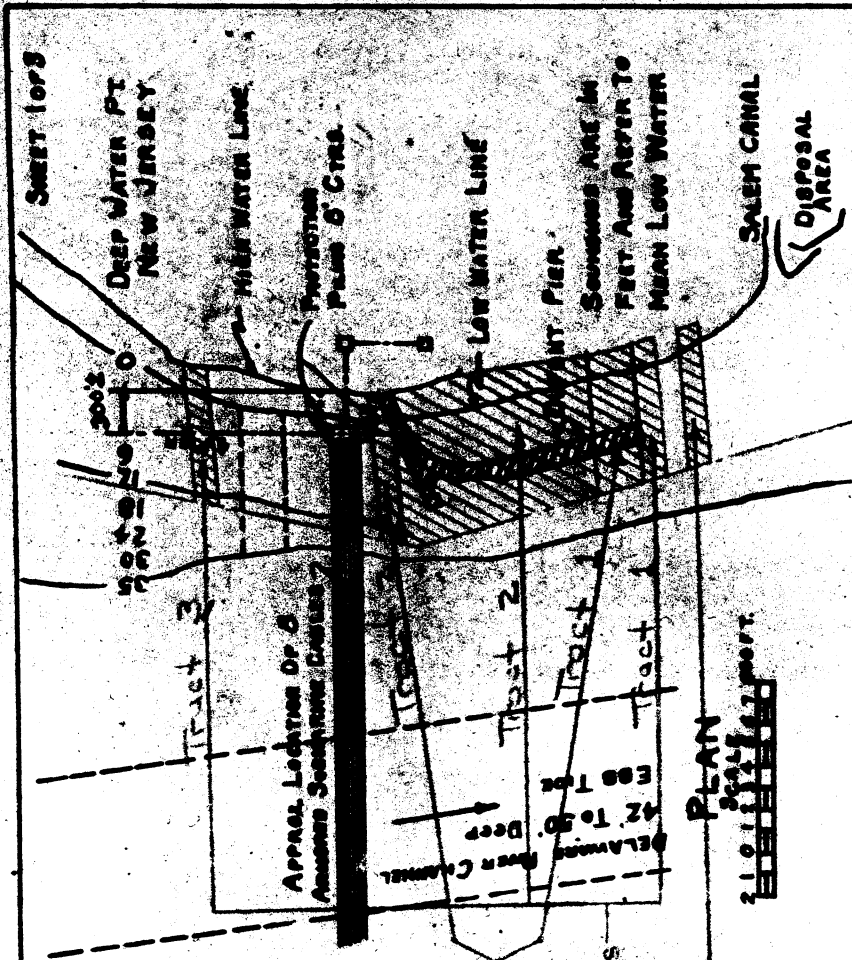
J. RAYMOND TIFFANY
Master in Chancery of New Jersey

J. Victor Gel
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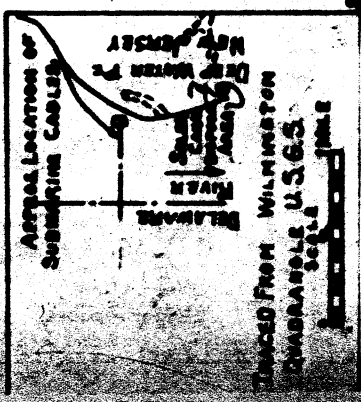
CABLES ARE TO BE USED FOR THE TRANSMISSION OF ELECTRICAL ENERGY AT 66,000 VOLTS

PROPOSED SUBMARINE CABLE ACROSS THE DELAWARE RIVER AT DEEP WATER Pt. N.J.

APPLICATION BY THE DELAWARE RIVER POWER CO. (D.R.P.C.)

August 12, 1923

Grant to E. I. Du Pont De Nemours and Company July 16, 1917
 Grant of grant to E. I. Du Pont De Nemours and Company August 21, 1916
 Grant to E. I. Du Pont De Nemours and Company November 20, 1916



DRAWN FROM WILMINGTON CHAMBERS U.S.G.S. SCALE 1:50,000

1-2 113

4008

March 1930

The State of New Jersey:

Office
FILE 6-2
1930

To all to whom these Presents shall Come, Greeting:

Whereas, Pursuant to an act of the Legislature of said State approved March 31, 1909, entitled "Supplement to an act entitled 'An Act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,' approved April Eleventh, eighteen hundred and sixty-four," and other acts and joint resolutions of the Legislature of said State, the State of New Jersey by its Riparian Commissioners appointed under said act did, by instrument dated the twenty-first day of October A. D. 1929 duly executed, demise, lease and to farm let unto

PENN BEACH PROPERTY OWNERS' ASSOCIATION, INC., and to its successors

and assigns the lands under water hereinafter granted.

And Whereas, the said PENN BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

being desirous of obtaining a grant of the lands under water hereinafter described, upon the terms hereinafter set forth, has, pursuant to an act of the Legislature of said State approved April 5th, 1917, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," applied to the Board of Commerce and Navigation of said State for a grant of said lands under water, and it appearing that the said PENN BEACH PROPERTY OWNERS' ASSOCIATION, INC. is

now the owner of such title to the lands under water hereinafter granted as was conveyed to said PENN BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

in and by said lease of the twenty-first day of October, A. D. nineteen hundred and twenty-nine, and of the rights, privileges and franchises included therein, so far as the same affect the said lands under water hereinafter granted;

And Whereas, the said Board of Commerce and Navigation, to wit: J. SPENCER SMITH, JOHN MURTLAND, FRANK BORSEY, JAMES W. COSTELLO, HORLIE G. FLINN, HAROLD L. JONES, JAMES J. KELLY, and LESLIE S. STALLING, - - - -

having due regard to the interests of navigation and the interests of the State, have agreed to grant the lands hereinafter mentioned upon the terms herein set forth, and have determined the sum of

FIVE HUNDRED and 70/100 (\$500.70) DOLLARS

as the price or reasonable compensation to be paid to the State for the lands hereinafter granted.

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of

FIVE HUNDRED and 70/100 (\$500.70) DOLLARS

duly paid by the said PENN BEACH PROPERTY OWNERS' ASSOCIATION, INC.

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey subject to the terms, covenants, conditions and limitations herein contained, unto the said PENN BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

and to its successors and assigns forever,

All that tract of land flowed by tide-water situate in the Township of Lower Penns Neck in the County of Salem and State of New Jersey,

bounded and described as follows:-

34

B E G I N N I N G in the mean high water line of the southeasterly shore of Delaware River distant North $15^{\circ} 58' 45''$ West, one hundred forty-eight and sixty-six hundredths (148.66) feet from where the tangent of the curved center line of Riviera Drive intersects the center line of Oberlin Road;

Thence (1) North $53^{\circ} 34'$ West, four hundred twenty-nine and forty-nine hundredths (429.49) feet to the Pierhead and Bulkhead Line established by the Board of Commerce and Navigation appointed under the authority of the act entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission," approved April 8, 1915, and other acts and joint resolutions of the Legislature of said State;

Thence (2) North $59^{\circ} 28'$ East following said Pierhead and Bulkhead Line, fifty and seven hundredths (50.07) feet to a point;

Thence (3) South $53^{\circ} 34'$ East, four hundred thirty and seventy hundredths (430.70) feet to the mean high water line of the southeasterly shore of Delaware River;

Thence (4) Southwestwardly following said mean high water line to the place of **BEGINNING**.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to its and their exclusive private uses.

~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce and Navigation appointed under the authority of the act aforesaid, and bounded by the _____ and _____ lines of the first described tract extended _____ to said pier line; but said land last described is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do; and if such exterior or pier lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, or under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted or leased, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said PENN BEACH PROPERTY OWNERS' ASSOCIATION, INC. is _____

not the owner of such title to the land under water hereby granted, as was conveyed to said PENN BEACH PROPERTY OWNERS' ASSOCIATION, INC. _____

by said lease of _____ October 21st, 1929, _____ and of the rights, privileges and franchises included therein, so far as the same affect the said land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established, by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging;
To have and to hold all and singular the above granted and described lands covered
with water and premises, subject to the terms, conditions and limitations aforesaid, unto the said
PENNSYLVANIA PROPERTY OWNERS' ASSOCIATION, INC., and to its successors
and assigns forever.

In Witness Whereof, the said Board of Commerce and Navigation have
hereto respectively set their hands, and these presents have
been signed by the Governor, and the Great Seal of the said
State has been hereunto affixed and attested by the Secretary of
State, this twentieth day of November
in the year nineteen hundred and thirty-three.

VICTOR GELINEAU

A. HARRY MOORE

Gov. Genl.

(THE GREAT SEAL OF THE
STATE OF NEW JERSEY)

J. SPENCER SMITH

JOHN MORTLAND

HORTIE G. FLINT

THOMAS A. MATHEIS

H. L. JONES

Secretary of State

JAMES J. KELLY

LESLIE S. STERLING

JAMES W. COSTELLO

Witness: VICTOR GELINEAU

STATE OF NEW JERSEY, } ss.
COUNTY OF HUDSON.

We it Remembered, That on this twenty-first day of November, nineteen
hundred and thirty-three, before me, the subscriber, a Master in Chancery
of New Jersey, personally appeared VICTOR GELINEAU
who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH,

JOHN MORTLAND, HORTIE G. FLINT, H. L. JONES, JAMES J. KELLY, LESLIE S.
STERLING, JAMES W. COSTELLO,

the within named Board of Commerce and Navigation, sign and deliver the within deed as their
voluntary act, and that he, the said VICTOR GELINEAU,

thereupon subscribed his name as an attesting witness thereto.

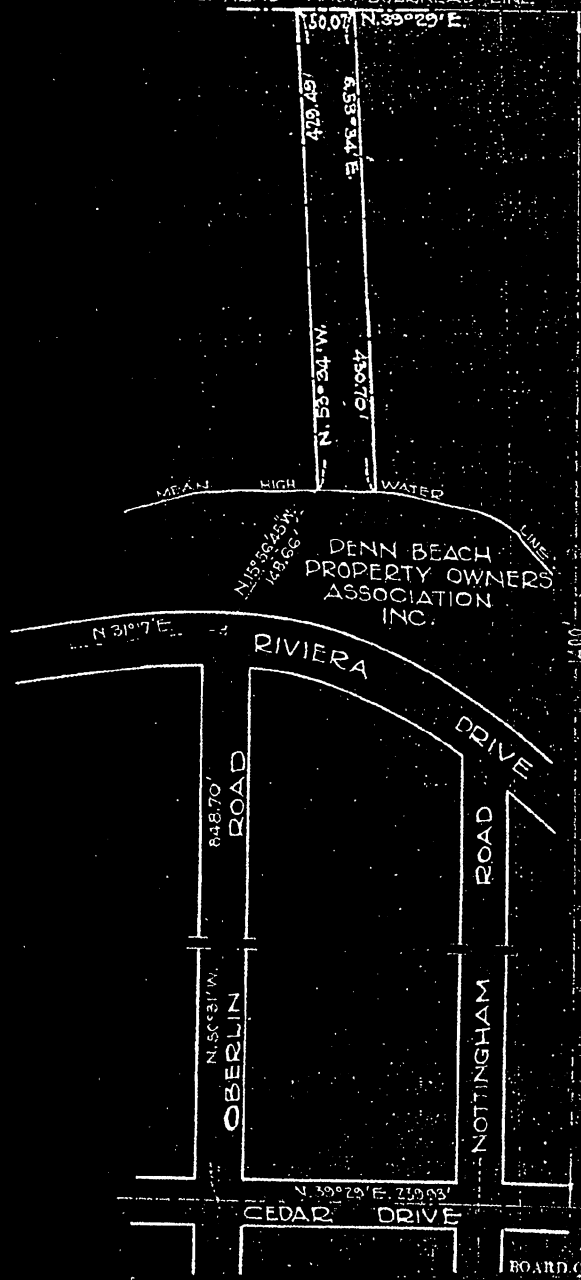
Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

VICTOR GELINEAU

J. RAYMOND TIFFANY
Master in Chancery of
New Jersey.

DELAWARE RIVER

PIERHEAD AND BULKHEAD LINE



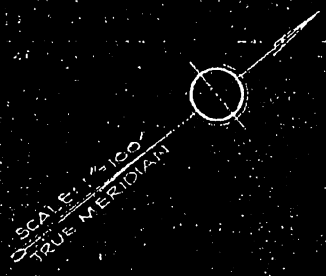
DENN BEACH
PROPERTY OWNERS
ASSOCIATION
INC.

RIVIERA DRIVE

OBERLIN ROAD

NOTTINGHAM ROAD

CEDAR DRIVE



STATE OF NEW JERSEY
 BOARD OF COMMERCE AND NAVIGATION
 MAP SHOWING
 LANDS UNDER TIDE WATER SITUATE
 IN THE TOWNSHIP OF LOWER PENNSYLVANIA
 NECK IN THE COUNTY OF SALEM
 GRANTED TO
 DENN BEACH PROPERTY OWNERS ASSOCIATION
 INC.
 NOVEMBER 20, 1933

Victor Beltrami
 Registrar and Chief Engineer

(98) 112 APPENDIX

The State of New Jersey:

To all to whom these Presents shall come or may concern,

Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved April 8th, 1911, entitled "An Act creating a department to be known as the Board of Commerce and Navigation, and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission and other acts and joint resolutions of the Legislature of said State.

J. LANDIS STRICKLER, of the Borough of Penns Grove, in the County of Salem and State of New Jersey,

being the owner of lands fronting on Delaware River, in Borough of Penns Grove in the County of Salem and State of New Jersey, which lie above high water mark, and in front of which the lands under water hereinafter described are situated, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Board of Commerce and Navigation to wit: **J. SPENCER SMITH, JOHN HURLAND, FRANK DORSEY, JAMES W. COSTELLO, HORACE G. BLUNT, HAROLD L. JONES, JAMES J. KELLY, and LESLIE S. STERLING,**

having due regard to the interest of navigation and the interests of the State, have agreed to rent the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of

ONE HUNDRED (\$100.00) DOLLARS

as the price or reasonable compensation to be paid to the State for the said lands:

Now Therefore, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of **ONE HUNDRED (\$100.00) DOLLARS**

duly paid by the said **J. LANDIS STRICKLER**

to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said

J. LANDIS STRICKLER

and to his heirs and assigns forever—All the right, title and interest of the State of New Jersey in and to the lands now or formerly flowed by tide-water at mean high tide of Delaware River, lying within the boundaries of the following described tract of land situate in the Borough of Penns Grove, in the County of Salem and State of New Jersey

BEGINNING at a point in the center line of Delaware Avenue where the same is intersected by center line of West Harmony Street;

Thence (1) South $32^{\circ} 00'$ West along the center line of Delaware Avenue twenty-four and five one-hundredths (24.05) feet to a point;

Thence (2) North $63^{\circ} 36'$ West along the southwesterly boundary line of J. Landis Strickler's property thirty-eight and eighty-seven one-hundredths (38.87) feet to an old stone;

Thence (3) North $77^{\circ} 36'$ West still along the southwesterly boundary line aforesaid 65 feet to an angle in the sea wall in Delaware River;

Thence (4) North $20^{\circ} 54'$ West still following said sea wall seventy-two and seventy one-hundredths (72.70) feet to an angle;

Thence (5) North $82^{\circ} 54'$ West still following said sea wall thirty-three and ninety one-hundredths (33.90) feet to an angle;

Thence (6) North $23^{\circ} 53'$ East still following said sea wall up the Delaware River one hundred sixty and ten one-hundredths (160.10) feet to an angle;

Thence (7) South $52^{\circ} 35'$ West along the northeasterly boundary line of J. Landis Strickler's property running through an iron pipe in the northwesterly line of Delaware Avenue, two hundred forty-nine and thirty-six one-hundredths (249.56) feet to center line of Delaware Avenue;

Thence (8) South $58^{\circ} 14'$ West along the center line of Delaware Avenue one hundred eighteen and three one-hundredths (118.03) feet to the point and place of **BEGINNING**.

It being understood, however, that the intent of this conveyance is to convey all the State's rights in the lands now or formerly under water only within the above described tract; that nothing herein contained shall be interpreted as affecting in any way the State's right to sell and convey the lands now or formerly under water on any or all sides of the tract above described.

With the right and privilege, under the covenants and conditions of this grant, to exclude the tide-water from so much of the lands above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands under water above described to **his and their** exclusive private uses.

1 ~~And also under like terms, covenants, conditions and limitations, all and singular the lands under water~~
2 ~~lying between the exterior line for solid filling and the exterior line for piers, as fixed by the Board of Commerce~~
3 ~~and Navigation appointed under the authority of the act aforesaid, and bounded by the~~
4 ~~and~~ ~~lines of the~~
5 ~~first described tract extended~~ ~~to said pier line, but said land last described~~
6 ~~is not to be used for any purpose whatsoever except the erection of a pier or piers thereon, underneath which~~
7 ~~the tide may ebb and flow and no solid filling shall be placed thereon.~~

Provided, that the State of New Jersey, by its Board of Commerce and Navigation or any other lawful authority, may, from time to time, change the exterior lines for solid filling and piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interests so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Board of Commerce and Navigation or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Board of Commerce and Navigation or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Board of Commerce and Navigation or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that if the said **J. LANDIS STRICKLER** is

not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said

J. LANDIS STRICKLER

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Board of Commerce and Navigation or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said **J. LANDIS STRICKLER** and to his heirs and assigns forever.

NOTE: Seven
printed lines on third
page stricken out before
execution.

In Witness Whereof, the said Board of Commerce and Navigation have here-
unto respectively set their hands, and these presents have been signed
by the Governor, and the Great Seal of the said State has been here-
unto affixed and attested by the Secretary of State, this
day of
in the year nineteen hundred and thirty-five.

Governor

STATE OF NEW JERSEY, }
COUNTY OF } ss.

Be It Remembered, That on this day of nineteen
hundred and before me, the subscriber, a Master in Chancery of New
Jersey, personally appeared who being by me duly
sworn on his oath, saith that he saw

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act,
and that he, the said

thereupon subscribed his name as an attesting witness thereto.

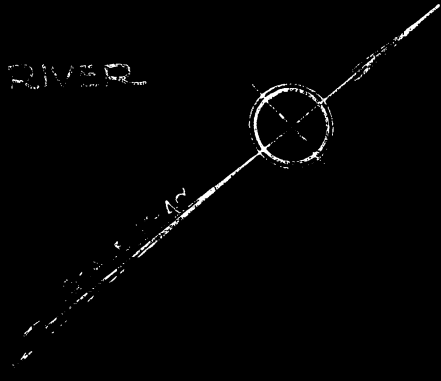
Sworn and subscribed before me,
at Jersey City, the day and
year aforesaid.

Master in Chancery
of New Jersey

557a

DELAWARE

RIVER



low or formerly of D. Turner 1830

N. 32° 00' E
DELAWARE

ST. HARMONY ST.

STATE OF NEW JERSEY
 BOARD OF COMMERCE AND NAVIGATION
 MAP SHOWING

LANDS UNDER TIDE WATER SURFACE
 IN THE BOROUGH OF DENNIS GROVE
 IN THE COUNTY OF SALEM

GRANTED TO
 J. LANDIS STRICKLER
 SEPTEMBER 16, 1935

558a

Deed #/2014.

SALEM CREEK
CANAL

**Board of Commerce and Navigation
of the State of New Jersey**

Recorded in Liber R-2

Folio 55 &c

**THE STATE OF NEW JERSEY
TO**

E. I. DUPONT DE NEMOURS & CO.

Grant

Map # 156-D.

Dated September 13, 1943 19

Received October 20, 1943 at
11.45 A.M. in the Clerk's office
of Salem County and recorded in
Book #256 of Deeds, page 44 &c.

Walter F. Dellinger
Clerk.

10 - 20 - 1943

T H E S T A T E O F N E W J E R S E Y

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, G R E E T I N G :

W H E R E A S, Pursuant to an act of the Legislature of said State, approved April 8, 1915, entitled "An Act creating a department to be known as the Board of Commerce and Navigation," being Title 12, Chapter 2, Section 1, of the Revised Statutes, approved December 20, 1937;

A N D W H E R E A S, E. I. du PONT de NEMOURS AND COMPANY, a Corporation of the State of Delaware having, among others, places of business in the State of New Jersey, and being the owner, in fee simple, and in possession of lands adjoining, but above the high water mark of the tidal waters of a portion of the tributary of Delaware River, known as Salem Creek Canal, and having also grants or waivers made to it by other owners of land fronting on said canal, said lands being situated in the Township of Lower Penns Neck, in the County of Salem, and State of New Jersey, and in front of which the lands under water hereinafter described are situate, has applied to the Board of Commerce and Navigation of said State for a grant of the said lands under water and to have the said Board of Commerce and Navigation fix the boundaries of the said lands under water and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant;

A N D W H E R E A S, the said Board of Commerce and Navigation by a majority of the members thereof, to wit: J. SPENCER SMITH, EDWARD CRABBE, JAMES KELLY, LOUIS SCHIAVONE, WAYNE D. MCMURRAY AND ALFRED A. LAFOUNTAIN, having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of one hundred sixty five and ten hundredths (\$165.10) Dollars as the price or reasonable compensation to be paid to the State for the said lands;

N O W T H E R E F O R E, the said State of New Jersey, by the said Board of Commerce and Navigation, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of One hundred sixty five and ten hundredths (\$165.10) Dollars duly paid by the said E. I. du Pont de Nemours and Company, to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said E. I. duPont de Nemours and Company, and to its successors and assigns forever;

ALL the right, title and interest of the State of New Jersey in and

to that portion of the tributary of Delaware River, known as Salem Creek Canal, lying within the boundaries of the following described tract of land.

B E G I N N I N G at a point in the former mean high water line of the easterly shore of Delaware River, said point being distant South $21^{\circ} 46' 08''$ East one hundred ninety eight and fifty one hundredths (198.51) feet from the front light of Deep Water Range;

Thence (1) North $78^{\circ} 01' 08''$ West along the northerly line of lands granted by the State of New Jersey January 20, 1930 to The Franklin Real Estate Company a distance of four hundred seventy one and thirteen hundredths (471.13) feet to a point or corner;

Thence (2) North $84^{\circ} 09' 12''$ East a distance of two hundred (200) feet more or less to a point in the present mean high water line of the easterly shore of Delaware River where the same is intersected by the mean high water line of the northerly shore of Salem Creek Canal;

Thence (3) in a general eastwardly direction along said mean high water line of the northerly shore of Salem Creek Canal the various courses, for a total distance of twelve hundred twenty (1220) feet more or less, to a point in the westerly face of Munson Dam, said point being in a line of lands of said E. I. duPont de Nemours & Company;

Thence (4) South $1^{\circ} 43' 30''$ West in said line of other lands of E. I. duPont de Nemours & Company and along said westerly face of Munson Dam a distance of one hundred five (105) feet more or less to the mean high water line of the southerly shore of Salem Creek Canal;

Thence (5) in a general westwardly direction along said mean high water line of the southerly shore of Salem Creek Canal the various courses, for a total distance of six hundred sixty (660) feet more or less to the present mean high water line of Delaware River;

Thence (6) North $78^{\circ} 31' 30''$ west a distance of three hundred twenty (320) feet more or less to the point and place of BEGINNING.

ALL as shown on the map hereto attached and made part hereof.

SUBJECT however, to all grants, easements, licenses or permits heretofore issued by the State of New Jersey for the construction of Dams, cable crossings, overhead transmission wires, pipe lines or for any other structure or structures, over and across Salem Creek Canal.

It being expressly understood and agreed by the parties hereto

and made a condition of this grant that the State of New Jersey shall in no way be responsible or become a party to any action for loss of life or property, or damage to persons or property which may occur by the carrying out of any work or the operation or maintenance thereof by the

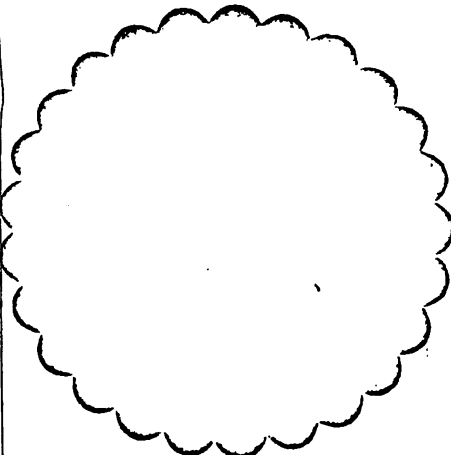
E. I. duPont de Nemours and Company, on or adjoining the lands hereby conveyed.

A N D A L S O P R O V I D E D, that if the said E. I. du Pont de Nemours and Company is not the owner in fee simple and in possession or has not the necessary grants or waivers of the upland owners of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said E. I. du Pont de Nemours and Company or not as aforesaid covered by grant or waiver made by the owners thereof, to said E. I. du Pont de Nemours and Company.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging.

TO HAVE AND TO HOLD all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said E. I. du Pont de Nemours and Company, its successors and assigns forever.

In Witness Whereof, the said Board of Commerce and Navigation by a majority of the members thereof have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been affixed and attested by the Secretary of State, this
 13th day of September
 in the year nineteen hundred and forty three.



Charles Edison
 Charles Edison Governor
David Wilentz
 David Wilentz Attorney General
J. Spencer Smith
 J. Spencer Smith
Edward Crabbe
 Edward Crabbe
James Kelly
 James Kelly
Louis Schiavone
 Louis Schiavone
Wayne D. McMurray
 Wayne D. McMurray
Alfred A. LaFountain
 Alfred A. LaFountain

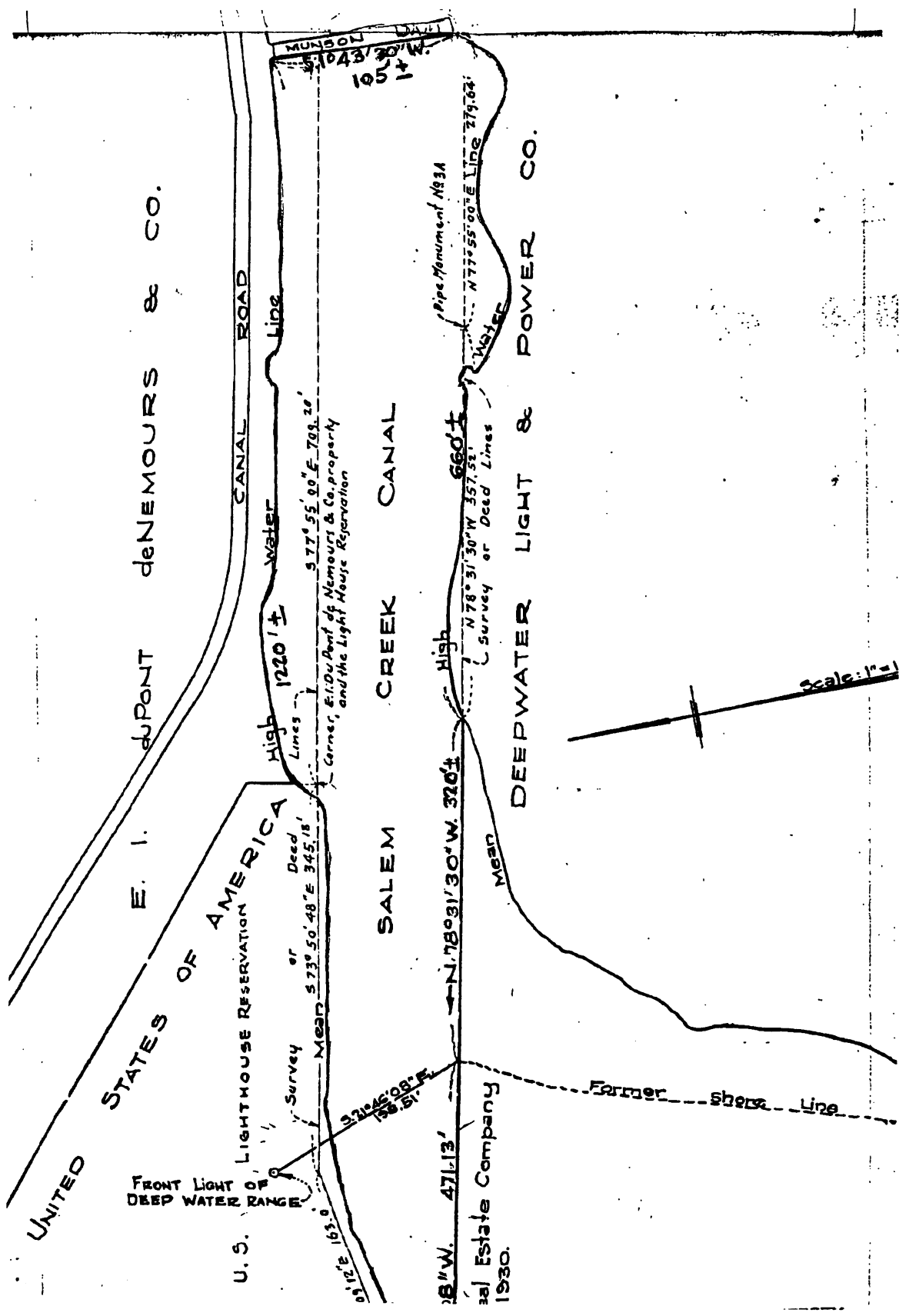
Witness Frank D. Holmes
 Frank D. Holmes

J.A. Brophy states
 I certify I have checked this instrument and it is drawn in accordance with the Minutes of the Board Meeting of September 13, 1943.
Mabel I. Walker
 Mabel I. Walker
 Accounts Receivable Bookkeeper

STATE OF NEW JERSEY, }
 COUNTY OF Mercer } ss.

Be it Remembered, That on this 30th day of Sept nineteen hundred and forty three before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Frank D. Holmes who being by me duly sworn on his oath, saith that he saw J. SPENCER SMITH, Edward Crabbe, James Kelly, Louis Schiavone, Wayne D. McMurray, and Alfred A. LaFountain, a majority of

the within named Board of Commerce and Navigation, sign and deliver the within deed as their voluntary act, and that he, the said Frank D. Holmes thereupon subscribed his name as an attesting witness thereto.



Scale: 1"=1'

1958-A

See R. 3/11/57

The State of New Jersey:

To all to whom these Presents shall come or may concern,

Greeting:

Whereas, the State of New Jersey owns the lands under tidewater hereinafter described:

And Whereas, the Division of Planning and Development in the Department of Conservation and Economic Development, as established by Chapter 418 Laws of 1948 succeeded to the powers and duties of the Division of Navigation in the Department of Conservation:

And Whereas, SUN OIL COMPANY, a corporation of the State of New Jersey, having its principal office at 1608 Walnut Street, in the City of Philadelphia, in the County of Philadelphia and State of Pennsylvania,

representing itself to be the owner of the lands fronting on Delaware River

in the Township of Logan

in the County of Gloucester and State of New Jersey, which lie above the high water mark and in front of which the lands hereinafter described are situate, has applied to the Department of Conservation and Economic Development, Division of Planning and Development, for a grant of said lands under water and to have it fix the boundaries thereof and determine the price or compensation to be paid therefor, and the covenants, conditions and limitations of said grant:

And Whereas, a majority of the members of the Planning and Development Council of the Division of Planning and Development having due regard to the interests of navigation and of the State, have approved the grant of the lands under tidewater hereinafter described upon the covenants, conditions and limitations herein set forth, and have fixed the sum of Fifty Thousand and no hundredths (\$50,000.00) Dollars

as the price or reasonable compensation to be paid to the State for said lands:

Now, Therefore, the State of New Jersey, acting by and through the Division of Planning and Development in the Department of Conservation and Economic Development, the Governor and the Commissioner of Conservation and Economic Development and a majority of the members of the Planning and Development Council in the Division of Planning and Development approving, in consideration of the premises, the covenants, conditions and limitations herein contained, and of the said sum above set forth duly paid by the grantee to the State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, unto the said SUN OIL COMPANY, a corporation of the State of New Jersey,

and to its successors and assigns forever—ALL that tract of land flowed by tidewater, situate in the Township of Logan, in the County of Gloucester and State of New Jersey, bounded and described as follows:

BEGINNING at a point in the present mean high water line of the southerly shore of the Delaware River, within the lands of the grantee herein, said point being located by coordinates North 48°56'85.077" and East 131°57'8.603", said coordinates are those established by the U. S. Corps of Army Engineers on a rectangular system of plan co-ordinates whose origin is the intersection of the parallel 39 degrees 50 minutes North (500,000) with the Meridian 75 degrees 10 minutes West (200,000)

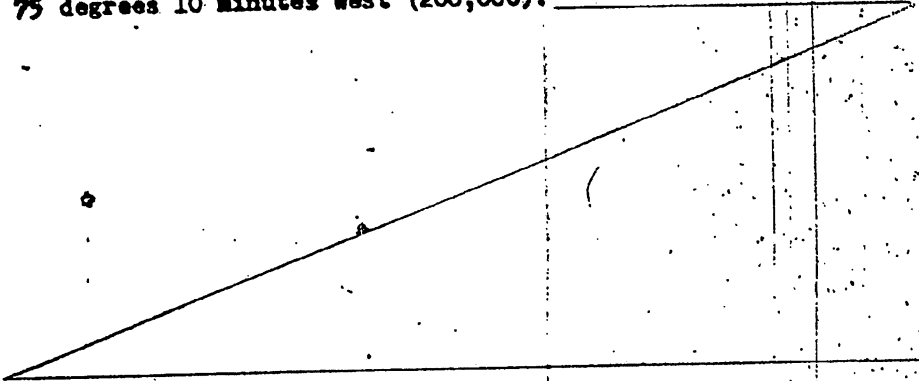
THENCE (1) North 32 degrees 41 minutes 20 seconds West, a distance of One Thousand Two Hundred Forty-five and no hundredths (1245.00) feet to a point in the Pierhead line herein established by the Department of Conservation and Economic Development, Division of Planning and Development;

THENCE (2) South 57 degrees 18 minutes 40 seconds West, following said Pierhead Line a distance of One Thousand and no hundredths (1,000.00) feet to a point;

THENCE (3) South 32 degrees 41 minutes 20 seconds East, a distance of One Thousand Two Hundred Forty-five and Eighty-two Hundredths (1245.82) feet to a point in the southerly shore line of the Delaware River;

THENCE (+) Easterly following the said mean high water line to the place and point of beginning.

ALL bearings refer to U. S. Harbor Line Coordinate System established by the U. S. Army Corps of Engineers through parallel 39 degrees 50 minutes North (500,000) with the Meridian 75 degrees 10 minutes West (200,000).



This grant is made with the understanding that the lands herein described and conveyed shall not be used for the purpose of ingress or egress to a lagoon or beyond lying inshore of the aforesaid granted lands until such permission is authorized, and upon payment of such additional compensation and upon such terms as shall be fixed by said Department of Conservation and Economic Development, Department of Planning and Development, or its successors.

This grant is made subject to the limitations that neither the grantee herein nor its successors or assigns shall exclude the tidewaters from the lands above described nor fill in, erect a pier or piers or otherwise improve or develop the same, nor appropriate the said lands under water to its or their own exclusive use, until a permit therefor shall have been issued to them for that purpose. The grantee shall prepare plans and specifications for any intended improvement, filling in, or development of the said lands, and submit same to the Department of Conservation and Economic Development, Division of Planning and Development for its approval, as a prerequisite to the issuance of any such permit.

This grant of riparian lands, until such time as the tidewaters shall be excluded therefrom by filling or other development of the same as herein permitted, is made subject to the usual rights of the public to the use of the waters flowing over the same and to temporarily anchor thereon. This reservation shall cease as to any lands thus improved and shall not be construed to withhold the right in the public to approach, venture upon, or to make use of any such improvement.

Provided, that the State of New Jersey, by its Department of Conservation and Economic Development, Division of Planning and Development, or any other lawful authority, may, from time to time, change the exterior lines for solid filling and for piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary in the interest of Navigation so to do; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Department of Conservation and Economic Development, Division of Planning and Development, or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms as shall be fixed by said Department of Conservation and Economic Development, Division of Planning and Development, or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling or for piers as directed by the said Department of Conservation and Economic Development, Division of Planning and Development, or its successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior lines for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said

Delaware River

And Also Provided, and this grant is made upon the condition and limitation that if the said **SUN OIL COMPANY,** a corporation of the State of New Jersey,

is the owner of any of the upland adjoining the land under tidewater hereby granted, then, and in that event, this conveyance and all the covenants herein on the part of the State shall be void; if the said **SUN OIL COMPANY,** a corporation of the State of New Jersey,

is the owner of a part of the upland adjoining the lands under tidewater hereby granted, then this conveyance, and all covenants herein on the part of both parties shall be void as affecting any part or parts of said land under tidewater which abuts and joins lands so owned.

And Also Provided, that if the exterior line for solid filling (bulkhead line) and the exterior line for piers (pierhead line) or either of said lines, now established, or lines that may be hereafter established by the Department of Conservation and Economic Development, Division of Planning and Development, or other lawful authority, of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, no claim or claims therefor shall be made against the State of New Jersey by reason of such change.

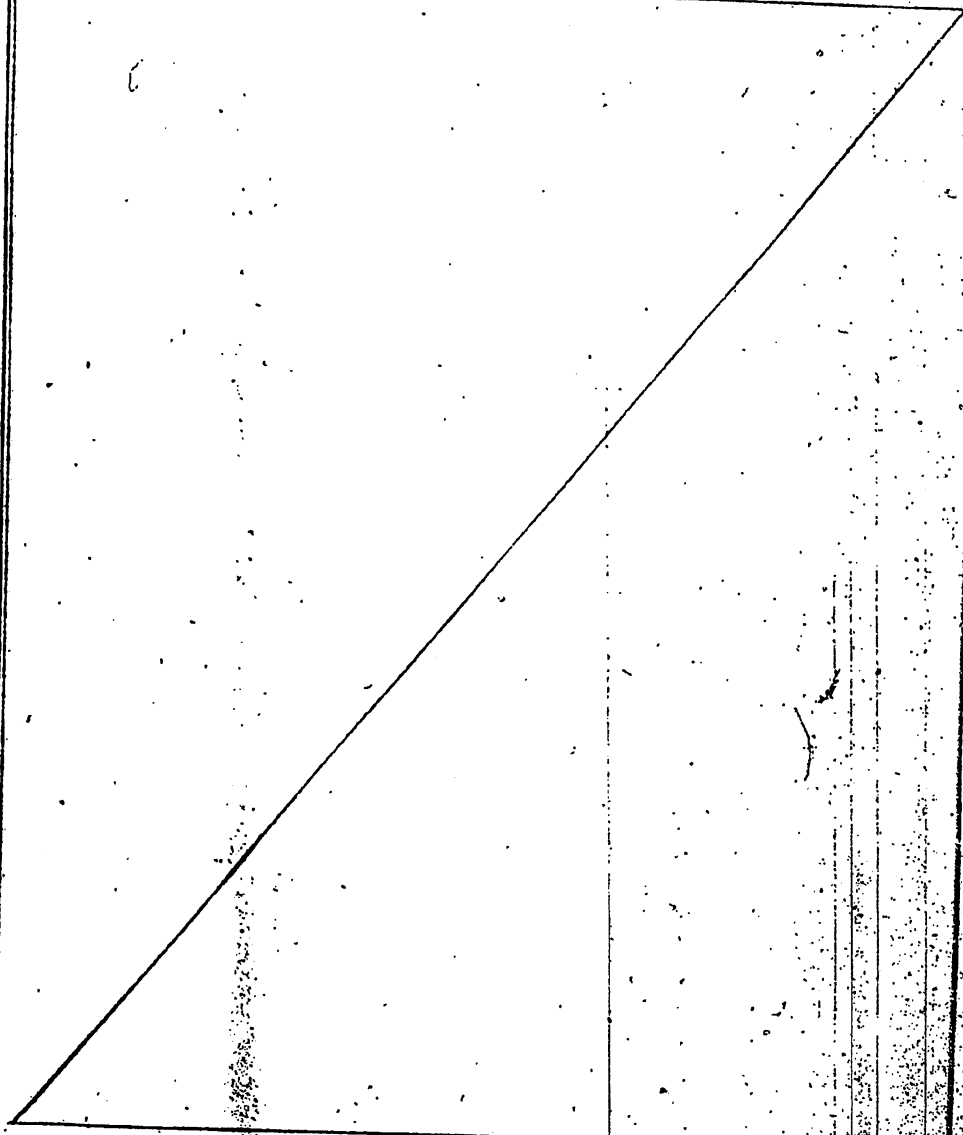
Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid unto the said

SUN OIL COMPANY, a corporation of the State of New Jersey,

its successors

and assigns forever.



In Witness Whereof, the State of New Jersey has caused these presents to be signed by the Governor, the Commissioner of Conservation and Economic Development, the Director of the Division of Planning and Development of the Department of Conservation and Economic Development, and a majority of the Planning and Development Council, and has caused the Great Seal of the State of New Jersey to be hereunto affixed, and has caused these acts to be attested by the Attorney General and the Secretary of State this

day of 1957

SEAL

Robert B. Meyner, Governor

Joseph E. McLaughlin, Commissioner of Conservation and Economic Development

T. J. Laughlin, Director of Planning and Development

Members of the Planning and Development Council:

ATTEST:

Edward J. Patten, Secretary of State

ATTEST:

Grover C. Richman, Jr., Attorney General

STATE OF NEW JERSEY, }
COUNTY OF MERCER } SS;

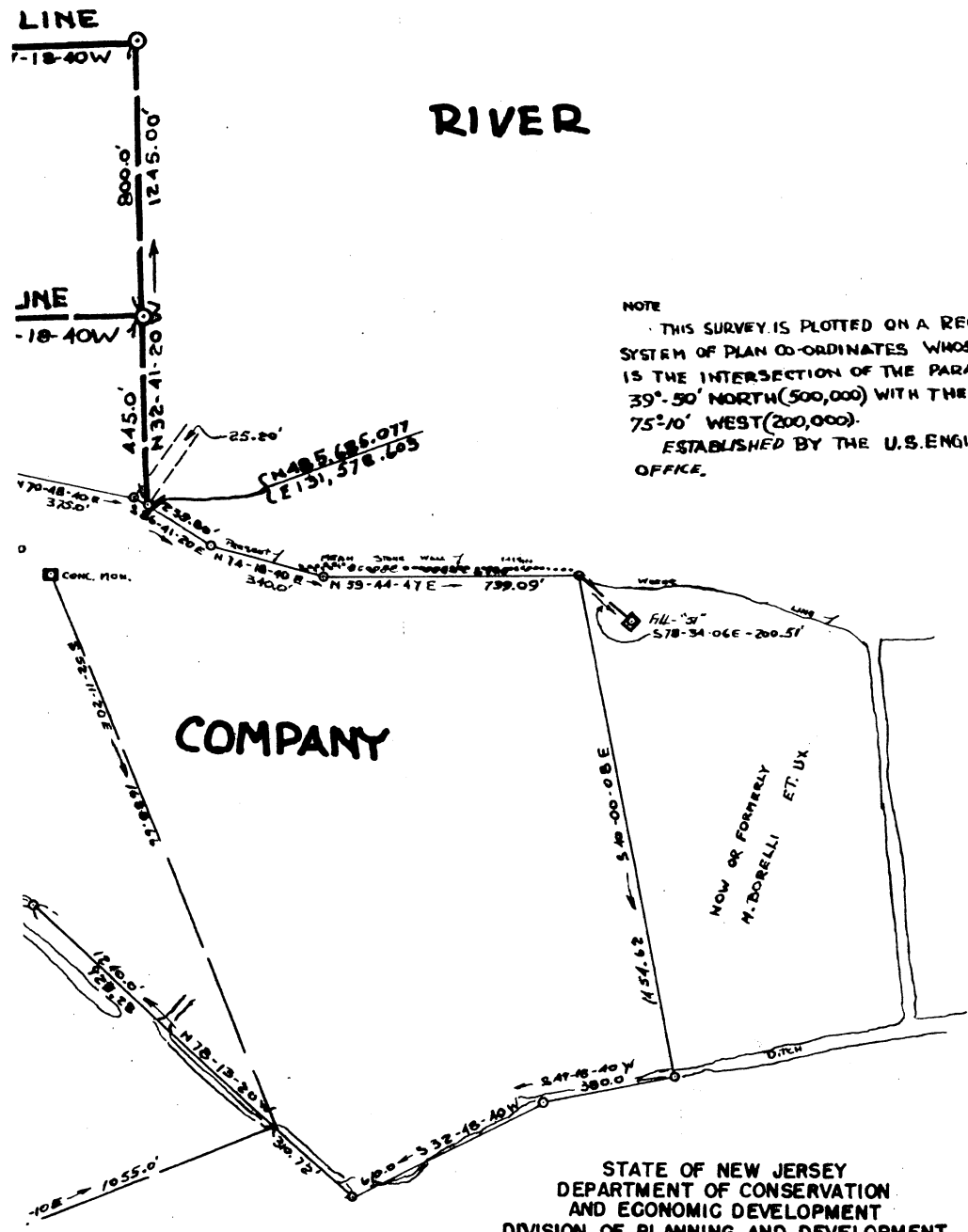
Be it Remembered, that on this _____ day of
Nineteen Hundred and Fifty-~~seven~~ before me, the subscriber, a
of New Jersey, personally appeared **Edward J. Patten**
who being by me duly sworn on his oath, says that he is the Secretary of State of the State of
New Jersey, the grantor named in the foregoing instrument; that he well knows the Great Seal
of the State of New Jersey; that the seal affixed to said instrument is said seal and was therein
affixed by him as his act and deed and as the act and deed of the said grantor; that on the date
of the execution of the said instrument, **Robert B. Meyner**
was the Governor of the State of New Jersey, **Joseph E. McLean**
was the Commissioner of Conservation and Economic Development,
Grover C. Richman, Jr. was the Attorney General, and

were members of the Planning and Development Council and constituted a majority thereof that
he well knows their signatures; and that the said instrument was signed by the Governor, the
Commissioner of Conservation and Economic Development and a majority of the members of the
Planning and Development Council, as their act and deed and as the act and deed of the said
grantor; that said instrument was attested by the Attorney General and by the subscriber.

Sworn and subscribed :
before me at Trenton :
this date aforesaid :

Edward J. Patten
Secretary of State

8928-A



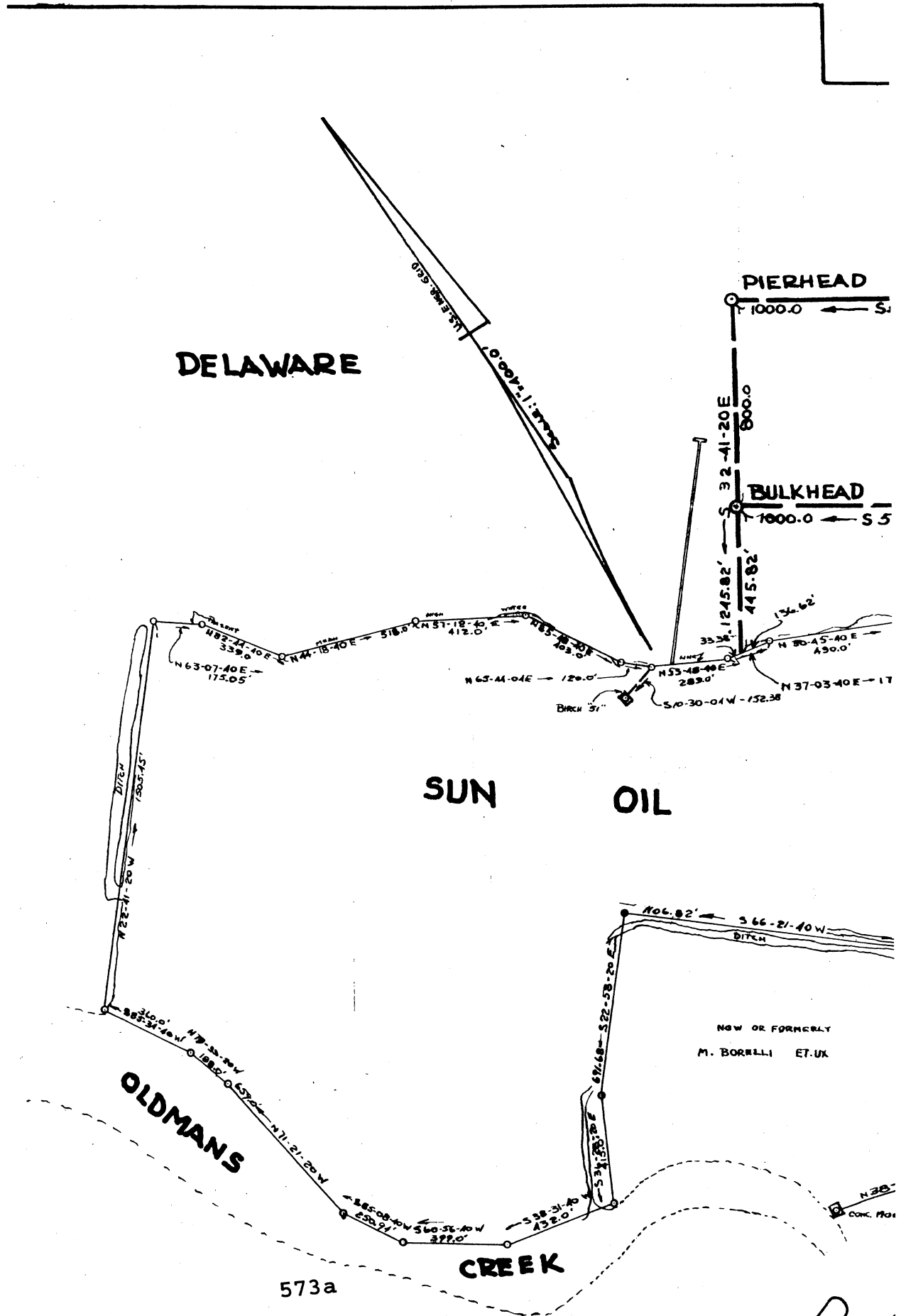
NOTE
THIS SURVEY IS PLOTTED ON A RECTANGULAR SYSTEM OF PLAN CO-ORDINATES WHOSE ORIGIN IS THE INTERSECTION OF THE PARALLEL 39°-50' NORTH (500,000) WITH THE MERIDIAN 75°-10' WEST (200,000). ESTABLISHED BY THE U.S. ENGINEERS OFFICE.

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION
AND ECONOMIC DEVELOPMENT
DIVISION OF PLANNING AND DEVELOPMENT
MAP SHOWING
LANDS UNDER TIDE-WATER SITUATE
IN THE TOWNSHIP OF LOGAN
IN THE COUNTY OF GLOUCESTER
GRANTED TO
SUN OIL COMPANY

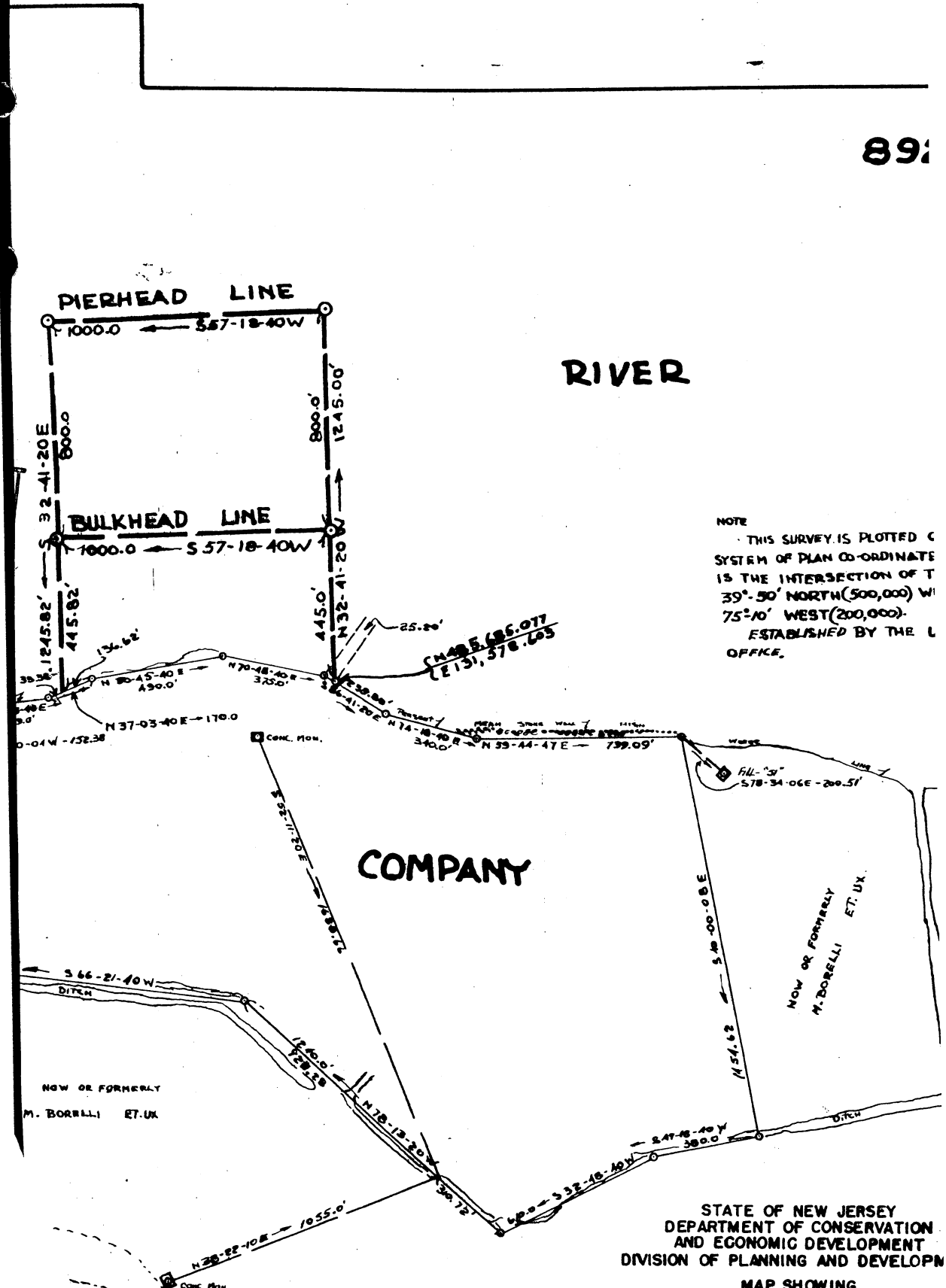
P. J. ...
Chief Navigation Bureau

572a

October 14, 1957



P.C. Brennan



STATE OF NEW JERSEY
 DEPARTMENT OF CONSERVATION
 AND ECONOMIC DEVELOPMENT
 DIVISION OF PLANNING AND DEVELOPMENT

MAP SHOWING
 LANDS UNDER TIDE-WATER SITUATION
 IN THE TOWNSHIP OF LOGAN
 IN THE COUNTY OF GLOUCESTER
 GRANTED TO
 SUN OIL COMPANY

OCTOBER 14, 1957

R. J. ...
 N.J. Engr. Lic. No. 1172 Chief Navigation Bureau

The State of New Jersey

To all to whom these Presents shall come or may concern,
Greetings

Whereas, the State of New Jersey owns the lands under tidewater hereinafter described:

And Whereas, the Division of Planning and Development in the Department of Conservation and Economic Development, as established by Chapter 448, Laws of 1948, succeeded to the powers and duties of the Division of Navigation in the Department of Conservation:

And Whereas, E. I. DuPONT DeNEMOURS and COMPANY, a corporation of the State of Delaware, having its principal office at 1007 Market Street, in the City of Wilmington in the County of New Castle and State of Delaware,

representing itself to be the owner of the lands fronting on

DELAWARE RIVER in the Township of Lower Penns Neck in the County of Salem and State of

New Jersey, which lie above the high-water mark and in front of which the lands hereinafter described are situate, has applied to the Department of Conservation and Economic Development, Division of Planning and Development, for a grant of said lands under water and to have it fix the boundaries thereof and determine the price or compensation to be paid therefor, and the covenants, conditions and limitations of said grant:

And Whereas, a majority of the members of the Planning and Development Council of the Division of Planning and Development having due regard to the interests of navigation and of the State, have approved the grant of the lands under tidewater hereinafter described upon the covenants, conditions and limitations herein set forth, and have fixed the sum of TWO THOUSAND SIX HUNDRED and NO HUNDREDTHS (\$2600.00) DOLLARS

as the price or reasonable compensation to be paid to the State for said lands:

Now, Therefore, the State of New Jersey, acting by and through the Division of Planning and Development in the Department of Conservation and Economic Development, the Governor and the Commissioner of Conservation and Economic Development and a majority of the members of the Planning and Development Council in the Division of Planning and Development approving, in consideration of the premises, the covenants, conditions and limitations herein contained, and of the said sum above set forth duly paid by the grantee to the State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, unto the said

E. I. DuPONT DeNEMOURS and COMPANY, a corporation of the State of Delaware,

and to its successors and assigns forever—ALL those two (2)

tracts of land flowed by tideswaters situate in the Township of Lower Penns Neck in the County of Salem and State of New Jersey,

RECORDED - Apr. 27 - 1968 - 3

fronting on and abutting a portion of the lands acquired by the grantee herein by deed recorded in Salem County in Book of Deeds #153, Pages #445, etc., the several courses and distances of the lands intended to be granted herein as shown on the map attached hereto and made part hereof.

Frontage involved measures 52.00 feet along former Pierhead and Bulkhead Line.

IT IS EXPRESSLY UNDERSTOOD, HOWEVER, that the right to maintain any structures within Tract #2 between the Combined Pierhead and Bulkhead Line adopted August 21, 1916 by the Former Board of Commerce and Navigation and the Modified Pierhead Line herein established by the Department of Conservation and Economic Development, Division of Planning and Development of the State of New Jersey, shall be subject to the regulations of and approval by the Secretary of the Army.

This grant is made with the understanding that the lands herein described and conveyed shall not be used for the purpose of ingress or egress to a lagoon or bayou lying inshore of the aforesaid granted lands until such permission is authorized, and upon payment of such additional compensation and upon such terms as shall be fixed by said Department of Conservation and Economic Development, ^{Division} ~~Department~~ of Planning and Development, or its successors.

This grant is made subject to the limitations that neither the grantee herein nor its successors or assigns shall exclude the tidewaters from the lands above described nor fill in, erect a pier or piers or otherwise improve or develop the same, nor appropriate the said lands under water to its or their own exclusive use, until a permit therefor shall have been issued to them for that purpose. The grantee shall prepare plans and specifications for any intended improvement, filling in, or development of the said lands, and submit same to the Department of Conservation and Economic Development, Division of Planning and Development for its approval, as a prerequisite to the issuance of any such permit.

This grant of riparian lands, until such time as the tidewaters shall be excluded therefrom by filling or other development of the same as herein permitted, is made subject to the natural rights of the public to the use of the waters flowing over the same and to temporarily anchor thereon. This reservation shall cease as to any lands thus improved and shall not be construed to include the right in the public to approach, venture upon, or to make use of any such improvement.

Provided, that the State of New Jersey, by its Department of Conservation and Economic Development, Division of Planning and Development, or any other lawful authority, may, from time to time, change the exterior lines for solid filling and for piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary in the interest of navigation so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Department of Conservation and Economic Development, Division of Planning and Development, or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms as shall be fixed by said Department of Conservation and Economic Development, Division of Planning and Development, or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling or for piers as directed by the said Department of Conservation and Economic Development, Division of Planning and Development, or its successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said

DELAWARE RIVER,

And Also Provided, that if the exterior line for solid filling (bulkhead line) and the exterior line for piers (pierhead line) or either of said lines, now established, or lines that may be hereafter established by the Department of Conservation and Economic Development, Division of Planning and Development, or other lawful authority, of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, no claim or claims therefor shall be made against the State of New Jersey by reason of such change.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid unto the said

E. I. DUPONT DENEMOURS and COMPANY, a corporation of the State of Delaware,

E. I. DUPONT DENEMOURS and COMPANY, a corporation of the State of Delaware,

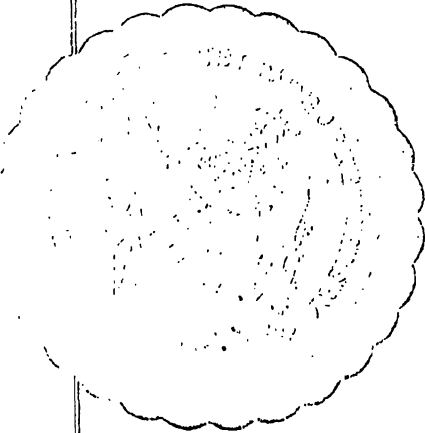
And Also Prohibited, that if the exterior line for solid filling (bulkhead line) and the exterior line for piers (pierhead line) or either of said lines, now established, or lines that may be hereafter established by the Department of Conservation and Economic Development, Division of Planning and Development, or other lawful authority, of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, no claim or claims therefor shall be made against the State of New Jersey by reason of such change.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid unto the said

*E. I. DuPONT DeNEMOURS and COMPANY, a corporation of the State of Delaware,
its successors and assigns forever.*

In Witness Whereof, the State of New Jersey has caused these presents to be signed by the Governor, the Commissioner of Conservation and Economic Development, the Director of the Division of Planning and Development of the Department of Conservation and Economic Development, and a majority of the Planning and Development Council, and has caused the Great Seal of the State of New Jersey to be hereunto affixed, and has caused these acts to be attested by the Attorney General and the Secretary of State this 31st day of March 1960.



Robert B. Meyner
ROBERT B. MEYNER
Governor

Salvatore A. Bontempo
Commissioner of
Conservation and Economic Development.
SALVATORE A. BONTEMPO

Kenneth H. Creveling
Director of
Planning and Development
KENNETH H. CREVELING

Members of the Planning and
Development Council:

Eugene L. Lora
Eugene L. Lora

O. V. Swisher
O. V. Swisher

W. E. Waters
W. E. Waters

Roland de Wilde
Roland de Wilde

Edward C. Rosa
Edward C. Rosa

Mark Anton
Mark Anton

Jack M. Kane
Jack M. Kane

ATTEST:
Edward J. Patten
Secretary of State
EDWARD J. PATTEN

ATTEST:
David D. Furman
Attorney General
DAVID D. FURMAN

STATE OF NEW JERSEY, }
COUNTY OF MERCER } ss:

Be it Remembered, that on this *first* day of *April*,
Nineteen Hundred and Fifty-Sixty before me, the subscriber, a Notary Public
of New Jersey, personally appeared Edward J. Patten
who being by me duly sworn on his oath, says that he is the Secretary of State of the State of New
Jersey, the grantor named in the foregoing instrument; that he well knows the Great Seal of the State
of New Jersey; that the seal affixed to said instrument is said seal and was thereto affixed by him as his
act and deed and as the act and deed of the said grantor; that on the date of the execution of the
said instrument, Robert B. Meyner
was the Governor of the State of New Jersey, Salvatore A. Bontempo
was the Commissioner of Conservation and Economic Development,
David D. Furman was the Attorney General, and Eugene L. Lora,
O. V. Swisher, W.E. Waters, Roland de Wilde, Edward C. Rose,
Mark Anton and Jack M. Kane.

were members of the Planning and Development Council and constituted a majority thereof; that he
well knows their signatures; and that the said instrument was signed by the Governor, the Commissioner
of Conservation and Economic Development and a majority of the members of the Planning and
Development Council, as their act and deed and as the act and deed of the said grantor; that said
instrument was attested by the Attorney General and by the subscriber.

Sworn and subscribed
before me at Trenton
the date aforesaid

L. B. Atkins

L. B. ATKINS
NOTARY PUBLIC OF N. J.
My Commission Expires Oct. 31, 1961

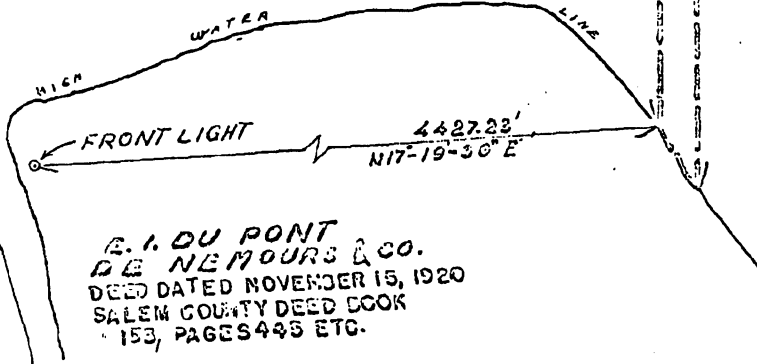
Edward J. Patten
Secretary of State
Edward J. Patten

DELAWARE RIVER

PIERHEAD AND BULKHEAD LINE
 ADOPTED AUGUST 21, 1910 BY THE
 FORMER BOARD OF COMMERCE AND
 NAVIGATION OF THE STATE OF NEW JERSEY

MODIFIED PIERHEAD
 LINE

SCALE 1:200
 T.M.



ATLANTIC CITY
 ELECTRIC CO.

E. I. DU PONT
 DE NEMOURS & CO.
 DEED DATED NOVEMBER 15, 1920
 SALEM COUNTY DEED BOOK
 153, PAGES 449 ETC.

STATE OF NEW JERSEY
 DEPARTMENT OF CONSERVATION
 AND ECONOMIC DEVELOPMENT
 DIVISION OF PLANNING AND DEVELOPMENT

MAP SHOWING
 LANDS UNDER TIDE-WATER SITUATE
 IN THE TOWNSHIP OF LONER PENINS
 NECK, IN THE COUNTY OF SALEM
 GRANTED TO

E. I. DU PONT DE NEMOURS
 AND COMPANY

MARCH 31, 1960

DRAWN BY A. SKUCAS N. J. ENGR. LIC. NO. 2565
 APPROVED BY C. FREEMAN N. J. ENGR. LIC. NO. 2565

N. J. ENGR. LIC. NO. 117 Chief Navigation Bureau

28

The State of New Jersey:

To all to whom these Presents shall come or may concern,
Greeting:

Whereas, the State of New Jersey owns the lands ~~now owned~~ under tidewater hereinafter described:

And Whereas, the Division of Resource Development in the Department of Conservation and Economic Development, as established by Chapter 448, Laws of 1948, as amended, succeeded to the powers and duties of the Division of Navigation in the Department of Conservation:

And Whereas, E. I. DU PONT DE NEMOURS AND COMPANY, a corporation of the State of Delaware having its principal office at 1007 Market Street in the City of Wilmington in the County of New Castle and State of Delaware

representing itself to be the owner of the lands fronting on Delaware River in the Township of Lower Penns Neck in the County of Salem and State of New Jersey, which lie above the high-water mark and in front of which the lands hereinafter described are situate, has applied to the Department of Conservation and Economic Development, Division of Resource Development, for a grant of said lands ~~now owned~~ under water and to have it fix the boundaries thereof and determine the price or compensation to be paid therefor, and the covenants, conditions and limitations of said grant:

And Whereas, a majority of the members of the Resource Development Council of the Division of Resource Development having due regard to the interests of navigation and of the State, have approved the grant of the lands now or formerly under tidewater hereinafter described upon the covenants, conditions and limitations herein set forth, and have fixed the sum of ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE and NO HUNDREDTHS DOLLARS (\$1,875.00) as the price or reasonable compensation to be paid to the State for said lands:

Now, Therefore, the State of New Jersey, acting by and through the Division of Resource Development in the Department of Conservation and Economic Development, the Governor and the Commissioner of Conservation and Economic Development and a majority of the members of the Resource Development Council in the Division of Resource Development approving, in consideration of the premises, the covenants, conditions and limitations herein contained, and of the said sum above set forth duly paid by the grantees to the State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey, unto the said E. I. DU PONT DE NEMOURS AND COMPANY a corporation of the State of Delaware

and to its successors and assigns forever—ALL that tract

40
(30)

44A + 45A APPENDIX 5

81

of land flowed by tidewaters situate in the Township of Lower Penna Neck in the County of Salem and State of New Jersey, fronting on and abutting lands acquired by the grantee herein by deed dated November 15, 1920 and recorded in Salem County in Book of Deeds #153 Pages #445 etc., and extending to the Pierhead and Bulkhead line herein established, in Delaware River the several courses and distances of the lands intended to be granted herein as shown within the dash lines on the map attached hereto and made part hereof.

FRONTAGE involved measures approximately 25.00 feet along the Pierhead and Bulkhead Line herein established.

This grant is made with the understanding that the lands herein described and conveyed shall not be used for the purpose of ingress in or egress from a lagoon or bayou lying inshore of the aforesaid granted lands ~~with this understanding~~ as shown on the map attached hereto and made part hereof until such permission is authorized, and upon payment of such additional compensation and upon such other terms as shall be fixed by said Department of Conservation and Economic Development, Division of Resource Development, or its successors.

This grant is made subject to the limitations that neither the grantee herein nor its successors or assigns shall exclude the tidewaters from the lands above described nor fill in, erect a pier or piers or otherwise improve or develop the same, nor appropriate the said lands ~~under water to~~ its own exclusive use, until a permit therefor shall have been issued to it for that purpose. The grantee shall prepare plans and specifications for any intended improvement, filling in, or development of the said lands, and submit same to the Department of Conservation and Economic Development, Division of Resource Development, for its approval, as a prerequisite to the issuance of any such permit.

This grant of riparian lands, until such time as the tidewaters shall be excluded therefrom by filling or other development of the same as herein permitted, is made subject to the natural rights of the public to the use of the waters flowing over the same and to temporarily anchor thereon. This reservation shall cease as to any lands thus improved and shall not be construed to include the right in the public to approach, venture upon, or to make use of any such improvement.

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Provided, that the State of New Jersey, by its Department of Conservation, and Economic Development, Division of Resource Development, or any other lawful authority, may, from time to time, change the exterior lines for solid filling and for piers, and fix the same further from the shore than formerly, even though such action may affect the lands hereby granted, whenever the State may deem it necessary in the interest of navigation so to do; and if such exterior lines shall be placed out farther from the shore than formerly, then the party or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Department of Conservation and Economic Development, Division of Resource Development, or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms as shall be fixed by said Department of Conservation and Economic Development, Division of Resource Development, or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling or for piers as directed by the said Department of Conservation and Economic Development, Division of Resource Development, or its successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Delaware River.

And Also Provided, that this grant is made upon the condition and limitation: that if the said **E. I. DU PONT DE NEMOURS AND COMPANY, a corporation of the State of Delaware**

is not the owner of any parts of the upland adjoining the land ~~herein~~ under tidewater hereby granted on the date of issuance of this grant, then and in that event, this grant and all of the covenants herein on the part of the State shall be void to the extent that the said **E. I. DU PONT DE NEMOURS AND COMPANY, a corporation of the State of Delaware**

is not the owner of such parts of said upland on said date.

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And Also Provided, that if the exterior line for solid filling (bulkhead line) and the exterior line for piers (pierhead line) or either of said lines, now established, or lines that may be hereafter established by the Department of Conservation and Economic Development, Division of Resource Development, or other lawful authority, of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States Government, no claim or claims therefor shall be made against the State of New Jersey by reason of such change.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands ~~XXXXXXXXXX~~ under water and premises, subject to the terms, conditions and limitations aforesaid unto the said **E. I. DU PONT DE NEMOURS AND COMPANY, a corporation of the State of Delaware** its successors and assigns forever.

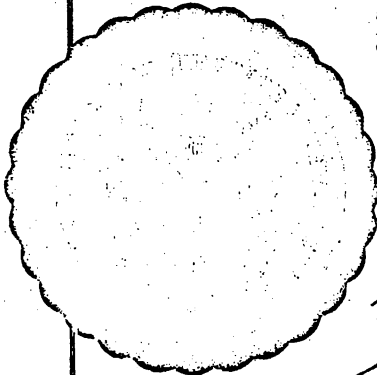
585a

66-112

C. S. DePoot De Nemours Company

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In Witness Whereof, the State of New Jersey has caused these presents to be signed by the Governor, the Commissioner of Conservation and Economic Development, the Director of the Division of Resource Development of the Department of Conservation and Economic Development, and a majority of the Resource Development Council, and has caused the Great Seal of the State of New Jersey to be hereunto affixed, and has caused these acts to be attested by the Attorney General and the Secretary of State this 29th day of September 1967.



[Signature]
Governor

RICHARD J. HUGHES,

[Signature]
Commissioner of Conservation and Economic Development

ROBERT A. ROE,

[Signature]
Director of Resource Development

KENNETH H. CREVELING,

Members of the Resource Development Council:

[Signature]
O. V. Swisher

[Signature]
S. P. Smoyer

[Signature]
William E. O'Leary

[Signature]
Mark Anton

[Signature]
Henry I. Wietama

[Signature]
J. Nevins McBride

[Signature]
Martin Weiner

ATTEST:

[Signature]

ROBERT J. BURKHARDT,
Secretary of State

ATTEST:

[Signature]
Attorney General

ARTHUR J. SILLS,

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NR


STATE OF NEW JERSEY, }
COUNTY OF MERCER } ss:


B

Be it Remembered, that on this 29th day of Sept.,
Nineteen Hundred and Sixty-~~Six~~^{Seven} before me, the subscriber, a Notary Public
of New Jersey, personally appeared **Robert J. Burkhardt**
who being by me duly sworn on his oath, says that he is the Secretary of State of the State of New
Jersey, the grantor named in the foregoing instrument; that he well knows the Great Seal of the State
of New Jersey; that the seal affixed to said instrument is said seal and was thereto affixed by him as his
act and deed and as the act and deed of the said grantor; that on the date of the execution of the
said instrument, **Richard J. Hughes**
was the Governor of the State of New Jersey, **Robert A. Roe**
was the Commissioner of Conservation and Economic Development,
Arthur J. Sills was the Attorney General, and **O. V. Swisher,**
S. C. Smoyer, William E. O'Leary, Mark Anton, Henry F. Wietsma,
J. Nevins McBride, and Martin Weiner,

were members of the Resource Development Council and constituted a majority thereof; that he
well knows their signatures; and that the said instrument was signed by the Governor, the Commissioner
of Conservation and Economic Development and a majority of the members of the Resource Develop-
ment Council, as their act and deed and as the act and deed of the said grantor; that said instrument
was attested by the Attorney General and by the subscriber.

Sworn and subscribed
before me at Trenton
the date aforesaid


FRANK J. CAHILL
NOTARY PUBLIC OF N. J.
My Commission Expires May 28, 1969


Secretary of State
ROBERT J. BURKHARDT

DELAWARE RIVER

SCALE 1" = 200' T.M.

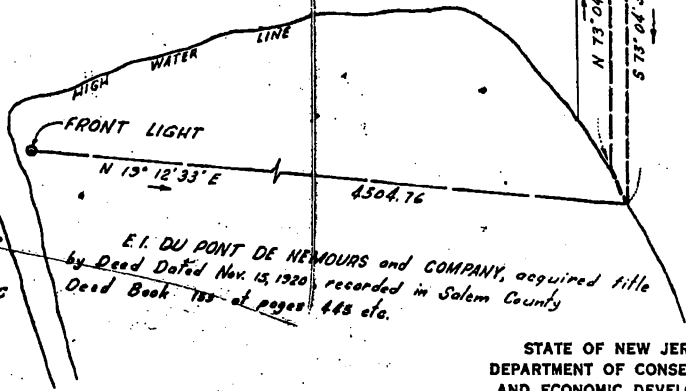
PIERHEAD and MODIFIED PIERHEAD LINE
BULKHEAD LINE

NOTE:
Pierhead and Bulkhead Line, adopted August 21, 1916 by the former Board of Commerce and Navigation of the State of New Jersey

NOTE 'A'
Granted to E.I. DU PONT DE NEMOURS and COMPANY, dated March 31, 1960 and recorded in Bureau of Navigation in Liber 5-A of Folio 127 etc.

DELAWARE MEMORIAL BRIDGE

ATLANTIC CITY ELECTRIC CO.



SEE NOTE 'A'
N 73° 04' 39\"/>

STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION
AND ECONOMIC DEVELOPMENT
DIVISION OF RESOURCE DEVELOPMENT

MAP SHOWING
LANDS UNDER TIDE-WATER SITUATE
IN THE TOWNSHIP OF LOWER PENNS NECK
IN THE COUNTY OF SALEM
GRANTED TO:

E. I. DU PONT DE NEMOURS and COMPANY,
corporation of the State of Delaware
Sept. 29, 1967

P. J. ...

N. J. ENGR. LIC. NO. 117 Chief Navigation Bureau

COMPUTED & DRAWN BY E. Grybanets N. J. ENGR. LIC. NO. ...
CHECKED AND APPROVED A. Scappafuola N. J. ENGR. LIC. NO. ...

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FILE NO. 91-0190-T
Delivered 6-16-92
Mailed 6-16-92

THE STATE OF NEW JERSEY

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,
GREETINGS:

WHEREAS, THE STATE OF NEW JERSEY through the Tidelands Resource Council, in the Department of Environmental Protection and Energy, ("the Lessor") owns the lands presently flowed by the tidewaters of the Delaware River described in Exhibit A and depicted on Exhibit B as within the dash lines ("the Tidelands");

AND WHEREAS, KEYSTONE URBAN RENEWAL LIMITED PARTNERSHIP, a limited partnership organized under the laws of the State of Delaware, and its Lessee KEYSTONE ENERGY SERVICE COMPANY, L.P., a Limited Partnership organized under the laws of the State of Delaware, both having an office at 7475 Wisconsin Avenue, Suite 1000, Bethesda, Maryland 20814 ("the Lessees")

represent that Sun Oil Company, Inc., a Pennsylvania Corporation is the owner of lands abutting the tidelands and that Sun Oil Company, Inc., has by letter dated August 5, 1991 (a copy of which is annexed hereto as EXHIBIT C) waived all rights it may have as an upland owner regarding the issuance of this lease, which letter remains binding upon Sun Oil Company, Inc.;

AND WHEREAS, the Lessees have applied to the Council for the thirty-five (35) year lease of the Tidelands in the Delaware River, in the Township of Logan, in the County of Gloucester and State of New Jersey, located outshore of Lots 2.00 and 2.01, Block 1 for the use and maintenance of a barge facility consisting of a platform, dolphins and a water intake structure in the Delaware River (designated hereinafter as "the Facility");

AND WHEREAS, a majority of the members of the Council, and the authorized State officials, having due regard for the public interest of the State, have approved the lease of the Tidelands, upon the covenants, conditions and limitations hereinafter set forth;

(41) 49a Appendix 5

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NOW THEREFORE, the Lessor, acting by and through the Council, the Governor and the Commissioner of Environmental Protection and Energy and the Lessees, in consideration of the premises and the rents, covenants, conditions and limitations herein contained, do hereby agree as follows:

(1) The Lessor hereby leases for a period of thirty-five (35) years commencing on December 5, 1991 and ending on December 5, 2026, to the Lessees the Tidelands with all rights and privileges appertaining thereto, including the right of quiet enjoyment;

(2) (a) Lessee shall pay each installment of the annual rent on or before the anniversary date of this Lease. The rent to be paid by Lessees shall be in the amount of \$9,200.00 per year for the first five (5) years. Thereafter, the rent shall be determined as follows, provided, however, that in no event shall the rent be less than the rent charged the previous year:

(2) (b) On the five (5) year, ten (10) year, fifteen (15) year, twenty (20) year, twenty-five (25) year and thirty (30) year anniversaries of this lease, the annual rent shall be adjusted to an amount equal to ten percent (10%) of the actual fair market value of the Tidelands being leased. In determining this value, the parties shall use the same methodology used by the parties in valuing the rental for the first five (5) years of the lease. A statement of this methodology is annexed as Exhibit D;

(2) (c) The parties shall attempt to ascertain the updated fair market value and the consequent annual rental by mutual agreement on or before six (6) months before the five (5) year, ten (10) year, fifteen (15) year, twenty (20) year, twenty-five (25) year and thirty (30) year anniversaries of this lease, as applicable;

(2) (d) If the parties cannot agree by the applicable date, they shall, within fifteen (15) days of that date, each designate a real estate appraiser who is either M.A.I. qualified, or certified by the State of New Jersey as being qualified to appraise non-residential property. If the designated real estate

appraisers cannot agree on the fair market value within thirty (30) days thereafter, they shall, within fifteen (15) days thereafter, designate a third real estate appraiser, impartial between them. The written decision of the majority of the appraisers of the fair market value of the land being leased in accordance with the methodology set forth in Exhibit C shall be rendered within sixty (60) days of the date of the designation of the third appraiser, and shall be final for the applicable next term of five (5) years;

(2) (e) If either or both parties fail to appoint appraisers, or if the appraisers fail to jointly appoint a third real estate appraiser by the applicable date, then either party shall have the right to apply to the Superior Court of New Jersey, Chancery Division, Gloucester County, for the court to designate such appraiser or for other relief. The written decision of the majority of the appraisers shall be rendered within sixty (60) days of the appointment of the third appraiser, and shall be final for the applicable next term of five (5) years;

(2) (f) All of the Lessor's reasonable expenses in the above procedure, including those involved in retaining an appraiser and in designating or having designated a third real estate appraiser, and the expenses related thereto, and further all of the Lessor's reasonable expenses involved in any litigation under paragraph (2) (e) of this lease, shall be paid by the Lessees. Further, all of the expenses involved in any litigation under this lease in which the Lessor is successful shall be paid by the Lessees;

(2) (g) All rents due under this lease shall be paid in annual installments in advance on or before the anniversary date of this lease. Rental checks shall be made payable to the Treasurer of the State of New Jersey, and shall be delivered as set forth in paragraph (14) of this lease.

(2) (h) The Lessees have obtained from the State of New Jersey an interim license to use the Tidelands for one year beginning December 5, 1991. The consideration of \$9,200.00 was paid under the interim license and shall be a credit to the amount

due under this lease. Upon the delivery of this lease to the lessees, the interim license shall automatically terminate.

(3) (a) The term and any and all covenants, conditions and limitations contained herein are subject to the Public Trust. Any and all use, improvement and development of whatever kind made of the Tidelands during the lease term shall not harm or cause detriment to the environment in the reasonable opinion of the Council with the approval of the Commissioner of the Department of Environmental Protection and Energy. Any use, improvement or development of the Tidelands in accordance with Paragraph (4) (a) of this Lease shall not be deemed to harm or cause detriment to the environment.

(3) (b) If any use, improvement or development of the Tidelands shall harm or cause detriment to the environment, then and in that event, the Council, with the approval of the Commissioner of the Department of Environmental Protection and Energy, may assert a default under this lease. The Council, or the Department of Environmental Protection and Energy, Tidelands Management Program, shall notify the Lessees of a default in accordance with paragraph (14) of this lease.

(3) (c) The Lessees shall have not more than ten (10) days from the date that written notice is received from the Council asserting that Lessees' use, improvement or development of the Tidelands is causing damage to the environment to cure the asserted damage to the environment, provided however, that if this damage cannot, in the exercise of due diligence, be cured within the initial maximum ten (10) day period, and the Lessees have commenced the curing of the damage within the initial maximum ten (10) day period, and further thereafter have diligently engaged in curing the damage, the Lessees shall have such additional periods of time as are reasonably necessary to cure the damage.

(3) (d) If the Lessees do not cure the asserted damage to the environment, or do not begin to do so as allowed by the preceding subparagraph, the Council, with the approval of the Commissioner of the Department of Environmental Protection and

Energy, may elect to terminate this lease. The termination shall be effective upon the mailing of a notice of termination as provided in paragraph (14). The exercise of any rights under this lease shall not constitute a waiver of any other rights the State of New Jersey or any of its subdivisions may have as a result of any damage to the environment.

(4) (a) The Lessees shall have the right to improve, develop and build the Facility upon the Tidelands in accordance with applicable State and municipal law and in accordance with the conditions herein. Approval of this lease does not constitute approval of any required State or local permits. Any improvements made to the Tidelands shall run to the exclusive benefit of the Lessees and the Leasehold Mortgagees (as defined in paragraph (12)(b)) for the full term of the lease. Upon the termination of the lease, the Council may elect to accept full ownership of any improvements and fixtures on the Tidelands, or the Council may require the Lessees to remove some or all of the improvements and fixtures and to restore the Tidelands at the Lessees' sole cost and expense to the reasonable satisfaction of the Council. The Council may require the Lessees to cure any asserted damage to the environment at their sole cost and expense.

(4) (b) The Lessees shall at all times maintain any improvements on the Tidelands in good repair.

(4) (c) The Lessees shall have the right to apply to the State of New Jersey for a renewal of a lease of the Tidelands. The Lessees understand that the approval of any lease and all of its terms is within the complete discretion of the State of New Jersey.

(5) This lease is subject to the right of the public to use the Tidelands and to temporarily anchor thereon subject to the reasonable rules of the Lessees for safety purposes.

(6) (a) The Lessees, in addition to the annual rental payments, covenant to carry comprehensive contingent liability insurance on the Tidelands for the entire term of the lease written by a reliable insurance company authorized to do business in New Jersey. The policy shall insure the Lessor and the Lessees, as

their respective interests may appear. The coverage shall total not less than a combined single limit policy insuring against injury to persons and/or damage to property in an amount not less than \$1,000,000.00

(6) (b) The Lessees shall provide the Lessor with proof of annual payment in full of the coverages specified in paragraph 6(a) within 30 days after the date of this Lease, and thereafter no later than the time of the payment of the annual rent, together with a certificate of the insurer or its authorized representative certifying that the insurance specified in such certificate is in full force and effect. The Council, with the approval of the Commissioner of the Department of Environmental Protection and Energy may reject the policies or the carriers. If it does so, the Lessor shall obtain appropriate coverage from another carrier promptly.

(6) (c) The policy amounts set forth by paragraph (6) (a) may be increased by the Council, but in no event shall the amounts be increased by a greater amount than that reflected by the increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers Philadelphia-New Jersey, or in a similar index.

(7) (a) The State of New Jersey or the United States Government may from time to time change the pierhead line or channel lines and fix the same further from or closer to the upland, even though such action may affect the Tidelands hereby leased, whenever they deem it necessary in the interests of navigation to do so, and no claim may be made against the State of New Jersey by reason of any such changes, provided, however, that no such change by the State of New Jersey shall impair or restrict the construction or use of, or require the relocation of any planned or existing improvement or development of the leased Tidelands in accordance with paragraph (4)(a) of this Lease.

(7) (b) The parties hereto recognize that the United States is not a party to this Lease, and is not bound thereby. Therefore, nothing in this Lease shall be deemed to operate as a

waiver of the Lessees' right to challenge any such action by the United States;

(8) Nothing in this lease shall be construed to limit the State in leasing any lands under tidal waters for shellfishing purposes as permitted by law;

(9) Except for environmental harm or damage matters, which are governed by paragraph (3) above, in the event of any default of the restrictions or covenants in this lease, including the covenant as to the payment of rent (paragraphs (2) (a) and (11)) or of the covenant to carry insurance (paragraphs 6 and 11), or of the covenant to maintain improvements in good repair (paragraph (4) (b) by the Lessees, the Council shall notify the Lessees and the Leasehold Mortgagees in accordance with paragraph (14). If the default continues beyond

- (a) fifteen (15) days thereafter, or
- (b) an additional reasonable period of time necessary to cure the default if Lessees have commenced the curing of the default within such fifteen (15) day period and have diligently engaged in curing the default,

then, at the election of the Council, this lease shall be void, a forfeiture shall be declared and the Lessor shall be deemed to have reentered the Tidelands. Ownership of any improvements on the Tidelands shall, in that event, immediately revert to the Lessor or at its option, the Council may require the Lessees to restore the Tidelands to the original condition that existed prior to any development being undertaken thereon.

(10) The Lessees hereby covenant to pay to the Lessor the rent set forth in paragraph (2) (a) and to pay the insurance premiums called for in paragraph (6) on or before the date and time any payment is due.

(11) The Lessees shall not be considered to be in default if an involuntary petition of bankruptcy or receivership is filed, or if there is a taking of possession of its property or assets under any governmental authority, provided that within sixty

(60) days from the filing of a petition or the taking of possession, the Lessees shall file suit or answer to cause the dismissal or removal of such action or actions and shall at all times otherwise remain in compliance with the terms of this Lease. In the event that the Lessee shall file voluntarily for bankruptcy, this lease shall immediately terminate but without any diminution in the rent already paid;

(12)(a) Except as hereinafter provided the Lessees shall not have the right to assign this lease in whole or in part without first obtaining the approval in writing of the Administrator of the New Jersey State Tidelands Management Program in the Department of Environmental Protection and Energy or his successors in office. This approval shall not be unreasonably withheld. No approval shall be deemed to consent to any subsequent assignment;

(12)(b) Notwithstanding the provisions of Paragraph (12)(a) hereof, Lessees shall have the right to

(1) encumber the leasehold estate created hereby with one or more leasehold mortgages (individually, a "Leasehold Mortgage") to any commercial bank, savings and loan association, trust company, savings bank, credit union, pension fund, insurance company, real estate investment trust, or other institutional investor ("Leasehold Mortgagee"), including, but not limited to,

(i) the lien granted in favor of Union Bank of Switzerland, as Administrative Agent for the Banks ("UBS"), under that certain Fee and Leasehold Mortgage and Assignment of rents by the Lessees,

(ii) the lien granted in favor of U.S. Concord, Inc., as Agent for the Subordinated Lenders ("U.S. Concord"), under that certain Fee and Leasehold Mortgage and Assignment of Rents by the Lessees and

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(iii) the lien granted in favor of Atlantic City Electric Company ("Atlantic Electric") under that certain Mortgage, Security Agreement, Assignment of Lease and Rents, Financing Statement and Fixture Filing between Keystone Urban Renewal Limited Partnership and Atlantic Electric and that certain Leasehold Mortgage, Security Agreement, Assignment of Rents, Financing Statement and Fixture Filing between Keystone Energy Service Company, L.P. and Atlantic Electric, and

(iv) any extension resetting of payment terms or other modification or amendment to the above,

and (2) assign this Lease as security for such mortgage or mortgages without the further consent of the State of New Jersey. Furthermore, the State of New Jersey hereby consents to the further assignment of this Lease or leasehold mortgages for financing purposes.

(12)(c) If Lessees mortgage their leasehold estate in accordance with Paragraph (12)(b), then the provisions of paragraphs (i) through (vi) of this Section shall apply with respect to the Leasehold Mortgage following receipt by the State of New Jersey of written notice from Lessees of the name and address of the Leasehold Mortgagee. In the event of any assignment of the Leasehold Mortgage, or in the event of a change of address of the Leasehold Mortgagee or an assignee of the Leasehold Mortgagee, written notice of the new name or address shall also be provided to the State of New Jersey before paragraphs (i) through (vi) shall be applicable to the assignee. The State of New Jersey shall promptly acknowledge in writing receipt of any written notice pursuant to this Paragraph (12)(c) if requested to do so. The request shall cite this paragraph of this Lease as

authority for the request. The State of New Jersey hereby acknowledges receipt of notice of the name and address as Leasehold Mortgagees of the following entities:

Union Bank of Switzerland
299 Park Avenue
New York, New York 10171
Attn: Paul Naumann

U.S. Concord, Inc
40 Richards Avenue
Norwalk, CT 06856
Attn: Richard Gray

Atlantic City Electric Company
1199 Black Horse Pike
Pleasantville, NJ 08232
Attn: Manager, Contract Capacity

(i) No cancellation, surrender or modification of this Lease by the Lessees herein shall be effective as to the Leasehold Mortgagee unless consented to in writing by the Leasehold Mortgagee.

(ii) The State of New Jersey, upon providing Lessees any notice of default, or any notice of termination of this Lease, shall simultaneously provide a copy of such notice to the Leasehold Mortgagees. No such notice by the State of New Jersey to Lessees shall be deemed to have been duly given unless and until a copy thereof has been sent to the Leasehold Mortgagees. After such notice has been given to the Leasehold Mortgagees, the Leasehold Mortgagee shall have the same period to remedy any default as Lessees have, plus an additional thirty (30) days. If the default shall be cured, this Lease shall continue in full force and effect

as if Lessees had not defaulted under this Lease.

(iii) Notices from the State of New Jersey to the Leasehold Mortgagee shall be sent to the address furnished the State of New Jersey pursuant to this paragraph 12(c), and those from the Leasehold Mortgagee to the State of New Jersey shall be sent to the address designated pursuant to the provisions of Paragraph (14) hereof. All such notices shall be given in the manner described in Paragraph (14) and shall in all respects be governed by the provisions of that Paragraph.

(iv) Upon the acquisition of Lessees's leasehold by the Leasehold Mortgagee or any other purchaser resulting from the exercise of any remedies contained in any financing document, either voluntarily or involuntarily as a result of a foreclosure sale, by deed in lieu of foreclosure or otherwise, this Lease shall continue in full force and effect as to Lessees's successor-in-interest as if Lessees had not defaulted under this Lease.

(v) The making of the Leasehold Mortgage shall not be deemed to constitute an assignment of this Lease so as to require the Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Lessees to be performed hereunder, but the purchaser at any foreclosure sale of this Lease, or the assignee of this Lease under any instrument of assignment in lieu of foreclosure, shall be deemed to have agreed to perform all the terms, covenants and conditions on the part of Lessees to be performed hereunder from and after the date of such purchase or assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate created by this Lease.

(vi) Nothing contained herein shall require any Leasehold Mortgagee to cure any default of Lessees under this Lease nor shall any Leasehold Mortgagee be liable therefor.

(13) All of the rights, covenants, conditions, limitations and obligations in this lease shall run with the land, and shall be binding upon, and inure to the benefit of the Lessees and the Lessor and upon their respective heirs, successors, executors, representatives or assigns, jointly and severally. All references in this lease to the Lessees shall be read to include the Lessees, their heirs, successors, executors, representatives or assigns, jointly and severally. All references in this lease to the Lessor shall be read to include the Lessor, its successors, executors, representatives, and assigns, and any of their heirs, successors, executors, representatives and assigns, jointly and severally.

(14)(a) All notices to the State of New Jersey shall be physically delivered in writing to the Tidelands Management Program, Department of Environmental Protection and Energy, State of New Jersey, CN 401, Trenton, New Jersey 08625. All notices and all checks shall bear the Tidelands Application Number of this matter, which is No. 91-0190-T.

(14)(b) All notices to the Lessees shall be mailed certified mail, return receipt requested, to the KEYSTONE ENERGY SERVICE COMPANY, L.P., 7475 Wisconsin Avenue, Suite 1000, Bethesda, Maryland 20814, Attn. General Counsel.

(14)(c) The address to which any notice may be sent may be changed by the Lessor or the Lessees as provided by this paragraph.

(15) The Tidelands are outshore of Block 1, Lots 2.00 and 2.01 on the current tax map of the Township of Logan, Gloucester County, N.J.S.A. 46:15-2.1, and are otherwise not designated with a tax lot number.

(16) This lease is made upon the condition and limitation that no portion of the Tidelands shall be filled, and that the flow of tidal water over the Tidelands shall not be impeded, reduced, or impaired in any way. If any portion of these

lands are filled, in whole or in part, or if the flow or tidal water over these lands is impeded, reduced or impaired in any way, then the Council may proceed as provided in paragraph (3).

(17) The Lessees agree that a 50.00 foot wide public access easement or right of way, adjacent to the Delaware River, will be created and maintained by the Lessee and its successors in title should the lands abutting the leased land not be used or cease to be used as a cogeneration facility. This easement shall include a 20 foot wide pedestrian access to U.S. 130 on both sides of the property. Failure to provide such access, should the use change, will cause this lease immediately and automatically to be void, and the title to the leased land shall immediately revert to the ownership of the State of New Jersey, free of the terms of this instrument, but without any diminution in the rental and fees paid.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound hereby have set their hands and seal this 30th day of April, 1992.

KEYSTONE URBAN RENEWAL LIMITED PARTNERSHIP

BY: KEYSTONE COGENERATION COMPANY, L.P., its General Partner

BY: E.K. Hauser
Authorized Agent

COMPANY, L.P.

KEYSTONE ENERGY SERVICE

BY: E.K. Hauser
Authorized Agent

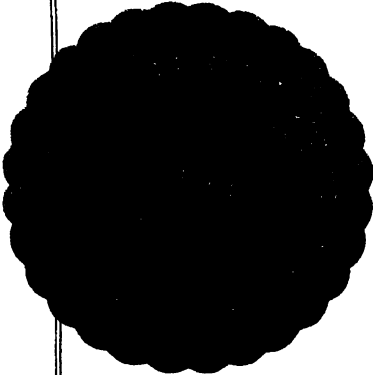
STATE OF New York)
COUNTY OF New York) SS:

BE IT REMEMBERED that on April 30, 1992, before me, the subscriber, Jodi C. Krugman, personally appeared, Ernest K. Hauser, whom, I am satisfied are the Lessees mentioned in the within Lease, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

Jodi C. Krugman
Notary Public

JODI C. KRUGMAN
Notary Public, State of New York
No. 31-4881911
Qualified in New York County
Commission Expires May 20, 1993

IN WITNESS WHEREOF, the State of New Jersey has caused these presents to be signed by the Governor, the Commissioner of Environmental Protection and Energy, and the Chairman of the Tidelands Resource Council, and has caused the Great Seal of the State of New Jersey to be hereunto affixed, and has caused these acts to be concurred in by the Attorney General and the Secretary of State this 12th day of June, 1992.



[Signature]
James V. Florio, Governor

[Signature]
Scott A. Weiner, Commissioner
Department of Environmental Protection
and Energy

By: John R. Weingart, Assistant Commissioner,
Department of Environmental Protection
and Energy, acting pursuant to N.J.S.A.
13:1B-4.

[Signature]
David F. Moore, Chairman of the
Tidelands Resource Council

ATTEST: *[Signature]*
Daniel S. Dalton, Secretary of State

CONCUR: *[Signature]*
Robert J. Del Tufo, Attorney General

This signature page is the 15th page of the riparian lease to KEYSTONE URBAN RENEWAL LIMITED PARTNERSHIP, and KEYSTONE ENERGY SERVICE COMPANY, L.P., Tidelands Management Program File #91-0190-T.

STATE OF NEW JERSEY)
) SS:
COUNTY OF MERCER)

BE IT REMEMBERED, that on this 12th day of June, 1992, before me a Notary Public of New Jersey, personally appeared Daniel J. Dalton, who being by me duly sworn on his oath says that he is the Secretary of State of the State of New Jersey, the grantor named in this instrument; that he knows the Great Seal of the State of New Jersey; that the seal affixed to this instrument is said seal and was affixed by him as the act and deed of the grantor; that on the date each signatory executed this instrument each held the office attributed to them, James J. Florio was the Governor of the State of New Jersey, Robert J. Del Tufo was the Attorney General, David F. Moore was the Chairman of the Tidelands Resource Council and Scott A. Weiner was the Commissioner of the Department of Environmental Protection and Energy, and he delegated his authority to review, approve and sign this instrument pursuant to N.J.S.A. 13:1B-4 to John R. Weingart, Assistant Commissioner, the delegation of authority is recorded in the Minutes of meeting of the Tidelands Resource Council at which this matter was considered, the minutes are on file with the New Jersey Tidelands Management Program; and that he knows their signatures and that they signed this instrument as the act and deed of the State of New Jersey; that this deed was concurred in by the Attorney General and that the consideration paid by the lessees shall never be less than \$9,200.00 per year, or the previous year, whichever is greater.

VIRGINIA LEE HOSSZU
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 18, 1993

Daniel J. Dalton
Daniel J. Dalton, Secretary of State

Sworn to and Subscribed
before me the date aforesaid

Virginia Lee Hosszu
A Notary Public of New Jersey

VIRGINIA LEE HOSSZU
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 18, 1993

(This instrument was reviewed and approved by the Attorney General's Office of the State of New Jersey.)

(This is the 16th page of the riparian lease to KEYSTONE URBAN RENEWAL LIMITED PARTNERSHIP, and KEYSTONE ENERGY SERVICE COMPANY, L.P., Tidelands Management Program File #91-0190-T.)

EXHIBIT A

DESCRIPTION OF PROPERTY
RIPARIAN LEASE AREA

All that certain tract or parcel situate in Logan Township, Gloucester County, New Jersey, and Brandywine Hundred, New Castle County, Delaware, being more particularly described as follows:

BEGINNING at a point in the pierhead line established by the Department of Conservation and Economic Development, Division of Planning and Development where the same is intersected by the Northerly line of grant of Riparian lands recorded in Liber A-4 Page 248 as shown on the plan entitled "Plan to Accompany Application for Riparian Lease" prepared by S. T. Hudson Engineers, Inc. (Drawing No. K-1064, Drawing 1, dated May 30, 1991) thence running along aforementioned pierhead line South 57 degrees 19 minutes 40 seconds West 316.00 feet to a point and place of beginning; thence

(1) South 57 degrees 18 minutes 40 seconds West, 42.00 feet to a point; thence

(2) North 32 degrees 41 minutes 20 seconds West, 265.00 feet to a point; thence

(3) South 57 degrees 18 minutes 40 seconds West, 33.00 feet to a point; thence

(4) North 32 degrees 41 minutes 20 seconds West, 50.00 feet to a point; thence

(5) South 57 degrees 18 minutes 40 seconds West, 397.50 feet to a point; thence

(6) North 32 degrees 41 minutes 20 seconds West, 185.00 feet to a point in the easterly Marcus Hook Authorized anchorage Line; thence

(7) Along said Anchorage Line North 57 degrees 18 minutes 40 seconds East, 920.00 feet to a point; thence

(8) South 32 degrees 41 minutes 20 seconds East, 185.00 feet to a point, thence

(9) South 57 degrees 18 minutes 40 seconds West,
397.50 feet to a point; thence

(10) South 32 degrees 41 minutes 20 seconds East, 50.00
feet to a point; thence

(11) South 57 degrees 18 minutes 40 seconds West,
50.00 feet to a point; thence

(12) South 32 degrees 41 minutes 20 seconds East,
265.00 feet to a point and place of BEGINNING.

Said above described parcel containing within said
bounds 4.30624 acres.

EXHIBIT C

SUN

97
Sun Refining and
Marketing Company
Ten Penn Center
1801 Market Street
Philadelphia PA 19103-169

August 5, 1991

Keystone Cogeneration Systems, Inc.
313 Chestnut Street
Philadelphia, PA 19106
Attn: Captain R. P. McKeever, President

Dear Captain:

Sun Refining and Marketing Company (Sun) and Keystone Cogeneration Systems, Inc. (Keystone) have entered into that certain Agreement of Sale, dated April 4, 1990, as amended by Amendment dated February 27, 1991 (Agreement).

Sun hereby acknowledges that Keystone will shortly file with the New Jersey Division of Coastal Resources an Application for a Lease of Riparian Land substantially in the form attached hereto and covering the area shown on the survey map which is part of such Application. Sun further acknowledges that as Upland Owner, it has certain rights by law with respect to the area covered by such Application. Accordingly, in further consideration of the mutual undertakings set forth in the Agreement, Sun hereby waives all rights it may have in connection with the filing of such Application, including, but not limited to, all statutory rights it may have pursuant to New Jersey State Tidelands law, N.J.S.A. 13:1b-13 et seq and N.J.S.A. 12:3-1 et seq, especially N.J.S.A. 12:3-9 and N.J.S.A. 12:3-23.

Very truly yours,

John B. Hall

John B. Hall
Manager, Real Estate & Facilities
(215)977-3914

JBH/ria

cc: E. Bailey
R. H. Frank
R. W. Williams

EXHIBIT D

The Tidelands consist of 4.30624 acres of submerged tidal land in the Delaware River outshore of the upland, now known as Lots 2.00 and 2.01, Block 1, Logan Township and the land outshore of the mean high water line within a State tidelands grant to Sun Oil Company, dated 10/14/57, Liber A-4, Page 248, etc. ("the Riparian Grant Area"). The appraisal shall value the Upland as a single developed property, land only ("The Property").

The appraiser shall assume that all approvals for any lawful use have been secured. The appraiser shall personally inspect the Property, the Riparian Grant Area, and the Tidelands and shall review a current survey of the Property, the Riparian Grant Area, and the Tidelands prepared by a licensed surveyor at the expense of the Lessees.

The appraisal shall identify the highest and best use of the Property and shall select comparable sales with the same highest and best use. Dissimilarities and adjustments between the Property and the comparable sales chosen shall be shown on a sales grid and explained by commentary.

The appraiser shall use the Direct Sales Comparison Approach, as determined by generally accepted appraisal techniques. The overall value of the Property shall be determined and then calculated to a per acre dollar value and then multiplied by the area of the Tidelands and then multiplied by 10% to determine the rent.

Thus, if V= the per acre dollar appraised value of the Property
R= the dollar rent per year for the next five (5) years of the Tidelands.

Then. . .
 $V \times 4.30624 \text{ acres} \times 10\% = R$

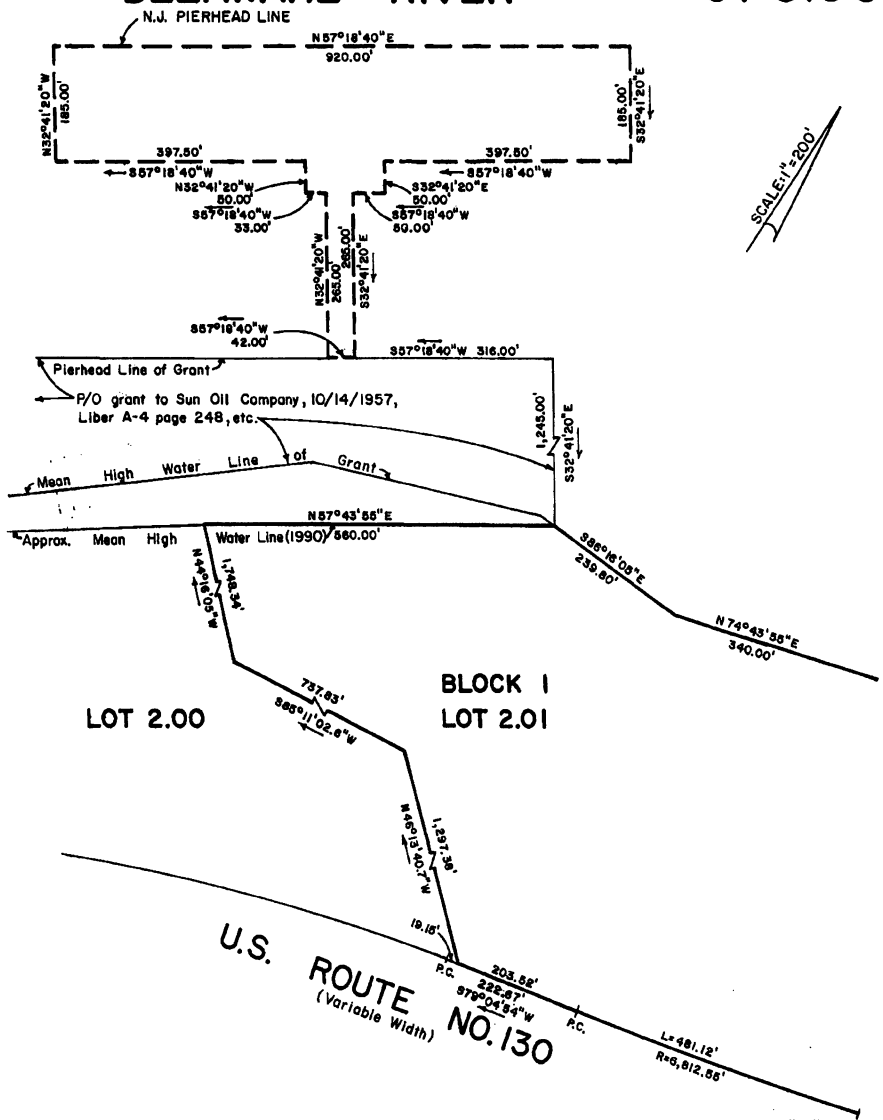
In accordance with paragraph (2)(a), in no event shall the rent be less than the rent charged the previous year.

The 10% rental factor shall not change during the course of the lease.

All appraisers shall be M. A. I. qualified, or certified by the State of New Jersey, to conduct non-residential appraisals. All reports shall be prepared in accordance with the Standards of the Appraisal Foundation, and presented as a formal narrative.

DELAWARE RIVER

91-0190-T



NOTE:
 AREA within the dashed lines contains 187,580 sq. ft.

EXHIBIT "B"
 STATE OF NEW JERSEY
 DEPARTMENT OF ENVIRONMENTAL
 PROTECTION & ENERGY
 TIDELANDS MANAGEMENT PROGRAM
 MAP SHOWING
 LANDS UNDER TIDE-WATER SITUATE
 in the Township of Logan
 in the County of Gloucester
 35 Year Lease to
 KEYSTONE
 Effective Dec. 5, 1991

COMPUTED & DRAWN BY R.B. REV. 3/2/1992
 CHECKED AND APPROVED [Signature] DATE: 9/30/1991
 DATE: 3/5/92
 Supervising Engineer

[Signature]
 Administrator, Tidelands Management Program
 3/5/92

REVOCABLE LICENSE/LEASE

THE STATE OF NEW JERSEY:

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

GREETING:

WHEREAS, the State of New Jersey owns the lands now or formerly under water hereinafter described,

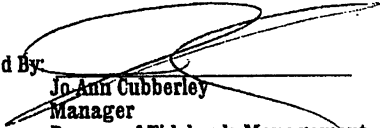
AND WHEREAS, the Tidelands Resource Council in the Department of Environmental Protection is empowered under N.J.S.A. 13:1B-13 to approve licenses/leases of lands now or formerly under tidewater;

AND WHEREAS, the licensees/lessees herein represents that they are the owners of the land abutting and adjoining the said lands now or formerly under tidewater;

AND WHEREAS WILLIAM G. BERGMANN and KAREN A. BERGMANN, husband and wife, have applied to the Tidelands Resource Council in the Department of Environmental Protection, for a license/lease to an area of land now or formerly under tidewater for the use and maintenance of a deck in the Delaware River, outshore of Lot 25, Block 1601, on North River Drive in the Township of Pennsville, Salem County, New Jersey, situate upon the lands of the State hereinafter described;

AND WHEREAS, the said Department of Environmental Protection, by a majority of the members of the Tidelands Resource Council, having due regard for the public interest, have agreed to grant said applicants a license/lease for a period of seven (7) years, revocable at the pleasure of the Tidelands Resource Council of the Department of Environmental Protection as hereinafter described and have determined that the compensation or license/lease fee shall be TWO HUNDRED NINETEEN AND 00/100 DOLLARS (\$219.00) per annum.

Prepared By:


Jo Ann Cubberley
Manager
Bureau of Tidelands Management
(N.J.S.A.46:15-1.1(a)(b))

NOW THEREFORE, the State of New Jersey acting by and through the said Tidelands Resource Council of the Department of Environmental Protection in consideration of the premises and of the terms, covenants and conditions herein contained, does hereby authorize, allow and license/lease to WILLIAM G. BERGMANN and KAREN A. BERGMANN, husband and wife to use the area of land as described above, said area being shown within the dashed lines on the map attached hereto and made a part hereof, situate upon the lands of the State now or formerly under tidewater;

This license/lease is made subject to the limitation that the licensees/lessees herein shall not improve or develop the above described lands flowed by tide nor appropriate said lands to their own exclusive use unless and until a permit, pursuant to N.J.S.A. 12:5-3, is obtained for that purpose.

This license/lease, authority and privilege is to continue seven (7) years from January 11, 1999 to January 11, 2006 unless revoked or otherwise terminated as hereinafter provided by the said Tidelands Resource Council of the Department of Environmental Protection. The annual rental is due on January 11 in advance of each rental year of the license.

All payments received 30 days after the due date shall be assessed a late fee of \$25.00. All fees or partial fees which remain past due for more than 90 days after said due date shall accrue interest therefrom at rate set by the Tidelands Resource Council, until received by the State. Additionally, if a check is returned for non-sufficient funds, a \$25.00 charge will be assessed to the licensee.

This license/lease is made and accepted upon the express condition that the license may be assigned or otherwise transferred by the said licensee/lessee to any other person or persons, only upon written consent of the Manager of the Bureau of Tidelands Management of the Department of Environmental Protection. Forms are available from the Bureau for this purpose.

It is distinctly understood and mutually agreed between the parties of these presents that the payment of the annual rentals or fees on the days and times appointed shall be of the essence of this contract. It is the responsibility of the licensees to remit the annual rental within 30 days of the due date stated above. The licensees/lessees may elect to make application for a license/lease renewal at the expiration of the said period of seven (7) years. The State of New Jersey does not covenant and is not bound to make any renewal of the license/lease. If any such renewal is granted, it shall be at such valuation and terms as may be fixed by the said Tidelands Resource Council of the Department of Environmental Protection.

AND the WILLIAM G. BERGMANN and KAREN A. BERGMANN, husband and wife, as aforesaid, do hereby agree to and with the State of New Jersey, that they the said WILLIAM G. BERGMANN and KAREN A. BERGMANN, husband and wife, will at the termination thereof, promptly quit, surrender and vacate the above described premises, and remove or cause to be removed

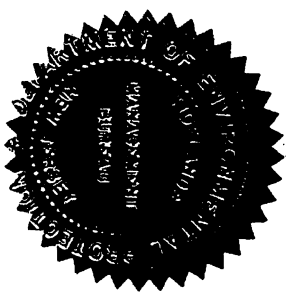
therefrom to the satisfaction of the Tidelands Resource Council of the Department of Environmental Protection, of the State of New Jersey aforesaid, any and all structures of whatsoever nature, whether the same be above or beneath the surface of the water, or occasioned by or through the acts of WILLIAM G. BERGMANN and KAREN A. BERGMANN, husband and wife and that should the said WILLIAM G. BERGMANN and KAREN A. BERGMANN, husband and wife, fail and neglect to remove said structures, the Department of Environmental Protection of the State of New Jersey may remove or cause the same to be removed at the expense and cost of the said WILLIAM G. BERGMANN and KAREN A. BERGMANN, husband and wife and they do hereby agree to reimburse the said Department and/or the State of New Jersey for the full amount of the expense incurred in causing the removal of said structures.

AND IT IS EXPRESSLY AGREED AND PROVIDED that the said Tidelands Resource Council of the Department of Environmental Protection, Bureau of Tidelands Management, may withdraw, terminate or revoke the license/lease hereby given and all the rights and privileges thereunder at any time prior to the expiration of the said terms above, upon notice to the said WILLIAM G. BERGMANN and KAREN A. BERGMANN, husband and wife by passing a resolution to that effect, and that upon passage of such resolution by the said Tidelands Resource Council of the Department of Environmental Protection, Bureau of Tidelands Management, the said license/lease and all rights and privileges thereupon shall cease and terminate.

IT IS ALSO PROVIDED, that this license/lease is made upon the condition and limitation, that if the said licensees/lessees are not the record owners of any parts of the land adjacent to the land hereby licensed/leased on the date of delivery of this license/lease, then in that event, this license/lease and all of the covenants herein on the part of the State shall be void with respect to the land herein licensed/leased as to which the said licensees/lessees are not the record owners on said date, and the licensed/leased land shall automatically revert to the ownership of the State, but without any diminution of the fees or consideration paid upon the delivery of this instrument.

AND PROVIDED FURTHER that nothing in this instrument contained shall in any manner affect the rights of any shore owner as now existing under the Laws of the State of New Jersey.

IN WITNESS WHEREOF, the said Tidelands Resource Council of the Department of Environmental Protection, Bureau of Tidelands Management, has caused these presents to be signed by its Manager of the Bureau of Tidelands Management of the Department of Environmental Protection on this 13th day of *Feb.* in the year Two Thousand One.



Jo Ann Cubberley, Manager
Bureau of Tidelands Management
Land Use Regulation Program
Department of Environmental Protection

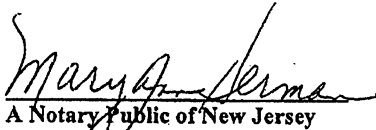
STATE OF NEW JERSEY)

)

COUNTY OF MERCER)

BE IT REMEMBERED that on this 13th day of February, 2002, before me a Notary Public of New Jersey, personally appeared Jo Ann Cubberley, Manager, Bureau of Tidelands Management, Land Use Regulation Program, Department of Environmental Protection who being duly sworn on her oath depose and make proof to my satisfaction, that Jo Ann Cubberley is the Manager, Bureau of Tidelands Management, Land Use Regulation Program and she has been duly authorized by proper resolution of the Tidelands Resource Council, and she has signed this document as an act pursuant to said resolution.

Sworn to me and Subscribed
before me the date aforesaid

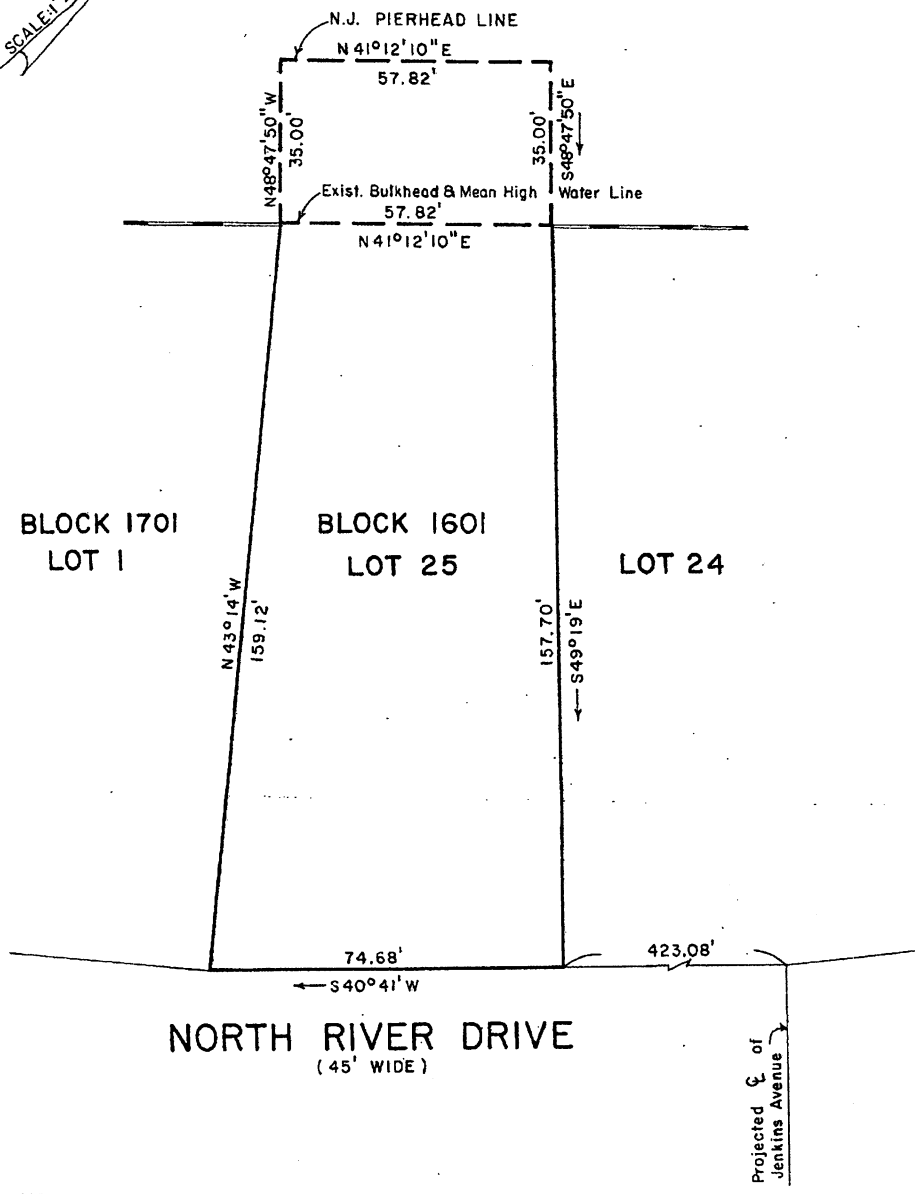

A Notary Public of New Jersey

MARY ANN HERMAN
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES 2/28/07

(This instrument has been reviewed
and approved by the Office of the
Attorney General.)

DELAWARE RIVER

SCALE: 1" = 30'



NOTE:

AREA within the dashed lines contains 2,023.7 sq. ft.

STATE OF NEW JERSEY
 DEPARTMENT OF ENVIRONMENTAL
 PROTECTION
 BUREAU OF TIDELANDS MANAGEMENT
 MAP SHOWING
 LANDS UNDER TIDE-WATER SITUATE
 In the Township of Pennsville
 In the County of Salem
 7 Year License to
 WILLIAM G. BERGMANN & KAREN A.
 BERGMANN, husband & wife
 Effective January 11, 1999

COMPUTED & DRAWN BY R.B. / S. Le DATE: 3/9/1989 / REV. 11/20/01
 CHECKED AND APPROVED _____ DATE: _____

REVOCABLE LICENSE/LEASE

THE STATE OF NEW JERSEY:

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

GREETING:

WHEREAS, the State of New Jersey owns the lands now or formerly under water hereinafter described,


AND WHEREAS, the Tidelands Resource Council in the Department of Environmental Protection is empowered under N.J.S.A. 13:1B-13 to approve licenses/leases of lands now or formerly under tidewater;

AND WHEREAS, the licensee/lessee herein represents that it is the owner of the land abutting and adjoining the said lands now or formerly under tidewater;

AND WHEREAS, TOWNSHIP OF PENNSVILLE has applied to the Tidelands Resource Council in the Department of Environmental Protection, for a license/lease to an area of land now or formerly under tidewater for the use and maintenance of a boat ramp in the Delaware River, outshore of Lot 1, Block 3428, on Riviera Drive in the Township of Pennsville, Salem County, New Jersey, situate upon the lands of the State hereinafter described;

AND WHEREAS, the said Department of Environmental Protection, by a majority of the members of the Tidelands Resource Council, having due regard for the public interest, have agreed to grant said applicant a license/lease for a period of seven (7) years, revocable at the pleasure of the Tidelands Resource Council of the Department of Environmental Protection as hereinafter described and have determined that the compensation or license/lease fee shall be TWO HUNDRED FIFTY SIX AND 00/100 DOLLARS (\$256.00) per annum.

Prepared By:


Jo Ann Gubberley
Manager
Bureau of Tidelands Management
(N.J.S.A.46:15-1.1(a)(b))

NOW THEREFORE, the State of New Jersey acting by and through the said Tidelands Resource Council of the Department of Environmental Protection in consideration of the premises and of the terms, covenants and conditions herein contained, does hereby authorize, allow and license/lease to the said TOWNSHIP OF PENNSVILLE to use the area of land as described above, situate upon the lands of the State now or formerly under tidewater;

This license/lease is made subject to the limitation that the licensee/lessee herein shall not improve or develop the above described lands flowed by tide nor appropriate said lands to its own exclusive use unless and until a permit, pursuant to N.J.S.A. 12:5-3, is obtained for that purpose.

This license/lease, authority and privilege is to continue seven (7) years from 4/25/00 to 4/25/07 unless revoked or otherwise terminated as hereinafter provided by the said Tidelands Resource Council of the Department of Environmental Protection. The annual rental is due on April 25 in advance of each rental year of the license.

This license/lease is made and accepted upon the express condition that the license may be assigned or otherwise transferred by the said licensees/leasee to another person or persons, only upon written consent of the Manager of the Bureau of Tidelands Management of the Department of Environmental Protection. Forms are available from the Bureau for this purpose.

It is distinctly understood and mutually agreed between the parties of these presents that the payment of the annual rentals or fees on the days and times appointed shall be of the essence of this contract. It is the responsibility of the licensee to remit the annual rental within 30 days of the due date stated above. The licensee/lessee may elect to make application for a license/lease renewal at the expiration of the said period of seven (7) years. The State of New Jersey does not covenant and is not bound to make any renewal of the license/lease. If any such renewal is granted, it shall be at such valuation and terms as may be fixed by the said Tidelands Resource Council of the Department of Environmental Protection.

AND the said TOWNSHIP OF PENNSVILLE, as aforesaid, does hereby agree to and with the State of New Jersey, that it the said TOWNSHIP OF PENNSVILLE, will at the termination thereof, promptly quit, surrender and vacate the above described premises, and remove or cause to be removed therefrom to the satisfaction of the Tidelands Resource Council of the Department of Environmental Protection, of the State of New Jersey aforesaid, any and all structures of whatsoever nature, whether the same be above or beneath the surface of the water, or occasioned by or through the acts of the said TOWNSHIP OF PENNSVILLE and that should the said TOWNSHIP OF PENNSVILLE fail and neglect to remove said structures, the Department of Environmental Protection of the State of New Jersey may remove or cause the same to be removed at the expense and cost of the said TOWNSHIP OF PENNSVILLE, and it does hereby agree to reimburse the said

Department and/or the State of New Jersey for the full amount of the expense incurred in causing the removal of said structures.

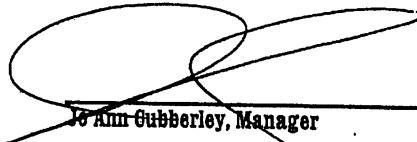
AND IT IS EXPRESSLY AGREED AND PROVIDED that the said Tidelands Resource Council of the Department of Environmental Protection, Bureau of Tidelands Management, may withdraw, terminate or revoke the license/lease hereby given and all the rights and privileges thereunder at any time prior to the expiration of the said terms above, upon notice to the said TOWNSHIP OF PENNSVILLE by passing a resolution to that effect, and that upon passage of such resolution by the said Tidelands Resource Council of the Department of Environmental Protection, Bureau of Tidelands Management, the said license/lease and all rights and privileges thereupon shall cease and terminate.

IT IS ALSO PROVIDED, that this license/lease is made upon the condition and limitation, that if the said licensee/lessee is not the record owner of any parts of the land adjacent to the land hereby licensed/leased on the date of delivery of this license/lease, then in that event, this license/lease and all of the covenants herein on the part of the State shall be void with respect to the land herein licensed/leased as to which the said licensee/lessee is not the record owner on said date, and the licensed/leased land shall automatically revert to the ownership of the State, but without any diminution of the fees or consideration paid upon the delivery of this instrument.

It is further understood and agreed upon by the licensee/lessee herein and the heirs, successors and assigns, that by acceptance of this document, the licensee/lessee acknowledges that the issuance of this license/lease shall not be construed to in any way affect the State's right, title or ownership of land now or formerly under tidewater lying shoreward of the licensed/leased area.

AND PROVIDED FURTHER that nothing in this instrument contained shall in any manner affect the rights of any shore owner as now existing under the Laws of the State of New Jersey.

IN WITNESS WHEREOF, the said Tidelands
Resource Council of the Department of
Environmental Protection, Bureau of Tidelands
Management, has caused these presents to be
signed by its Manager of the Bureau of
Tidelands Management of the Department of
Environmental Protection on this 25th
day of April in the year Two Thousand.



~~Jo Ann Gubberley, Manager~~

Bureau of Tidelands Management

Land Use Regulation Program

Department of Environmental Protection



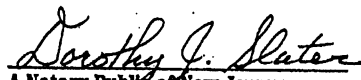
STATE OF NEW JERSEY)

)

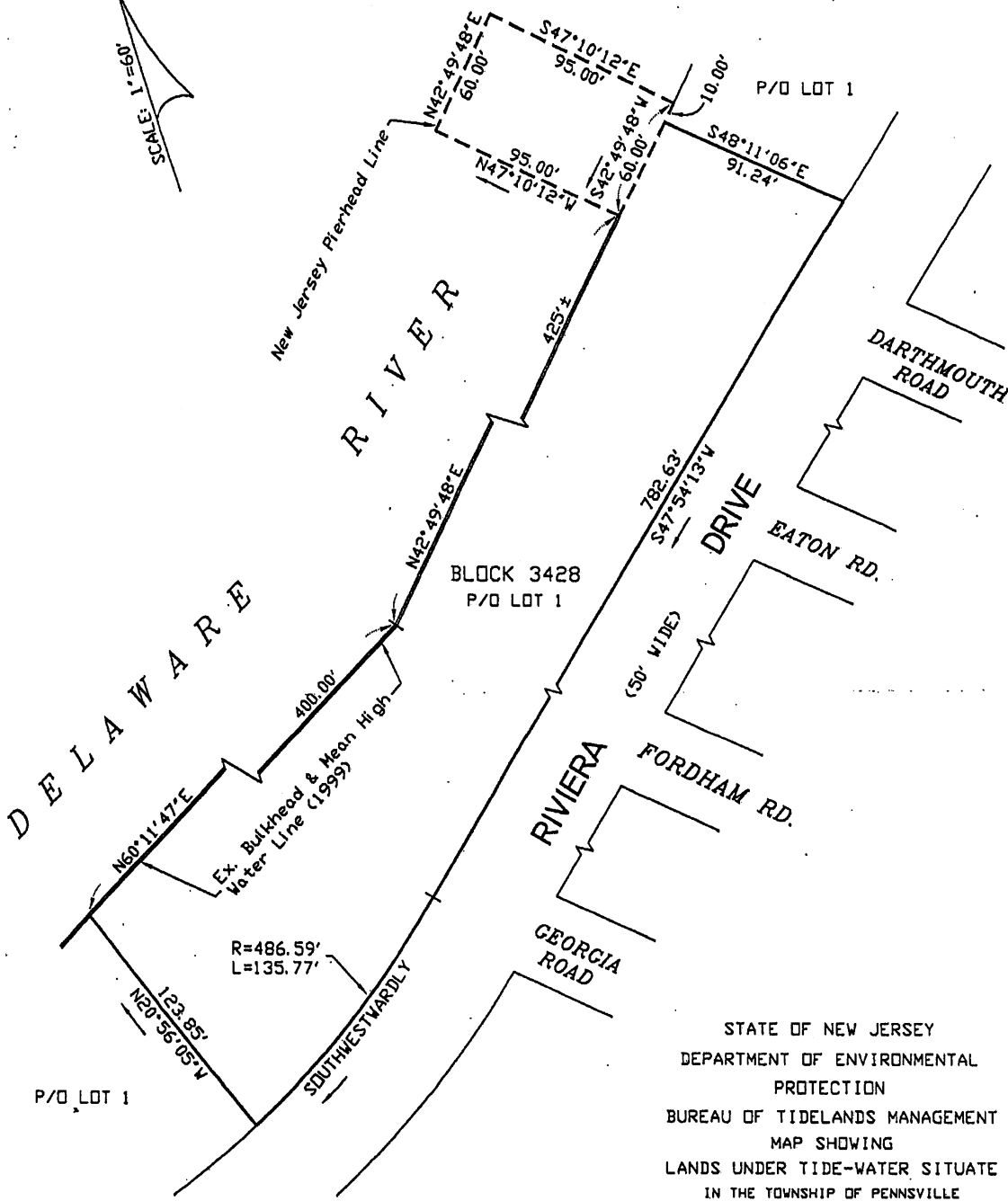
COUNTY OF MERCER)

BE IT REMEMBERED that on this 25th day of *April*, 2000, before me a Notary Public of New Jersey, personally appeared Jo Ann Cubberley, Manager, Bureau of Tidelands Management, Land Use Regulation Program, Department of Environmental Protection, who being duly sworn on her oath depose and make proof to my satisfaction, that Jo Ann Cubberley is the Manager, Bureau of Tidelands Management, Land Use Regulation Program and she has been authorized by proper resolution of the Tidelands Resource Council, and she has signed this document as an act pursuant to said resolution.

Sworn to me and Subscribed
before me the date aforesaid


A Notary Public of New Jersey

DOROTHY J. SLATER
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 11/18/2001



NOTE: Area within the dashed lines contains 5,700 Sq. Ft.

STATE OF NEW JERSEY
 DEPARTMENT OF ENVIRONMENTAL
 PROTECTION
 BUREAU OF TIDELANDS MANAGEMENT
 MAP SHOWING
 LANDS UNDER TIDE-WATER SITUATE
 IN THE TOWNSHIP OF PENNSVILLE
 IN THE COUNTY OF SALEM
 7 YEAR LICENSE TO
 TOWNSHIP OF PENNSVILLE
 EFFECTIVE: 4/25/00

COMPUTED & DRAWN BY W.A.R. DATE: APRIL 18, 2000
 CHECKED AND APPROVED _____ DATE: _____
 Supervising Engineer

 Manager, Bureau of Tidelands Management

M-9 1974

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FILE NO. 95-0306-T
DELIVERED: _____

ASSIGNMENT OF MANAGEMENT RIGHTS
FROM THE STATE OF NEW JERSEY, TIDELANDS RESOURCE COUNCIL
TO THE NEW JERSEY DIVISION OF PARKS & FORESTRY

(1) WHEREAS, the parties agree that the following terms are defined as follows:

(1)(a) "The Assignor": The State of New Jersey, by and through the Tidelands Resource Council, with the approval of the Commissioner of the Department of Environmental Protection and the Governor, and the concurrence of the Attorney General, with offices in care of the Bureau of Tidelands Management, PO Box 439, 9 Ewing Street, Trenton, New Jersey, 08625 ("the Bureau") acting pursuant to N.J.S.A. 12:3-1 et seq. and N.J.S.A. 13:1B-13 et seq.

(1)(b) "The Tidelands": Those lands within the Property, title to which is claimed by the State, as lands now and formerly flowed by the mean high tide of the Delaware River as shown on the State's tidelands claims map number 280-1746, filed and recorded in the office of the Salem County Clerk.

(1)(c) "The Property": Lot 3, Block 5301 in the Township of Pennsville in Salem County.

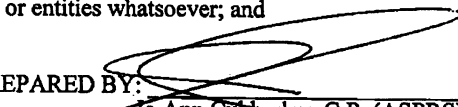
(1)(d) "The Assignee": The NEW JERSEY DIVISION OF PARKS & FORESTRY, with offices at PO Box 404, Trenton, New Jersey, 08625-0404.

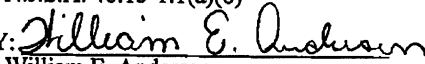
(1)(e) "The Plan": The redevelopment of the Property in accordance with plans entitled NJDBC Project No. PO745, Fort Mott Pier Rehabilitation and Ferry Terminal, Fort Mott State Park, Salem, New Jersey, prepared by S.T. Hudson Engineers Inc., dated September 13, 1995. A copy of these plans are on file with the Assignor.

(2) WHEREAS, portions of the Property are claimed to have once been below the mean high water line of the tidal waters of the Delaware River and therefore fee simple ownership to these present former tidal lands is claimed to be in the Assignor; and

(3) WHEREAS, the Assignor has claimed title to the Tidelands within the Property; and

(4) WHEREAS, the Assignee warrants to the State that it is the upland or riparian owner to the Tidelands. It further warrants generally that there are no other claimants to the title to the Property. It agrees to defend in perpetuity the Upland and the Tidelands against the claims and demands of all other persons or entities whatsoever; and

PREPARED BY: 
Jo Ann Cubberley, C.P. (ASPRS)
Manager
Bureau of Tidelands Management
N.J.S.A. 46:15-1.1(a)(6)

APPROVED BY: 
William E. Andersen
Deputy Attorney General

(5) WHEREAS, the Assignor and the Assignee recognize that ownership of the Tidelands is impressed with a public trust, and that the Tidelands should be accessible to all of the public of the State of New Jersey for recreational uses to the greatest extent possible; and

(6) WHEREAS, the Assignee wished to develop the Property as park land dedicated to use by and for all residents of the State of New Jersey in accordance with The Plan; and

(7) WHEREAS, on November 6, 1996 the Assignee appeared before the Tidelands Resource Council under Docket No. 95-0306-T and received approval for an Assignment of Management Rights, subject to the following conditions;

a) The Assignee concedes that the owner of the Tidelands is the State of New Jersey, acting by and through the TRC;

b) The Assignee will restore the area to a vacant condition if the management of the Tidelands reverts to the Assignor; and

c) The Assignee develop this area within a state park pursuant to The Plan. This development is described in the Project Narrative attached as Exhibit A and made a part of this agreement.

NOW THEREFORE, in consideration of one dollar (\$1.00) paid in hand and in accordance with the terms and conditions herein, the Assignor acting in accordance with the N.J.S.A. 12:3-33 and N.J.S.A. 12:3-34, the Assignor and the Assignee agree as follows:

(8) The Assignor does hereby remise, release and forever quitclaim unto the Assignee and its assigns forever those upland portions of the Property, if same exists, not within the bounds of the Tidelands, from any claim of title because said lands are now or were not formerly flowed by the mean high tide.

(9) The Assignor assigns to the Assignee management rights for a period of thirty (30) years commencing on the date of issuance of this agreement over the Property including the Tidelands and the Assignee accepts this assignment in accordance with the terms set forth in this Assignment.

(10) The Assignee covenants and agrees that, at the option of the Assignor, by and through the Tidelands Resource Council with the approval of the Commissioner of the Department of Environmental Protection, it will promptly remise, release and forever quitclaim unto the State and its assigns forever the Tidelands, together with the appurtenances and all of the estate, right and title of the Assignee in and to the Tidelands. The State may exercise this option only upon the termination of this Assignment under paragraph 12e or 14. Until the exercise of this option, the State's claim of title to the Tidelands shall remain as only a claim.

(See paragraph 7a)

(11a) The Assignee covenants and agrees that it will restore the Tidelands to a vacant condition if the management rights conveyed herein revert to the Assignor and the Assignor requests that the Assignee do so (see paragraph 7B); and

(11b) The Assignee agrees to carry out The Plan. The Plan shall be qualified by the Public Trust Doctrine and shall mandate public access as its fundamental operating principal for any development and use. The Plan includes the development within a state park including a barge/landing platform and a pier (See paragraph 7C). The Assignor acknowledges that The Plan may be subject to modification by the Assignee. All significant modifications of The Plan shall be subject to approval by the Land Use Regulation Program (hereinafter referred to as "the Program") of the Department of Environmental Protection.

(12a) In the event that the Program or the Bureau believes that the Assignee is not carrying out the terms of The Plan, the Assignor shall so notify the Assignee in accordance with the provisions of Paragraph 15. The notice shall specify in detail the terms or term of The Plan which the Program or the Bureau believes the Assignee is not carrying out. If the Assignee objects, it shall do so in writing to the Bureau, citing the Assignment and its date and the paragraph. The Bureau shall thereupon conduct such further investigation as it feels necessary. The Assignee shall at all times cooperate in the investigation. Upon completion of its investigation, the Bureau shall schedule the matter for the Tidelands Resource Council upon notice in accordance with the provisions of Paragraph 15.

(12b) The Program and the Bureau and the Assignee shall present the matter to the Council in accordance with its usual way of proceeding at that time. However, all interested persons shall have a reasonable opportunity to be heard and to present witnesses and information.

(12c) The Council shall thereupon decide whether the Assignee is properly carrying out the terms of The Plan. If it decides that the Assignee is not, this decision shall be subject to the review of the Commissioner. (N.J.S.A. 13:1B-13)

(12d) Upon a decision of the Council that the Assignee is not properly carrying out the terms of The Plan, and the commissioner's approval of this decision, the Council shall establish a remedy or a reasonable period of time to correct the violation upon notice and an opportunity to be heard by the Assignee and the Program and the Bureau.

(12e) In addition, if The Plan is not completed within five (5) years of the date of this Assignment, the Council may in its discretion terminate this Assignment. However, if the Assignee has in good faith undertaken reasonable efforts to complete the project but has not been

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able to do so within the five year period, the Assignee may petition the Council for one (1) year extensions in order to complete the project. These approvals shall not be unreasonably withheld. Thereafter, the remedies provided herein shall apply. The initial petition must be filed within the five year period.

(13)(a) The Assignee shall release, indemnify and save harmless the Assignor, its employees and agents against any personal injury or property damage to anyone caused by or arising from this Assignment, or the use, improvements and development of the Tidelands whether or not caused in whole or in part by the failure and/or negligence of the Assignor, its employees, representatives, agents or officials.

(13)(b) The Assignee shall release, indemnify and save harmless the Assignor from any personal injury damages, property injury damages and clean up costs associated with any environmental conditions on the Property.

(14) The Assignor may terminate this Agreement if any part of the property ceases to be used as designated in The Plan at any time. Notice of termination and the reasons for termination shall be given in accord with Paragraph 15.

(15) All notices to the Assignee shall be in writing, and shall be delivered personally or by certified mail return receipt requested, to the following:

New Jersey Division of Parks & Forestry
PO Box 404
Trenton, NJ 08625-0404

All notices to the Assignor shall be in writing and shall be delivered personally or by certified mail, return receipt requested, to the following:

Bureau of Tidelands Management
9 Ewing Street, PO Box 439
Trenton, NJ 08625
ATTN.: JO ANN CUBBERLEY, MANAGER

With copies to the following:

Division of Law
Department of Law and Public Safety
PO Box 093
Trenton, NJ 08625
ATTN.: SECTION CHIEF
Environmental Permitting and Counseling Section

All notices to the Assignor or to the Assignee shall refer to this Assignment and note the date of this Assignment and the Bureau file number, which is No. 95-0306-T, and the filing information

in the Bureau's Liber records when available. The address to which any notice may be sent may be changed by either party upon written notice in accordance with this paragraph.

(16) All officials and offices named in this Assignment include any successors duly established by law.

(17) This Assignment may not be assigned without the consent of the other party. This consent may not be reasonably withheld. In the event an assignment is permitted, all the terms of this Assignment shall nevertheless remain in full force and effect.

(18) The Assignee may make application to the Tidelands Resource Council or its successor in office for renewal of this agreement at the expiration of this term. The State of New Jersey does not covenant nor is it bound to make such renewal. If any such renewal is approved, it shall be at such terms and conditions as may be fixed by the Tidelands Resource Council, Department of Environmental Protection, or its successors at that time.

(19) Paragraphs (1) through (7) are incorporated in this Assignment by reference.

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IN WITNESS WHEREOF, the parties hereto intended to be legally bound have set their hands
and seals this 7th day of April, 1999

ASSIGNEE:
New Jersey Division of Parks & Forestry

Carl R. Kunkle
(SIGNATURE)

Deputy Director
(TITLE)

STATE OF NEW JERSEY)
) SS.
COUNTY OF *MERCER*

BE IT REMEMBERED that on this *7th* day of *April*, 1999, before me, a Notary Public of New Jersey, personally appeared *CARL R NORDSTROM* who, being by me duly sworn on his oath deposes and makes proof to my satisfaction that he is the *DEPUTY DIRECTOR* of the New Jersey Division of Parks & Forestry, the Assignee named in the within Assignment; that the execution, as well as the acceptance of this Assignment, has been duly authorized by proper resolution or approval of the governing body of the Assignee, that the deponent knows well the corporate seal of the Assignee; and that the seal affixed to this Assignment is the proper seal and was thereto affixed and the Assignment signed and delivered by the said Assignee as and for the voluntary act and deed of the Assignee in the presence of the deponent, who thereupon subscribed name thereto as a testing witness.

Marianne Verde

4/7/99
Date

Sworn and Subscribed to
before me the date aforesaid

Marianne Verde

A Notary Public of the
State of New Jersey

Marianne Verde
Notary Public
My Commission Expires
7/10/00

IN WITNESS WHEREOF, THE STATE OF NEW JERSEY has caused this Assignment to be signed by the Governor, the Commissioner of the Department of Environmental Protection and the Chairman of the Tidelands Resource Council and has caused the Great Seal of the State of New Jersey to be hereunto affixed, and caused these acts to be concurred in by the Attorney General and attested to by the Secretary of State, this 24th day of January ~~1999~~ 2001.



Christine Todd Whitman
Christine Todd Whitman, Governor

Robert E. Shinn, Jr.
Robert E. Shinn, Jr., Commissioner
Department of Environmental Protection
Date 5/2/99

Barbara Trought
Barbara Trought
Vice-Chairperson of the Tidelands Resource Council
Date 2/3/99

ATTEST: DeForest B. Soaries, Jr.
DeForest B. Soaries, Jr., Secretary of State
Date 1/24/01

CONCUR: John J. Farmer, Jr.
John J. Farmer, Jr.
Attorney General
Date 2/17/00

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STATE OF NEW JERSEY)

) SS.

COUNTY OF)

BE IT REMEMBERED that on this 24th day of January, ²⁰⁰¹~~1999~~, before me, a Notary Public of the State of New Jersey, personally appeared DeForest B. Soaries, Jr. who being duly sworn on his oath says that he is the Secretary of State of the State of New Jersey; that he knows the Great Seal of the State of New Jersey; that the Seal affixed to this instrument is the said Seal and was affixed by him as the act and deed of the State of New Jersey; that on the date each signatory executed this Agreement each held the office attributed to them, Christine Todd Whitman was the Governor of the State of New Jersey; ~~John J. Farmer, Jr.~~ ^{John J. Farmer, Jr.} was the Attorney General of the State of New Jersey; Barbara Trought was the Vice-Chairperson of the Tidelands Resource Council; and Robert C. Shinn, Jr. was the Commissioner of the Department of Environmental Protection, and that he knows their signatures and that they signed this Agreement as the act of the State of New Jersey; that this Assignment was concurred in by the Attorney General and that the monetary consideration paid by the Municipality for this Assignment was \$1.00.

DeForest B. Soaries, Jr. 1/2
 DeForest B. Soaries, Jr., Secretary of State Date

Sworn and Subscribed to
before me the date aforesaid

Charlene B. Woner

A Notary Public of the
State of New Jersey

CHARLENE B. WONER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 15, 2002

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EXHIBIT A

New Jersey Division of Parks & Forestry
Fort Mott State Park
Fort Mott Pier Rehabilitation
Project Narrative

The Project site is located within the historic Fort Mott State Park, which provides the general public with both recreational and educational activities. The pier is considered to be a significant cultural and historic resource which when restored will provide the public with an excellent replication of the original pier designed and constructed in 1898. In addition, the rehabilitated pier will provide barrier free access to the waters edge and serve as a terminus for ferry boat operation.

This project is intended specifically to replicate the appearance of the pier in 1898, during the period of its greatest historical significance. The project was designed so that the pier could be made suitable as a terminus for ferry service between Fort Mott and Fort Delaware on Pea Patch Island, and Fort DuPont on the Delaware Shore, with provision for handicapped access and so that the rehabilitated pier would be eligible for inclusion in the Fort Mott and Finn's Point National Cemetery Historic District, in accordance with Department of the Interior criteria.

The project will provide the general public with improved access to the river for both historical and recreational uses. No fee will be charged for access to the pier.



E. I. DU PONT DE NEMOURS & COMPANY

WILMINGTON, DELAWARE

ENGINEERING DEPARTMENT

September 21, 1916.

Mr. B. F. Cresson, Jr., Chief Engineer,
Board of Commerce & Navigation,
75 Montgomery Street,
Jersey City, New Jersey.

Dear Sir:

DEEP WATER POINT - RIPARIAN RIGHTS. It has become necessary for us to ask for riparian rights on additional strip of land at Deep Water Point, this riparian right being immediately adjacent to the adjoining property belonging to the Fenton Beach Development Company. The line between our property and the Fenton Beach Development Company's property lacks $3^{\circ} 55'$ of being at right angles to the line of Cherry Island Range. The other riparian grants were at right angles to this range.

We hand you herewith one blue print of our map C. P. #64, on which we have shown this condition and we are writing to ask you to advise us as to the minimum width at shore line and Pierhead line to apply for at this point, with the necessary direction of same.

An early reply giving this information will be greatly appreciated.

Yours very truly,

W. G. RAMSAY, VICE PRESIDENT,

Per *R.R.R.*

RER:GEL

Amey Dep 12/16

NO. 18

765-A

REEL 9

75 Montgomery Street,

Jersey City, N.J., November 7, 1917.

C. R. Mudge, Esq.,
Legal Department,
Messrs. E. I. du Pont de Nemours & Company,
Wilmington, Del.

Dear Sir:

Your letter of November 5th, inclosing application for riparian rights, is at hand, and will be placed before the Board at its next meeting which will be held in the State House, Trenton, N.J., on Monday November 19th, commencing at 1.30 P.M.

A letter has also been received from Mr. C.L.S. Tingley, Second Vice-President of The American Railways Company, (a copy of which is herewith enclosed), saying that he had signed the application blanks for construction permit and forwarded them to your Company. Kindly send these also to this office.

Respectfully yours,

B. F. Cresson, Jr.
Consulting Engineer.

Enclosure
E.J.M/c

NJ09800

633a

785-A

75 Montgomery Street,

Jersey City, N. J., November 8, 1917.

C. L. Muller, Inc.,
Legal Department,
P. O. Box 100, Wilmington, Delaware.

Dear Sir:

Replying to the last paragraph of your letter of November 7th, I have no authority to give you any kind of temporary permit to lay the cable referred to, until the riparian rights have been acquired, but if you on your own responsibility start this work on definite agreement that you will take the riparian rights, I do not think that you will be interfered with by this Board pending its next meeting which is scheduled for November 19th, at which meeting this matter will come up for consideration.

Yours very truly,

B. L. Cresson, Jr.,
Consulting Engineer.

BPC/c

P.S. We have not as yet received application for the permission of this Board to lay this cable, as per my letter to you of November 7th.

634a

NJ09801

785 and 785-A

75 Montgomery Street,

Jersey City, N.J., November 12, 1917.

C. R. Mudge, Esq.,
Legal Department,
E. du Pont de Nemours and Company,
Wilmington, Del.

Dear Sir:

Referring to my letter to you of November 7th, we have not as yet received the application to this Board for permit to lay cable in Delaware River from Magazine Ditch to near mouth of Salem Canal, New Jersey, which Mr. C. L. S. Tingley, stated he had signed on behalf of the Electric Securities Company and forwarded to the du Pont Company, owners of the shore line upon which the cable will land.

It will be necessary to receive this application without delay so that it may be considered by the Board at the meeting which will be held in the State House, Trenton, on Monday, November 19th, at 2 P.M. I am enclosing blanks for such application by the Electric Securities Company. Your attention will oblige,

Yours very truly,

Consulting Engineer.

BFC/c
(Enclosure).

NJ09802

635a



COPY

E. I. DU PONT DE NEMOURS & COMPANY

WILMINGTON 98, DELAWARE

September 30, 1957

LEGAL DEPARTMENT

**Mr. R. A. Haber
Chief Engineer
Delaware State Highway Department
Dover, Delaware**

Dear Mr. Haber:

We have filed an application with the United States Corps of Engineers for a permit for the installation of certain facilities in the bed of the Delaware River on the New Jersey side of said River and within the 12-mile circle which delineates the Delaware boundary, and, in a discussion concerning said application, we were informed by Mr. Moritz of the Philadelphia Office of the U. S. Corps of Engineers that if our application were in order the permit would be granted upon our obtaining the prior approval of the State Highway Department of the State of Delaware. This requirement, as I understand, was the result of a request by the State Highway Department of the State of Delaware to the U. S. Corps of Engineers that, before any such permit be granted for installation on Delaware owned land, such approval be required.

This is a case of first instance with us inasmuch as throughout a long period of years we have made many purchases of land under the waters of the Delaware River, situate within the State of Delaware but on the New Jersey side of the River and within the 12-mile circle, and in some instances we have made installations thereon under proper permits obtained from the U. S. Corps of Engineers without the necessity of obtaining approval by the State of Delaware, it being the position of all parties concerned, until now, that New Jersey was the proper authority with which to deal in connection with such matters on the New Jersey side of the River and within the 12-mile circle, because of the Treaty of 1905 between the State of New Jersey and the State of Delaware, reported in 52 N.J.S.A. 28-34, Article 7 of which reads as follows:

"Article 7. Each state may on its own side of the River continue to exercise riparian jurisdiction of every kind and nature and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective states".

Mr. R. A. Haber

-2-

September 30, 1957

This treaty was the result of a long-standing conflict between the two states regarding the actual boundary between them and was followed in 1933 by a United States Supreme Court decision in the case: State of New Jersey v. State of Delaware, reported in 291 U. S. 361-365, which held, among other things, as follows:

"Within the 12-mile circle the River and the subaqueous soil thereof up to the low water mark on the easterly or New Jersey side will be adjudged to belong to the State of Delaware, subject to the Compact of 1905."

It is our opinion that, pursuant to the terms of the above mentioned Treaty of 1905 and the U. S. Supreme Court decision of 1933, the State of New Jersey is the proper authority with which we should deal in connection with any lands lying under the Delaware River within the boundary of the State of Delaware, but on the New Jersey side of the River and within the 12-mile circle.

It would be appreciated if you would review this matter and notify us as soon as possible of the position your Department will take insofar as the present and future similar applications are concerned. It is suggested that in the event it is determined that the State of Delaware has no jurisdiction in such matters, you notify the U. S. Corps of Engineers by letter, with a copy to E. I. du Pont de Nemours and Company, attention of the writer, that the State of Delaware has no jurisdiction over grants that may be made in and to the lands lying under the Delaware River on the New Jersey side thereof and within the 12-mile circle, and that the prior approval of the State of Delaware in such matters is not required.

Yours very truly,

ALAN L. SKINNER
Of Counsel

ALS:O

STATE OF DELAWARE



RICHARD A. HABER, Chief Engineer
JAMES J. DEPUTY, Secretary
CHARLES C. MOORE
Motor Vehicle Commissioner
HARRY A. SHEW
Superintendent
State Police Division

MEMBERS
J. GORDON SMITH, Chairman
BENJAMIN F. SHAW, II
Vice Chairman
BENJAMIN ABLEMAN
THURMAN G. ADAMS
DR. J. DRAPER BROWN
DALLAS B. CULVER
SAMUEL J. FOX
FRANK R. GRIER
EDWARD KELLY
WILLIAM P. RICHARDSON
HUGH R. SHARP, JR.
ROBERT D. THOMPSON

STATE HIGHWAY DEPARTMENT

P. O. BOX 151
DOVER, DELAWARE

October 25, 1957

Mr. Alan L. Skinner
E. I. duPont DeNemours & Company
Wilmington, 98, Delaware

Dear Mr. Skinner:

At the October 18th meeting of the State Highway Department, permission was granted to place the new outfall from the Deep-water Plant. This approval is in accordance with the present policy of the State Highway Department.

The Department further directed that your letter of September 30th be forwarded to our Attorney, and that he be asked to contact you directly to determine if possible the future status of such requests.

Very truly yours,

R. A. Haber
Chief Engineer

RAH:W
cc:
S. Samuel Arsht, Esq.
Corps of Engineers

Payment

COPY

MORRIS, STEEL, NICHOLS & ARSHT
 3018 DUPONT BUILDING
 WILMINGTON 1, DELAWARE

December 2, 1957

Mr. R. A. Haber
 Chief Engineer
 State Highway Department
 P. O. Box 151
 Dover, Delaware

Dear Mr. Haber:

This will acknowledge receipt of a copy of your letter of October 25, 1957 to Mr. Alan L. Skinner of the DuPont Company (a copy of which went to me and the Corps of Engineers) in which you stated that at the October 18th meeting of the State Highway Department permission was granted to place the new outfall from the Deepwater Plant and that such approval is in accordance with the present policy of the State Highway Department. You also stated in your letter that I had been requested by the Department to contact Mr. Skinner directly to determine, if possible, the future status of similar requests.

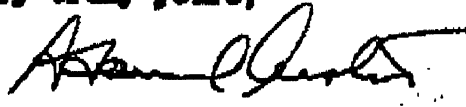
I have considered Mr. Skinner's letter to you of September 30, 1957 in which he refers to the Treaty of 1905 between New Jersey and Delaware and to the decision of the United States Supreme Court of 1933 in the case of State of New Jersey v. State of Delaware, reported in 291 U.S. 361-5.

I concur in Mr. Skinner's opinion that, pursuant to the terms of the Treaty of 1905 and the United States Supreme Court decision of 1933, the State of New Jersey is the proper authority with which the DuPont Company should deal in connection with any lands lying under the Delaware River within the boundary of the State of Delaware, but on the New Jersey side of the river and within the twelve-mile circle.

In view of my concurrence in Mr. Skinner's opinion regarding the jurisdiction of the State of

Delaware, I suggest that the State Highway Department notify the U. S. Corps of Engineers by letter, with a copy to E. I. DuPont de Nemours & Company, attention Mr. Alan L. Skinner, Legal Department, that the State of Delaware has no jurisdiction over grants that may be made in and to the lands lying under the Delaware River on the New Jersey side thereof and within the twelve-mile circle, and that the prior approval of the State of Delaware in such matters is not required.

Very truly yours,



S. SAMUEL ARDET

SSA:NJ

cc: Alan L. Skinner, Enquire

COPY

December 13, 1957

**U. S. Army, Corps of Engineer
Office of the District Engineer
Philadelphia District
P. O. Box 8629
Philadelphia, Pa.**

Gentlemen:

At the December 11th meeting of the Delaware State Highway Department it was determined that the Corps of Engineers be requested to continue to supply the Delaware State Highway Department with information regarding proposed work in, on, or under the Delaware River on the New Jersey side provided, however, that no permit of the Corps of Engineers be held up or otherwise delayed by failure of the Delaware State Highway Department to act upon it.

If any work is contemplated or requested on the Delaware side, then, of course, no permits should be issued without approval of the Delaware State Highway Department.

Your cooperation in keeping us supplied with the information on the proposed work will be very much appreciated.

Very truly yours,

**R. A. Haber
Chief Engineer**

RAH:Wiese

cc:

**Mr. Hugh B. Sharp, Jr.
Mr. Joe S. Robinson
Mr. Samuel S. Araht**



E. I. DU PONT DE NEMOURS & COMPANY
INCORPORATED
CHAMBERS WORKS
DEEPWATER, NEW JERSEY 08023

TELEPHONE
AREA CODE 609-299-3000

May 12, 1971

Mr. B. E. Lane, Staff Geohydrologist
Water Resources and Subaqueous Lands
Department of Natural Resources & Environmental Control
State of Delaware
Dover, Delaware 19901

Dear Mr. Lane:

Reference your letter of January 29, 1971, to Colonel Strider, U. S. Army Corps of Engineers, relative to the proposed fuel oil storage facilities which Du Pont wishes to construct at its Chambers Works, Deepwater, New Jersey plant. Said facilities were described in the Corps of Engineers Notice NAPOP-N-184 dated 8 January 1971.

The facilities involve the construction of a 200,000 bbl fuel oil storage tank and attendant sheet pile dike area to serve the requirements of both Chambers Works and the Atlantic City Electric Company's Deepwater Operating Station. The following materials fully describe the proposed facilities and are enclosed herewith for your information and consideration:

- Exhibit A: Environmental Impact Statement concerning conditions and justifications.
- Exhibit B: Map showing location of storage tank and diked area.
- Exhibit C: Maps showing location of proposed hydraulic dredging site to increase the berth area at the wharf and the landfill area behind the seawall on Du Pont property directly north of Chambers Works.
- Exhibit D: Description of Design Features of the facility and attendant drawings DWM-1655, DW-22779, DW-22780, and DW-23045.

As stated in Exhibit A, we feel that the proposed facility is desirable from an environmental point of view for the following reasons: (1) The risk of spillage would be substantially

(61)

Mr. B. E. Lane

-2-

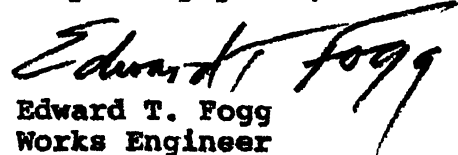
May 12, 1971

reduced due to the elimination of double handling and the large number of connections required by the present oil barging operation; (2) River traffic would be reduced; and (3) the existing unloading and oil handling facilities at the site would be modernized and upgraded. In addition, the fuel oil inventory at the site would be increased from an unacceptable 6 days to 18 days which is considered a minimum storage capacity by Du Pont and the Atlantic City Electric Company to insure a continuity of operations.

We recognize that a jurisdictional dispute exists between the State of New Jersey and the State of Delaware over who has authority with regard to subaqueous lands in the area of the proposed facility. We wish to point out that with the exception of a small dredge area, the entire facility will be constructed on subaqueous riparian lands which the Du Pont Company previously purchased as long ago as 1916 from the State of New Jersey. Be that as it may, our immediate concern is to obtain requisite approvals from the various state and federal authorities so as to complete the proposed facilities by the next heating season. Since the jurisdictional dispute between New Jersey and Delaware will in all probability not be resolved in the near future, we wish to request from the State of Delaware at this time an expression of no objection to the proposed facilities as described in the aforementioned attachments.

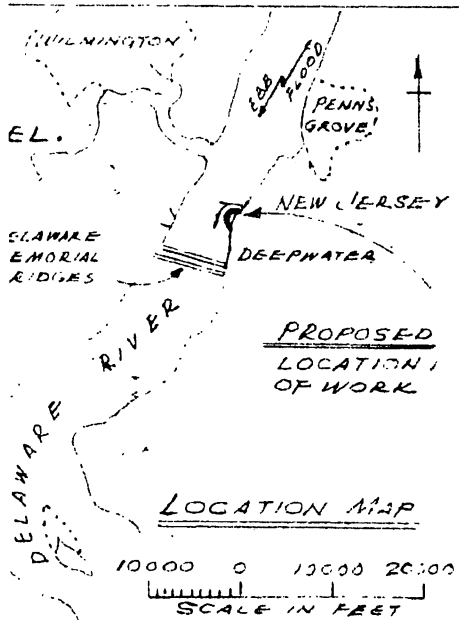
Please feel free to contact me by phone (AC 609-299-5000 Extension 440) if you should have any questions with regard to this matter.

Very truly yours,

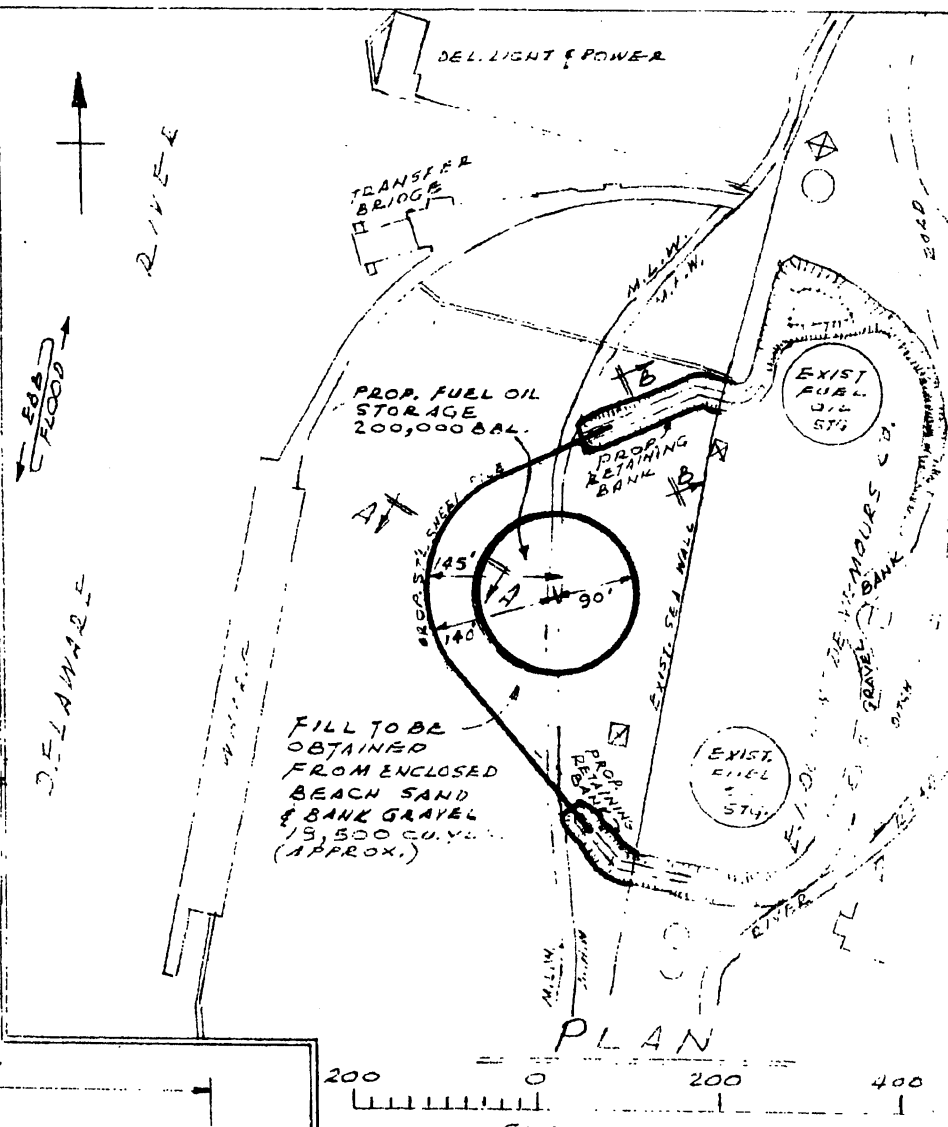
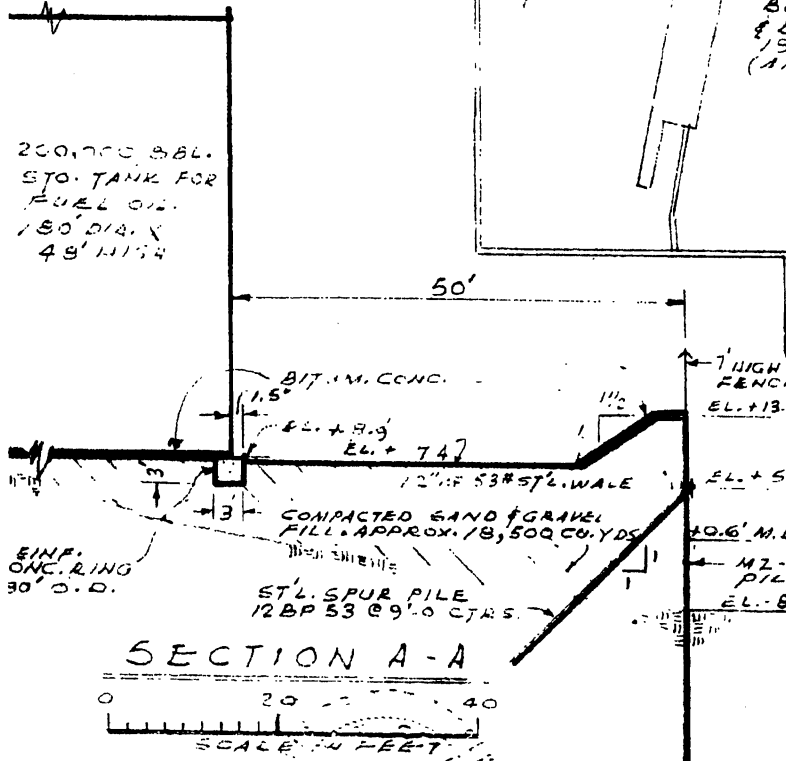

Edward T. Fogg
Works Engineer

Encs.

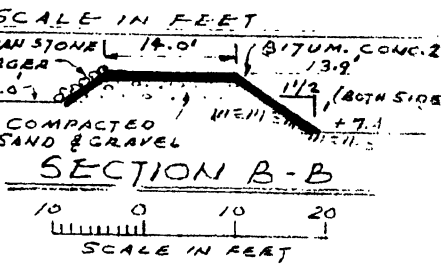
EXHIBIT - B



NOTE A
DATUM = CORPS OF ENGINEERS,
HIGHEST TIDE OF RECORD +11.3
M.L.W. = +0.6'
M.H.W. = +5.9'



FILL TO BE OBTAINED FROM ENCLOSED BEACH SAND & BANK GRAVEL 18,500 CU. YDS. (APPROX.)

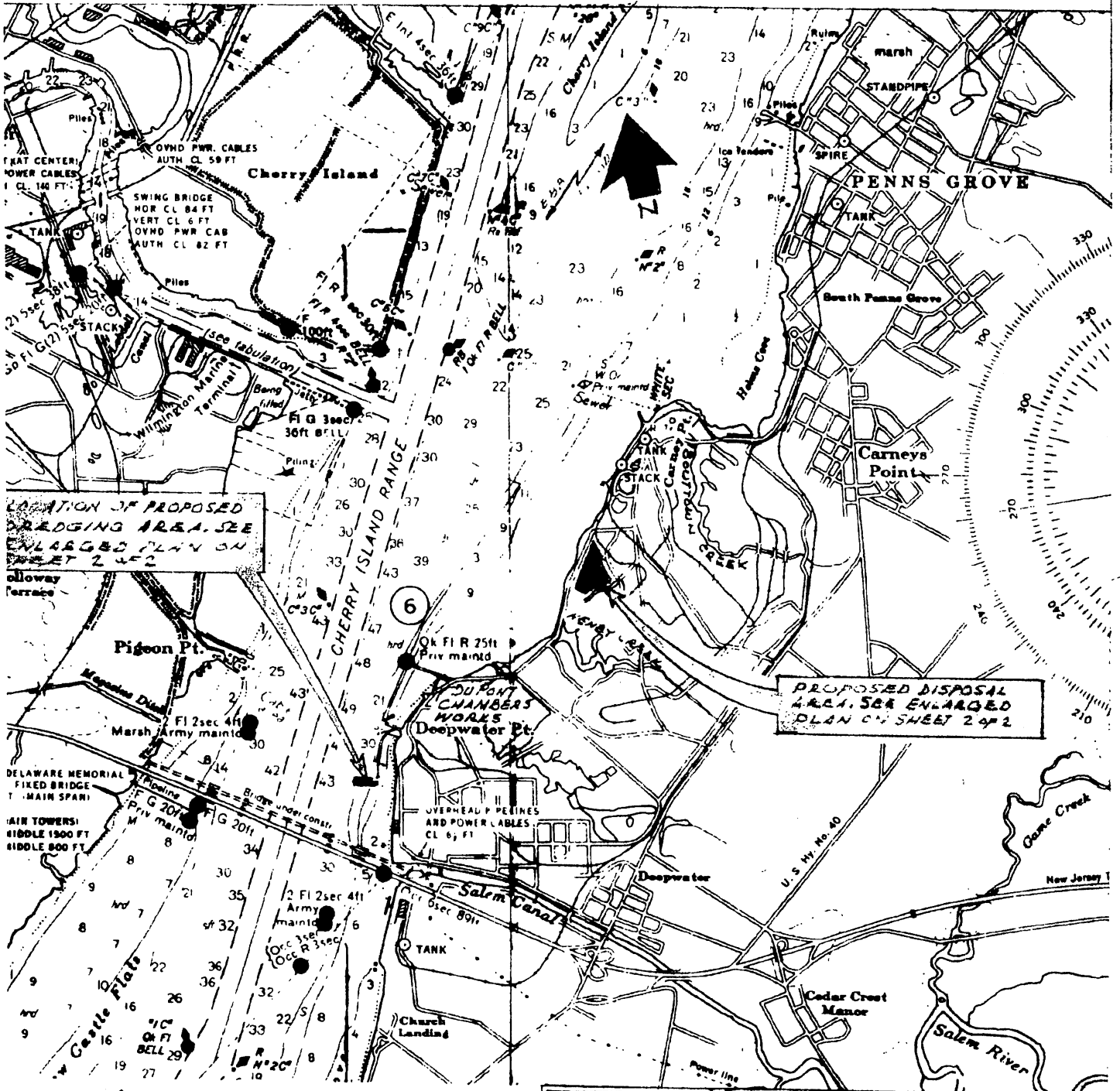


I HEREBY CERTIFY TO THE ACCURACY OF THE DATA SHOWN ON THIS DRAWING, WHICH WAS MADE UNDER MY DIRECTION AND SUPERVISION.

Perez H. Collins
PEREZ H. COLLINS, P. E. LIC. N.J. 5141

53

PROPOSED FUEL OIL STG. TANK
IN DELAWARE RIVER
AT CHAMBERS WORKS
DEEPWATER, N.J.
APPLICATION BY
E. I. DU PONT DE NEMOURS & CO.
SEPT. 1970 SHEET 1 OF 1



LOCATION OF PROPOSED DREDGING AREA. SEE ENLARGED PLAN ON SHEET 2 OF 2

PROPOSED DISPOSAL AREA. SEE ENLARGED PLAN ON SHEET 2 OF 2

LOCATION PLAN

1000 0 1000 2000

SCALE IN FEET

TAKEN FROM C & G S - 294

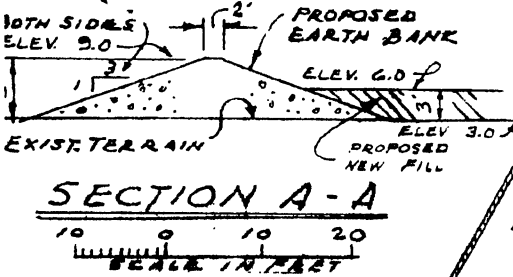
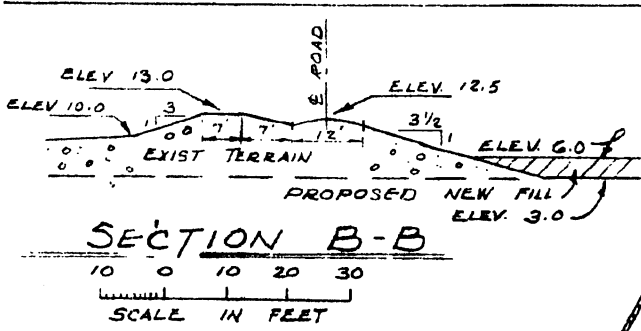
I HEREBY CERTIFY TO THE ACCURACY OF THE DATA SHOWN IN THIS DRAWING WHICH WAS MADE UNDER MY DIRECTION AND SUPERVISION.

Perez H. Collins
 PEREZ H. COLLINS, P.E., LIC. N.J. 5141 52

**PROPOSED WHARF BERTH AREA
 HYDRAULIC DREDGING**

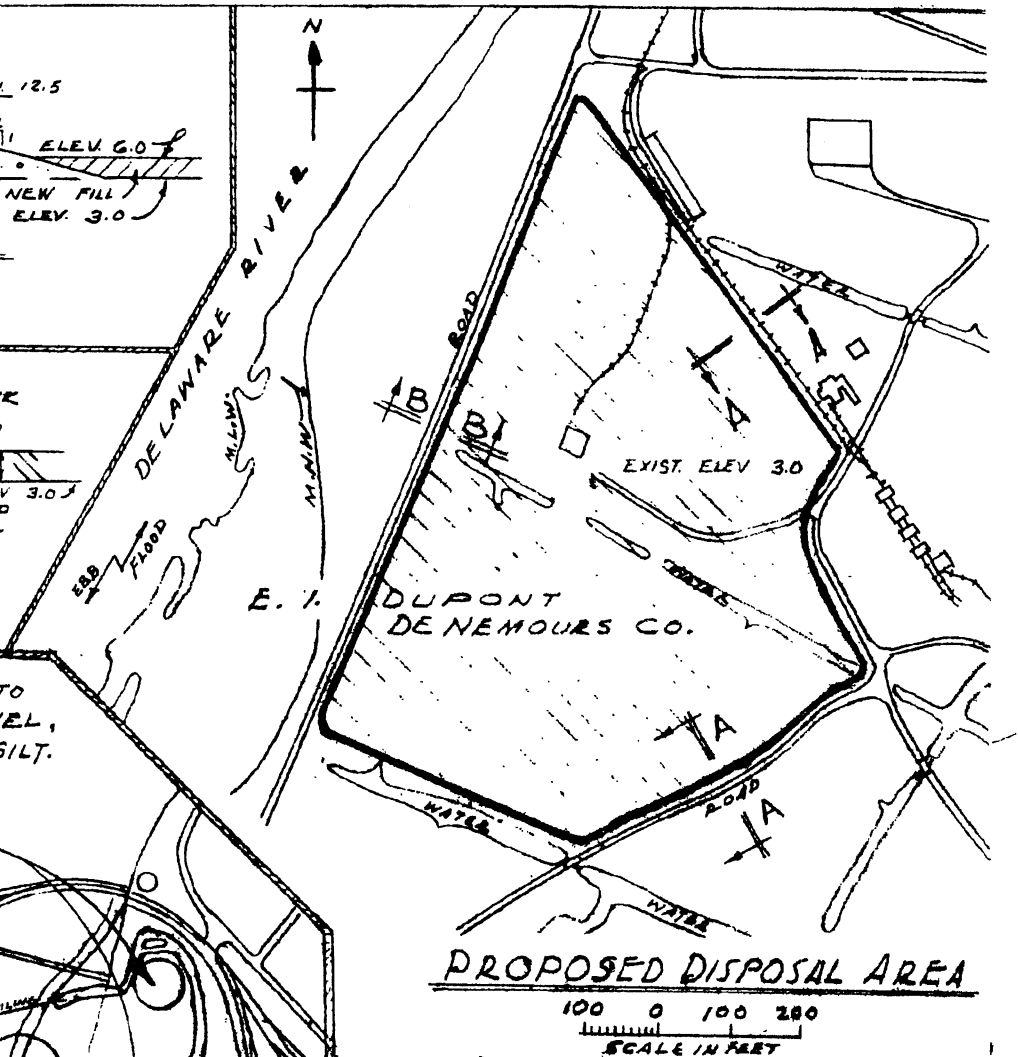
IN DELAWARE RIVER
 AT CHAMBERS WORKS
 DEEPWATER, N.J.

APPLICATION BY
 E. I. DUPONT DE NEMOURS CO.
 FEB. 1971
 SHEET 1 OF 2



NOTE: TYPE OF MATERIAL TO BE DREDGED: SAND, GRAVEL, CLAY AND A MINIMUM OF SILT.

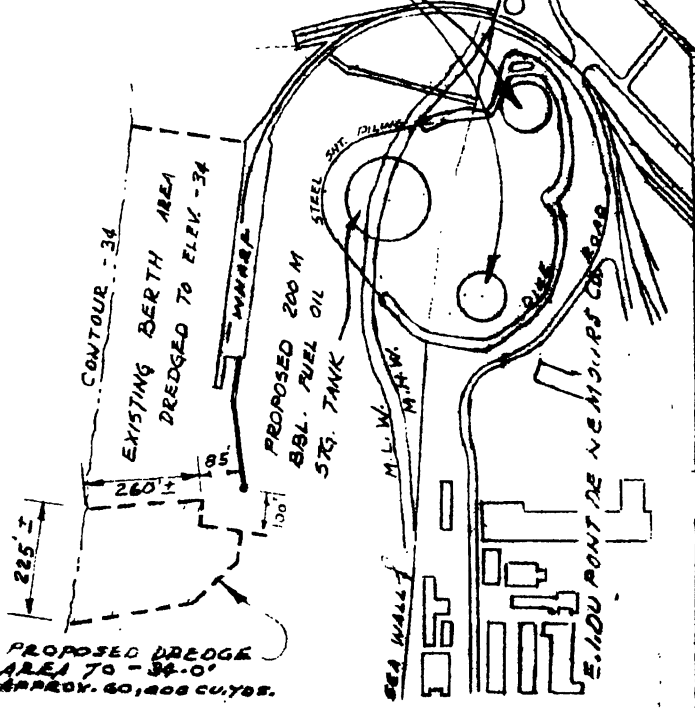
EXISTING 55M BBL. FUEL OIL STORAGE TANKS.



DATUM = CORPS OF ENGINEERS
HIGHEST TIDE OF RECORD = +11.3'
MLW = +0.6' — MNW = +5.9'

I HEREBY CERTIFY TO THE ACCURACY OF THE DATA SHOWN ON THIS DRAWING WHICH WAS MADE UNDER MY DIRECTION AND SUPERVISION.

Perel H. Collins
PEREL H. COLLINS, P.E. E.C. NO. 5141



**PROPOSED WHARF BERTH AREA
HYDRAULIC DREDGING
IN DELAWARE RIVER
AT CHAMBERS WORKS
DEEPWATER, N.J.**

APPLICATION BY
E. I. DU PONT DE NEMOURS CO.
JAN. 1971
REVISED MAY 1971

SHEET 20/21

(51)

DESCRIPTION OF DESIGN FEATURES

1. Capacity of New Dike Enclosure

The attached print of DWM-1655 shows that the dike enclosure is adequate to contain the capacity of the proposed tank (200,000 barrels) plus an additional 6 inches of freeboard. The top of the dike enclosure is at elevation 13.9 feet above mean low tide (U. S. Engineers' datum) compared with an elevation of 11.5 feet for the top of the adjoining Chambers Works concrete seawall. The highest tide recorded for the Delaware River is elevation +11.3 feet.

2. Sheet Piling Dike Enclosure

The steel sheet piling enclosure including the tension piles, as shown on DW-22779 and DW-22780, has been designed with a factor of safety of 3.0 based on the yield strength of the material. This is equivalent to a safety factor of 6 relative to the ultimate strength of the steel. Detail calculations regarding this facility have been approved by the New Jersey Department of Labor and Industry.

3. Soil Bearing Value of New Tank Foundation

Soil bearing tests in the area indicate an existing soil bearing allowance of 3500 pounds per square foot. A small area of unstable silt will be replaced with controlled compacted soil to realize a 3500-pound per square foot soil bearing strata. This is considered to provide ample factor of safety for the required design bearing value of 3100 pounds per square foot.

4. Fuel Oil Unloading Facilities at Wharf

The attached print of drawing DW-23045 proposes a modern unloading facility at the Chambers Works wharf to handle large tankers. Oil spillage and/or drippage at the unloading area will be retained by a large rectangular storage tank (7,270-gallon) and the spillage pumped via pipeline to a storage facility. Tankers will unload at a rate of 8,000 gallons per minute via the four flexible hoses. The proposed catch tank will therefore handle the full flow (2,000 g.p.m.) from one of the flexible hoses for 3.6 minutes. Since unloading operations will be manned continuously, we believe this protection is adequate to permit a shutdown of the unloading pumps in the event of a hose failure.



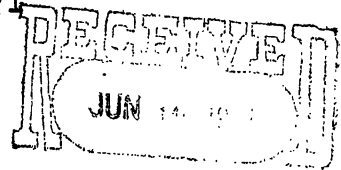
E. I. DU PONT DE NEMOURS & COMPANY
INCORPORATED

CHAMBERS WORKS

DEEPWATER, NEW JERSEY 08023

TELEPHONE
AREA CODE 609-299-5000

June 7, 1971



State of Delaware
Division of Environmental Control

State of Delaware
Water and Air Resources Commission
Water Resources Division
Dover, Delaware 19901

Attention Mr. B. E. Lane, Staff Geohydrologist
Water Resources and Subaqueous Lands

Gentlemen:

Reference E. T. Fogg's letter to B. E. Lane of May 12, 1971, describing the proposed tanker unloading and oil storage facility which Du Pont wishes to construct at its Chambers Works plant located at Deepwater, New Jersey. Enclosed herewith are three completed copies of form WRD-3, 7/69 Application for State Approval of a Subaqueous Lands Project for the proposed facility, and Du Pont Check No. 008-650 in the sum of \$25 to cover the application fee.

As you know, the proposed facility, with the exception of a small area to be dredged, will be constructed on subaqueous land which the Du Pont Company has purchased from the State of New Jersey. It is Du Pont's position that the 1905 Treaty between New Jersey and Delaware ceded to the State of New Jersey full authority over subaqueous lands from the New Jersey shore to the center of the Delaware River, including the right to convey title to such lands; and that the subsequent Supreme Court cases did not, and in fact could not, modify the terms of said Treaty. It was in reliance on the Treaty that the Du Pont Company purchased the lands in question from the State of New Jersey in 1916. The charges for dredging and filling listed under Item H of the aforesaid application form would compel the Du Pont Company to pay for and lease back land which the Company had previously purchased and holds title to under the deeds attached.

We recognize that the State of Delaware's position is that State of New Jersey v. State of Delaware, 291 U.S. 361 (1934), conclusively established Delaware's title to the Delaware River and its subaqueous soil up to the mean low water mark on the easterly (New Jersey) side. The application is therefore

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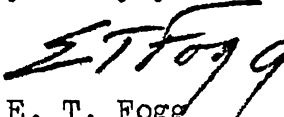
BETTER THINGS FOR BETTER LIVING . . . THROUGH CHEMISTRY

Page 2
June 7, 1971
State of Delaware
Water and Air Resources Commission
Water Resources Division

filed with the understanding that such filing is without prejudice to either Du Pont or the State of Delaware with regard to any questions that might arise as to the adequacy of Du Pont's title, and that payment of dredging and lease charges shall be reserved. The Du Pont Company agrees to pay to the State of Delaware the application for a permit fee of \$25 now, and any charges that might be lawfully due by reason of subject project in the event it is determined at some future date by a court of competent jurisdiction that Delaware's title to the land in question is superior to that of Du Pont's.

We trust that our application is now in order and will be considered by the Water and Air Resources Commission at a special hearing as soon as possible. Feel free to give me a call (AC 609-299-5000 Extension 440) if you should have any questions with regard to this matter.

Very truly yours,


E. T. Fogg
Works Engineer

rwj
Enclosures 3 - Completed Form WRD-3, 7/69
1 - Du Pont Check No. 008-650
1 - Copy of Deeds

cc: Mr. J. Bryson
Richard H. Schliem, 3rd, Esquire

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STATE OF DELAWARE
DEPARTMENT OF JUSTICE

LAIRD STADLER, JR.
ATTORNEY GENERAL

Wilmington, Delaware

September 23, 1971

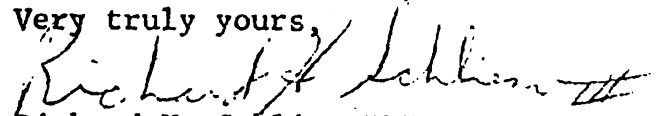
Honorable Russell W. Peterson
Governor of the State of Delaware
Dover, Delaware

Dear Governor Peterson:

Enclosed please find three copies of the partially executed lease between the Dupont Company and the State for the subaqueous lands adjacent to Dupont's Deepwater plant. The form of this lease has been passed back and forth between the Attorney General's Office and the Dupont Company resulting in this finished product which includes all of the elements discussed and agreed upon in the meeting of May 28, 1971 in your Wilmington office. As you can see, all of the copies have been executed by the Dupont Company and Walter Kabis. All that is lacking is your execution of the documents.

Please execute all copies of the instrument and return them to me as soon as possible with the exception of one copy which you may have for your file. If you have any questions, please don't hesitate to call me or have Sandy Campbell give me a call and I will try to help you. Thank you.

Very truly yours,


Richard H. Schliem III
Deputy Attorney General

RHS/m
Enclosures

SL-558/1971

LEASE GRANTED TO

E. I. DU PONT DE NEMOURS AND COMPANY

TO

DREDGE, CONSTRUCT A BULKHEAD, FILL BEHIND SAID
BULKHEAD, CONSTRUCT A DOCK, AND CONSTRUCT A
FUEL OIL STORAGE TANK AT ITS "CHAMBERS
WORKS" FACILITY ALONG THE DELAWARE RIVER

AND NOW, to wit, this _____ day of _____,

A.D. 1971, the State of Delaware (hereinafter referred to as Lessor) does hereby accept the June 21, 1971, resolution of the Water and Air Resources Commission approving the application of E. I. du Pont de Nemours and Company (hereinafter referred to as Lessee) submitted to the Water and Air Resources Commission and dated June 7, 1971, a copy of which is attached hereto and made a part hereof; and

WHEREAS, Lessor claims title to certain subaqueous lands lying beneath the waters of the Delaware River, the subject matter of this lease; and

WHEREAS, Lessee also claims title to the same subaqueous lands;

WHEREAS, the granting of this lease is necessary for the construction of certain storage facilities which are necessary for the use of low sulphur fuel, an environmentally desirable goal;

It is understood by both parties to this agreement that both the application for this lease and the granting of this lease are filed and granted without prejudice to the title claim of either party; and

WHEREAS, Lessee, owner of certain lands referred to as the "Chambers Works" and adjacent to the Delaware River, has applied for permission to dredge, construct a bulkhead, fill behind

said bulkhead, construct a dock, and construct a fuel oil storage tank on the subaqueous lands adjacent to the "Chambers Works"; and

WHEREAS, pursuant to the provisions of Title 7, Part VII, Section 6451, Delaware Code, the Water and Air Resources Commission finds that it is not contrary to the public interest, and that the granting of this lease is hereby approved subject to the terms and conditions herein set forth.

NOW, THEREFORE, Lessor hereby grants permission to the Lessee to dredge from the Delaware River approximately sixty thousand (60,000) cubic yards of subaqueous material;

AND, to construct approximately nine hundred (900) feet of bulkhead;

AND, to fill approximately thirty thousand six hundred forty-seven (30,647) square feet of subaqueous land behind said bulkhead;

AND, to construct a six (6) foot by ten (10) foot dock;

AND, to construct a two hundred thousand (200,000) barrel fuel oil storage tank, part of which will be constructed on the aforementioned subaqueous lands, all in accordance with the plans submitted, drawings DWM-1655, DW-22779, DW-22780, and DW-23045, copies of which are attached hereto and become a part hereof;

AND, hereby leases to Lessee the approximately thirty thousand six hundred forty-seven (30,647) square feet of subaqueous land to be filled and the approximately sixty (60) square feet of subaqueous land upon which the six (6) foot by ten (10) foot dock is to be constructed.

THIS lease and authorization shall be continued for a period of ten (10) years beginning the _____ day of

_____, 1971, or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto Lessee shall have applied for and received a renewal of this lease. A renewal may be denied if Lessor determines that the lease is no longer in the public interest.

THIS lease shall be subject to the following conditions:

1. The Lessee agrees to pay the Lessor, subject to the terms of paragraph 1(a) below, thirty thousand dollars (\$30,000.00) for the approximately sixty thousand (60,000) cubic yards of subaqueous material to be dredged, thirty thousand six hundred forty-seven dollars (\$30,647.00) for a ten-year lease for the approximately thirty thousand six hundred forty-seven (30,647) square feet of subaqueous land to be filled, and an annual rental charge of sixty dollars (\$60.00) for a ten-year lease for the approximately sixty (60) square feet of subaqueous land upon which a six (6) foot by ten (10) foot dock is to be constructed.

1(a) Lessee agrees to pay Lessor the amounts, with 6% annual interest from the date of this agreement, as scheduled in the preceding paragraph in the event that the disputed title to the subaqueous lands in question is resolved in favor of Lessor at some future date under a final judgment of a federal court of competent authority. Lessor agrees to defer the collection of the fees, herein referred to, until the title question is resolved as herein agreed.

2. The bulkhead is to be completed prior to any filling of lands contained by said bulkhead.

3. The project is to be undertaken in accordance with the plans submitted. If changes are necessary, revised plans must be submitted and a supplemental approval issued prior to actual construction.

4. Representatives of the Water and Air Resources Commission may inspect such work during the term of this lease, including construction and may collect any samples or conduct any tests that are deemed necessary.

5. This instrument does not purport to constitute an approval of the design or structural stability and safety of the proposed installation and Lessee agrees to save harmless Lessor in the event of design or structural failures which cause injury to person(s) or property.

6. Lessee shall maintain any structures on subaqueous lands in a good and safe condition and will protect and save Lessor harmless from any loss, cost or damage by reason of said structural condition.

7. All construction debris, excavated material, brush, rocks, and refuse incidental to such work shall be placed either on shore above the influence of flood waters or on some suitable and approved dumping ground.

8. Any actions, operations or installations associated with the subject matter of this instrument, which are considered by the Water and Air Resources Commission to be contrary to the best interests of the public shall constitute reason for the discontinuance of, and/or

- removal of, said action, operation or installation.
9. Approval from the Corps of Engineers, where its jurisdiction is in effect, shall be obtained within one (1) year of the date of execution of this lease.
 10. Lessee shall at all times comply with such rules and regulations relating to navigation as may from time to time be promulgated by the United States Corps of Engineers as the same may affect such structures and the activity related to said structures.
 11. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project which Lessee may be contemplating.
 12. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over the aforementioned subaqueous lands (the subject matter of this lease) other than that of a tenant.
 13. Lessee hereby agrees to waive and to release forever any increased claim to title and/or jurisdiction over the lands presently lying below the mean low water line which, because of the rights granted by this instrument, will be raised above the mean low water line.
 14. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State to any person(s), political subdivision, Board, Commission or Agency of the State in the vicinity of the leased premises.
 15. This lease and authorization are granted solely for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

16. This lease is void if the project has not been initiated by one (1) year from the date of issuance.

17. This lease will be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, E. I. du Pont de Nemours and Company has caused this instrument to be executed and its corporate seal affixed by its respective proper officers thereunto duly authorized on this the day and year first above written.

E. I. DU PONT DE NEMOURS AND COMPANY

By [Signature]
DIRECTOR, SECRETARY'S DEPARTMENT

ATTEST:

[Signature]
Assistant Secretary

REVISED
[Signature]
DEPT.
[Signature]
DIV.

IN WITNESS WHEREOF, I [Signature]

Chairman of the Delaware Water and Air Resources Commission have hereunto set my hand and seal this 17th day of September, 1971.

(SEAL)
By Chairman of Delaware Water and Air Resources Commission

IN WITNESS WHEREOF, I, RUSSELL W. PETERSON, Governor of the State of Delaware, have hereunto set my hand and the Great Seal of the State of Delaware has been hereunto affixed by the Secretary of State, at Dover, on this 29th day of September in the year of Our Lord One Thousand Nine Hundred and Seventy-one.

[Signature]
By The Governor

[Signature]
By the Secretary of State

(ICE REPAIR PERMIT)



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
TRENTON

cc: B.H.C. - K.F.E.
D.G.H. - J.G.
G.L.P. - D.F.D.
J.R. McGraw
W.F. Lippincott
E.C. File - 13.04
2.04

DIVISION OF MARINE SERVICES

PLEASE ADDRESS REPLY TO:
P. O. BOX 1889
TRENTON, N. J. 08625

E. I. Du Pont De Nemours & Co. Inc.
Chambers Works
Deepwater, N.J. 08023

MAR 1 1977

LOT: 1
TOWN: Pennsville
WATERWAY: Delaware River
Permit #T-25
BLOCK: 1
COUNTY: Salem

TO WHOM IT MAY CONCERN:

The Department of Environmental Protection, Division of Marine Services acting under N.J.S.A. 12:5-3 hereby grants a revocable permit to carry out work in accordance with your application filed February 22, 1977.

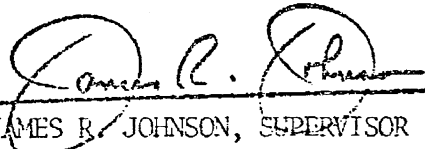
The application, in general, contemplates the dismantling and removal of ice damage portion of waste water outfall and repair or replacement of the line in Delaware River as shown on plan filed with application, dated June 1971, sheets 2 of 6.

This permit is issued with the concurrence of the Department of the Army, U.S. Corps of Engineers.

This permit does not authorize any additions, changes in configuration, dredging or filling.

This permit is subject to revocation and shall be enforced until revoked and is further issued subject to the work being completed by September 1, 1977, date of expiration of this permit.

OFFICE OF RIPARIAN LANDS MANAGEMENT


JAMES R. JOHNSON, SUPERVISOR

cc: Dept. of the Army
U.S. Corps of Engineers (Phila. Dist.)
with copy of application

cc: Atlantic City Field Office

Sent James R. Johnson, Sup'v.
Office of Riparian Lands Management
P.O. Box 1889 - Trenton, N.J. 08625

OFFICE USE ONLY

FILE NO. _____
DATE FILED: _____

APPLICATION FOR REVOCABLE PERMIT
(ICE DAMAGE REPAIRS)

2/18/77
P.F. Brown N-10404
E.C. Lorenz N-9418

bcc J.C. Breckenridge, N-10404
P.M. Humanick/R.A. Shinn/D.F. Gilbert
W.F. Lippincott, Ad. Bldg.
G.L. Porter, Ad. Bldg.
E.T. Fogg, Ad. Bldg.

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MARINE SERVICES
OFFICE OF RIPARIAN LANDS MANAGEMENT
P. O. BOX 1889
TRENTON, NEW JERSEY 08625

ECD File 13.04

JC
HWH
DSD

DATE: 2/18/77

Gentlemen:

Application is hereby made for issuance of a revocable permit to carry out the following work:

1. APPLICANT/OWNER
(NAME) E. I. DU PONT DE NEMOURS & CO., INC.
(ADDRESS) CHAMBERS WORKS, DEEPWATER, N.J. 08023

2. LOCATION OF WORK:
(MUNICIPALITY) PENNSVILLE TOWNSHIP (COUNTY) SALEM
(NAME OF WATERWAY) DELAWARE RIVER

(LOT & BLOCK NUMBER) LOT NO. 1; BLOCK NO. 1 (STREET ADDRESS) CHAMBERS WORKS

3. GENERAL DESCRIPTION OF REPAIR & REPLACEMENT WORK CONTEMPLATED: DISMANTLING AND REMOVAL OF ICE DAMAGED PORTION OF WASTEWATER OUTFALL LINE (001) AND REPAIR⁽¹⁾ OR REPLACEMENT⁽²⁾ OF THE LINE FOR WHICH DESIGN IS BEING DEVELOPED.

4. ESTIMATED COST OF REPAIR OR REPLACEMENT: \$500,000⁽¹⁾ TO \$1,500,000⁽²⁾

5. Attached hereto is a survey or sketch showing structure to be repaired or replaced.

6. Attached is a picture of structure to be repaired or replaced.

NOTICE: IT IS HEREBY UNDERSTOOD AND AGREED UPON BY THE APPLICANT OR OWNER THAT IF THE STRUCTURE TO BE REPAIRED OR REPLACED, UNDER THIS PERMIT, IS FOUND TO BE A TRESPASS ON RIPARIAN LANDS, I WILL AGREE TO FILE A COMPLAINT APPLICATION PER RIPARIAN STATUTES.

(1) Assumes repair of existing line

(2) Assumes complete replacement

Respectfully yours,

[Handwritten Signature]

CERTIFICATE OF TITLE

Department of Environmental Protection
Division of Marine Services
Office of Riparian Lands Management
P.O. Box 1839
Trenton, New Jersey 08625

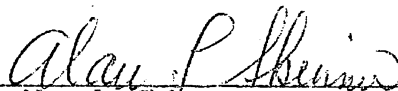
Gentlemen:

I hereby certify that according to the records in the Clerk's Office of the County of Salem, New Jersey, E. I. du Pont de Nemours and Company, a Delaware corporation, is the owner of record in fee simple of the following described premises, being Tract 1 in deed dated March 31, 1960, and recorded in Deed Book 410, page 137 (also recorded with the State of New Jersey, Department of Conservation and Economic Development, Division of Planning and Development, in Liber J-4, Folio 127), and that E. I. du Pont de Nemours and Company has not sold, assigned, or in any way disposed of its rights in said lands so far as the records of said County reveal:

ALL that tract of land flowed by tidewaters situate in the Township of Lower Penns Neck in the County of Salem and State of New Jersey, fronting on and abutting a portion of the lands acquired by the grantee herein by deed recorded in Salem County in Book of Deeds #153, Pages #445, etc., the several courses and distances of the land intended to be granted herein as shown on the map attached hereto and made part hereof.

Frontage involved measures 52.00 feet along former Pierhead and Bulkhead Line.

IN WITNESS WHEREOF, I have hereunto placed my hand and seal the 23rd day of August, 1977.



Alan L. Skinner
Attorney-at-Law of the State of
New Jersey
R.D. #3
Salem, New Jersey 08079

ACCEPTANCE OF REVOCABLE PERMIT

Date 9-19-77

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MARINE SERVICES
OFFICE OF RIPARIAN LANDS MANAGEMENT
P. O. BOX 1889
TRENTON, NEW JERSEY 08625

Gentlemen:

The undersigned hereby accepts the revocable permit issued by the Department of Environmental Protection, Division of Marine Services, dated 9-16-77 subject to the terms and conditions thereof including but not limited to the right of the State to revoke same with or without cause and also subject to all provisions of law, rules and regulations of any government agency applicable thereto.

Name George P. Cassidy
Title Supt. Environmental Control

Attest:

John J. Dwyer, Jr.

(This shall be properly signed, witnessed and sealed)

JOHN J. DWYER, JR.
Notary Public of New Jersey
My Commission Expires Oct. 26, 1980



File - 2.0421

13.04

R-NFL

State of New Jersey
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 DIVISION OF WATER RESOURCES
 POST OFFICE BOX 2809
 TRENTON, NEW JERSEY 08625

STREAM ENCROACHMENT APPLICATION NO. 7949

STREAM ENCROACHMENT YEAR NO. 77-585

An application has been received by this office for approval of a project along a stream as follows:

APPLICANT: E. I. du Pont de Nemours & Co., Inc.

ADDRESS: 1094 Bldg., Chambers Works, Deepwater, N.J. 08023

PROJECT: water flume and pier

STREAM: Delaware River

LOCATION: Along stream on Chambers Works

MUNICIPALITY: Pennsville

COUNTY: Salem

The application will be reviewed by the engineering staff as soon as the workload permits. All inquiries should be addressed to Bill Weaver, the engineer assigned to this project. Reference should always be made to Application No. 7949 and year No. 77-585 so as to facilitate locating the file and obtaining a proper answer.

Very truly yours,

William F. Rogers

William F. Rogers
Acting Supervising Engineer
Stream Encroachment Section
Bureau of Flood Plain Management
Telephone (609) 292-2402

WFR/JRM:mc

DATE 10-25-77

MEMORANDUM

RECEIVED

TO: Bill Moyer

SEP 9 1981

FROM: Mike Malkiewicz *Mike*

WETLAND SECTION

DATE: September 4, 1981

RE: Renewal of E. I. DuPont Chamers Works Subaqueous Lease

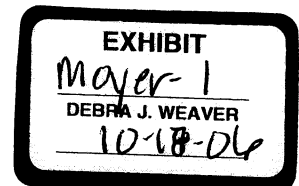
Bill - I hope you had a good vacation. Please contact me on the above subject at your earliest convenience. I received a call from the State Economic Development Office, and was informed that the Dupont Co. wants to have this matter settled by the end of September, 1981.

Thanks. *MJM*

RECEIVED

SEP 9 1981

WETLAND SECTION



MEMORANDUM

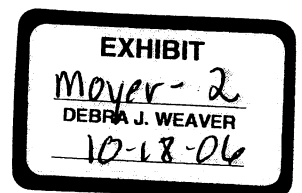
TO: Bill Moyer
FROM: Mike Malkiewicz *MM*
DATE: September 10, 1981
RE: DuPont Subaqueous Lease Renewal

RECEIVED
SEP 11 1981
WETLAND SECTION

I have attached hereto a photocopy of the subaqueous lease that the legal office obtained from Archives. The lease was signed by all the required parties. However, several dates are not filled in on blanks in the lease.

Please contact me and let me know how you want to proceed with this matter. *Mike*

Attachment



SL-558/1971

LEASE GRANTED TO

E. I. DU PONT DE NEMOURS AND COMPANY

TO

DREDGE, CONSTRUCT A BULKHEAD, FILL BEHIND SAID BULKHEAD, CONSTRUCT A DOCK, AND CONSTRUCT A FUEL OIL STORAGE TANK AT ITS "CHAMBERS WORKS" FACILITY ALONG THE DELAWARE RIVER

AND NOW, to wit, this 29th day of September, A.D. 1971, the State of Delaware (hereinafter referred to as Lessor) does hereby accept the June 21, 1971, resolution of the Water and Air Resources Commission approving the application of E. I. du Pont de Nemours and Company (hereinafter referred to as Lessee) submitted to the Water and Air Resources Commission and dated June 7, 1971, a copy of which is attached hereto and made a part hereof; and

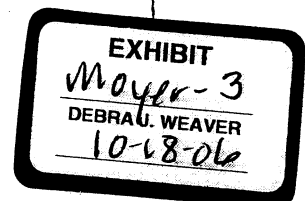
WHEREAS, Lessor claims title to certain subaqueous lands lying beneath the waters of the Delaware River, the subject matter of this lease; and

WHEREAS, Lessee also claims title to the same subaqueous lands;

WHEREAS, the granting of this lease is necessary for the construction of certain storage facilities which are necessary for the use of low sulphur fuel, an environmentally desirable goal;

It is understood by both parties to this agreement that both the application for this lease and the granting of this lease are filed and granted without prejudice to the title claim of either party; and

WHEREAS, Lessee, owner of certain lands referred to as the "Chambers Works" and adjacent to the Delaware River, has applied for permission to dredge, construct a bulkhead, fill behind



said bulkhead, construct a dock, and construct a fuel oil storage tank on the subaqueous lands adjacent to the "Chambers Works"; and

WHEREAS, pursuant to the provisions of Title 7, Part VII, Section 6451, Delaware Code, the Water and Air Resources Commission finds that it is not contrary to the public interest, and that the granting of this lease is hereby approved subject to the terms and conditions herein set forth.

NOW, THEREFORE, Lessor hereby grants permission to the Lessee to dredge from the Delaware River approximately sixty thousand (60,000) cubic yards of subaqueous material;

AND, to construct approximately nine hundred (900) feet of bulkhead;

AND, to fill approximately thirty thousand six hundred forty-seven (30,647) square feet of subaqueous land behind said bulkhead;

AND, to construct a six (6) foot by ten (10) foot dock;

AND, to construct a two hundred thousand (200,000) barrel fuel oil storage tank, part of which will be constructed on the aforementioned subaqueous lands, all in accordance with the plans submitted, drawings DWM-1655, DW-22779, DW-22780, and DW-23045, copies of which are attached hereto and become a part hereof;

AND, hereby leases to Lessee the approximately thirty thousand six hundred forty-seven (30,647) square feet of subaqueous land to be filled and the approximately sixty (60) square feet of subaqueous land upon which the six (6) foot by ten (10) foot dock is to be constructed.

THIS lease and authorization shall be continued for a period of ten (10) years beginning the 29th day of

September A.D. _____, 1971, or so long as the conditions attached to the lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this lease shall expire and become null and void, unless prior thereto Lessee shall have applied for and received a renewal of this lease. A renewal may be denied if Lessor determines that the lease is no longer in the public interest.

THIS lease shall be subject to the following conditions:

1. The Lessee agrees to pay the Lessor, subject to the terms of paragraph 1(a) below, thirty thousand dollars (\$30,000.00) for the approximately sixty thousand (60,000) cubic yards of subaqueous material to be dredged, thirty thousand six hundred forty-seven dollars (\$30,647.00) for a ten-year lease for the approximately thirty thousand six hundred forty-seven (30,647) square feet of subaqueous land to be filled, and an annual rental charge of sixty dollars (\$60.00) for a ten-year lease for the approximately sixty (60) square feet of subaqueous land upon which a six (6) foot by ten (10) foot dock is to be constructed.

1(a) Lessee agrees to pay Lessor the amounts, with 6% annual interest from the date of this agreement, as scheduled in the preceding paragraph in the event that the disputed title to the subaqueous lands in question is resolved in favor of Lessor at some future date under a final judgment of a federal court of competent authority. Lessor agrees to defer the collection of the fees, herein referred to, until the title question is resolved as herein agreed.

2. The bulkhead is to be completed prior to any filling of lands contained by said bulkhead.
3. The project is to be undertaken in accordance with the plans submitted. If changes are necessary, revised plans must be submitted and a supplemental approval issued prior to actual construction.
4. Representatives of the Water and Air Resources Commission may inspect such work during the term of this lease, including construction and may collect any samples or conduct any tests that are deemed necessary.
5. This instrument does not purport to constitute an approval of the design or structural stability and safety of the proposed installation and Lessee agrees to save harmless Lessor in the event of design or structural failures which cause injury to person(s) or property.
6. Lessee shall maintain any structures on subaqueous lands in a good and safe condition and will protect and save Lessor harmless from any loss, cost or damage by reason of said structural condition.
7. All construction debris, excavated material, brush, rocks, and refuse incidental to such work shall be placed either on shore above the influence of flood waters or on some suitable and approved dumping ground.
8. Any actions, operations or installations associated with the subject matter of this instrument, which are considered by the Water and Air Resources Commission to be contrary to the best interests of the public shall constitute reason for the discontinuance of, and/or

removal of, said action, operation or installation.

9. Approval from the Corps of Engineers, where its jurisdiction is in effect, shall be obtained within one (1) year of the date of execution of this lease.

10. Lessee shall at all times comply with such rules and regulations relating to navigation as may from time to time be promulgated by the United States Corps of Engineers as the same may affect such structures and the activity related to said structures.

11. The issuance of this lease does not imply approval of any other part, phase, or portion of any overall project which Lessee may be contemplating.

12. This lease shall not be construed to grant or confer any right, title, easement, or interest in, to, or over the aforementioned subaqueous lands (the subject matter of this lease) other than that of a tenant.

13. Lessee hereby agrees to waive and to release forever any increased claim to title and/or jurisdiction over the lands presently lying below the mean low water line which, because of the rights granted by this instrument, will be raised above the mean low water line.

14. This lease is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State to any person(s), political subdivision, Board, Commission or Agency of the State in the vicinity of the leased premises.

15. This lease and authorization are granted solely for the purposes as stated herein. Any other use without prior approval shall constitute reason for this lease being revoked.

16. This lease is void if the project has not been initiated by one (1) year from the date of issuance.

17. This lease will be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, E. I. du Pont de Nemours and Company has caused this instrument to be executed and its corporate seal affixed by its respective proper officers thereunto duly authorized on this the day and year first above written.

E. I. DU PONT DE NEMOURS AND COMPANY

By [Signature]

ATTEST:

[Signature]
Assistant Secretary

APPROPRIATE
Al Shuman, Esq.
For execution
INDUS. DIV. or
AUXILIARY DEPT.
C. O. Reed
REAL ESTATE DIV.
[Signature]

IN WITNESS WHEREOF, I _____

Chairman of the Delaware Water and Air Resources Commission have hereunto set my hand and seal this 17th day of September, 1971.

[Signature] (SEAL)
By Chairman of Delaware Water and Air Resources Commission

IN WITNESS WHEREOF, I, RUSSELL W. PETERSON, Governor of the State of Delaware, have hereunto set my hand and the Great Seal of the State of Delaware has been hereunto affixed by the Secretary of State, at Dover, on this 29th day of September in the year of Our Lord One Thousand Nine Hundred and Seventy-one.

[Signature]
By The Governor

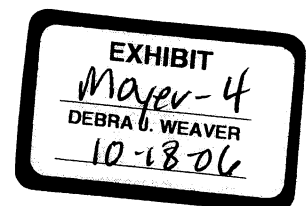
[Signature]
By the Secretary of State

MEMORANDUM

TO: June MacArtor
FROM: William Moyer
SUBJECT: Subaqueous Lands Lease - DuPont
DATE: January 15, 1982

To date, the Wetlands Section has not received the lease payment requested in your October 23, 1981 letter to Mr. Alan Skinner.

Could you inquire as to the reason for the delay and get back with me?





STATE OF DELAWARE
DEPARTMENT OF JUSTICE

RICHARD S. GEBELIN
ATTORNEY GENERAL

Tatnall Building
P. O. Box 1401
Dover, De. 19901

736-4636

October 23, 1981

Alan L. Skinner, Esq.
Legal Department
E. I. duPont deNemours & Co.
1007 Market Street
Wilmington, Delaware 19898

Re: Lease No. SL558/1971

Dear Mr. Skinner:

The lease between the duPont Company and the State of Delaware for subaqueous lands beneath the waters of the Delaware River has been referred to me by the Department of Natural Resources and Environmental Control. The terms of the lease include a phrase that your payments will become due and payable when the disputed title to the subaqueous lands is resolved in favor of Lessor under a final judgment of a federal court of competent authority. I think that you will agree that a federal court of competent jurisdiction has ruled on the subject of the boundary between New Jersey and Delaware. See New Jersey v. Delaware, 295 U. S. 694 (copy attached). The court determined that the boundary was the mean low water line on the easterly or New Jersey side.

Please regard this as your official notification that the \$60,647.00 plus 6% interest from September 29, 1971 is presently due and owing. May we please receive your check for this amount payable to the State of Delaware.

Thank you for your consideration.

Sincerely,

June D. MacArtor

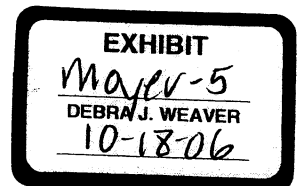
June D. MacArtor
Deputy Attorney General

JDM:jb

RECEIVED

OCT 25 1981

WETLAND SECTION



PROJECT RESUME'

- 2494 E. I. duPont de Nemours & Company, Chambers Works - application to dredge from the Delaware River, construct a bulkhead, fill behind said bulkhead, construct a dock and construct a fuel oil storage tank in the Delaware River.

Findings

1. Project location is shown on the attached plans.
2. Plans call for construction of 900 feet of sheet pile dike (bulkhead), filling of approximately 30,647 square feet of public subaqueous land behind said bulkhead and construction of a 200,000 barrel capacity fuel oil storage tank in the diked in area adjacent to the Delaware River.
3. A second part of the project involves dredging of approximately 60,000 cubic yards from the Delaware River and construction of a 6'x10' extension to an existing dock.
4. The project is to serve the requirements of the Chambers Works Plant and the Atlantic City Electric Company's generating plant by providing greater emergency fuel storage and by reducing the number of lightering operations.
5. The Division of Soil and Water Conservation has no objection to this project.
6. The Division of Fish and Wildlife has no objection, with the following provisions:
 - a. The proposed bulkhead will provide sufficient capacity to contain the entire contents of oil stored within the tank; and
 - b. All dredging should be timed to not interfere with the annual migration of anadromous fishes up the Delaware River during April and May.
7. The Division of Parks, Recreation and Forestry has no objection to this project.
8. The Company has requested that payment of dredging and lease charges shall be reserved until such time as a competent court shall determine that the State of Delaware's title to the land in question is superior to that of duPont's. The Company files this application without prejudice to either the State or to duPont in this question.

133

Commission Action

1. Recommend to the Governor for approval of a ten-year lease with the following charges:
 - a. A one-time charge of \$30,000.00 for the approximately 60,000 cubic yards of public subaqueous material dredged.
 - b. Rental charge of \$30,647.00 for a ten-year lease for the approximately 30,647 square feet of public subaqueous land to be filled.
 - c. Annual rental fee of \$60.00 for a ten-year lease for the approximately 60 square feet of public subaqueous land upon which a 6'x10' dock is to be constructed.

SUBAQUEOUS LANDS AGENDA
21 June 1971 Commission Meeting

- 2494 E. I. duPont de Nemours & Co., Chamber Works - application to construct a fuel oil storage tank in the Delaware River and to perform dredging in the Delaware River.

Findings:

1. Project location is shown on the attached plans.
2. Plans are to construct a 200,000 barrel fuel oil storage tank and attendant sheet pile dike area in and adjacent to the Delaware River. A second part of the project is to dredge approximately 60,000 cu. yds. from the Delaware River.
3. The project is to serve the requirements of Chambers Works plant and the Atlantic City Electric Company's generating plant by providing greater emergency fuel storage and by reducing the number of lightering operations.
4. The Division of Soil and Water Conservation has no objections.
5. The Division of Fish and Wildlife has no objections, with the following provisions:
 - a. The proposed bulkhead will provide sufficient capacity to contain the entire contents of oil stored within the bulkhead; and
 - b. All dredging should be timed to not interfere with the annual migration of anadromous fishes up the Delaware River during April and May.
6. No comments were received from the Division of Parks, Recreation and Forestry as of 17 June 1971.
7. The company has requested that payment of dredging and lease charges shall be reserved until such time as a competent court shall determine that the State of Delaware's title to the land in question is superior to that of duPont's. The company files this application without prejudice to either the State or to duPont in this question.

Recommendation

1. Recommend for approval with the condition that all applicable dredging and lease charges shall be reserved until such time as the legal question of the ownership of the subaqueous land is resolved. All applicable fees shall become attached to any permit issued by the State of Delaware for this project if the ownership is settled in Delaware's favor.

2494 E. I. duPont de Nemours & Co., Chamber Works

Recommendation (continued)

2. That the charges for the dredging shall be a one-time charge of thirty thousand dollars (\$30,000.00) for the approximately 60,000 cubic yards of material dredged from the Delaware River.
3. That a ten-year lease fee of thirty thousand six hundred forty-seven dollars (\$30,647.00) be charged for approximately 30,647 square feet of public subaqueous land acquired by bulkheading and filling.

130

6201000

ACCEPTANCE OF REVOCABLE PERMIT

Date 4-8-82

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF COASTAL RESOURCES
BUREAU OF COASTAL PROJECT REVIEW
P.O. BOX 1889
TRENTON, NEW JERSEY 08625

Gentlemen:

The undersigned hereby accepts the revocable permit issued by the Department of Environmental Protection, Division of Coastal Resources dated 3/24/82 subject to the terms and conditions thereof including but not limited to the right of the State to revoke same with or without cause and also subject to all provisions of law, rules and regulations of any government agency applicable thereto.

Name George H. Cassidy
Title Supt. Environ. Control.

Attest:

Gladys A. Rokhtoff 4-8-82

(This form shall be properly signed, witnessed and sealed)

GLADYS A. ROKHTOFF
Notary Public of New Jersey
My Commission Expires July 6, 1986



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
TRENTON

PLEASE ADDRESS REPLY TO
CN 401

DIVISION OF COASTAL RESOURCES

March 24, 1982

TRENTON, N. J. 08625

S.T. Hudson Engineering, Inc.
1339 Chestnut Street
Philadelphia, Pa. 19107

RE: Coastal Permit Application No. 82-0069-1

Dear Applicant for a State Coastal Permit:

The Department of Environmental Protection, Division of Coastal Resources has decided to approve the coastal permit application you applied for under the:

- () Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.)
- () Wetlands Act (N.J.S.A. 13:9A-1 et seq.)
- (X) Waterfront Development Law (N.J.S.A. 12:5-3)

Please review the enclosed permit and note any conditions. The enclosed summary report or opinion, or the permit itself indicates the reasons for this decision, in terms of the Rules on Coastal Resource and Development Policies (N.J.A.C. 7:7E-1.1 et seq.).

Please complete the permit acceptance form and promptly return it to Steven C. Whitney, Chief, Bureau of Coastal Project Review, at the above address.

If you or anyone else is aggrieved by this permit decision, an administrative appeal may be filed as follows:

1. CAFRA Permit: Appeal on public policy grounds to the Coastal Area Review Board, within 21 days of this decision (see N.J.A.C. 7:7D-1.1 et seq.) and/or appeal to the Commissioner, within 21 days of the publication of notice of this decision in the DEP Bulletin, for a quasi-judicial hearing before an administrative law judge (see N.J.A.C. 7:7D-2.1).

2. Wetlands Permit or Waterfront Development Permit: Appeal to the Commissioner, within 10 days of the publication of notice of this decision in the DEP Bulletin, for a quasi-judicial hearing before an administrative law judge (see N.J.A.C. 7:1C-1.10).

You may contact the Division Appeals Coordinator, at the above address or by telephone (609) 292-9762, if you have questions on appealing this decision.

I am sharing a copy of the permit with the appropriate local and federal agencies to promote inter-governmental cooperation in managing coastal resources.

If you have questions on this decision or permit, please contact the Bureau of Coastal Project Review at the above address or telephone (609) 292-0060.

Please notify the Bureau of Coastal Enforcement and Field Services by telephone (201) 341-3977 three days prior to beginning site preparation.

Sincerely yours,

David N. Kinsey

David N. Kinsey, Director
Division of Coastal Resources

Enclosures

- (X) Permit
- (X) Acceptance Form
- () Summary Report/Opinion

cc U.S. Army Corps of Engineers
Philadelphia District (X)
New York District ()
Bureau of Coastal Enforcement and Field Services
Thomas F. Hampton (X)
Regional Supervisor (X) - John Higgins
Municipal Construction Official ()



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
P.O. Box 1390
Trenton, N.J. 08625



PERMIT *

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attached accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the permit.

Permit No. 82-0069-1	Issuance Date March 24, 1982	Effective Date March 24, 1982	Expiration Date March 24, 1987
Name and Address of Applicant E.I. duPont de Nemours & Co. Chambers Works Administration Bldg. Deepwater, NJ 08023	Location of Activity/Facility 300 feet downriver of the Permittee's main wharf	Name and Address of Owner same as applicant	
Issuing Division <input type="checkbox"/> Water Resources <input checked="" type="checkbox"/> Coastal Resources <input type="checkbox"/> Environmental Quality	Type of Permit Waterfront Development	Statute(s) NJSA 12:5-3	Application No. 82-0069-1

This permit grants permission to:

Install a new steel sheet piling cell to replace an existing 36 timber pile cluster on the Delaware River as shown on the attached plan in 2 sheets dated 12-30-81 by Robert V. Shelly.

The site of the work herein authorized is covered by a tidelands grant to the permittee dated July 16, 1917 and recorded in Liber W. at page 62 in the records of this Division.

This permit is issued subject to the approval of the Army Corps of Engineers.

This permit is effective for five (5) years from its issuance date and cannot be renewed.

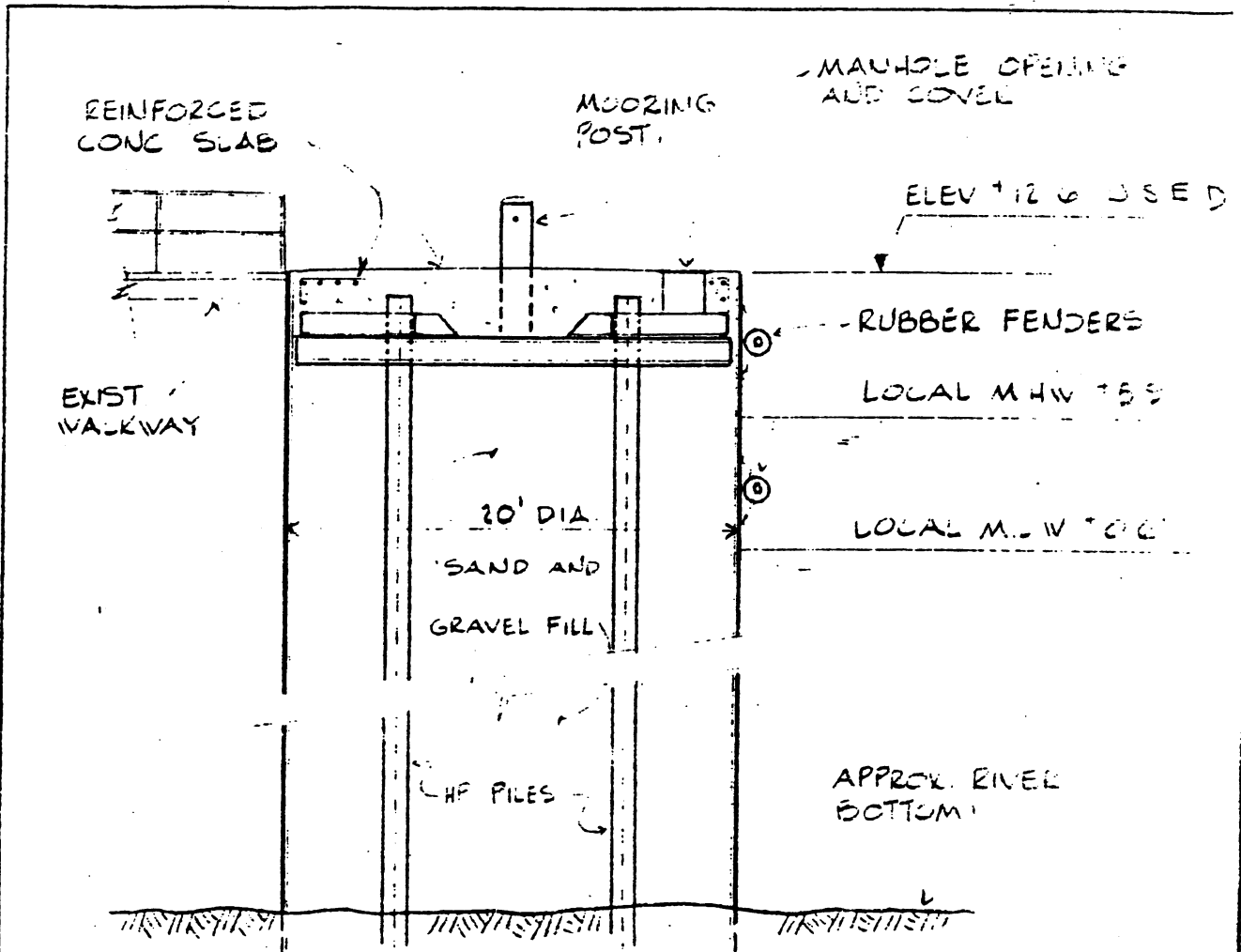
The work/structures authorized by this permit have been deemed acceptable under section (s) N.J.A.C. 7:7E-4.10(j) of the Coastal Resource and Development Policies.

Approved by the Department of Environmental Protection

Dana Kinney

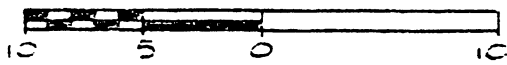
3/24/82
DATE

Director - Division of Coastal Resources



SECTION A-A

SCALE 1/8" = 1'-0"



Robert V. Shelly

ROBERT V. SHELLY P.E.
LICENSE No 10245

S.T. HUDSON ENGINEERS INC.
1339 CHESTNUT STREET
PHILADELPHIA, PA 19107

PROPOSED: NEW 20' DIA. TURNING CELL
AT: CHAMBERS WORKS DEEPWATER N.J.
COUNTY OF: SALEM, N.J.
APPLICATION BY: E.I. DUPONT DENEMOURE & CO.

DA-2072 H-1703 SH. 2 of 2 12-30-81

PURPOSE

NEW 20' DIAMETER
STEEL SHEET PILING
TURNING CELL FOR
BARGES

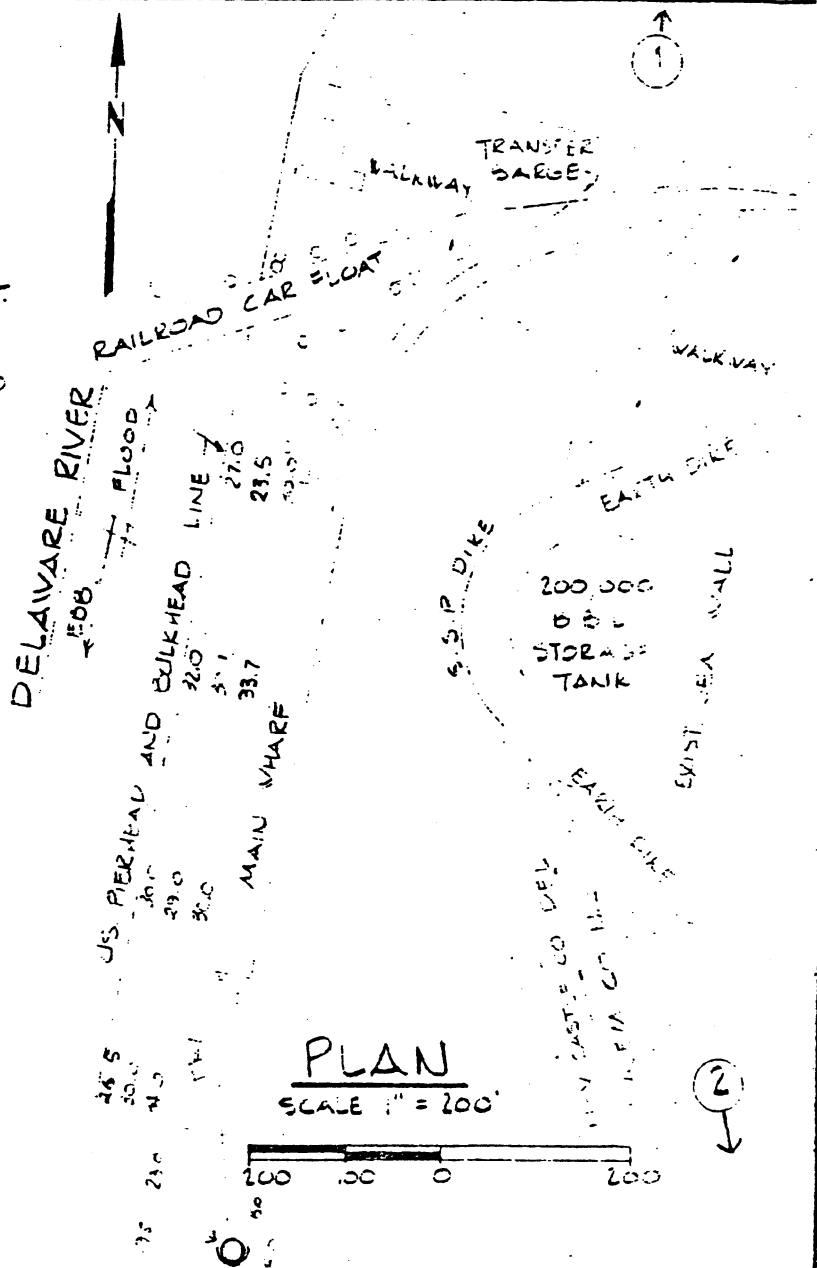
ADJACENT PROPERTIES

- ① E.I. DUPONT CARNEYS PT.
- ② DELAWARE RIVER AND BAY AUTHORITY

NOTE :

ALL SOUNDINGS ARE
EXPRESSED IN FEET & TENTHS
AND REFER TO USED MLW
10.6 DELAWARE RIVER
DATUM

ST. HUDSON ENGINEERS INC.
1339 CHESTNUT STREET
PHILADELPHIA PA 19107

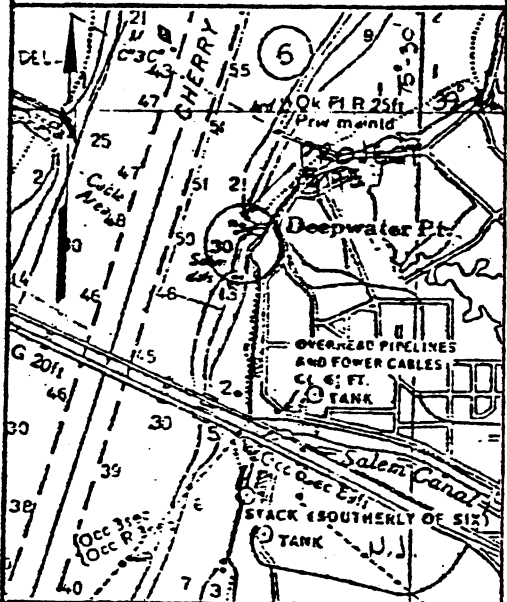


PLAN

SCALE 1" = 200'

LOCATION PLAN

TAKEN FROM US C & G CHART # 234



REMOVE EXISTING
36 PILE TIMBER CLUSTER
AND INSTALL NEW
20' DIAMETER STEEL
SHEET PILING TURNING
CELL

Da-2072 H-1703
SHT. 10;2 12-30-81

Robert V. Shelly
ROBERT V. SHELLY P.E.
LICENSE No 10245

PROPOSED: NEW 20' DIA TURNING CELL
AT: CHAMBERS WORKS DEEPWATER, N.J.
COUNTY OF: SALEM, N.J.
APPLICATION BY: E.I. DUPONT DE NEMOURS & CO



STATE OF NEW JERSEY
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 CN 402
 Trenton, N.J. 08625
 PERMIT



The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachm accompanying same application, and applicable laws and regulations. This permit is also subject to the further condit and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the per

Permit No. WQC #82-2-13	Issuance Date MAR 2 2 1982	Effective Date MAR 2 2 1982	Expiration Date -----
Name and Address of Applicant S.T. Hudson Engineers, Inc. 1339 Chestnut St. Philadelphia, PA 19107	Location of Acitivity/Facility 300' downriver of Main Wharf Outshore of duPont Chambers Works, Deepwater, NJ Salem Co., Delaware River	Name and Address of Owner E.I. duPont deNemours & Co. Chambers Works Administration Building Deepwater NJ 08023	
Issuing Division <input checked="" type="checkbox"/> Water Resources <input type="checkbox"/> Coastal Resources <input type="checkbox"/> Environmental Quality <input type="checkbox"/> Other	Type of Permit Conditional Water Quality Certification	Statute(s) 33 U.S.C. 1251, Section 401 NJSA 58:10-1 to 13	Application No. -----

This permit grants permission to:

Install 20' steel sheet piling cell to replace a deteriorated existing 36 pile timber cluster

There is reasonable assurance that the proposed activity, as described above, will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Act and will be conducted in a manner which will not violate applicable water quality standards of the State of New Jersey. This certification is being issued with the following conditions:

1. A Waterfront Development permit approval shall be required.

The foregoing applies only and exclusively to the effect the proposed work would have on water quality as defined in the regulations establishing certain classifications to be assigned to the waters of this State and standards of quality to be maintained in waters so classified. The certification does not apply to broader ecological, biological or environmental effects which may result from the project, nor does this certification evaluate the degree of public interest the project generates.

Approved by the Department of Environmental Protection

cc: U.S. Army Corps of Engineers
 Division of Coastal Resources

Arnold Schiffman
 By Authority Of
 Arnold Schiffman, Director

MAR 2 2 1982
 DATE

No. 11, Original

In The
Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

**AFFIDAVIT OF FREDERICK SICKELS
IN SUPPORT OF PLAINTIFF'S MOTION
FOR LEAVE TO PETITION
TO REOPEN AND TO ENFORCE THE DECREE,
OR FOR A SUPPLEMENTAL DECREE**

State of New Jersey:

SS

County of Mercer :

I, FREDERICK SICKELS, being duly sworn according to law, upon his oath, deposes and says:

1. I am the Acting-Assistant Director of the Water Supply Permitting Element, in the State of New Jersey, Department of Environmental Protection ("DEP"), Division of Water Supply. I have knowledge of the matters set forth herein, based upon my personal knowledge and upon my review of the DEP files in this matter.

2. The Bureau of Water Allocation within the Water Supply Permitting Element of the Division of Water Supply regulates all diversions of ground water and fresh surface water in New Jersey that are in excess of 100,000 gallons of water per day. N.J.Stat.Ann. § 58:1A-6 and -7 (2004). This includes water diverted for public water supply, industrial processing and cooling, irrigation, agriculture, sand and gravel operations, remediation, and power generation.

3. The Water Supply Permitting Element has exercised this jurisdiction since 2005. Prior to 2005, the DEP exercised this jurisdiction through its Water Supply Administration and its predecessor agencies. Prior to the establishment of the Department of Environmental Protection in 1970, the equivalent program was administered by the State of New Jersey, Department of Conservation and Economic Development.

4. Since 1907, the DEP Division of Water Supply and its predecessor agencies, the State Water Supply Commission; the Division of Water Policy and Supply; the Water Policy

and Supply Council in the State Department of Conservation; the State Department of Conservation and Economic Development; and the Division of Water Resources, have been responsible for the economical and prudent development and equitable allocation of State's surface water resources for industrial and potable water supply.

5. The DEP Division of Water Supply administers the water supply management program throughout the State of New Jersey, regulating the diversion of water from a variety of sources, including the Delaware River, even where the diversion will withdraw water from the Delaware River through a pipe extending beyond the low water mark on the New Jersey shore of the Delaware River within the Twelve Mile Circle. The Water Resources Management section of the Bureau of Water Allocation has issued one water allocation permit to withdraw water from the Delaware River, along this length of the Delaware River, and through a pipe that extends beyond the low water mark on the New Jersey shore of the Delaware River.

6. Pursuant to the Delaware River Basin Compact between the States of New Jersey, Delaware, Pennsylvania and New York, N.J.Stat.Ann. § 32:11D-1 to -78 et seq. (2005), the Water Resources Management section of the New Jersey DEP's Bureau of Water Allocation ensures that each applicant for a Water Allocation Permit, to withdraw water from the Delaware River and into New Jersey, provides notice to the Delaware River Basin Commission. Such notice is provided by New Jersey for any request to withdraw water from the Delaware River into New Jersey, even if such withdrawal request involves an intake extending below the low-water mark within the Twelve Mile Circle.

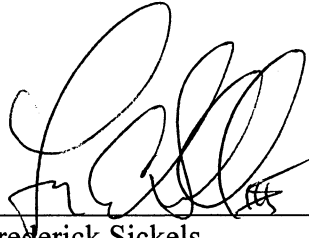
7. My staff and I searched the databases and files of the Water Supply Permitting Element and identified a Water Allocation Permit number 4059 PS, that the DEP issued for

an electricity and steam cogeneration facility located on the New Jersey shore of the Delaware River, that withdraws water from the Delaware River, along the length of the Delaware River located in the Twelve Mile Circle, through a pipe that extends beyond the low water mark on the New Jersey shore of the Delaware River and crosses the boundary into the State of Delaware.

8. The DEP issued Permit number 4059 PS, dated April 10, 1991, to the Keystone Cogeneration Systems, Inc. in Logan Township, Gloucester County, New Jersey, to withdraw from the Delaware River up to 108.5 million gallons of water per month, at a maximum rate of 5,000 gallons per minute, for power generation operations at the facility. The intake structure for the water supply pipe is located at the outshore end of the pipe, approximately 1,600 feet from shore, at least 4 feet below the mean low water elevation and 2 feet above the bottom of the Delaware River. This permit remains in effect. The name of the permittee has been changed to Logan Generating Company, L.P.

9. As required by the Delaware River Basin Compact, Keystone Cogeneration Systems, Inc. provided to the Delaware River Basin Commission notice of its application to the DEP's Water Resources Management Section for Water Allocation Permit number 4059 PS. The DRBC considered the application under its Docket Number D-90-48, and issued a Notice of Commission Action on September 27, 1991, that modified the requested volume of water withdrawal. Pursuant to the State of New Jersey's obligations under the Delaware River Basin Compact, the DEP's Bureau of Water Allocation incorporated those limits into the final version of Water Allocation Permit number 4059 PS.

--



Frederick Sickels

Post Office Box 426
Trenton, New Jersey 08625-0426
(609)292-2957

Subscribed and sworn
to before me this
22 day of June, 2005



Notary Public of the
State of New Jersey

JUN 22 2005

DAVID E. LEACH III
MY COMMISSION EXPIRES 03/23/09
ID #2223582

SickelsAff5.rtf

--



State of New Jersey

Department of Environmental Protection
WATER SUPPLY ELEMENT

CN 426
TRENTON, NEW JERSEY 08625-0426
TEL.# 609-292-7219
FAX.# 609-292-1654

Current Permit

Christine Todd Whitman
Governor

Robert C. Shinn, Jr.
Commissioner

NOV 13 1996

(Christine Whitman)
↓

Logan Generating Company, L.P.
Box 169-C, Route 130 South
Swedesboro, New Jersey 08085-9300
Attn: Nazre Adum

Dear Mr. Adum:

Re: Water Allocation Permit No. 4059PS

Enclosed is a permit dated *NOV 13 1996* issued pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. This permit is to divert water from two wells and a surface water intake in the Township of Logan, Gloucester County.

Please be advised that as you are responsible for complying with the terms and conditions of the enclosed permit you should review them thoroughly. Failure to comply with any or all of the terms and conditions could result in penalties and/or revocation of the permit.

Within 20 calendar days following your receipt of this permit you may submit a request for an adjudicatory hearing to contest the conditions of this permit. Regulations regarding the format and requirements for requesting an adjudicatory hearing may be found in N.J.A.C. 7:19-2.13.

To request a hearing, the permittee must complete the enclosed Tracking Form and supply all the information specified in Part III of the Tracking Form. A copy of the completed, signed and dated Tracking Form, together with all of the information required by Part III of the Tracking Form, including attachments where specified, must be submitted to:

1. Richard McManus, Director
New Jersey Department of Environmental Protection
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625

2. Robert Oberthaler, Bureau Chief (without attachments)
New Jersey Department of Environmental Protection
Water Supply Element
Bureau of Water Allocation
CN 426
Trenton, New Jersey 08625

Very truly yours,



Robert Oberthaler
Bureau Chief
Bureau of Water Allocation
Water Supply Element

RTD:bu

Enclosure

CERTIFIED MAIL NO. P 170080732

c: Bureau of Water Allocation
Delaware River Basin Commission

NJ 01466



STATE OF NEW JERSEY
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 BUREAU OF WATER ALLOCATION
 CN 426, Trenton, N.J. 08625-0426



PERMIT*

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents.

Permit No. 4059PS	Issuance Date NOV 13 1996	Effective Date NOV 13 1996	Expiration Date December 31, 2004
Name and Address of Applicant Logan Generating Company, L.P. Box 169-C, Route 130 South Swedesboro, NJ 08085-9300		Location of Activity/Facility Logan Township Gloucester County	
Type of Permit Allocation Diversion		Statute(s) N.J.S.A. 58:1A-1	

This permit grants permission to:

Divert water from two wells and a surface water intake in the Township of Logan, Gloucester County.

This permit is subject to the following Specific and General Conditions:

A) WATER DIVERSION SOURCES

- Water for industrial and potable use may be diverted under this revised permit from the following sources at the maximum rates specified below:

Groundwater

Well Permit No.	Well Name or Designation	Pump Capacity (gpm)	Aquifer
3008633	1B	80	Potomac-Raritan-Magothy
3008635	1A	80	Potomac-Raritan-Magothy

Surface Water

Intake No.	Source	Pump Capacity (gpm)
1	Delaware River	5000

Page 1 of 3

Approved by the authority of:
 Steven Nieswand, Administrator
 Water Supply Element

Robert Oberthaler 10/22/96
 Robert Oberthaler, Bureau Chief, Date
 Bureau of Water Allocation

* The word permit means "approval, certification, registration, etc."

(GENERAL CONDITIONS ARE ON THE REVERSE SIDE.)

B) ALLOCATION

2. The total diversion from the above sources shall not exceed 108.53 million gallons per month at a maximum rate of 5002 gpm.
3. The total diversion from the above sources shall not exceed 1302.36 million gallons per year.
4. The combined total diversion from Wells 1A and 1B shall not exceed 0.09 million gallons per month.

C) INITIAL PERMIT REQUIREMENTS

5. The permittee has adopted and shall implement to the satisfaction of the Department, a water conservation and drought management plan. An update to the existing plan shall be submitted to the Bureau of Water Allocation on or before June 30, 1997, and an update every other year thereafter, on the actions taken pursuant to this program and the impact thereof.

D) MONTHLY PERMIT REQUIREMENTS

6. The combined monthly diversion from the wells shall be recorded and reported quarterly on form DWR-017A under Permit No. 4059PS.
7. Wells shall be constructed so that static water level (depth to water) can be determined at any time. Static water level and total head measurements for each well shall be recorded quarterly and reported quarterly on form DWR-017A under Permit No. 4059PS. Total head shall be calculated by subtracting the static water level from the land surface elevation above sea level. Measurements shall be made when the well pump has been shut down for a recovery period of at least 12 hours.
8. The monthly diversion from the Delaware River and the quantity returned during each month shall be recorded and reported quarterly on form DWR-017A under Permit No. 4059PS.

E) QUARTERLY/ANNUAL REQUIREMENTS

9. The permittee shall have a raw water sample from either Well No. 1A or 1B analyzed by a New Jersey certified laboratory to obtain its chloride concentration. The analysis shall be performed during the third quarter each year. The permittee shall submit the results of the analysis, the well permit number, and the date the sample was taken on the third quarterly report form, DWR-017A.
10. The permittee shall submit a biennial water conservation and drought management plan update as outlined in Item C.5. above.

F) GENERAL REQUIREMENTS

11. Intake No. 1 and the combined diversion from Wells 1A and 1B shall be metered with totalizing flow meters.
12. All wells shall be equipped with a metal tag showing the well permit numbers listed in Item A above or have the permit numbers painted on the casings.
13. The pumping equipment capacity shall not be increased without prior approval from the Bureau of Water Allocation.
14. The permittee shall investigate valid complaints by users of wells or surface water supplies within the zone of influence of its diversion to determine what impact the diversion has had on such wells or surface water supplies. A report on these investigations shall be forwarded to the Bureau of Water Allocation. Any well or surface water supply which becomes damaged, dry, has reduced capacity, reduced water quality or is otherwise rendered unusable as a water well or surface water supply system as a result of the permittee's diversions shall be repaired or replaced at the expense of the permittee. Work shall be in accordance with all State, County and Municipal construction standards for potable water. The Department of Environmental Protection will make the final determination regarding the validity of such complaints, the scope or sufficiency of such investigations, and will determine how to resolve any problems resulting from the diversion.
15. The Department may modify, suspend or terminate this permit, after due process, for violations of permit conditions, N.J.S.A. 58:1A-1, N.J.A.C. 7:19-1 et seq., any orders issued by the Department, or when in the public interest.
16. The permittee is subject to such initial, modification and annual fees as may be prescribed by the regulations.
17. The permittee shall have the right to apply at any time for modification of this permit by submission of the appropriate application forms. The permittee may informally discuss the terms and conditions of this permit at any time with the Bureau of Water Allocation. An application for renewal shall be filed 3 months prior to the expiration date.
18. Approval of this application is subject to the granting of any approval by the Delaware River Basin Commission which may be required under the provisions of the Delaware River Basin Compact.

G) PERMIT EXPIRATION

19. This permit shall expire on December 31, 2004.

**STAFF REPORT
ADDENDUM**

IN THE MATTER OF

Logan Generating Company, L.P.

Revision of Water Allocation
Permit No. 4059PS to divert
water from two wells and a
surface water intake in the
Township of Logan,
Gloucester County

Background

On May 10, 1995 Water Allocation Permit No. 4059PS was issued to Logan Generating Company, L.P., 901 Market Street, Suite 721, Wilmington, Delaware 19801. The permit was issued with a short term expiration date which could be extended provided that certain conditions dealing with submission of water conservation and drought or water supply emergency plans were satisfied by the specified deadline.

Findings of Fact

1. On June 30, 1995, Logan Generating Company, L.P. submitted a water conservation and a drought or water supply emergency plan in accordance with existing conditions 5 and 6.
2. In a letter date June 2, 1995, the permit holder requested that the well names or designations for Wells 1A (3008633) and 2A (3008635) be changed to 1B and 1A, respectively.
3. The permit holder also requested that the address of record be changed to the following:

Logan Generating Company, L.P.
Box 169-C, Route 130 South
Swedesboro, New Jersey 08085-9300

4. Existing permit condition 13 requires all diversion sources to be metered. However, the combined diversion from the two wells is measured by a single meter. The wells are of the same depth in the same aquifer and are only around 50 feet apart. In addition, the

combined allocation from the wells is only 90,000 gallons per month. Significant modification of the existing plumbing would be needed to meter each well individually.

Staff Analysis

1. Following a review of the materials submitted it has been determined that the permit expiration date should be extended until December 31, 2004.
2. The well designations and address of record should be changed as requested.
3. Pursuant to the exception set forth in N.J.A.C. 7:19-2.14(a)4iii, the permit holder should not be required to individually meter each well. Continued metering of the combined diversion from the two wells should be authorized.

Recommendations

It is recommended that the permit be issued with an extended expiration date of December 31, 2004, and all conditions should be changed to reflect both current status and updated conditions as follows:

A) WATER DIVERSION SOURCES

1. Water for industrial and potable use may be diverted under this revised permit from the following sources at the maximum rates specified below:

Groundwater

Well Permit No.	Well Name or Designation	Pump Capacity (gpm)	Aquifer
3008633	1B	80	Potomac-Raritan-Magothy
3008635	1A	80	Potomac-Raritan-Magothy

Surface Water

Intake No.	Source	Pump Capacity (gpm)
1	Delaware River	5000

B) ALLOCATION

2. The total diversion from the above sources shall not exceed 108.53 million gallons per month at a maximum rate of 5002 gpm.
3. The total diversion from the above sources shall not exceed 1302.36 million gallons per year.
4. The combined total diversion from Wells 1A and 1B shall not exceed 0.09 million gallons per month.

C) INITIAL PERMIT REQUIREMENTS

5. The permittee has adopted and shall implement to the satisfaction of the Department, a water conservation and drought management plan. An update to the existing plan shall be submitted to the Bureau of Water Allocation on or before June 30, 1997, and an update every other year thereafter, on the actions taken pursuant to this program and the impact thereof.

D) MONTHLY PERMIT REQUIREMENTS

6. The combined monthly diversion from the wells shall be recorded and reported quarterly on form DWR-017A under Permit No. 4059PS.
7. Wells shall be constructed so that static water level (depth to water) can be determined at any time. Static water level and total head measurements for each well shall be recorded quarterly and reported quarterly on form DWR-017A under Permit No. 4059PS. Total head shall be calculated by subtracting the static water level from the land surface elevation above sea level. Measurements shall be made when the well pump has been shut down for a recovery period of at least 12 hours.

8. The monthly diversion from the Delaware River and the quantity returned during each month shall be recorded and reported quarterly on form DWR-017A under Permit No. 4059PS.

E) QUARTERLY/ANNUAL REQUIREMENTS

9. The permittee shall have a raw water sample from either Well No. 1A or 1B analyzed by a New Jersey certified laboratory to obtain its chloride concentration. The analysis shall be performed during the third quarter each year. The permittee shall submit the results of the analysis, the well permit number, and the date the sample was taken on the third quarterly report form, DWR-017A.
10. The permittee shall submit a biennial water conservation and drought management plan update as outlined in Item C.5. above.

F) GENERAL REQUIREMENTS

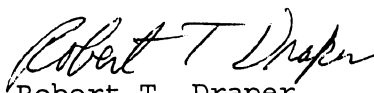
11. Intake No. 1 and the combined diversion from Wells 1A and 1B shall be metered with totalizing flow meters.
12. All wells shall be equipped with a metal tag showing the well permit numbers listed in Item A above or have the permit numbers painted on the casings.
13. The pumping equipment capacity shall not be increased without prior approval from the Bureau of Water Allocation.
14. The permittee shall investigate valid complaints by users of wells or surface water supplies within the zone of influence of its diversion to determine what impact the diversion has had on such wells or surface water supplies. A report on these investigations shall be forwarded to the Bureau of Water Allocation. Any well or surface water supply which becomes damaged, dry, has reduced capacity, reduced water quality or is otherwise rendered unusable as a water well or surface water supply system as a result of the permittee's diversions shall be repaired or replaced at the expense of the permittee. Work shall be in accordance with all State, County and Municipal construction standards for potable water. The Department of Environmental Protection will make the final determination regarding the validity of such complaints, the scope or sufficiency of such investigations, and will determine how to resolve any problems resulting from the diversion.

15. The Department may modify, suspend or terminate this permit, after due process, for violations of permit conditions, N.J.S.A. 58:1A-1, N.J.A.C. 7:19-1 et seq., any orders issued by the Department, or when in the public interest.
16. The permittee is subject to such initial, modification and annual fees as may be prescribed by the regulations.
17. The permittee shall have the right to apply at any time for modification of this permit by submission of the appropriate application forms. The permittee may informally discuss the terms and conditions of this permit at any time with the Bureau of Water Allocation. An application for renewal shall be filed 3 months prior to the expiration date.
18. Approval of this application is subject to the granting of any approval by the Delaware River Basin Commission which may be required under the provisions of the Delaware River Basin Compact.

G) PERMIT EXPIRATION

19. This permit shall expire on December 31, 2004.

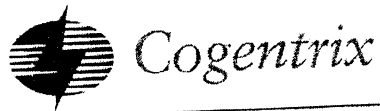
Respectfully submitted,



Robert T. Draper
Bureau of Water Allocation

dyg 10/11/96
AK
9/24/96

RTD:bu



Logan Generating Co., L.P.
76 Route 130
Swedesboro, NJ 08085-9300
856-467-2128
Fax: 856-467-5256

September 29, 2005

Mr. Frederick Sickels
Bureau Chief
NJDEP, Water Supply Administration
Bureau of Water Allocation
401 East State Street
Third Floor, West Wing
Trenton, NJ 08625-0426

Subject: Logan Generating Plant
76 Route 130
Swedesboro, NJ 08085-9300
Program Interest ID: 4059PS
Activity No. WAP900001
Permit Renewal Application

Dear Sir or Madam:

On behalf of Logan Generating Plant, please accept this Water Allocation Permit Renewal Application, for the Logan Generating Plant (Logan), located in Swedesboro, New Jersey.

This permit renewal application, which addresses withdrawals from two groundwater wells and a surface water intake in the Township of Logan, Gloucester County, is being submitted in accordance with the requirements of N.J.A.C. 7:19-2.4(a). There have been no modifications to the existing permitted activities conducted at Logan since the permit was renewed through 12/31/05, as per a July 23, 2004 Letter to Logan from the Bureau of Water Allocation.

If you have any questions regarding this submittal, please feel free to contact us at 856-241-4575.

Very truly yours,

A handwritten signature in cursive script, appearing to read "T. Shannon".

Terrence A. Shannon
Environmental Manager

Attachments

cc: Charlotte-M Casper
File-7.1.4

NJ 01450

MMS ✓
BSU ✓
MFSID 4059 PS
(DEP Use Only)



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATER SUPPLY ADMINISTRATION
BUREAU OF WATER ALLOCATION
P.O. BOX 426
TRENTON, NEW JERSEY 08625-0426
(609) 292-2957



WATER ALLOCATION PERMIT APPLICATION
RENEWALS

PLEASE READ THE INSTRUCTIONS BEFORE COMPLETING THIS APPLICATION FORM.
Provide all requested information, as applicable.

A. LOCATION AND PROPERTY INFORMATION

The Department is now maintaining a single database of regulated sites. The following information will prevent unnecessary duplication of data.

1. ACTUAL DIVERSION LOCATION

Name of Facility Application is for (For facilities pending or under construction, please use the proposed facility name)
Logan Generating Plant

Street Address/Location (or nearest cross streets if no address is available; P.O. Boxes are not acceptable)
76 Route 30

City or Town Swedesboro State NJ Zip Code 08085 + 9300

Municipality Logan TWP Does the Facility span multiple municipalities? Yes No

County Gloucester Does the Facility span multiple counties? Yes No

2. PROPERTY/LAND OWNERS(S) INFORMATION

Name Keystone Urban Renewal Telephone (704) 525-3800

Mailing Address 9405 Arrowpoint Blvd.

City or Town Charlotte State NC Zip Code 28273 + 8110

Organization Type: Authority/District/Commission Municipal County State
(Check one) Commercial/Industry Individually Owned Utility Corporation
 Investor (Non-BPU) Investor (BPU) Other _____

3. APPLICANT/OPERATING ENTITY(IES)*

Name Logan Generating Company Telephone (856) 241-4575

Mailing Address 76 Route 30

City or Town Swedesboro State NJ Zip Code 08085 + 9300

CONTACT INFORMATION

Application Contact (contact at the above address for all application matters):

If an agent has been authorized under the certification section of the application to act as the agent/representative in all matters pertaining to the application, please check here:

* Quarterly Monitoring Report Forms will be sent to the Report Form Recipient at the address listed in this section.

If an agent has not been authorized, provide an Application Contact:

Name Terrence Shannon Telephone (856) 241-4575

Report Form Recipient/Permit Contact (contact at the above address for permit information and monitoring reports):

Name Terrence Shannon Telephone (856) 241-4575

Title Environmental Manager Department _____

4. RESPONSIBLE ENTITY/ORGANIZATION

If the responsible organization is the Applicant located in No. 3 above, check here:

If the responsible organization is different from the Applicant in No. 3 above, complete the following:

Organization Name _____ Telephone () _____

Mailing Address _____

City or Town _____ State _____ Zip Code _____ + _____

Fax () _____ E-Mail _____

- Organization Type: Authority/District/Commission Municipal County State
 (Check one) Commercial/Industry Individually Owned Utility Corporation
 Investor (Non-BPU) Investor (BPU) Other _____

5. BILLING CONTACT

Billing should go to mailing address of:

- Responsible Entity/Organization address in No. 4 Applicant/Operating Entities address in No. 3

Name Terrence Shannon Telephone (856) 241-4575

6. OTHER PERMITS/AGENCIES

Provide the following for any other state, local or federal permit that has been applied for in relation to this project

Permit Type	Application No./Permit No./Relevant DEP No.	Application Date	Application Status
● Water Quality Management Plan Amendment	*		
● Safe Drinking Water System/Potable Water Supply Well or Intake	*		
● Hazardous Waste Management Program	*		
● Land Use Permits (Freshwater Wetlands, etc.)	*		
● Relevant Environmental Permits – Including Federal, State, & Local Approvals – Specify:	*		

*No applications in relation to this renewal. See attached Environmental Permit Index.

Is the project located within the New Jersey Pinelands Area? ___ Yes X No

If this application includes a new source of supply, which is located in the New Jersey Pinelands Area, or is for an increase in allocation, then a Certificate of Filing from the New Jersey Pinelands Commission must be submitted with the application. The Pinelands Commission can be contacted at (609) 894-7300.

Is the project located in the Delaware River Basin? Yes No
If Yes, has a docket been issued for this project by the Delaware River Basin Commission?
 Yes Docket No. D-90-48
 No Docket applied for on _____ (Date)
The Delaware River Basin Commission can be contacted at (609) 883-9500.

B. CERTIFICATIONS

In cases where the official required to sign Certification 1 below is the same person as the official required to sign the Certification 2 below, only Certification 1 need be signed. In all other cases, both certifications shall be completed.

1. HIGHEST RANKING INDIVIDUAL OF FACILITY

This certification is to be signed by the highest-ranking individual at the facility with overall responsibility for that facility.

I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment.

9/29/05
Date

James M. Sousa Jr
Signature

James M. Sousa
Name (please print)

General Manager
Title

2. HIGHEST RANKING INDIVIDUAL

This certification shall be signed as follows:

- (a) For a corporation, by a principal executive officer of at least the level of vice president; or
- (b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (c) For a municipality, State, Federal or other public agency, by either the principal executive officer ranking elected official.

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fines and/or imprisonment.

27 SEP 05
Date

Thomas J. Bonner
Signature

THOMAS J. BONNER
Name (please print)

President
Title

3. APPLICANT'S AGENT (IF APPLICABLE)

I, the Applicant/Owner _____ or Applicant/Operator (when the owner of the facility and the operator of the facility are distinct parties) _____ or Co-permittee (if applicable) _____ authorize to act as my agent/representative in all matters pertaining to my application the following person:

Name _____ Phone _____
Company/Employer _____
Address _____ County _____
City or Town _____ State _____ Zip Code _____
Occupation/Profession _____

(Signature of Applicant/Owner)

(Signature of Applicant/Owner)

(Signature of Co-permittee)

AGENT'S CERTIFICATION

Sworn before me
this _____ day of
_____ 20 _____

Notary Public

I agree to serve as agent for the above mentioned applicant

(Signature of Agent)

4. STATEMENT OF PREPARER OF PLANS, SPECIFICATIONS, SURVEYORS OR TECHNICAL REPORT (IF APPLICABLE)

I hereby certify that the engineering plans, specifications and engineer's report applicable to this project comply with the current rules and regulations of the State Department of Environmental Protection with the exceptions as noted.

[NOT APPLICABLE]

(Signature of Engineer)

Type: Name and Date

Position, Name of Firm

PROFESSIONAL ENGINEER'S
EMBOSSSED SEAL

C. REQUIRED SUBMITTALS/ APPLICATION ATTACHMENTS

Check to ensure the following are included with the application:

Included	
<input checked="" type="checkbox"/>	1. Proof of Meter Calibration for each source
<input checked="" type="checkbox"/>	2. Water conservation and Drought Management Plan <i>If not required, please indicate why:</i> _____
<input checked="" type="checkbox"/>	3. Information supporting Future Demands Projections listed in Section E.1.

D. DIVERSION REQUEST AND DIVERSION SOURCE INFORMATION

This application is for:

Renewal of existing Permit No. 4059PS Resol No. 48-92, Activity No. (if known) WAP 900001

1. Present Allocation:

a. Groundwater: 0.09 million gallons of water per month at a maximum rate of 160 gallons per minute.

If Groundwater sources are in two or more Aquifers, please note the present Aquifer Specific Allocation:

Aquifer/Formation Name	Present Allocation (million gallons)	
	Per Month (mgm)	Per Year (mgy)
Potomac-Raritan-Magothy	0.09	1.08

b. Surface water: 108.53 million gallons of water per month at a maximum rate of 5,000 gallons per minute.

c. All sources: 108.53 million gallons of water per month at a maximum rate of 5,080 gallons per minute.

d. All sources: 1,302.36 million gallons of water per year.

Note: Monthly allocations are established based upon the maximum withdrawal expected during any one month (31 days) of the calendar year.

2. Diversion to be used for Industrial cooling and potable use.

3. Complete the following for each diversion source:

a. Groundwater (wells)

State Well Permit No. (mandatory)	Well Local Name	Location Description	Existing (E) Proposed (P)	Proposed Maximum Withdrawal Rate (million gallons)	
				Per Month	Per Year
3008633	1B	Approx. 2500 ft west from Rte 130 Approx. 1110 ft north from Plant Access Rd	E	0.09*	1.08*
3008635	1A	Approx. 2500 ft west from Rte 130 Approx. 1100 ft north from Plant Access Rd	E	0.09*	1.08*

* Combined withdrawal rate for the wells 3008633 (1B) and 3008635 (1A).

¹ If source specific surface water allocations are requested, please attach requests as necessary.

b. Groundwater (continued from previous page)

State Well Permit No. (mandatory ¹)	Well Local Name	Location Description	Existing (E) Proposed (P)	Proposed Maximum Withdrawal Rate (million gallons)	
				Per Month	Per Year

b. Surface water (streams, reservoirs, ponds)

Intake Subject Item Identification No. ²	Intake Local Name	Location Description	Existing (E) Proposed (P)	Proposed Maximum Withdrawal Rate (million gallons)	
				Per Month	Per Year
1	Delaware River	Located at River Mile 78.5 in Water Zone 5 (majority of intake barge berth and coal handling pier are located in Delaware River within the boundary of New Castle County, DE).	Quality E	108.53	1302.36*

* Includes withdrawal from groundwater wells 3008633 (1B) and 3008635 (1A).

4. Complete Addendum A and B for each diversion source.

E. WATER USE

1. The current and projected average and peak water demands in million of gallons for 5 year intervals are as follows:

WATER DEMAND	AVERAGE DEMAND			PEAK DEMAND	
	Daily	Monthly	Annual	Daily	Monthly
Current Demand	2.23	66.0	795	2.49	77.31
5 Year Projections	2.34	69.3	835	2.61	81.2
10 Year Projections	2.34	69.3	835	2.61	81.2
15 Year Projections	2.34	69.3	835	2.61	81.2

¹ State Well Permit No. is mandatory for existing wells (see instructions).

² Intake Subject Item Identification No. is the identification number assigned to the intake by the DEP. For existing, approved sources, this number can be found on the Pre-Printed Monitoring Report Forms or the existing permit.

2. Present annual average water use:

WATER USE	Self Supplied		Other Sources (mgd)	Total (mgd)	Estimated Consumptive Use ¹ (%)
	Ground (mgd)	Surface (mgd)			
Domestic Supply	0.0009				0%
Industrial Process		0.08			0%
Industrial Cooling		2.09			100%
Irrigation					
Commercial					
Remediation					
Other					
Total Water Use	0.0009	2.17	0	2.17	96.3%

¹ Consumptive use is water withdrawn that is not returned to the surface or ground waters at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality.

3. The water, after use for above purposes stated in D.2., will discharge into _____
 (Name of Stream, Sewage System, or Subsurface Disposal System). For wastewater discharged directly by the facility or via a sewerage system to treatment plant, provide the location of the plant and its NJPDES Permit Number.
 Location: Delaware River

NJPDES Permit No. NJ0076872

4. For non-potable diversions, what is the source of water for sanitary use? Aquifer

F. IRRIGATION

Complete if water is to be used for irrigation purposes. **NOT APPLICABLE**

1. Check to ensure the following is included:

Included	
<input type="checkbox"/>	Attach a diagram of the irrigation system piping between the diversion sources, any storage ponds and wet wells, up to the irrigation system distribution piping. Include the position of all water meters.

2. Irrigation is to be used for (e.g. golf course, landscape, grounds maintenance)

3. Describe the types of grasses, acreage and maximum need for each in extreme dry weather, in gallons per week.

4. Describe the irrigation system (type, capacity of nozzles in gpm, maximum number of nozzles operating at one time, average and maximum irrigation time in hours per day, how diversion is metered, how the ponds are fed.)

5. Is there any treated wastewater used for irrigation? Yes No

G. PUBLIC WATER/SUPPLY SYSTEMS

Complete only if diversion is for public water supply. NOT APPLICABLE

1. Population

- a. Population supplied at the time of application: _____
- b. Provide source or basis as to how figure in 1a. was determined: _____
- c. The population supplied is projected to be _____ by the year _____. The method used to calculate the population is (or include in attached report): _____

2. Estimated Consumption (average day of maximum month (MGD)):

- a. Immediate _____
- b. Future (_____ years) _____

3. Quantity or percentage of water supplied during the last calendar year for the following:

	<u>Annual</u>	<u>Maximum Month</u>
Total	_____	_____
Domestic	_____	_____
Commercial	_____	_____
Industrial	_____	_____
Other	_____	_____

4. Quantity or percentage of unaccounted-for water (as defined by N.J.A.C. 7:19-6.2): _____ for _____ (Year), of a total water production of _____ million gallons.

5. Number of Service Taps: Domestic _____ Commercial and Industrial _____
 Number of Meters: Domestic _____ Commercial and Industrial _____

6. Capacity of Plant (gallons daily) _____

7. Total System Storage (million gallons) _____

8. The following is required for all Public Water Supply Applications:

Included	
<input type="checkbox"/>	a. Provide a list of all contracts with other municipalities or water companies to supply or purchase water. Provide copies of the all contracts not previously approved by the Bureau.
<input type="checkbox"/>	b. List of municipalities to be supplied . Submit a map of the service area when not restricted by established municipal limits. (If not submitted previously.)
<input type="checkbox"/>	c. List of all interconnections , size of each interconnection, and the water system serviced.
<input type="checkbox"/>	d. Other drawings and information deemed pertinent.

ADDENDUM A
SOURCE DATA FOR GROUNDWATER (WELLS)

Complete Well information for all existing and proposed sources. This information is mandatory. Refer to instructions for acceptable values. Please reference the same State Well Permit Numbers and Well Names as referenced in Section D of the application. Attach additional copies of addendum as needed.

State Well Permit No.	3008633	State Well Permit No.	3008635
Well Local Name	1B	Well Local Name	1A
Date Drilled	07/09/1992	Date Drilled	07/09/1992
Total Finished Depth (feet) (include tailpiece if any)	97	Total Finished Depth (feet) (include tailpiece if any)	97
Depth to Top of Open Hole Interval or Screen (feet)	75	Depth to Top of Open Hole Interval or Screen (feet)	75
Depth to Bottom of Open Hole Interval or Screen (feet)	95	Depth to Bottom of Open Hole Interval or Screen (feet)	95
Rated Pump Capacity (gpm)	80	Rated Pump Capacity (gpm)	80
Yield (gpm)	80	Yield (gpm)	80
Aquifer/Geological Formation	Potomac-Raritan-Magothy	Aquifer/Geological Formation	Potomac-Raritan-Magothy
Elevation Information:		Elevation Information:	
Site Elevation	9.8 FEET	Site Elevation	9.8 FEET
Elevation System Description	NJ DEP DEM (10 METER)	Elevation System Description	NJ DEP DEM (10 METER)
Elevation Method Description	ESTIMATED AT WELL LOCATION	Elevation Method Description	ESTIMATED AT WELL LOCATION
Absolute Elevation Accuracy	UNKNOWN	Absolute Elevation Accuracy	UNKNOWN
Absolute Elevation Accuracy Units (feet or meters)	FEET	Absolute Elevation Accuracy Units (feet or meters)	FEET
Locational Information:		Locational Information:	
X coordinate (e.g. Longitude) of well center	75 24' 16.9"	X coordinate (e.g. Longitude) of well center	75 24' 16.8"
Y coordinate (e.g. Latitude) of well center	39 47' 33.8"	Y coordinate (e.g. Latitude) of well center	39 47' 33.9"
Coordinate System Code and Description	Lat/Long (WGS84) DMS	Coordinate System Code and Description	Lat/Long (WGS84) DMS
Coordinate Method Description	FIELD SKETCH	Coordinate Method Description	FIELD SKETCH
Absolute Location Accuracy	UNKNOWN	Absolute Location Accuracy	UNKNOWN
Accuracy Units (feet or meters)	FEET	Accuracy Units (feet or meters)	FEET

ADDENDUM B

SOURCE DATA FOR SURFACE WATER (STREAMS, RESERVOIRS, PONDS)

Complete Intake information for all existing and proposed sources. This information is mandatory. Refer to instructions for acceptable values. Please reference the same Source Intake ID and Intake Local Name as referenced in Section D of the application. Attach additional copies of addendum as needed:

Source Intake SI ID (if already permitted)	1	Source Intake SI ID (if already permitted)	
Intake Local Name	Delaware River	Intake Local Name	
Rated Pump Capacity (gpm)	5,000	Rated Pump Capacity (gpm)	
MA7CD10 (cfs) at intake opening	>1700*	MA7CD10 (cfs) at intake opening	
Requested Passing Flow (cfs)	None specified	Requested Passing Flow (cfs)	
Surface Water Quality Classification	(DRBC Zone 5)	Surface Water Quality Classification	
Drainage Area Above Intake (square miles)	>7160**	Drainage Area Above Intake (square miles)	
Locational Information:		Locational Information:	
X coordinate (e.g. Longitude) of intake opening *	A: 464572.1 B: 235373.9	X coordinate (e.g. Longitude) of intake opening	
Y coordinate (e.g. Latitude) of intake opening *	A: 4405310.7 B: 352291.7	Y coordinate (e.g. Latitude) of intake opening	
Coordinate System Code and Description	LAT/LONG (WGS 84) DMS UTM Zone 18 NAD 83	Coordinate System Code and Description	
Coordinate Method Description	Located from Orthophoto	Coordinate Method Description	
Absolute Location Accuracy	2	Absolute Location Accuracy	
Accuracy Units (feet or meters)	meters	Accuracy Units (feet or meters)	

* From Trenton gauge. 56 miles upstream, USGS# 01463500

* From Burlington gauge. 36 miles upstream USGS #01464598

*** A is middle of pier using UTM Zone 18 (meters) NAD 83. B is middle of pier using NJ State plane (feet) NAD 83

SURFACE WATER INTAKE
235373.9 East
352291.7 North

WELL #3008635
237929.2 East
350705.7 North

WELL #3008633
237925.5 East
350700.7 North

DELAWARE RIVER

NEW CASTLE CO. DELAWARE
GLOUCESTER CO. NEW JERSEY

Water Allocation Permit
Logan Generating Plant
76 Route 30, Swedesboro, NJ

Coordinates: NJ State Plane Feet, NAD83.
Orthophoto provided by NJ Spatial Data Clearinghouse. Date of photo: 2002.

1:6,000



9/19/2005 - 3:55:25 PM

No. 11, Original

In The
Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

**AFFIDAVIT OF JEFFREY T. READING
IN SUPPORT OF MOTION
FOR LEAVE TO PETITION
TO REOPEN AND TO ENFORCE DECREE,
OR FOR A SUPPLEMENTAL DECREE**

State of New Jersey:

SS

County of Mercer :

I, JEFFREY T. READING, being duly sworn according to law, upon his oath, deposes and says:

1. I am the Assistant Director of the Division of Water Quality, in the State of New Jersey, Department of Environmental Protection ("DEP"). I have served the DEP in this capacity since 2000. I have knowledge of the matters set forth herein, based upon my personal knowledge and upon my review of the DEP files in this matter.

2. I have been employed by the DEP since 1980. From 1996 to 2000, I served as the Bureau Chief, Bureau of Point Source Permitting – Region 1. From 1992 to 1996, I served as Bureau Chief, Bureau of Watershed Permitting (formerly Bureau of Municipal Discharge Permits). From 1987 to 1991, I served as an Environmental Scientist I in the Bureau of Industrial Discharge Permits. From 1982 to 1987, I worked in the Bureau of Water Quality Standards and Analysis, serving as an Environmental Scientist I (1987), Environmental Scientist II (1986-1987), Environmental Scientist III (1983-1986) and Senior Environmental Specialist (1982-1983). From 1981 to 1982, I served as a Senior Environmental Specialist in the Bureau of Monitoring and Data Management. From 1980 to 1981, I served as an Environmental Specialist in the Bureau of Monitoring and Data Management. Since 1982, I have worked on

various aspects of the development, review, issuance and monitoring of water pollution discharge permits.

3. The DEP's New Jersey Pollution Discharge Elimination System ("NJPDES") Program protects New Jersey's ground and surface water quality by assuring the proper treatment and discharge of wastewater (and its residuals) and stormwater from various types of facilities and activities, as well as municipalities, counties, public complexes and highway agencies. To accomplish this, permits are issued limiting the mass and/or concentration of pollutants which may be discharged into ground water, streams, rivers and the ocean, or through the imposition of best management practices for stormwater discharges.

The types of regulated facilities can range from very small users such as campgrounds, schools, and shopping centers to larger industrial and municipal wastewater dischargers.

4. The Federal National Pollution Discharge Elimination System Program, established by Congress pursuant to 33 U.S.C.A. §§ 1311 and -1342(a) (2005), is administered by the United States Environmental Protection Agency ("EPA"). From 1972 to 1981, EPA issued permits to dischargers located in New Jersey. In 1981, EPA delegated this permitting authority to New Jersey. Since then, that program has been implemented by New Jersey through the DEP's NJPDES program.

5. The legal authority for the NJPDES Program is the New Jersey Water Pollution Control Act, N.J.Stat.Ann. §§ 58:10A-1 et seq. (2004) and the federal Clean Water Act, 33 U.S.C.A. § 1251 et seq. (2005). The regulatory scheme for the NJPDES Program is set forth at N.J.Admin.Code §§ 7:14A-1 et seq. (2005).

6. The DEP administers the NJPDES Program throughout the State of New Jersey, regulating pollution discharges from sources within New Jersey even when the outfall crosses the boundary of New Jersey into the State of Delaware within the length of the Delaware River located in the Twelve Mile Circle. The NJPDES Program has issued permits for wastewater treatment projects that are located along this length of the Delaware River and that discharge beyond the low water mark on the New Jersey shore of the Delaware River.

7. Under the Delaware River Basin Compact, the NJPDES Program provides notice to the Delaware River Basin Commission, notwithstanding the location with respect to State boundaries, of each application for a NJPDES permit to discharge pollutants to the Delaware River.

8. I directed the identification of permits issued by the NJPDES Program for pollution discharges from facilities located on the New Jersey shore of the Delaware River. The outfall pipe for each of the facilities extends below the low water line of the Delaware River within the Twelve Mile Circle, and thus crosses the boundary of the State of New Jersey into the State of Delaware. Each of these permits remains in effect. I discuss those NJPDES permits below, progressing from north to south.

9. The NJPDES Program has issued NJPDES permit number NJ0076872 DSW to the Logan Generating Company, f/k/a Keystone Energy Service Company, L.P., in Logan Township, Gloucester County, New Jersey, to discharge an average of 1,440 gallons of groundwater per day from an underdrain system and stormwater, at a steam and electricity cogeneration station into the

Delaware River beyond the low water mark and within the State of Delaware through two outfall structures.

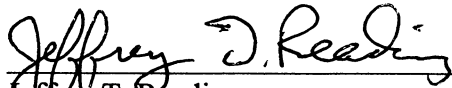
10. The NJPDES Program issued NJPDES permit number NJ0024023 DSW to the Penns Grove Municipal Sewerage Authority in the Borough of Penns Grove, Salem County, New Jersey, to discharge up to 0.75 million gallons of treated wastewater per day from a wastewater treatment facility into the Delaware River beyond the low water mark and within the State of Delaware through an outfall pipe located 209 feet from shore at a depth of 7.08 feet below the surface of the Delaware River.

11. The NJPDES Program has issued NJPDES permit number NJ0005100 DSW to the E.I. duPont de Nemours & Co., Chambers Works Plant, in Pennsville Township, Salem County, New Jersey, to discharge up to 62.8 million gallons per day of treated industrial wastewater, stormwater and non-contact cooling water from a chemical manufacturing plant into the Delaware River beyond the low water mark and within the State of Delaware through three outfall structures that are located up to 50 feet from the shoreline.

12. The NJPDES Program has issued NJPDES permit number NJ0005363 DSW to the Atlantic City Electric Co., d/b/a Connectiv Power Delivery, Deepwater Generating Station, in Pennsville Township, Salem County, New Jersey, to discharge up to 350 million gallons per day of non-contact cooling water, stormwater, and intake screen backwash water per day from a steam electric generating station into the Delaware River beyond the low water mark and within the State of Delaware through up to 14

outfall structures that are located up to 100 feet from the shoreline.

13. The NJPDES Program has issued NJPDES permit number NJ0021598 D SW to the Pennsville Municipal Sewerage Authority in Pennsville Township, Salem County, New Jersey, to discharge up to 1.875 million gallons per day of treated wastewater per day from a wastewater treatment facility into the Delaware River beyond the low water mark and within the State of Delaware through an outfall pipe located 102 feet from shore at a depth of 4.5 feet below the surface of the Delaware River.



Jeffrey T. Reading
Assistant Director
State of New Jersey
Department of Environmental Protection
Division of Water Quality
401 East State Street, Floor 3E
Post Office Box 029
Trenton, New Jersey 08625-0029
(609) 292-4543

Subscribed and sworn
to before me this
23 day of June, 2005



Notary Public of the
State of New Jersey

Louise Konjushok
Notary Public of New Jersey
My Commission Expires Aug. 10, 2008

-6-

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

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

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

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

**VOLUME 5 of 7
(Pages 718A-939A-1)**

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Attorney General

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BARBARA L. CONKLIN*
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Assistant Attorney General
JOHN R. RENELLA
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On the Brief

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New Jersey's Appendix

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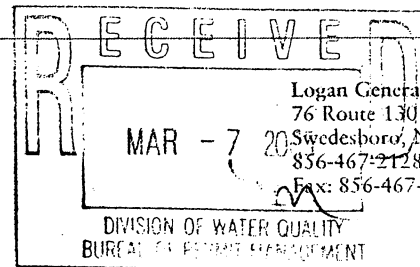
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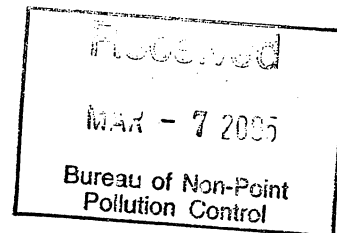
Cogentrix



March 3, 2005

NJDEP, Division of Water Quality
Bureau of Water Management
Attn.: Administrative Review Unit
P.O. Box 029
Trenton, NJ 08625-0029

Subject: Logan Generating Plant
76 Route 130
Swedesboro, NJ 08085-9300
NJPDES/DSW Permit NJ0076872
NJPDES Permit Renewal Application



Dear Sir or Madam:

On behalf of Logan Generating Plant, LP, please accept this NJPDES Permit Renewal Application for the Logan Generating Plant (Logan), located in Swedesboro, New Jersey.

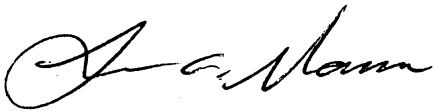
This permit renewal application, which addresses discharges to surface water from an existing steam and electric power generating facility, is being submitted in accordance with the requirements of the New Jersey Pollutant Discharge Elimination System (NJPDES) program. There have been no modifications to the facility since the permit was renewed in 2000 and modified in 2002, that would increase the discharge flow, change the disposal locations and/or method, or otherwise alter the existing permitted activities.

Two outfalls at Logan facility are regulated under the existing NJPDES-DSW permit NJ0076872. These regulated outfalls are designated as DSN001 and DSN003. The outfall DSN001 discharges approximately 1 gallon per minute (gpm) of untreated groundwater and stormwater from Storm Water Basin No. 1 to the Delaware River, classified as Zone 5. The outfall DSN003 discharges approximately 3 gpm of untreated groundwater and stormwater from the Storm Water Basin No. 2 to an unnamed tributary of Oldman's Creek, classified as FW2-NT. In addition, Logan has approval to discharge reject water from Reverse Osmosis (RO) system as well as up to 400 gpm of cooling tower blowdown through DSN001. Logan discharges the reject water from RO system only during emergency draught conditions when Delaware River Chloride level near Logan plant intake structure exceeds 125 ppm for three consecutive days. It is important to note that the RO reject water was last discharged in October 2002. The cooling tower blowdown discharge was a one-time incident and occurred in October 2002. All analytical data are reported to the NJDEP with the specified monitoring requirements on Discharge Monitoring Reports (DMRs). Flow measurements at each permitted point are determined at discharge pipe via bucket/time calculation.

As required for NJPDES-DSW permit application renewal, the facility completed NJPDES-1 Form and NJPDES Technical Form (Form C). Attachments to NJPDES-1 include a Facility Diagram (Attachment A), Line Drawing (Attachment B), and Site Location Map (Attachment C). As required in Item 7 of NJPDES-1 Form, Attachment D includes the full list of environmental permits maintained by Logan.

If you have any questions regarding this submittal, please feel free to contact us at 856-244-4575.

Very truly yours,



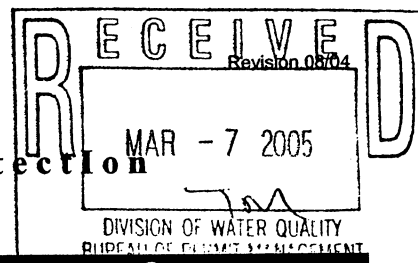
Terrence A. Shannon
Environmental Manager

Attachments

cc: Charlotte-M Casper
File-6.3.3



**State of New Jersey
Department of Environmental Protection
Division of Water Quality**



**NEW JERSEY POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMIT APPLICATION**

Refer to Instructions on Page 6 and the Appropriate Completeness Checklist and Provide All Applicable Information. Please Print or Type. (Attach additional sheets if necessary)

1. APPLICANT(S) / OPERATING ENTITY(IES)*

Name Logan Generating Plant, LP
 Mailing Address 76 Route 130
 City or Town Swedesboro State NJ Zip Code 08085-9300
 Federal Tax I.D.# _____ Telephone (856) 241-4575
 Fax (856) 467-2128 E-Mail _____
 Parent Corporation & Place of Incorporation _____

6163

2. PROPERTY/LAND OWNER(S)

Name Keystone Urban Renewal
 Mailing Address 9405 Arrowpoint Boulevard
 City or Town Charlotte State NC Zip Code 28273-8110
 Federal Tax I.D.# _____ Telephone (704) 525-3800

3. LOCATION OF FACILITY/SITE

Name Logan Generating Plant
 Street Address/Location 76 Route 130
 City or Town Swedesboro State NJ Zip Code 08014
 Municipality Logan TWP County Gloucester EPA I.D. # NJ0001009828

4. FACILITY CONTACT (Person Familiar With The Facility/Site And This Application)

Name Terrence Shannon
 Affiliation Logan Generating, LP
 City or Town Swedesboro State NJ Zip Code 08014
 Fax (856) 467-5256 E-Mail TerrenceShannon@Cogentrix.com

* If you wish to receive MRFs and/or Billing notices at a different address, please complete and submit the "Request to Send MRFs and/or Billing Notices to an Address Different Than Listed in NJPDES V form."

PI - 47189
 NJ 00076772

5. PROJECT AND DISCHARGE DESCRIPTION (Under This Application)

1) Discharge of approximately 1 gallon per minute (gpm) of untreated groundwater and stormwater from Storm Water Basin No. 1 to the Delaware River.

2) Discharge of approximately 3 gpm of untreated groundwater and stormwater from the Storm Water Basin No. 2 to an unnamed tributary of Oldman's Creek.

6. REQUESTED NJPDES PERMIT ACTIONS AND OTHER NJPDES PERMITS

Under Table A, for each requested permit action under this application, list each discharge activity associated with this facility/site in the left column using the discharge activity category codes listed in the Discharge Activity Category Sheet (i.e., A, B, CSO, etc.) and check the requested permit action (new, renewal, etc.). Under Table B, list currently held permits and/or pending applications for this facility/site. For existing permits, list permit number(s) and expiration date.

TABLE A: REQUESTED PERMIT ACTION UNDER THIS APPLICATION

DISCHARGE ACTIVITY (CATEGORY CODES)	PERMIT NUMBER	EXPIR DATE	NEW	RENEW	MOD.	REVOC.	REVOC & REISSUE
B	NJ0076872	08/31/2005		X			

TABLE B: OTHER NJPDES PERMITS ASSOCIATED WITH THIS FACILITY

DISCHARGE ACTIVITY (CATEGORY CODES)	PERMIT NO.	EXPIRATION DATE	PENDING
Stormwater Discharge	NJ0088315	05/31/2007	
	NJ0129984	05/31/2007	
Discharge to Ground Water	NJ0129020	04/30/2009	

7. OTHER PERMITS

If any of the following applications have been submitted for this facility/site, complete the applicable information.

Permit Type	Application No. (if assigned)	Application Status		
		Approved Date	Denied Date	Pending/
• Treatment Works Approval (Municipal - Industrial)	92-7374-4N	6/24/93		
• Exemption From Sewer Ban	GCUA	4/23/92		
• Water Quality Management Plan Amendment	Resol. No.: 48-92	4/16/93		
• Potable Water Supply Well	3008633/30088635	7/9/92		
• Hazardous Waste Management Program	N/A			
• Prevention of Significant Deterioration (PSD)	APC ID 55357	9/6/91		
• Nonattainment Program, Clean Air Act	See Attachment D – Other Permits			
• National Emission Standards - Hazardous Pollutants	N/A			
• Ocean Dumping Permits (Marine Protection Act)	N/A			
• Dredge/Fill Permits - Federal Act Section 404	GENAP-OP-R-91-0374-11	9/5/91		
• Relevant Environmental Permits - Including Federal, State, & Local Approvals - Specify:	See Attachment D – Other Permits			

8. STANDARD INDUSTRIAL CLASSIFICATION CODE(S):

SIC Code #	(✓) if assigned by NJ Dept. of Labor	Products or Service Provided by Facility/Site
4911		Electric Power Generation, Transmission and Distribution
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. WATER SUPPLY DISCHARGE INFORMATION

RAW WATER SOURCES: Please check 0 all that apply.

_____ Public Water Supply: Name of the water utility _____
 Private Wells _____
 Surface Water: Name of the surface waters Delaware River _____

A) Is this facility/site connected to a sanitary or combined sewer? _____ Yes No

If yes, list name, address, and phone number of receiving wastewater treatment plant:

Does this facility discharge to a storm drainage system? Yes _____ No
 If yes, please check _____ Public Private

C) Does this facility discharge to surface water? Yes _____ No

D) Does this facility discharge to ground water? Yes _____ No

10. LICENSED OPERATOR(S) (IF APPLICABLE)

Name N/A N.J. License No. _____
 Affiliation _____
 Mailing Address _____
 City or Town _____ State _____ Zip Code _____
 Telephone () _____ Fax () _____
 E-Mail _____

11. APPLICANT'S AGENT (Optional)

The person listed below is authorized to act as agent/representative in all matters pertaining to this application.

Name _____ N.J. License No. _____
 Affiliation _____
 Mailing Address _____
 City or Town _____ State _____ Zip Code _____
 Telephone () _____ Fax () _____
 E-Mail _____

 Signature of Agent Date Signature for Applicant Date

12. PROPERTY OWNER'S CERTIFICATION (FOR DGW PERMITS ONLY)

I hereby certify that _____
(Property Owners Name)
owns the property identified in (d.) below. The owner grants permission for the activity to be permitted under this application and authorizes the Department to conduct on-site inspections, if necessary.

- In addition, I certify: (check "yes" or "no")
- | | YES | NO |
|--|-------|-------|
| a. The activity will take place in an easement? | _____ | _____ |
| b. Part of the entire project (e.g. pipeline, disposal area, wells, etc.) is or will be located within property owned by the State of New Jersey? | _____ | _____ |
| c. Part of the entire project (e.g. pipeline, disposal area, wells, etc.) is or will be located within property owned by a municipality or county? (If "yes", contact the Green Acres Program at (809) 588-3461 for an applicability determination.) | _____ | _____ |

d.	LOT	_____
	BLOCK	_____

Signature for Owner _____ Date _____

Print or Type: Name _____

Print or Type: Position _____

Note: If "yes" to statements a, b, or c, the applicant must provide evidence of obtaining permission from the other property owners (include copy with this application).

13. CERTIFICATION BY APPLICANT

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for purposely, knowingly, recklessly, or negligently submitting false information."

James M. Sousa Jr. 3/2/05
Signature for Applicant Date

JAMES M. SOUSA JR.
Print or Type: Name

GENERAL MANAGER
Print or Type: Position

Refer to Appropriate Completeness Checklist and Instructions. Provide All Applicable Information.
Please Print or Type. (Attach additional sheets if necessary)

SUPPLEMENTAL APPLICATION FORM TO NJPDES-1 FOR INDUSTRIAL NJPDES/DSW PERMITS

1. FACILITY NAME: Logan Generating Plant			2. NJPDES NO. (NEW APPLICANTS LEAVE BLANK) NJ 0076872		
3. THE PERMIT APPLICATION SHALL INCLUDE:			A. FACILITY DIAGRAM B. LINE DRAWING C. USGS MAP		
4. OUTFALL LOCATION					
For each outfall, list the latitude, longitude and the name of the receiving water.					
OUTFALL NUMBER	LATITUDE (deg, min, sec)	LONGITUDE (deg, min, sec)	RECEIVING WATER (name)	USEPA REACHING	WATERSHED MANAGEMENT AREA
DSN001B	39°47'39"N	75°24'28"W	Delaware River		
DSN003B	39°47'26"N	75°24'26"W	Unnamed Tributary to Adams Creek		
PROPOSED DISCHARGE DATE:				For Department Use Only	
5. FLOWS, POLLUTANT SOURCES, AND TREATMENT TECHNOLOGIES					
OUTFALL NUMBER (DSN)	OPERATION CONTRIBUTING FLOW		TREATMENT TECHNOLOGIES		
	NAME OF OPERATION OR PROCESS (LIST)	AVERAGE FLOW (INCLUDE UNITS)	DESCRIPTION	CODES FROM TABLE 1	
001B	Untreated groundwater and stormwater	1 gpm	No treatment		
	RO reject water-emergency discharge		No treatment	1-5	
	Non-contact cooling tower-emergency discharge		No treatment		
003B	Untreated groundwater and stormwater	3 gpm	No treatment		

FACILITY NAME:

6. INTERMITTENT OR SEASONAL DISCHARGES

Except for stormwater runoff, leaks, or spills, are any of the discharge(s) described in Item 5 intermittent or seasonal?

YES (complete the following table) NO (go to Item 7)

OUTFALL NUMBER (DSN)	FREQUENCY		FLOW				DURATION IN DAYS
	DAYS PER WEEK (SPECIFY AVERAGE)	MONTHS PER YEAR (SPECIFY AVERAGE)	FLOW RATE (in mgd)		TOTAL VOLUME (specify units)		
			monthly average	daily maximum	monthly average <i>mil Gal/mo.</i>	daily maximum <i>MGD</i>	
001B*	7	4	0.305	0.766	6.8	0.77	7
001B**	1	1	0.531	0.769	0.531	0.769	1

7. PRODUCTION BASED EFFLUENT STANDARDS

A. Does an effluent guideline promulgated by USEPA under the Clean Water Act apply to any discharge this application is made for?

YES (complete 7B) NO (go to Item 8)

B. Are the limitations in the applicable effluent guideline expressed in terms of production (or other measure of operation)?

YES (complete 7C) NO (go to Item 8)

C. If you answered "yes" to Item 7B, list the quantities which represent an actual measurement or estimate of your level of production, expressed in the terms and units used in the applicable effluent guideline, and indicate the affected outfalls.

YEAR	QUANTITY PER DAY	UNITS OF MEASURES	OPERATION, PRODUCT, MATERIAL, ETC. (SPECIFY)	OUTFALL NUMBER
			N/A	

8. ENFORCEMENT/CORRECTIVE ACTIONS

Identify each AO, ACO, JCO, NOV, COMP (if known to the applicant), or other (OT) corrective or enforcement action(s) required by NJDEP, USEPA or any other governmental agency(ies), and provide a brief summary of the action.

DATE	ACTION	AGENCY	SUMMARY OF REQUIRED ACTION
			None

9. IMPROVEMENTS

Complete this table if you are required by federal, state or local authority to meet any implementation schedule for construction, upgrading or operation of the wastewater treatment equipment or practices, or any other environmental programs which may affect the discharges described in this application (i.e., permit conditions, administrative orders, etc.).

IDENTIFICATION OF CONDITIONS, AGREEMENTS, ETC.	AFFECTED OUTFALLS		DESCRIPTION OF PROJECT	FINAL COMPLIANCE DATE	
	DSN	SOURCES		REQUIRED	PROJECTED
N/A					

* RO Reject Water
** Cooling Tower Blowdown

C

FACILITY NAME: Logan Generating Plant OUTFALL NUMBER (DSN): 001B
 10A. EFFLUENT DATA - PART A

POLLUTANT	EFFLUENT		Monthly Average		Units		Intake (Optional)		
	Daily Max. Conc.	loading	conc.	loading	conc.	loading	conc.	loading	
Biochemical Oxygen Demand (BOD ₅)	To Be Provided								
Chemical Oxygen Demand (COD)	To Be Provided								
Total Organic Carbon (TOC)	5.95	0.143	5.95	0.143	2	mg/L	lb/day		
Total Suspended Solids (TSS)	13	0.312	13	0.312	2	mg/L	lb/day		
Total Dissolved Solids (TDS)	469	11.265	469	11.265	2	mg/L	lb/day		
Ammonia (as N)	To Be Provided								
UNITS AS INDICATED									
Flow (specify units)	Daily Max.	2,800	Monthly Avg.	2,800	2				
Temperature (winter)	Daily Max.	11.7	Monthly Avg.	11.7	1		°C		
Temperature (summer)	Daily Max.	21.1	Monthly Avg.	21.1	1		°C		
PH	minimum	6.25	maximum	6.61	2		STANDARD UNITS	minimum	maximum

10B. EFFLUENT DATA - PART B

POLLUTANT (AND CAS NUMBER WHERE AVAILABLE)	EFFLUENT		Monthly Average		Units		Intake (Optional)		
	Daily Max. conc.	loading	conc.	loading	conc.	loading	conc.	loading	
CONVENTIONAL and NON-CONVENTIONAL POLLUTANTS									
Bromide (24959-67-9)									
Chlorine, Total Residual	X								
Color, (specify units)	X								
Fecal Coliform	X								
Fluoride (16984-48-8)	X								
Nitrate-Nitrite (as N)	X								

C

FACILITY NAME: Logan Generating Plant OUTFALL NUMBER (DSN): 001 B

10B. EFFLUENT DATA - PART B (continued)

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X" EFFLUENT		Daily Maximum		Monthly Average		# of		Units		Average		# of samples
	believed present	believed absent	conc.	loading	conc.	loading	conc.	loading	conc.	loading	IN TAKE (Optional)		
											conc.	loading	
Nitrogen, Total Organic (as N)		X											
<input checked="" type="checkbox"/> Oil & Grease or <input checked="" type="checkbox"/> Pet. Hydrocarbons		X	0.78	0.019	0.78	0.019	2		mg/L	lb/day			
Phosphorus (as P), Total (7723-14-0)		X											
Alpha, Total		X											
Beta, Total		X											
Radium, Total		X											
Radium 226, Total		X											
Surfactants		X											
Sulfide (as S)		X											
Sulfite (as SO ₃) (14265-45-3)		X											
Sulfate (as SO ₄) (14808-79-8)		X											
Aluminum, Total (7429-90-5)		X											
Barium, Total (7440-39-3)		X											
Boron, Total (7440-42-8)		X											
Cobalt, Total (7440-48-4)		X											
Iron, Total (7439-89-6)		X											
Magnesium, Total (7439-95-4)		X											
Molybdenum, Total (7439-98-7)		X											
Manganese, Total (7439-96-5)		X											
Tin, Total (7440-31-5)		X											
Titanium, Total (7440-32-6)		X											

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FACILITY NAME: Logan Generating Plant OUTFALL NUMBER (DSN): 001B

10C. EFFLUENT DATA - PART C If you do not analyze a sample for certain Item 10C pollutants because you qualify as a "Small Business" (see instructions for details), check this box and attach sales data for the most recent three years.

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT		Monthly Average		Units		INTAKE (Optional)		
	testing required	believed present	Daily Maximum conc.	loading	conc.	loading	conc.	loading	conc.	loading	
OTHER TOXIC POLLUTANTS (METALS AND CYANIDE) and TOTAL PHENOLS											
Antimony, Total (7440-36-0)		X	<0.02	0	<0.02	0	2	mg/L	lb/day		
Arsenic, Total (7440-38-2)	X		0.009	0.0002	0.009	0.0002	2	mg/L	lb/day		
Beryllium, Total (7440-41-7)		X	<0.004	0	<0.004	0	2	mg/L	lb/day		
Cadmium, Total (7440-43-9)		X	<0.002	0	<0.002	0	2	mg/L	lb/day		
Chromium, Total (7440-47-3)		X	<0.005	0	<0.005	0	2	mg/L	lb/day		
Copper, Total (7550-50-8)		X									
Lead, Total (7439-92-1)			<0.005	0	<0.005	0	2	mg/L	lb/day		
Mercury, Total (7439-97-6)			<0.0001	0	<0.0001	0	2	mg/L	lb/day		
Nickel, Total (7440-02-0)		X									
Selenium, Total (7782-49-2)		X									
Silver, Total (7440-22-4)		X									
Thallium, Total (7440-28-0)		X									
Zinc, Total (7440-66-6)	X		0.0708	0.0017	0.0708	0.0017	2	mg/L	lb/day		
Cyanide, Total (57-12-5)		X									
Phenols, Total		X									
DIOXIN											
2,3,7,8-Tetrachlorodibenzo-P-Dioxin (1764-01-6)		X									

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FACILITY NAME: Logan Generating Plant OUTFALL NUMBER (DSN): 001B

10C. EFFLUENT DATA - PART C (continued)

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT		Monthly Average		Units		Average		# of samples	
	testing required	believed present	believed absent	concentration	loading	concentration	loading	concentration	loading	concentration		loading
ORGANIC TOXIC POLLUTANTS - VOLATILES												
Acrolein (107-02-8)			X									
Acrylonitrile (107-13-1)			X									
Benzene (71-43-2)			X									
Bromoform (75-25-2)			X									
Carbon Tetrachloride (56-23-5)			X									
Chlorobenzene (108-90-7)			X									
Chlorodibromomethane (124-48-1)			X									
Chloroethane (75-00-3)			X									
2-Chloro-ethyl-vinyl Ether (110-75-8)			X									
Chloroform (67-66-3)			X									
Dichlorobromomethane (75-27-4)			X									
1,1-Dichloroethane (75-34-3)			X									
1,2-Dichloroethane (107-06-2)			X									
1,1-Dichloroethylene (75-35-4)			X									
1,2-Dichloropropane (78-87-5)			X									
1,3-Dichloropropylene (542-75-6)			X									
Ethylbenzene (100-41-4)			X									
Methyl Bromide (74-83-9)			X									
Methyl Chloride (74-87-4)			X									

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FACILITY NAME: Logan Generating Plant		OUTFALL NUMBER (DSN): 001B										
10C. EFFLUENT DATA - PART C (continued)												
POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT		Monthly Average		Units		IN TAKE (Optional)		# of samples	
	testing required	believed present	believed absent	Daily Maximum conc.	loading	conc.	loading	conc.	loading	conc.		Average loading
ORGANIC TOXIC POLLUTANTS - VOLATILES (continued)												
Methylene Chloride (75-09-2)			X									
1,1,2,2-Tetrachloroethane (79-34-5)			X									
Tetrachloroethylene (127-18-4)			X									
Toluene (108-88-3)			X									
1,2-Transdichloroethylene (156-60-5)			X									
1,1,1-Trichloroethane (71-55-6)			X									
1,1,2-Trichloroethane (79-00-5)			X									
Trichloroethylene (79-01-6)			X									
Vinyl Chloride (75-01-4)			X									
ORGANIC TOXIC POLLUTANTS - ACID COMPOUNDS												
2-Chlorophenol (95-57-8)			X									
2,4-Dichlorophenol (120-83-2)			X									
2,4-Dimethylphenol (105-67-9)			X									
4,6-Dinitro-O-Cresol (534-52-1)			X									
2,4-Dinitrophenol (51-28-5)			X									
2-Nitrophenol (88-75-5)			X									
4-Nitrophenol (100-02-7)			X									
P-Chloro-M-Cresol (59-50-7)			X									
Pentachlorophenol (87-86-5)			X									
Phenol (108-95-2)			X									
2,4,6-Trichlorophenol (88-06-2)			X									

FACILITY NAME: Logan Generating Plant OUTFALL NUMBER (DSN): 001 B
 10C. EFFLUENT DATA - PART C (continued)

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT				INTAKE (Optional)				
	testing required	believed absent	Daily conc.	Maximum loading	Monthly Average		Units		Average		
					conc.	loading	conc.	loading	conc.	loading	# of samples
ORGANIC TOXIC POLLUTANTS - BASE/NEUTRAL COMPOUNDS											
Acenaphthene (83-32-9)		X									
Acenaphthylene (208-96-8)		X									
Anthracene (120-12-7)		X									
Benzidine (92-87-5)		X									
Benzo (a) Anthracene (56-55-3)		X									
Benzo (a) Pyrene (50-32-8)		X									
3,4-Benzofluoranthene (205-99-2)		X									
Benzo (ghi) Perylene (191-24-2)		X									
Benzo (k) Fluoranthene (207-08-9)		X									
Bis (2-Chloroethoxy) Methane (111-91-1)		X									
Bis (2-Chloroethyl) Ether (111-44-4)		X									
Bis (2-Chloroisopropyl) Ether (102-60-1)		X									
Bis (2-Ethylhexyl) Phthalate (117-81-7)		X									
4-Bromophenyl Phenyl Ether (101-85-3)		X									
Butyl Benzyl Phthalate (85-68-7)		X									
2-Chloronaphthalene (91-58-7)		X									
4-Chlorophenyl Phenyl Ether (7005-72-3)		X									
Chrysene (218-01-9)		X									
Dibenzo (a,h) Anthracene (53-70-3)		X									

FACILITY NAME: Logan Generating Plant OUTFALL NUMBER (DSN): 001 B

10C. EFFLUENT DATA - PART C (continued)

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT				INTAKE (Optional)					
	testing required	believed present	believed absent	Daily Maximum		Monthly Average		Units		Average		
				conc.	loading	conc.	loading	conc.	loading	conc.	loading	# of samples
ORGANIC TOXIC POLLUTANTS - BASE/NEUTRAL COMPOUNDS (continued)												
1,2-Dichlorobenzene (95-50-1)			X									
1,3-Dichlorobenzene (541-73-1)			X									
1,4-Dichlorobenzene (106-46-7)			X									
3,3 -Dichlorobenzidine (91-94-1)			X									
Diethyl Phthalate (84-66-2)			X									
Dimethyl Phthalate (131-11-3)			X									
Di-N-Butyl Phthalate (84-74-2)			X									
2,4-Dinitrotoluene (121-14-2)			X									
2,6-Dinitrotoluene (606-20-2)			X									
Di-N-Octyl Phthalate (117-84-0)			X									
1,2-Diphenylhydrazine (122-66-7)			X									
Fluoranthene (206-44-0)			X									
Fluorene (86-73-7)			X									
Hexachlorobenzene (118-74-1)			X									
Hexachlorobutadiene (87-68-3)			X									
Hexachlorocyclopentadiene (77-47-4)			X									
Hexachloroethane ((67-72-1)			X									
Indeno (1,2,3-cd) Pyrene (193-39-5)			X									
Isophorone (78-59-1)			X									

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FACILITY NAME: Logan Generating Plant		OUTFALL NUMBER (DSN): 001B											
10C. EFFLUENT DATA - PART C (continued)													
POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X" testing required	believed present		believed absent		EFFLUENT		Monthly Average		Units		IN TAKE (Optional)	
		conc.	loading	conc.	loading	conc.	loading	conc.	loading	conc.	loading	conc.	loading
ORGANIC TOXIC POLLUTANTS - BASE NEUTRAL COMPOUNDS (continued)													
Naphthalene (91-20-3)													
Nitrobenzene (98-95-3)													
N-Nitrosodimethylamine (62-75-9)													
N-Nitrosodi-N-Propylamine (621-64-7)													
N-Nitrosodiphenylamine (86-30-6)													
Phenanthrene (85-01-8)													
Pyrene (129-00-0)													
1,2,4-Trichlorobenzene (120-82-1)													
ORGANIC TOXIC POLLUTANTS - PESTICIDES													
Aldrin (309-00-2)													
Alpha-BHC (319-84-6)													
Beta-BHC (319-85-7)													
Gamma-BHC (58-89-9)													
Delta-BHC (319-86-8)													
Chlordane (57-74-9)													
4,4'-DDT (50-29-3)													
4,4'-DDE (72-55-9)													
4,4'-DDD (72-54-8)													
Dieldrin (60-57-1)													

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FACILITY NAME: Logan Generating Plant OUTFALL NUMBER (DSN): 001B

10C. EFFLUENT DATA - PART C (continued)

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT		Monthly Average		Units		INTAKE (Optional)		# of samples	
	testing required	believed present	Daily Conc.	loading	conc.	loading	conc.	loading	conc.	loading		
ORGANIC TOXIC POLLUTANTS - PESTICIDES (continued)												
Alpha-Endosulfan (115-29-7)		X										
Beta-Endosulfan (115-29-7)		X										
Endosulfan sulfate (1031-07-8)		X										
Endrin (72-20-8)		X										
Endrin Aldehyde (7421-93-4)		X										
Heptachlor (76-44-8)		X										
Heptachlor Epoxide (1024-57-3)		X										
PCB-1242 (53469-21-9)		X										
PCB-1254 (11097-69-1)		X										
PCB-1221 (11104-28-2)		X										
PCB-1232 (11141-16-5)		X										
PCB-1248 (12672-29-6)		X										
PCB-1260 (11096-82-5)		X										
PCB-1016 (12674-11-2)		X										
Toxaphene (8001-35-2)		X										

FACILITY NAME: Logan Generating Plant

OUTFALL NUMBER (DSN): 003 B

10A. EFFLUENT DATA - PART A

POLLUTANT	EFFLUENT		Monthly Average conc.	Monthly Average loading	# of samples	Units		Intake (Optional)		# of samples
	Daily Max. Conc.	Daily Max. loading				conc.	loading	conc.	loading	
Biochemical Oxygen Demand (BOD ₅)	To Be Provided									
Chemical Oxygen Demand (COD)	To Be Provided									
Total Organic Carbon (TOC)	15.3	0.221	15.3	0.221	2	mg/L	lb/day			
Total Suspended Solids (TSS)	45	0.649	45	0.649	2	mg/L	lb/day			
Total Dissolved Solids (TDS)	389	5.613	389	5.613	2	mg/L	lb/day			
Ammonia (as N)	To Be Provided									

UNITS AS INDICATED

Flow (specify units)	gpd	Monthly Avg.	1,730	1	
Temperature (winter)		Monthly Avg.	6.5	1	°C
Temperature (summer)		Monthly Avg.	20.8	1	°C
pH		minimum	6.78		
		maximum	6.93	2	STANDARD UNITS

10B. EFFLUENT DATA - PART B

POLLUTANT (AND CAS NUMBER WHERE AVAILABLE)	EFFLUENT		Monthly Average conc.	Monthly Average loading	# of samples	Units		INTAKE (Optional)		# of samples
	Daily Max. conc.	Daily Max. loading				conc.	loading	conc.	loading	
Bromide (24959-67-9)										
Chlorine, Total Residual										
Color, (specify units)										
Fecal Coliform										
Fluoride (16984-48-8)										
Nitrate-Nitrite (as N)										

CONVENTIONAL AND NON-CONVENTIONAL POLLUTANTS

POLLUTANT	MARK "X"	
	believed present	believed absent
Bromide (24959-67-9)	X	
Chlorine, Total Residual	X	
Color, (specify units)	X	
Fecal Coliform	X	
Fluoride (16984-48-8)	X	
Nitrate-Nitrite (as N)	X	

FACILITY NAME:

OUTFALL NUMBER (DSN):

10B. EFFLUENT DATA - PART B (continued)

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X" EFFLUENT		Daily Maximum		Monthly Average		Units		INTAKE (Optional)	
	believed present	absent	conc.	loading	conc.	loading	conc.	loading	conc.	loading
							# of samples		# of samples	
Nitrogen, Total Organic (as N)		X								
<input checked="" type="checkbox"/> Oil & Grease or <input checked="" type="checkbox"/> Pet. Hydrocarbons	X		0.65	0.009	0.65	0.009	2	mg/L	lb/day	
Phosphorus (as P), Total (7723-14-0)		X								
Alpha, Total		X								
Beta, Total		X								
Radium, Total		X								
Radium 226, Total		X								
Surfactants		X								
Sulfide (as S)		X								
Sulfite (as SO ₃) (14265-45-3)		X								
Sulfate (as SO ₄) (14808-79-8)		X								
Aluminum, Total (7429-90-5)		X								
Barium, Total (7440-39-3)		X								
Boron, Total (7440-42-8)		X								
Cobalt, Total (7440-48-4)		X								
Iron, Total (7439-89-6)		X								
Magnesium, Total (7439-95-4)		X								
Molybdenum, Total (7439-98-7)		X								
Manganese, Total (7439-96-5)		X								
Tin, Total (7440-31-5)		X								
Titanium, Total (7440-32-6)		X								

C

FORM C
3/2/98

FACILITY NAME: Logan Generating Plant **OUTFALL NUMBER (DSN): 003 B**

If you do not analyze a sample for certain item 10C pollutants because you qualify as a "Small Business" (see instructions for details), check this box and attach sales data for the most recent three years.

10C. EFFLUENT DATA - PART C

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT		Monthly Average		Units		IN TAKE (Optional)		
	testing required	believed present	believed absent	Daily Maximum conc.	loading	conc.	loading	conc.	loading	Average conc.	
Antimony, Total (7440-36-0)		X		<0.02	0	<0.02	0	mg/L	lb/day		
Arsenic, Total (7440-38-2)	X			0.0207	0.0003	0.0207	0.0003	mg/L	lb/day		
Beryllium, Total (7440-41-7)		X									
Cadmium, Total (7440-43-9)		X		<0.002	0	<0.002	0	mg/L			
Chromium, Total (7440-47-3)		X									
Copper, Total (7550-50-8)		X									
-ead, Total (7439-92-1)		X									
Mercury, Total (7439-97-6)		X									
Nickel, Total (7440-02-0)		X									
Selenium, Total (7782-49-2)		X									
Silver, Total (7440-22-4)		X									
Thallium, Total (7440-28-0)		X									
Zinc, Total (7440-66-6)		X									
Cyanide, Total (57-12-5)		X									
Phenols, Total		X									
DIOXIN											
2,3,7,8-Tetrachlorodibenzo-P-Dioxin (1764-01-6)			X								

C

FORM C
3/2/98

FACILITY NAME: Logan Generating Plant		OUTFALL NUMBER (DSN): 003B													
10C. EFFLUENT DATA - PART C (continued)															
POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT			Monthly Average			Units			INTAKE (Optional)			
	testing required	believed present	believed absent	Daily conc.	Maximum loading	conc.	loading	loading	conc.	loading	conc.	loading	conc.	loading	# of samples
Acrolein (107-02-8)			X												
Acrylonitrile (107-13-1)			X												
Benzene (71-43-2)			X												
Bromoform (75-25-2)			X												
Carbon Tetrachloride (56-23-5)			X												
Chlorobenzene (108-90-7)			X												
Chlorodibromomethane (124-48-1)			X												
Chloroethane (75-00-3)			X												
2-Chloro-ethyl-vinyl Ether (110-75-8)			X												
Chloroform (67-66-3)			X												
Dichlorobromomethane (75-27-4)			X												
1,1-Dichloroethane (75-34-3)			X												
1,2-Dichloroethane (107-06-2)			X												
1,1-Dichloroethylene (75-35-4)			X												
1,2-Dichloropropane (78-87-5)			X												
1,3-Dichloropropylene (542-75-6)			X												
Ethylbenzene (100-41-4)			X												
Methyl Bromide (74-83-9)			X												
Methyl Chloride (74-87-4)			X												

C

FORM C
3/2/98

FACILITY NAME: Logan Generating Plant OUTFALL NUMBER (DSN): 003B

10C. EFFLUENT DATA - PART C (continued)

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT		Monthly Average		Units		INTAKE (Optional)		
	testing required	believed present	believed absent	Daily Maximum conc.	loading	conc.	loading	conc.	loading	Average conc.	loading
Methylene Chloride (75-09-2)			X								
1,1,2,2-Tetrachloroethane (79-34-5)			X								
Tetrachloroethylene (127-18-4)			X								
Toluene (108-88-3)			X								
1,2-Transdichloroethylene (156-60-5)			X								
1,1,1-Trichloroethane (71-55-6)			X								
1,1,2-Trichloroethane (79-00-5)			X								
Trichloroethylene (79-01-6)			X								
Vinyl Chloride (75-01-4)			X								
ORGANIC TOXIC POLLUTANTS AND COMPOUNDS											
2-Chlorophenol (95-57-8)			X								
2,4-Dichlorophenol (120-83-2)			X								
2,4-Dimethylphenol (105-67-9)			X								
4,6-Dinitro-O-Cresol (534-52-1)			X								
2,4-Dinitrophenol (51-28-5)			X								
2-Nitrophenol (88-75-5)			X								
4-Nitrophenol (100-02-7)			X								
P-Chloro-M-Cresol (59-50-7)			X								
Pentachlorophenol (87-86-5)			X								
Phenol (108-95-2)			X								
2,4,6-Trichlorophenol (88-06-2)			X								

FORM C

3/2/98

C

FACILITY NAME: Logan Generating Plant

OUTFALL NUMBER (DSN): 003B

10C. EFFLUENT DATA - PART C (continued)

POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X"		EFFLUENT		Daily Maximum		Monthly Average		# of samples		Units		Average		# of samples		
	testing required	believed present	believed absent	concentration	loading	concentration	loading	concentration	loading	concentration	loading	concentration	loading	concentration	loading	concentration	loading
Acenaphthene (83-32-9)			X														
Acenaphthylene (208-96-8)			X														
Anthracene (120-12-7)			X														
Benzidine (92-87-5)			X														
Benzo (a) Anthracene (56-55-3)			X														
Benzo (a) Pyrene (50-32-8)			X														
3,4-Benzofluoranthene (205-99-2)			X														
Benzo (ghi) Perylene (191-24-2)			X														
Benzo (k) Fluoranthene (207-08-9)			X														
Bis (2-Chloroethoxy) Methane (111-91-1)			X														
Bis (2-Chloroethyl) Ether (111-44-4)			X														
Bis (2-Chloroisopropyl) Ether (102-60-1)			X														
Bis (2-Ethylhexyl) Phthalate (117-81-7)			X														
4-Bromophenyl Phenyl Ether (101-55-3)			X														
Butyl Benzyl Phthalate (85-68-7)			X														
2-Chloronaphthalene (91-58-7)			X														
4-Chlorophenyl Phenyl Ether (7005-72-3)			X														
Chrysene (218-01-9)			X														
Dibenzo (a,h) Anthracene (53-70-3)			X														

C

FORM C
3/2/98

FACILITY NAME: Logan Generating Plant		OUTFALL NUMBER (DSN): 003B											
10C. EFFLUENT DATA - PART C (continued)													
POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X" testing required	believed present	absent	EFFLUENT		Daily Maximum		Monthly Average		Units		INTAKE (Optional)	
				conc.	loading	conc.	loading	conc.	loading	conc.	loading	conc.	loading
1,2-Dichlorobenzene (95-50-1)			X										
1,3-Dichlorobenzene (541-73-1)			X										
1,4-Dichlorobenzene (106-46-7)			X										
3,3 - Dichlorobenzidine (91-94-1)			X										
Diethyl Phthalate (84-66-2)			X										
Dimethyl Phthalate (131-11-3)			X										
Di-N-Butyl Phthalate (84-74-2)			X										
2,4-Dinitrotoluene (121-14-2)			X										
2,6-Dinitrotoluene (606-20-2)			X										
Di-N-Octyl Phthalate (117-84-0)			X										
1,2-Diphenylhydrazine (122-66-7)			X										
Fluoranthene (206-44-0)			X										
Fluorene (86-73-7)			X										
Hexachlorobenzene (118-74-1)			X										
Hexachlorobutadiene (87-68-3)			X										
Hexachlorocyclopentadiene (77-47-4)			X										
Hexachloroethane ((67-72-1)			X										
Indeno (1,2,3-cd) Pyrene (193-39-5)			X										
Isophorone (78-59-1)			X										

C

FORM C
3/2/98

FACILITY NAME: Logan Generating Plant		OUTFALL NUMBER (DSN): 003B									
10C. EFFLUENT DATA - PART C (continued)											
POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X" testing required		EFFLUENT		Monthly Average		Units		IN TAKE (Optional)		
	believed present	believed absent	conc.	loading	conc.	loading	conc.	loading	conc.	loading	
ORGANIC TOXIC POLYHALANES											
Naphthalene (91-20-3)		X									
Nitrobenzene (98-95-3)		X									
N-Nitrosodimethylamine (62-75-9)		X									
N-Nitrosodi-N-Propylamine (621-64-7)		X									
N-Nitrosodiphenylamine (86-30-6)		X									
Phenanthrene (85-01-8)		X									
Pyrene (129-00-0)		X									
1,2,4-Trichlorobenzene (120-82-1)		X									
ORGANIC TOXIC POLYHALANES - PESTICIDES											
Aldrin (309-00-2)		X									
Alpha-BHC (319-84-6)		X									
Beta-BHC (319-85-7)		X									
Gamma-BHC (58-89-9)		X									
Delta-BHC (319-86-8)		X									
Chlordane (57-74-9)		X									
4,4'-DDT (50-29-3)		X									
4,4'-DDE (72-55-9)		X									
4,4'-DDD (72-54-8)		X									
Dieldrin (60-57-1)		X									

FORM C
3/2/98

C

FACILITY NAME: Logan Generating Plant		OUTFALL NUMBER (DSN): 003B																
10C. EFFLUENT DATA - PART C (continued)																		
POLLUTANT (AND CAS NUMBER IF AVAILABLE)	MARK "X" testing required	believed		absent		EFFLUENT		Daily Conc.	Maximum loading	Monthly conc.	Average loading	# of samples	Units		Average		# of samples	
		present	absent	Conc.	loading	conc.	loading						conc.	loading				
Alpha-Endosulfan (115-29-7)																		
Beta-Endosulfan (115-29-7)																		
Endosulfan sulfate (1031-07-8)																		
Endrin (72-20-8)																		
Endrin Aldehyde (7421-93-4)																		
Heptachlor (76-44-8)																		
Heptachlor Epoxide (1024-57-3)																		
PCB-1242 (53469-21-9)																		
PCB-1254 (11097-69-1)																		
PCB-1221 (11104-28-2)																		
PCB-1232 (11141-16-5)																		
PCB-1248 (12672-29-6)																		
PCB-1260 (11096-82-5)																		
PCB-1016 (12674-11-2)																		
Toxaphene (8001-35-2)																		

FACILITY NAME:

10D. EFFLUENT DATA - PART D

Use the space below to list each of the pollutants listed in Table 3 of the instructions and each biocide, which you know or have reason to believe is discharged or may be discharged from any outfall. For every pollutant you list, briefly describe the reasons you believe it to be present and report any analytical data in your possession.

POLLUTANT	SOURCE
N/A	

11. TOXIC POLLUTANTS USED OR MANUFACTURED

Identify below if any toxic pollutant listed in item 10C or Table 3 is a substance or a component which you currently use or manufacture as an intermediate or final product or byproduct.

N/A	

12. BIOLOGICAL TOXICITY TESTING DATA

Is this application for an individual NJPDES/DSW permit?

YES (Complete Below)

NO (Go to Item 13)

DATE OF TOXICITY TEST	TYPE OF TOXICITY TEST	RESULT OF TEST
N/A		To Be Provided

13. CERTIFIED LABORATORY

Complete the table below for all analyses reported in this application.

NAME OF CERTIFIED LAB.	TELEPHONE #	CERTIFICATION NUMBER	POLLUTANT(S)/CATEGORIES ANALYZED
QC Laboratories	215-355-3900	77166	ALL

14. CERTIFICATION BY THE APPLICANT

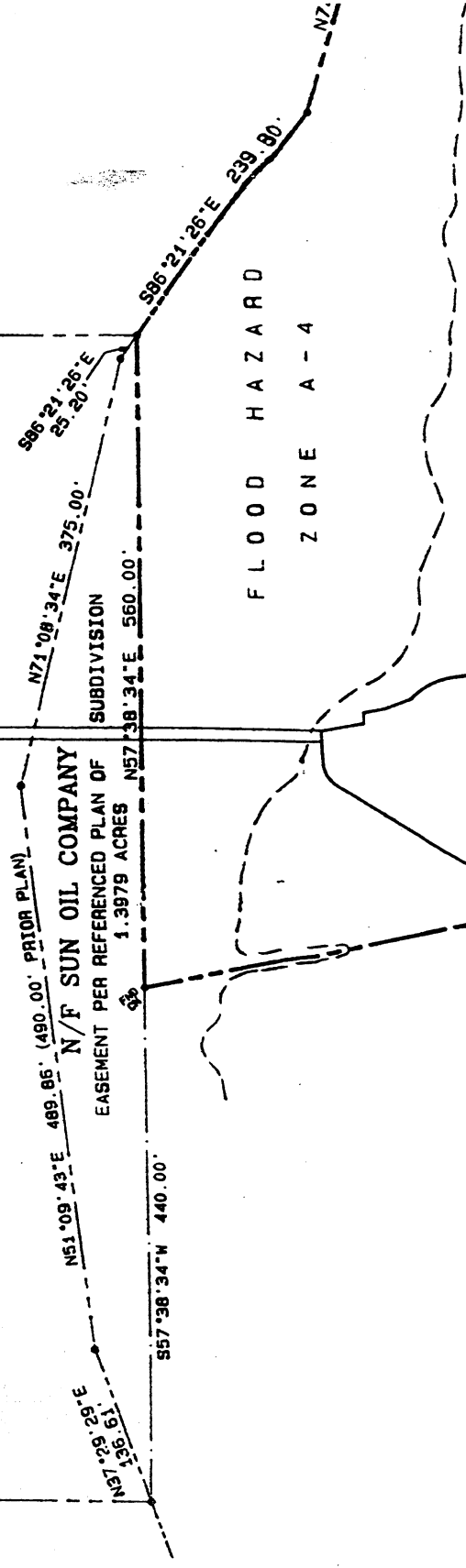
For LOGAN GENERATING PLANT
NAME OF APPLICANT/OPERATING ENTITY (Type or Print)

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for purposely, knowingly, recklessly, or negligently submitting false information.

NAME (TYPE OR PRINT) JAMES M. SOUSA JR.	TITLE (TYPE OR PRINT) GENERAL MANAGER
SIGNATURE <i>James M. Sousa Jr</i>	DATE 3/2/05
	PHONE 856-241-4571

ATTACHMENT A
FACILITY DIAGRAM

MATCH LINE SEE INSERT BELOW



N/F SUN OIL COMPANY
EASEMENT PER REFERENCED PLAN OF
SUBDIVISION
1.3979 ACRES

FLOOD HAZARD
ZONE A-4

COAL STORAGE
ENCLOSURE

COAL STOCKPILE


STORMWATER RETENTION BASIN NO. 3

CRUMBER
TOWER
ELEC. BLDG.

TAX MAP LOT
N/F SUN OIL
BLOCK
COMPANY

LEGEND:

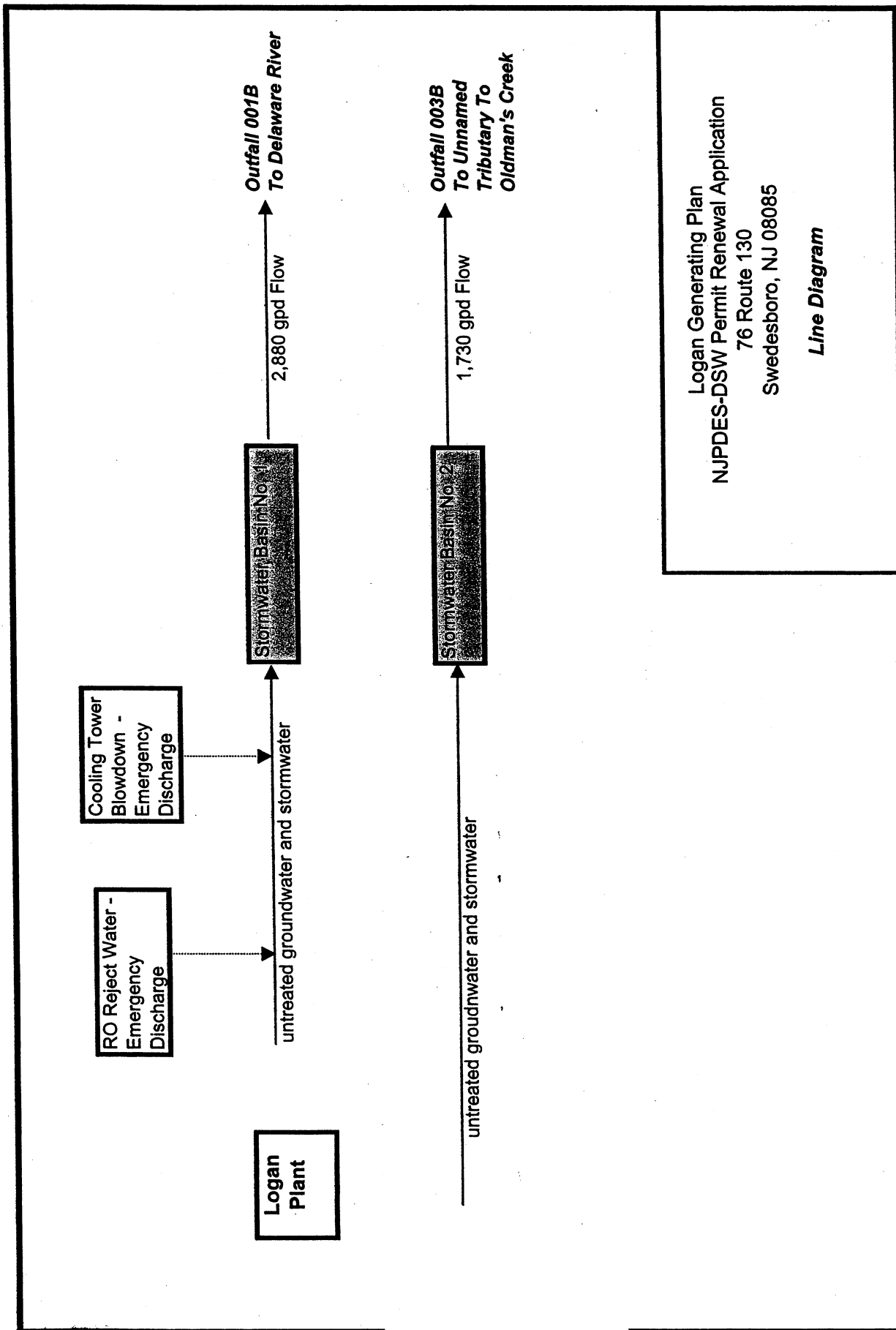
SUBJECT PROPERTY LINE.....	-----
ADJACENT PROPERTY LINE.....	-----
EASEMENT LINE.....	-----
GAS PIPE LINE.....	-G-G-G-
RAILROAD TRACKS.....	-----
STEAM LINE.....	-S-S-S-
OVERHEAD WIRES.....	-W-W-W-
CHAIN LINK FENCE.....	-X-X-X-X-
STEEL GUARD RAIL.....	-// -// -// -
PIERHEAD - BULKHEAD LINE.....	-----
RAW WATER LINE.....	-K-X-W-
STORM DRAINAGE PIPING.....	-----
STREAM TO OLDMAN'S CREEK.....	-----
STORM DRAINAGE INLET.....	⊕
SITE LIGHT POLE.....	⊙
FIRE HYDRANT.....	⊙
MANHOLE.....	⊙
POWER POLE.....	⊙

1	12/28/94	REV. CERTIFICATION, NOTES AND GENERAL PLAN DATA	mdh	mdh					
NO.	DATE	REVISION DESCRIPTION	DES	DRN	CKD				
KEYSTONE COGENERATION SITE		KEYSTONE ENERGY SERVICES COMPANY, L.P.							
MASTER SURVEY PLAN		STATE HIGHWAY ROUTE U.S. 130 TAX MAP LOT 2.01, BLOCK 1 TOWNSHIP OF LOGAN GLOUCESTER COUNTY, NEW JERSEY							
 MERLE D. HOPKINS, SR. PROFESSIONAL LAND SURVEYOR PA Lic. 17576-E NJ Lic. 23129		ATKINSON & WALTON, INC. CIVIL & ENVIRONMENTAL ENGINEERS LAND SURVEYORS & PLANNERS 180 TUCKERTON ROAD SUITE 11 MEDFORD, NEW JERSEY 08055 609 983-4118 OR 609 980-3507 C. L. WALTON, JR., P.E., L.S., P.P. S. C. UEL, L.S. S. F. LOPERT, L.S.							
SCALE 1" = 100'		DATE		CHECKED BY		DRAWN BY		FILE NO.	
SEP 26, 1994		100'		M. D. H.		S. F. L.		94651	
								1/6	

A-001-0016

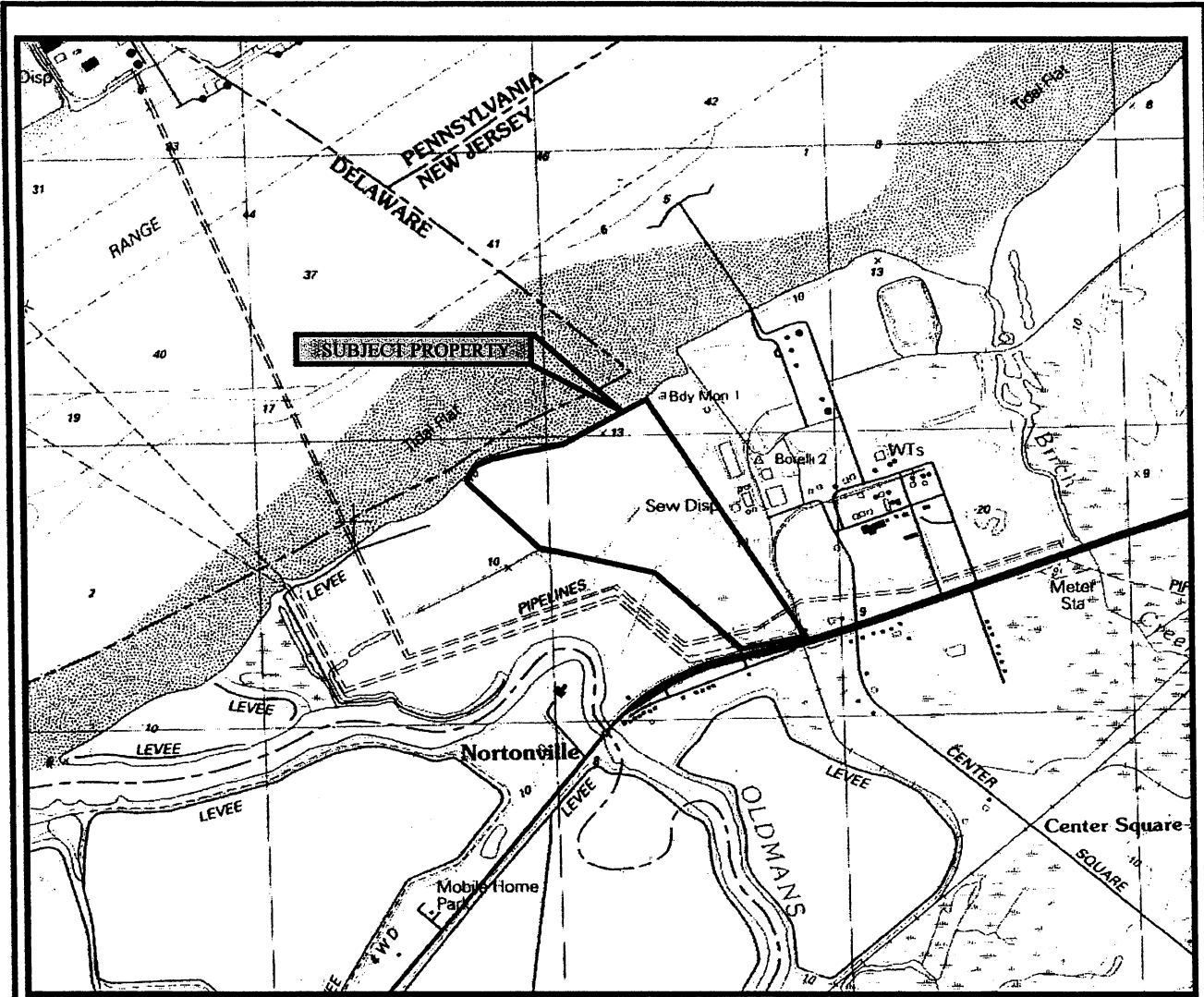
FILE COPY

ATTACHMENT B
LINE DRAWING



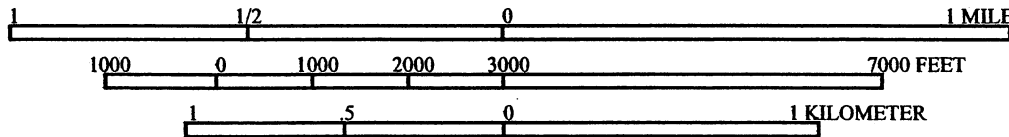
Logan Generating Plan
 NJPDES-DSW Permit Renewal Application
 76 Route 130
 Swedesboro, NJ 08085
Line Diagram

ATTACHMENT C
SITE LOCATION MAP

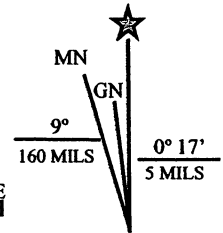


MARCUS HOOK, PA-NJ QUADRANGLE

U.S.G.S. 1:24 000 SCALE TOPOGRAPHIC MAP




CONTOUR INTERVAL 10 FEET



UTM GRID & 1995
MAGNETIC NORTH
DECLINATION AT
CENTER OF SHEET

ENVIRONMENTAL/CONSULTING ENGINEERS

 A tyco INTERNATIONAL LTD. COMPANY	PROJECT: NJPDES-DSW Permit Renewal Application Logan Generating Plant 76 Route 130 Swedesboro, New Jersey 08085	SITE LOCATION MAP
		Figure No. 1-1

ATTACHMENT D
ENVIRONMENTAL PERMITS

**LOGAN
SOUTH SWEDESBORO, NEW JERSEY**

ENVIRONMENTAL PERMIT INDEX

Tab	Permit	Permit Number	Issuance Date	Permit Expiration	Issuing Authority
1.0	Federal				
1.1	Acknowledgement of Notice of Proposed Construction or Alteration - Aeronautical Study	92-AEA-1707-OE 91-AEA-1056-OE 91-AEA-1056-OE 88-AEA-1962-OE	04/21/94 04/28/93 03/24/93 08/09/92	04/21/94 11/01/91 09/27/91 02/12/90	FAA
1.2	Section 404/10 Permit to Construct a Pulverized Coal Fired Cogeneration Power Plant	CENAP-OP-R-0347-11	Supp. App. 08/15/94 Mod. 04/09/93 Supp. App. 04/10/92 Supp. App. 02/23/92 Supp. App. 12/20/91 09/05/91	06/16/95	COE
1.3	Qualifying Facility Certification	Docket No. QF7-517-001	03/22/92	--	FERC
2.0	State				
2.1	(a) PSD Permit and Permits to Construct, Install or Alter Control Apparatus or Equipment and Temporary Certificate to Operation (Air Pollution Control) with 90-day Extensions Amendment to Permit to Construct, Install or Alter Control Apparatus or Equipment and Certification to Operate Authorization to Discontinue Post Construction Ambient Monitoring Program Initial Emission Compliance Testing Approval CEMs Initial Certification (b) Title V Technical Completeness Review	APC ID 55357	09/06/91	Temporary Permit	NJDEP
2.2	NJPDES/Discharge to Surface Water	Log No. 01-89-3983	11/01/95		NJDEP
2.2a	NJPDES/General Stormwater Permit	Log No. 01-89-3983	08/24/95		NJDEP
2.2b	NJPDES/Discharge to Groundwater	Log No. 05-95-0015 NJ-0076872 NJ-0088315 NJ0129020	08/15/95 01/10/95 06/01/96 8/1/98	8/31/05 01/31/96 8/31/03	NJDEP NJDEP NJDEP NJDEP
2.3	Water Use Registration	10713W	03/23/93		NJDEP
2.4	Permit to Drill Well	3008633 3008634 3008635	07/09/92 07/09/92 07/09/92	Well Abandonment Report for 08654 completed 07/28/92	NJDEP

J:\GLOBAL\Environmental -Project 2003\DataRoom\PDF Copy of Env Plant Audits Permit TOC\Logan Env Permit Index\Logan Env Permit Index.doc
Updated 09/18/02

Tab	Permit	Permit Number	Issuance Date	Permit Expiration	Issuing Authority
2.5	Tri-County Water Quality Management Plan Amendment		04/16/92		NJDEP
2.6	Water Allocation Diversion Permit	4059PS	Mod. 06/09/92 04/10/91 11/13/96	12/31/04	NJDEP
2.7	Water Allocation Diversion Permit (Construction)	1149D	12/27/91	12/31/93	NJDEP
2.8	Treatment Works Approval Application	92-7374-4N	06/24/93		NJDEP
2.9	Consolidated Permit		Supp. App. 09/25/92 09/24/91	09/24/96	NJDEP
	Water Front Development	0809-91-0010.1			
	Wetlands Type A Permit	0809-91-0010.2			
	Freshwater Wetlands Permit	0809-91-0010.3			
	Stream Encroachment Permit	0809-91-0010.6			DRBC
2.10	Project Approval of Consistency with Comprehensive Plan for Water Resources	Docket No. D-90-48	09/25/91		
2.11	DOT Permits				NJDEP
	Access Driveway Permit	A-130-4-39-91			NJDOT
	Drainage Permit	D-130-4-08-91			
	Highway Occupancy Permit	LT-130-4-04-91			
2.12	ECRA Determination on Non-Applicability	N94489	10/18/89		NJDEP
2.13	Construction and Operation of Temporary Holding Tanks	92-6934-4	02/26/93	02/25/95	NJDEP
2.14	Interim Riparian Lease	91-0190-T	12/05/91	12/05/92	NJDEP
	Long-Term Riparian Lease	91-0190-T	06/16/92	12/05/26	NJDEP
2.15	Discharge Prevention, Containment and Countermeasure Plan and Discharge Cleanup and Removal Plan Approval	DIFF No. 080900052000	10/21/94	10/21/03	NJDEP
2.16	(a) Exemption for Solid Waste Flow Restriction Regulations		12/07/91 (sic); 07/07/94		NJDEP
	(b) Waive Beneficial Application Approvals for Wastewater Treatment Filter Cake		01/24/97		NJDEP

Tab	Permit	Permit Number	Issuance Date	Permit Expiration	Issuing Authority
3.0	Delaware State				
3.1	Industrial Water Allocation	91-0012M	10/17/92 Mod 12/01/91	10/17/21	DNREC
3.2	Air Resources Permit - Construction for Coal Unloading Equipment Air Operation Permit	APC-91/0602 APC-91/0602	09/24/91 09/02/94 Amend. 01/06/95	Indefinite	DNREC
3.3	Delaware Subaqueous Lands Lease and Supplemental Approval	SL-0907/91S2 SL-0907/91S1 SL-0907/92S SL-0907/91	Supp. App. 01/11/95 Supp. App. 05/28/93 Supp. App. 04/06/92 09/30/91	09/30/21	DNREC
3.4	Delaware Coastal Zone Permit and Secretary's Order	255	12/13/91	Indefinite	DNREC

Tab	Permit	Permit Number	Issuance Date	Permit Expiration	Issuing Authority
4.0	County				
4.1	Safe Drinking Water Certification (Well No. 1 and No. 3)	In conjunction with NJDEP Permit to Drill Well No. 30-08633 and 30-8635	07/30/92	Upon Expiration of Permit 10/713W	Gloucester Cty. Dept. of Health
4.2	Floodplain Conditional Use Approval	920067(F)	02/14/92	N/A	New Castle Cty Dept. of Planning
4.3	Soil Erosion and Sediment Control Plan Certification	90-140	01/14/92	N/A	NJ Soil Conservation Svcs/Gloucester Cty
4.4	Exception from Subdivision Approval	LO-0264	04/09/91	N/A	Gloucester Cty Planning Department
4.5	Waiver of Site Plan	LO-0142SP	04/09/91	N/A	Gloucester Cty Planning Department
4.6	Subdivision Exemption	Exempt	02/10/92	N/A	New Castle Cty Dept. of Planning
4.7	Site Plan Approval	R-114.90 P&F	08/08/91	N/A	Planning Board of Logan Township
4.8	Minor Subdivision Approval		Approval by Board 10/11/90 Memorialized 10/25/90 Decided 05/05/91	N/A	Planning Board of Logan Township
4.9	Potable Water Wells and Package Sanitary Wastewater Treatment System Approvals		01/06/92 Amended 04/23/92	N/A	Municipal Utilities Authority
4.10	Final Release (List)	Various	Various	N/A	NJDCA
4.11	Certificates of Occupancy/Certificates of Approval (List)	Various	12/16/94	N/A	Construction Official of Logan Township
4.12	Certificate of Use	9310292	07/12/94	N/A	DE New Castle Cty Dept. of Public Works
4.13	Certificate of Compliance	90-140	12/05/94	N/A	Gloucester County Soil Conservation District
4.14	Zoning Permits	92-75 Through 92-131	05/14/92	N/A	Zoning Officer of Logan Township



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Water Quality

P.O. Box 029 Trenton, NJ 08625

Phone: (609) 292-4543

Fax: (609) 984-7938

LISA P. JACKSON
Commissioner

JON S. CORZINE
Governor

March 29, 2006

Kevin Donnelly, Director
Division of Water Resources
Delaware Department of Natural Resources and Control
89 Kings Highway
Dover, Delaware 19901

Re: DRBC Docket No. D-88-85-2, E.I.
DuPont de Nemours and Co.
NJPDES Permit No. NJ0005100

Dear Mr. Donnelly,

Late last week, my staff received your email enclosing a draft response from the Delaware Department of Natural Resources and Environmental Control (DNREC) to Green Delaware regarding the New Jersey Pollutant Discharge Elimination System (NJPDES) permit issued by New Jersey to DuPont, and the related action of the Delaware River Basin Commission (DRBC) on March 1, 2006, which was taken pursuant to that NJPDES permit. The draft DNREC response suggests that DuPont's expanded outfall diffuser and extension will require approvals from Delaware. In addition, the draft response addresses questions regarding the NJPDES permit that was issued by New Jersey, and regarding the Penns Grove and Carneys Point sewage treatment plants which are located on the New Jersey mainland.

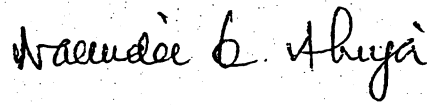
As you are aware, discharges from the DuPont outfall were authorized by a renewed NJPDES permit on August 10, 2005, which permit made reference to the diffuser that is the subject of the Green Delaware letter. New Jersey's issuance of this renewed NJPDES permit comported with longstanding practice, under which New Jersey has issued all required permits related to the DuPont outfall. In addition, the permit comported with United States Environmental Protection Agency's (USEPA) delegation of NPDES permit authority to New Jersey in 1981, and with the Compact of 1905 between Delaware and New Jersey, which recognized each State's right to continue to exercise riparian jurisdiction on its own side of the Delaware River.

Given the Compact of 1905, the USEPA delegation of NPDES authority to New Jersey, and the States' longstanding practice, Green Delaware's comments should have been directed to the New Jersey Department of Environmental Protection (NJDEP) for response. We appreciate our cooperative working relationship that was so productive in

preparing the draft and final NJPDES permit as well as in the management of other issues related to the facility. Accordingly, we ask that you advise Green Delaware that NJDEP, not Delaware, has jurisdiction over this matter and to direct any comments it may have on the outfall or diffuser to NJDEP. This also applies to any comments Green Delaware may have on Penns Grove, Carneys Point or any other mainland New Jersey discharger.

If you have any questions concerning this matter, please feel free to contact me at (609) 292-4543.

Very truly yours,



Narinder K. Ahuja, P.E., P.P.
Director
Division of Water Quality

c: Harry Otto, DNREC
Carol Collier, DRBC
Pamela Bush, DRBC
William Muszynski, DRBC
Mark Mauriello, NJDEP

bc: Catherine Tormey, NJDEP
Rachel Horowitz, Division of Law
Gerald Burke, Division of Law



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
CN 029
Trenton, N.J. 08625-0029

Jorge H. Berkowitz, Ph.D.
Acting Director

(609) 292-1637
Fax # (609) 984-7938

IN THE MATTER OF :
E. I. DU PONT DE NEMOURS : ADMINISTRATIVE
AND COMPANY : CONSENT
(CHAMBERS WORKS FACILITY) : ORDER

This Administrative Consent Order is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP") by N.J.S.A. 13:1D-1 et seq., and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director of the Division of Water Resources pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. E. I. du Pont de Nemours and Company, a Delaware corporation ("DuPont") owns and operates a chemical manufacturing and wastewater treatment plant known as the Chambers Works facility located at Block 1, Lot 1, Block 105, Lot 1, and Block 185, Lot 1, Route 130, Deepwater, Pennsville Township, Salem County, New Jersey ("the site").
2. On June 30, 1987 NJDEP issued a New Jersey Pollutant Discharge Elimination System ("NJPDES") permit No. NJ0005100 ("the permit") to DuPont authorizing the discharge of pollutants into Zone 5 of the Delaware River via twelve (12) outfall pipes. Said permit became effective on September 1, 1987 and expires on August 31, 1992.
3. By letter dated September 1, 1987, DuPont requested an adjudicatory hearing to contest certain terms and conditions of the permit.
4. By letters dated May 2, 1988 to NJDEP and the United States Environmental Protection Agency ("USEPA"), DuPont requested a variance of the final effluent discharge limitations for

Priority Organic Toxic Pollutants established by the USEPA guidelines for the Organic Chemicals, Plastics, and Synthetic Fibers industrial category as required by the Federal Water Quality Act, 33 U.S.C. 1251 et seq., as amended.

5. By letter dated January 4, 1989, DuPont was notified of NJDEP's proposal to resolve the contested permit conditions involving specific discharge limitations.

6. By letter dated March 28, 1989, DuPont was notified of NJDEP's final position on the resolution of the remaining contested permit conditions ("Science and Research issues") that were not addressed in NJDEP's January 4, 1989 correspondence.

7. The permit requires DuPont to monitor the twelve outfalls for certain parameters at frequencies specified in Part III, pages one through twelve of the permit, and to submit Discharge Monitoring Reports ("DMR's") to NJDEP monthly.

8. A review by NJDEP of the DMR's submitted by DuPont during the period September 1, 1987 through April 30, 1989 has revealed the following exceedances of permit limits:

<u>Reporting Period</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Reported Result</u>
09/87	TSS (Kg/Day)	001	680 avg	3708
09/87	DOC (mg/L)	010	20 max	49.7
10/87	pH (su)	001	6.0 min	5.5
10/87	Iron (Kg/Day)	001	450 max	742
11/87	Nickel (Kg/Day)	001	45 max	58.7
11/87	BOD ₅ (Kg/day)	001	7710 max	11951
11/87	BOD ₅ (Kg/Day)	001	4260 avg	5408
12/87	Nickel (Kg/Day)	001	45 max	53.5
01/88	TSS (mg/L)	008	20 max	32.8
02/88	BOD ₅ (Kg/Day)	001	7710 max	9023
04/88	TSS (mg/L)	008	20 max	36
05/88	TSS (mg/L)	010	50 max	105
07/88	Temperature (°C)	005	43.3 max	48.5
08/88	Temperature (°C)	005	43.3 max	45.0
08/88	TSS (mg/L)	008	20 max	47
09/88	Color (Pt-Co)	001	500 max	577
10/88	Lead (Kg/Day)	001	45 max	79
10/88	Lead (Kg/Day)	001	36 avg	38
10/88	Color (Pt-Co)	001	500 max	669
10/88	BOD ₅ (Kg/Day)	001	7710 max	10530
10/88	Cyanide (Kg/Day)	001	74.3 max	121
10/88	Cyanide (Kg/Day)	001	32.6 avg	53
10/88	TSS (mg/L)	010	50 max	92
12/88	Nickel (Kg/Day)	001	45 max	59
12/88	DOC (mg/L)	011	20 max	96
01/89	Color (Pt-Co)	001	500 max	666
01/89	Color (Pt-Co)	001	350 avg	382
01/89	BOD ₅ (Kg/Day)	001	7710 max	8555
01/89	F/Coliform	661	200/100ml	1171
01/89	TSS (mg/L)	010	50 max	61
01/89	TSS (Kg/Day)	001	680 avg	755

<u>Reporting Period</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Reported Result</u>
02/89	TSS (Kg/Day)	001	7490 max	14899
02/89	TSS (Kg/Day)	001	680 avg	1676
02/89	BOD ₅ (Kg/Day)	001	7710 max	8485
02/89	BOD ₅ (Kg/Day)	001	4260 avg	5448
02/89	Iron (Kg/Day)	001	450 max	619
02/89	Copper (Kg/Day)	001	45 max	62.5
02/89	TSS (mg/L)	010	50 max	120
03/89	BOD ₅ (Kg/Day)	001	7710 max	8101
03/89	Iron (Kg/Day)	001	450 max	1900
03/89	TSS (Kg/Day)	001	7419 max	20895
03/89	Temperature (°C)	008	43.3 max	48
04/89	BOD ₅ (Kg/Day)	001	7710 max	10061
04/89	TSS (Kg/Day)	001	7490 max	7874
04/89	TSS (Kg/Day)	001	680 avg	3045

The following abbreviations were used in the table above:
mg/L - milligrams per liter
Kg/Day - Kilograms per Day
su - standard units
Pt-Co - Platinum-Cobalt color scale

9. Part III, pages eleven (11) and twelve (12) of the permit require DuPont to meet Priority Organic Toxic Pollutant discharge limitations at outfall 661 by April 1, 1989.

10. Based on information received from DuPont as well as information in NJDEP's possession, DuPont was unable to meet the permitted effluent discharge limits at outfall 661 for twenty-two Priority Organic Toxic Pollutants by the April 1, 1989 deadline, which constitutes violations of N.J.A.C. 7:14A-1.2.

11. Based on the facts set forth in these FINDINGS, NJDEP has determined that DuPont has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1, et seq., specifically N.J.A.C. 7:14A-1.2.

12. Based upon the information available to the parties on the effective date of this Administrative Consent Order and to amicably resolve the above matters, the Department and DuPont enter into this Administrative Consent Order without trial or adjudication of any of the facts or issues contained herein.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AND AGREED THAT:

I. ENFORCEMENT COMPLIANCE SCHEDULE

13. DuPont shall comply with all the terms and conditions of the NJPDES permit as amended by the terms and conditions set forth in items (a) through (i) of NJDEP's January 4, 1989 correspondence, and items (k) through (u) of NJDEP's March 28,

1989 correspondence, copies of which are attached hereto as Appendices A and B and made part hereof, and with the additional exception of those terms and conditions specified in paragraphs sixteen (16) and seventeen (17) below. NJDEP will modify the permit as necessary to incorporate the aforesaid terms and conditions set forth in NJDEP's January 4, 1989 and March 28, 1989 correspondences.

14. DuPont shall meet the following schedule for upgrading the treatment plant at the site:

- a. Submit a complete application for a Stage I Treatment Works Approval (TWA) to NJDEP by no later than July 1, 1989.
- b. Submit a complete application for a Stage II TWA by no later than January 1, 1990.
- c. Complete construction and submit a complete Stage III TWA by no later than May 1, 1991.

15. By no later than January 1, 1990, DuPont shall submit to NJDEP a Waste Characterization Study specifying and characterizing the individual wastewater sources and flows of the Priority Organic Toxic Pollutants at the site.

16. By no later than June 1, 1991, DuPont shall discharge wastewater through outfall number 661 in conformity with the final effluent limitations for the Priority Organic Toxic Pollutants as set forth in Appendix C which is attached hereto and made part hereof, or such modification to Appendix C as deemed necessary by NJDEP to reflect the results of the waste characterization study required in paragraph fifteen (15) above, or the granting in whole or in part of a variance of the limitations based on fundamentally different factors ("FDF") by USEPA.

II. INTERIM ENFORCEMENT EFFLUENT LIMITATIONS

17. From April 1, 1989 until May 31, 1991, DuPont shall discharge wastewater through outfall number 661 in conformity with the interim enforcement effluent limitations for the Priority Organic Toxic Pollutants set forth in Appendix D which is attached hereto and made part hereof.

III. PROGRESS REPORTS

18. DuPont shall submit to NJDEP quarterly progress reports, the quarters being January through March, April through June, July through September, and October through December of each year. Each report shall be submitted to the address in paragraph twenty-six (26) on or before the thirtieth (30th) day of the month following the quarter being reported. DuPont shall submit the first report to NJDEP by October 30, 1989. Each progress report shall detail the status of DuPont's compliance with this Administrative Consent Order and shall include the following:

- a. Identification of site and reference to this Administrative Consent Order;
- b. status of work at the site and progress to date;
- c. difficulties or problems encountered during the reporting period;
- d. actions taken or to be taken to rectify difficulties or problems;
- e. activities planned for the next reporting period;
- f. required and actual completion dates for each item required by this Administrative Consent Order;
- g. an explanation of any non-compliance with the approved schedule; and
- h. an evaluation of performance of all corrective remedial measures implemented to date.

IV. PENALTIES

19. Within thirty (30) calendar days after the effective date of this Administrative Consent Order, DuPont shall submit a cashier's or certified check in the amount of \$496,750.00, payable to "Treasurer, State of New Jersey", submitted to the address given in paragraph twenty-six (26) of this Administrative Consent Order, in settlement of the findings contained herein.

20. Upon a demand made by NJDEP, DuPont shall pay stipulated penalties to the Department for its failure to comply with any of the deadlines or schedules required by this Administrative Consent Order, including those established and approved by NJDEP in writing pursuant to this Administrative Consent Order. Each deadline or schedule not complied with shall be considered a separate violation. Payment of stipulated penalties shall be made according to the following schedule, unless the Department has modified the compliance date pursuant to the Force Majeure provisions hereinbelow:

For exceeding interim enforcement effluent limitations (Appendix D): \$5,000.00 per violation

For all other violations:

<u>Calendar Days After Due Date</u>	<u>Stipulated Penalties</u>
1 - 7	\$1,000.00 per calendar day
8 - 14	\$2,000.00 per calendar day
15 - Over	\$5,000.00 per calendar day

21. Any such penalty shall be due and payable fourteen (14) calendar days following receipt of a written demand by NJDEP. Payment of stipulated penalties shall be made by a cashier's or certified check payable to the "Treasurer, State of New Jersey" and shall be submitted to the address given in paragraph twenty-six (26) of this Administrative Consent Order.

22. DuPont will not seek to have payments submitted by DuPont pursuant to the above paragraphs to be treated as tax deductible.

23. If DuPont fails to pay stipulated penalties pursuant to the preceding paragraph, NJDEP may assess administrative or civil administrative penalties for violations of this Administrative Consent Order or may institute civil proceedings to collect stipulated penalties. NJDEP may also bring an action in New Jersey Superior Court pursuant to N.J.S.A. 58:10A-10 to enforce the provisions of this Administrative Consent Order.

V. Force Majeure

24. If any event occurs which DuPont reasonably believes will or may cause delay in the compliance with any provision of this Administrative Consent Order, DuPont shall notify NJDEP in writing within seven (7) calendar days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measure to prevent or minimize any such delay. DuPont shall take all necessary actions to prevent or minimize any such delay.

25. If NJDEP finds that: (a) DuPont has complied with the notice requirements of the preceding paragraph and; (b) that any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of DuPont and; (c) that DuPont has taken all necessary actions to prevent or minimize the delay, NJDEP shall extend the time for performance hereunder for a period no longer than the delay resulting from such circumstances. If NJDEP determines that either DuPont has not complied with the notice requirements of the preceding paragraph, or the event causing the delay is not beyond the control of DuPont, or DuPont has not taken all necessary actions to prevent or minimize the delay, failure to comply with the provisions of this Administrative Consent Order shall constitute a breach of the requirements of the Administrative Consent Order. The burden of proving that any delay is caused by circumstances beyond the control of DuPont, the length of any such delay attributed to those circumstances and the actions taken to prevent or minimize the delay shall rest with DuPont. Increase in the cost or expenses incurred by DuPont in fulfilling the requirements of this Administrative Consent Order shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Force Majeure shall not include nonattainment of the goals, standards, guidelines and requirements set forth in the appendices attached hereto. Force Majeure shall not include contractor's breach.

GENERAL PROVISIONS

26. DuPont shall submit all documents required by this Administrative Consent Order by certified mail, return receipt requested or by hand delivery with an acknowledgement of receipt form for NJDEP's signature to:

Edward H. Post, P.E., Chief
Southern Bureau of Regional Enforcement
Division of Water Resources
20 East Clementon Road
Suite 301 South
Gibbsboro, New Jersey 08026

27. Should the United States Environmental Protection Agency grant DuPont a waiver or modification of any of the permitted discharge limits for Priority Organic Toxic Pollutants outlined in Appendix C based on FDF's, the limits contained herein shall be modified accordingly by NJDEP through a permit modification.

28. All provisions of the NJPDES permit shall remain in full force and effect and are not modified by this Administrative Consent Order. The interim enforcement effluent limitations set forth in Appendix D are enforcement compliance requirements that DuPont shall meet while working to meet the final discharge limitations for Priority Organic Toxic Pollutants contained in Appendix C.

29. Nothing in this Administrative Consent Order shall preclude NJDEP from taking enforcement action against DuPont for matters not set forth in the FINDINGS of this Administrative Consent Order.

30. This Administrative Consent Order shall be binding on DuPont, its principals, agents, successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.

31. This Administrative Consent Order shall not be construed to be a permit or in lieu of a permit for existing or former activities which require permits and shall not relieve DuPont from obtaining and complying with all applicable Federal, State and local permits necessary for any future activities which DuPont must perform in order to carry out the obligations of this Administrative Consent Order.

32. DuPont shall complete and submit applications for all Federal, State and local permits required to carry out the obligations of this Administrative Consent Order in accordance with the approved time schedules. Du Pont shall, within thirty (30) calendar days of receipt of written comments concerning any permit application to a Federal, State or local agency, or sooner if required by the permitting agency, modify the permit application to conform to the agency's comments and resubmit the permit application to the agency. The determination as to whether or not the permit application, as resubmitted, conforms with the agency's comments or is otherwise acceptable to the agency shall be made solely by the agency in writing.

33. All appendices referenced in this Administrative Consent Order, and all reports, work plans and documents required under the terms of this Administrative Consent Order are, upon approval by NJDEP, incorporated into this Administrative Consent Order by reference and made part hereof.

34. Obligations and penalties of this Administrative Consent Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the public health, safety and welfare and are not intended to constitute debt or debts which may be limited or discharged in a bankruptcy proceeding.

35. In addition to NJDEP's statutory and regulatory rights to enter and inspect, DuPont shall allow NJDEP and its authorized representatives access to the facility at all times for the purpose of monitoring compliance with this Administrative Consent Order.

36. NJDEP reserves the right to require DuPont to take additional action should NJDEP determine that such actions are necessary to protect human health or the environment. Nothing in this Administrative Consent Order shall constitute a waiver of any right of NJDEP to require DuPont to undertake such additional measures should NJDEP determine that such measures are necessary.

37. DuPont shall not construe any informal advice, guidance, suggestions or comments by NJDEP, or by persons acting on behalf of NJDEP, as relieving DuPont of its obligations of obtaining written approvals as may be required herein, unless such advice, guidance, suggestions, or comments by NJDEP shall be submitted in writing to DuPont.

38. DuPont hereby consents to and agrees to comply with this Administrative Consent Order which shall be fully enforceable as an Order in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

39. DuPont agrees not to contest the authority or jurisdiction of NJDEP to issue this Administrative Consent Order and also agrees not to contest the terms of this Administrative Consent Order in any action to enforce its provisions.

40. DuPont shall give written notice of this Administrative Consent Order to any successor in interest no later than ninety (90) calendar days prior to transfer of ownership of the facilities which are the subject of this Administrative Consent Order, and shall simultaneously verify to NJDEP that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership of DuPont's facilities.

41. The requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by DuPont of written notice from NJDEP that DuPont has demonstrated, to the satisfaction of NJDEP, that all the terms of this Administrative Consent order have been completed.

42. HEARING WAIVER. When this ADMINISTRATIVE CONSENT ORDER becomes effective, DuPont waives its rights to a hearing on the matters contained hereinabove pursuant to N.J.S.A. 52:14B-1 et seq. Additionally, DuPont hereby withdraws its request for an adjudicatory hearing contesting the terms and conditions of the NJPDES permit.

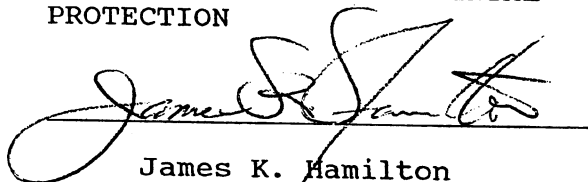
43. DuPont shall retain its right to appeal to a court of appropriate jurisdiction, an unfavorable ruling of its FDF request by USEPA.

44. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment duly executed by DuPont and NJDEP, or by NJDEP's modification in writing of any of the provisions pursuant to the Force Majeure provisions hereinabove.

45. This Administrative Consent Order becomes effective upon the execution hereof by all parties.

BY THE AUTHORITY OF
JORGE H. BERKOWITZ, Ph.D.
ACTING DIRECTOR
DIVISION OF WATER RESOURCES
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

DATE JUN 28 1989



James K. Hamilton
Assistant Director
Enforcement Element

E. I. DU PONT DE NEMOURS, AND COMPANY

DATE 6-27-89

BY: Richard S. Stewart

NAME: Richard S. Stewart

TITLE: Works Manager



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES

CN 029

TRENTON, NEW JERSEY 08625

JOHN W. GASTON JR., P.E.
DIRECTOR

DIRK C. HOFMAN, P.E.
DEPUTY DIRECTOR

IN THE MATTER OF
E.I. DUPONT DE NEMOURS &
COMPANY, INCORPORATED

* ADMINISTRATIVE *
* CONSENT *
* ORDER *

The following FINDINGS are made and ORDER is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (NJDEP) by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Assistant Director for Enforcement of the Division of Water Resources pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. E.I. DuPont de Nemours and Co., Inc. ("DuPont") owns and operates the Chambers Works Facility ("CWF") in Deepwater, Salem County, New Jersey. The CWF produces hundreds of organic chemicals.

2. The wastewaters generated at the CWF travel through a series of collection ditches, some of which are presently unlined, before they are conveyed to the on-site wastewater treatment plant. During periods of higher flow, wastewaters will flow into a sixteen acre, unlined basin ("A"). There also exists a three acre unlined basin ("C") which is part of the on-site lead reclaiming operation. These two basins contain some contaminated wastes to be treated. A third, unlined, seventeen acre settling basin ("B") contains only non-contact cooling water and treated effluent. The treated water and non-contact cooling water of B is currently discharged to the Delaware River. The discharge to the Delaware River was authorized under National Pollutant Discharge Elimination System (NPDES) Permit No. 0005100, which had an effective date of September 30, 1974 and an expiration date of September 30, 1979. On March 6, 1981, NJDEP assumed primary responsibility for all NPDES Permits in the State and, consequently, NPDES Permits are now New Jersey Pollutant Discharge Elimination System (NJPDES) Permits. Although NJPDES Permit No. 0005100 has expired, the permit limits continue to be effective, pursuant to N.J.A.C. 7:14A-2.3 pending the issuance of a renewal NJPDES Permit by NJDEP. NJDEP is currently developing a new NJPDES Permit for the CWF.

3. On the site referenced in paragraph one (1) there also exists two unlined landfills (A and B) totaling 45 acres in area and a secure landfill (C).

4. In 1967 DuPont installed and sampled ground water monitoring wells at the CWF site. Analysis of the monitoring well samples indicated that contamination had occurred in the shallow glacial aquifer underlying and adjacent to the plant site and that the two unlined landfills (A and B) referenced in paragraph three (3) were contributors to the contamination. DuPont subsequently performed a hydrogeologic study and determined that an interceptor well system was needed. In 1971, DuPont installed an interceptor well system along the north and east boundary of the CWF site. Untreated and contaminated ground water from the interceptor well system was pumped to an unlined lagoon prior to discharge to the Delaware River.

5. DuPont proposed to treat the contaminated groundwater at the CWF site and in 1973, DuPont, NJDEP and the Delaware River Basin Commission (DRBC) met in order to insure that all DRBC regulations would be met during the construction of an on-site treatment plant. From the 1973 proceeding (DRBC Docket No. D-69-194) DuPont agreed, as a long-range objective, to continue to upgrade the existing ditch system and replace contaminated ditches with impervious linings or other satisfactory means of conveyance as part of the CWF overall ditch maintenance program. It was also agreed between DuPont and DRBC that all unlined basins and ditches for holding or conveying wastewater having pollutants other than heat would be lined with an appropriate impermeable liner. This agreement is contained in DRBC Docket No. D-69-194.

6. By letter dated April 3, 1973, NJDEP granted approval to DuPont for the proposed construction of the on-site treatment plant referenced in paragraph five (5) and operation of a Phase I abatement program with the provision that all basins and conveyance ditches be of impervious construction. On May 4, 1973, DuPont and NJDEP met regarding the above referenced letter. At this meeting, it was agreed that the impervious construction of all ditches and lagoons would be done in stages, so as not to delay the construction of the wastewater treatment facility referenced in paragraph five (5). This agreement was confirmed in a letter dated May 29, 1973 from NJDEP to DuPont.

7. In 1974, DuPont and DRBC reaffirmed the agreement referenced in paragraph five (5) to line all unlined ditches and basins (DRBC Docket No. D-69-194-2).

8. In June of 1977 the on-site treatment plant referenced in paragraph five (5) began operation.

9. By letter of January 17, 1979, NJDEP requested an update on the ditch upgrading program as well as a schedule for the completion of the remaining ditches. By letter of May 13, 1979, DuPont requested a delay in submitting its completion timetable due to the imposition of regulations concerning the New Jersey Spill Compensation and Control Act and the Federal Resource Conservation and Recovery Act of 1976 (RCRA). DuPont stated that it was continuing the on-going ditch upgrading as maintenance is required. By letter of December 4, 1981, DuPont advised the Department that it has replaced approximately 104,500 square feet of the CWF contaminated ditch system with impervious materials since 1973. This accounts for approximately 34% of the present 319,000 square feet of total contaminated ditch system on the CWF site.

10. Presently, DuPont pumps 1.5 million gallons per day (MGD) of ground water from the interceptor well system for treatment at the on-site wastewater treatment plant. Through yearly ground water reports submitted to both NJDEP and DRBC, it has been shown that the interceptor well system has halted migration of contaminated ground water beyond the land boundaries of the CWF site. However, contamination continues to enter the Delaware River through ground water migration. While these submittals may indicate that ground water quality has improved at the site, especially in the shallow and middle glacial aquifer, they will not be restored to natural ground water quality for the area until the sources of continued contamination are eliminated.

11. In June of 1982 DuPont applied for a NJPDES permit to regulate the discharges from its unlined landfills (A and B).

12. On March 10, 1983, DuPont met with NJDEP concerning the NJPDES application referenced in paragraph eleven (11). At that time it was agreed that one NJPDES permit would be issued for the entire facility and cover all discharges (landfills, lagoons, etc.) to ground water and that DuPont and the Department would execute an Administrative Consent Order concerning the necessary actions which DuPont would have to take to control the on-going ground water discharges.

14. On May 30, 1984, NJDEP and DRBC visited the CWF and discussed the matter of a time schedule for lining or eliminating all unlined ditches and lagoons. DuPont promised to submit to NJDEP and DRBC a revised schedule for lining or eliminating all unlined ditches and lagoons.

15. In an August 31, 1984 phone conversation with NJDEP, DuPont presented a time schedule for lining or eliminating all unlined ditches and lagoons. This time schedule is incorporated into paragraph 20 of this Administrative Consent Order.

16. In a letter dated, June 13, 1984, DuPont advised NJDEP that it will install an additional interceptor well to optimize ground water decontamination and to prevent off-site migration of contaminated ground water. Another set of three monitor wells will also be installed to confirm that there will be no ground water flow toward the Delaware River.

17. DuPont has been and is discharging pollutants into unlined ditches and lagoons, from which the pollutants may flow into the ground waters of the State, in violation of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED AND AGREED THAT:

18. DuPont shall continue to pump, through the interceptor well system referenced in paragraph ten (10), at a minimum, 1.5 million gallons per day of ground water or at a rate greater than 1.5 million gallons per day so as to maximize ground water decontamination and to prevent off-site migration of contaminated ground water.

19. DuPont shall submit to NJDEP a monthly ground water report of the daily volume of ground water pumped and hours of pumping operation for each abatement well and the system in total. The report shall note any deviation from the required ground water abatement program. The first report shall be due thirty (30) calendar days following the effective date of this Administrative Consent Order and then monthly thereafter.

20. DuPont shall adhere to the following time schedule for implementation and completion of remedial action in the following geographic areas to eliminate contaminated waste discharges to the ground water from unlined ditches and lagoons. The following referenced geographic areas are found on Map DWM-1799-C as submitted by DuPont to NJDEP on March 29, 1984, which map is incorporated herein by reference and annexed hereto as Attachment I.

<u>AREA</u>	<u>FIELD WORK START</u>	<u>PROJECT COMPLETION</u>
A	April 1985	December 1986
B	April 1985	June 1986
C	April 1985	December 1985
E	October 1985	December 1988
F	October 1985	December 1987
G	October 1985	June 1988
J	October 1985	June 1987
D	July 1986	June 1989
H	July 1986	June 1990
I	July 1986	December 1990
Main Ditch	-	June 1991
A and C Basins	-	December 1991
Interceptor Well	-	December 1984

Project completion for the A and C Basins means that they will be out of service and in the process of being closed per the Closure Plans in DuPont's RCRA Part B Permit.

21. DuPont shall continue to submit to NJDEP and DRBC its annual ground water report as required by DRBC Docket No. D-71-211.

22. All submittals required by this Administrative Consent Order shall be made to:

James K. Hamilton, Chief
 Southern Region
 Enforcement Element
 Division of Water Resources
 CN-029
 Trenton, New Jersey 08625

AND

Delaware River Basin Commission
 P.O. Box 7360
 West Trenton, New Jersey 08628

23. DuPont hereby consents to and agrees to comply with all the terms and provisions of this Administrative Consent Order, which shall be fully enforceable in the Superior Court of New Jersey having jurisdiction over the subject matter and signatory parties, upon the filing of a summary action for compliance pursuant to N.J.S.A. 58:10A-1 et seq. and also may be enforced in the same fashion as an Administrative Order issued by the NJDEP pursuant to this same statutory authority.

24. This Administrative Consent Order shall not preclude the NJDEP from taking whatever action it deems appropriate to enforce the water pollution control laws of the State of New Jersey in any manner not inconsistent with the terms of this Administrative Consent Order. Nothing in this Consent Order shall constitute a waiver of any statutory right of NJDEP pertaining to any of the laws of the State of New Jersey, should NJDEP determine that additional remedial measures are necessary to protect the public health, safety and welfare or the environment.

25. The provisions of this Administrative Consent Order shall be binding on DuPont, its subsidiaries and divisions, and its principals, directors, officers, agents, employees, successors, assigns, tenants and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.

26. Compliance with the terms of this Administrative Consent Order shall not excuse DuPont from obtaining and complying with all applicable federal and state permits, statutes and regulations while carrying out the obligations imposed by this Administrative Consent Order. The execution of this Administrative Consent Order shall not preclude the Department from requiring that DuPont obtain and comply with any permit issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order even if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order. Should any of the measures to be taken by DuPont during the remediation of the ground water and surface water pollution result in a new or modified discharge as defined in N.J.A.C. 7:14A-1 et seq., then DuPont shall obtain a NJPDES permit modification from the Department prior to commencement of said activity.

27. No obligations imposed by this Administrative Consent Order are intended to constitute a debt, damage claim, penalty or other civil action which should be limited or discharged in a bankruptcy proceeding. All obligations imposed by this Order shall constitute continuing regulatory obligations imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety and welfare.

28. Force Majeure. If any event occurs which purportedly causes or may cause delays in the achievement of any provision of this Administrative Consent Order, DuPont shall notify the Department in writing within ten calendar days of the delay or anticipated delay, as appropriate, describing the anticipated length, precise cause or causes, measures taken or to be taken, and the time required to minimize the delay. DuPont shall adopt all reasonable necessary measures to prevent or minimize delay. Failure by DuPont to comply with the notice requirements of this paragraph shall render this Force Majeure provision void and of no effect as to the particular incident involved.

29. Hearing Waiver. When this Administrative Consent Order becomes effective, DuPont waives any right it may have to a hearing on the matters contained hereinabove pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 58:10A-1 et seq.

30. This Administrative Consent Order shall take effect upon the signature of all parties.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BY AUTHORITY OF
JOHN W. GASTON, JR., P.E.
DIRECTOR
DIVISION OF WATER RESOURCES

DATE 2/8/88

BY: *George G. McCann* *NUNE PRO TUNC*
GEORGE G. McCANN
Assistant Director
Enforcement Element

DATE 12/17/84

E.I. DuPont de Nemours & Company, Inc.
BY: *R. A. Shinn*
NAME: R. A. Shinn
TITLE: Works Manager



State of New Jersey

Department of Environmental Protection

Water Compliance and Enforcement

401 East State Street

Trenton, NJ 08625-0422

Telephone (609) 984-5855

Fax (609) 292-9938

Robert C. Shinn,
Commissioner

WALD T. DiFRANCESCO
Acting Governor

IN THE MATTER OF :

CONNECTIV POWER :

DELIVERY :

ADMINISTRATIVE ORDER
AND
NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT

This Administrative Order and Notice of Civil Administrative Penalty Assessment is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection and Energy ("the Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Administrator of Water Compliance and Enforcement pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Conectiv Power Delivery (previously Atlantic Electric Company which is now a wholly-owned subsidiary of Conectiv) ("AEC/Conectiv") owns and operates continuously for twenty-four (24) hours per day, the Deepwater Electrical Generating Station located at Blocks 301, Lots 12 & 13, 373 North Broadway (Route 49), Pennsville, Salem County, New Jersey.
2. The Department issued a New Jersey Pollutant Discharge Elimination System ("NJPDES") Discharge to Surface Water Permit No. # NJ0005363 ("the Permit") to AEC/Conectiv on June 30, 1986. The effective date of the Permit was August 1, 1986.
3. On or about March 31, 1998, AEC/Conectiv notified the Department that Atlantic Electric Company had become a subsidiary of Conectiv Power Delivery.
4. Pursuant to the Permit, AEC/Conectiv discharges contact and non-contact cooling water and storm-water which contain pollutants, as defined by N.J.A.C. 7:14A-1.2, into the Delaware River.
5. No person shall discharge any pollutant except in conformity with a valid NJPDES Permit issued pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

6. Part III Section B / C of the Permit sets forth specific parameters for outfall DSN005A required to be sampled during the first precipitation event of the month which causes a discharge during working hours and which is preceded by a minimum dry period of 72 hours, and the monthly monitoring requirements and discharge limitations for outfall DSN006A.

7. Part III Section B / C of the Permit also requires that discharge monitoring results obtained during the previous reporting period shall be summarized and reported to the Department on DMR forms. The DMRs are to be postmarked and submitted to the Department no later than the 25th calendar day of the month following the completed monitoring period.

8. Part III Section B/C of the Permit requires that the discharge DSN005 and DSN006 be sampled for the following parameters;

DSN005A: pH, Chemical Oxygen Demand, Total Suspended Solids, and Petroleum Hydrocarbons

DSN006A: pH, Temperature-Effluent, Chemical Oxygen Demand, Total Suspended Solids, and Petroleum Hydrocarbons

9. A review of Department records indicates that AEC/Conectiv failed to sample DSN005A and DSN006A discharges for the months of March 1996 through May 2000 in conformity with the Permit.

10. The DMRs submitted for DSN005A and DSN006A for the months March 1996 through May 2000 were coded as No Discharge. The non-contact cooling water discharge was removed from DSN006A in the beginning of 1996, leaving only the stormwater discharge. Significant precipitation events, preceded by seventy-two (72) hours without such events, were recorded in the area of AEC/Conectiv by the National Weather Service during sixteen months between March 1996 and May 2000. A significant precipitation event is defined as a precipitation event which results in 0.4", 0.2", and 0.5" of precipitation at the Wilmington, Philadelphia and Millville weather stations, respectively.

11. On June 6, 2000, representatives of United States Environmental Protection Agency ("EPA") inspected AEC/Conectiv during a precipitation event and observed that both DSN005A and DSN006A were discharging. The precipitation recorded on June 6, 2000 by the National Weather Service was 0.4", 0.2", and 0.5" at the Wilmington, Philadelphia, and Millville weather stations, respectively.

12. AEC/Conectiv has submitted a DMR to the Department as required by Part III Section B/C of the Permit for the period of June 1, 2000 to June 30, 2000. The DMR demonstrates that AEC/Conectiv violated the discharge limits of the Permit as listed below:

<u>Monitoring Period</u>	<u>Outfall Number</u>	<u>Discharge Parameter</u>	<u>Permit Limits</u>	<u>Reported Results</u>
June 2000	005A	TSS	50 mg/L	103 mg/L
June 2000	005A	PHC	15 mg/L	52 mg/L

13. Based on the facts set forth in these FINDINGS, the Department has determined that AEC/Conectiv has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., specifically N.J.A.C. 7:14A-6.2(a)1.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14. AEC/Conectiv shall sample and discharge pollutants only in conformity with NJPDES Permit No. NJ0005363, the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq.

15. Obligations and penalties of this Administrative Order and Notice of Civil Administrative Penalty Assessment are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the public health, safety and welfare and are not intended to constitute debt or debts which may be limited or discharged in a bankruptcy proceeding.

16. This Order shall be effective upon receipt.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

17. Pursuant to N.J.S.A. 58:10A-10d, N.J.S.A. 58:10A-10.1 and N.J.A.C. 7:14-8.1 et seq., and based upon the above FINDINGS, the Department has determined that a civil administrative penalty should be assessed against AEC/Conectiv in the amount of \$477,488.00. The Department's rationale for this civil administrative penalty is set forth in Appendix A which is attached hereto and incorporated herein.

18. Payment of the penalty is due when a final order is issued by the Commissioner subsequent to a hearing if any, or when this Notice of Civil Administrative Penalty Assessment becomes a final order (see following paragraph). Payment shall be made by certified or cashier's check payable to "Treasurer, State of New Jersey" and shall be submitted along with the bottom portion of the attached enforcement invoice to:

Division of Revenue
New Jersey Department of Treasury
P. O. Box - 417
Trenton, New Jersey 08625-0417

19. If no request for a hearing is received within twenty (20) calendar days after receipt of this Notice of Civil Administrative Penalty Assessment by AEC/Conectiv, it shall become a final order upon the twenty-first calendar day following its receipt by AEC/Conectiv, and the penalty shall be due and payable.

20. Notice is given that pursuant to N.J.S.A. 58:10A-10d and N.J.A.C. 7:14-8.13, the Department may, in addition to any civil administrative penalty assessed, amend such penalty assessment to include a civil administrative penalty for the economic benefit (in dollars) which a violator has realized as a result of not complying, or by delaying compliance, with this Act.

NOTICE OF RIGHT TO A HEARING

21. AEC/Conectiv is entitled to request an administrative hearing. AEC/Conectiv shall, pursuant to N.J.A.C. 7:14-8.4(a) in its request for a hearing, furnish the Department with all of the information specified in the enclosed Administrative Hearing request Checklist and Tracking Form. This information must be delivered to the office of legal Affairs at the address referenced in the cover letter to this document within (20) calendar days from receipt of this Administrative Order and Notice of Civil Administrative Penalty Assessment. A copy of the hearing request shall be filed at the same time to the address referenced in paragraph twenty-three (23) below.

GENERAL PROVISIONS

22. This Administrative Order and Notice of Civil Administrative Penalty Assessment is binding on AEC/Conectiv, its principals, directors, officers, agents, successors, assigns, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.

23. AEC/Conectiv shall submit all documents required by this Administrative Order and Notice of Civil Administrative Penalty Assessment by certified mail, return receipt requested or by hand delivery to:

Edward H. Post, P.E., Chief
Water Compliance and Enforcement - Southern Regional Office
2 Riverside Drive, One Port Center, Suite 201
Camden, New Jersey 08103

Payments shall be made as instructed and to the address in paragraph eighteen (18) above.

24. Notice is given that this Administrative Order and Notice of Civil Administrative Penalty Assessment is issued only for the violations identified in the findings hereinabove and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted without further notice. By issuing this Administrative Order and Notice of Civil Administrative Penalty Assessment, the Department does not waive its right to initiate additional enforcement actions.

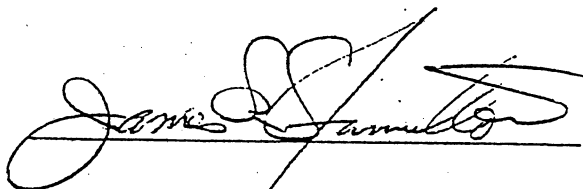
25. Notice is given that pursuant to N.J.S.A. 58:10A-10d, the Department is authorized to assess a civil administrative penalty of not more than \$50,000 for each violation, and each day during which the violation continues shall constitute an additional, separate and distinct offense.

26. Notice is further given that pursuant to N.J.S.A. 58:10A-10e, any person who violates N.J.S.A. 58:10A-1 et seq., or an administrative order issued pursuant to N.J.S.A. 58:10A-10b, or who fails to pay a civil administrative penalty in full after it is due or who fails to make payment pursuant to a payment schedule entered into with the Department shall be subject to a civil penalty not to exceed \$50,000 per day of such violation, and each day's continuance of the violation shall constitute an additional separate and distinct violation.

27. Notice is further given that pursuant to N.J.S.A. 58:10A-10f, any person who purposely, knowingly or recklessly violates N.J.S.A. 58:10A-1 et seq., including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a monitoring report, or any portion thereof, required pursuant to this act, shall, upon conviction, be guilty of a crime of the third degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.A. 2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment, or by both. Any person who negligently violates N.J.S.A. 58:10A-1 et

seq., including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a discharge monitoring report, or any portion thereof, shall, upon conviction, be guilty of a crime of the fourth degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.A. 2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or by both.

DATE: 6-7-01

A handwritten signature in black ink, appearing to read "James K. Hamilton", written over a horizontal line.

James K. Hamilton, Administrator
Water Compliance and Enforcement

APPENDIX A
Penalty Rationale

AEC/Conectiv did not sample its DSN005A and DSN006A discharges for the time period of March 1996 through May 2000 in conformity with its NJPDES permit and AEC/Conectiv discharged pollutants in violation of the Permit, the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the NJPDES Regulations, N.J.A.C. 7:14A-1 et seq., as specified in the Findings of this Administrative Order and Notice of Civil Administrative Penalty Assessment.

N.J.A.C. 7:14-8.9: Civil Administrative Penalty Determination

In accordance with N.J.A.C. 7:14-8.9, the Department may assess a civil administrative penalty against each violator who fails to carry out monitoring or sampling activities or submit monitoring report forms required by the Water Pollution Control Act.

Penalty

Pursuant to N.J.A.C. 7:14-8.9(e)1, the Department shall assess civil administrative penalty against AEC/Conectiv in the amount of \$100 per parameter omitted on a DMR for 30 days per monitoring period.

For failing to sample DSN005A for 16 months for 4 parameters at	\$3,000 per parameter	=	\$ 192,000.00
For failing to sample DSN006A for 16 months for 5 parameters at	\$3,000 per parameter	=	\$ 240,000.00
	Subtotal Amount		\$ 432,000.00

In addition, pursuant to N.J.A.C. 7:14-8.13, the Department shall include as part of a Civil Administrative Penalty, any economic benefit realized by AEC/Conectiv for failure to conduct analyses for the omitted parameters.

<u>Omitted Parameter</u>	<u>Cost of Analyses</u>	<u>Number of Analyses Missed</u>	<u>Total Cost</u>
PH	\$15.00	32	\$480.00
Total Suspended Solids	17.00	32	544.00
Chemical Oxygen Demand	38.00	32	1216.00
Petroleum Hydrocarbons	99.00	32	3168.00
Temperature	5.00	16	80.00
	Subtotal Economic Benefit		\$5,488.00

N.J.A.C. 7:14-8.5: Civil Administrative Penalty Determination

In accordance with N.J.A.C. 7:14-8.5(e), the Department may assess a civil administrative penalty against AEC/Conectiv on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the ranges stated therein.

In accordance with N.J.A.C. 7:14-8.5(h), the Department has assessed the conduct of AEC/Conectiv to be minor.

Pursuant to N.J.A.C. 7:14-8.5(g) and (e), the seriousness factors and penalties for the effluent violations have been assessed as follows:

<u>Monitoring Period</u>	<u>Outfall Number</u>	<u>Parameter</u>	<u>Percent Exceeded</u>	<u>Seriousness</u>	<u>Assessed Penalty</u>
June, 2000	005A	TSS	106	Major	\$20,000
June, 2000	005A	PHC	247	Major	<u>\$20,000</u>
				Subtotal	<u>\$40,000</u>
				Total Assessed Penalty	<u>\$ 477,488.00</u>

Let's protect our earth



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
CN 029
TRENTON, NEW JERSEY 08625

ROBERT G. McCANN, P.E.
DIRECTOR

DIRK C. HOFMAN, P.E.
DEPUTY DIRECTOR

IN THE MATTER OF :
PENNSVILLE SEWERAGE :
AUTHORITY :

ADMINISTRATIVE ORDER
AND
NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT

This Administrative Order and Notice of Civil Administrative Penalty Assessment is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "NJDEP" or the "Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Director of the Division of Water Resources pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Pennsville Sewerage Authority (hereinafter "PSA") owns and operates the Pennsville Sewage Treatment Plant (hereinafter the "plant" or "facility") located at Delaware Drive, Pennsville Township, Salem County, New Jersey. A New Jersey Pollutant Discharge Elimination System ("NJPDDES") Permit No. NJ0021598 (hereinafter the "Permit") was issued to PSA for the facility with an effective date of March 1, 1986 for the discharge of pollutants from the facility through outfall #001 into the Delaware River, Zone 5.
2. N.J.A.C. 7:14A-1.2(c) provides that no person shall discharge any pollutants except in conformity with a valid NJPDDES permit.
3. PSA has been submitting Discharge Monitoring Reports ("DMR's") for the facility as required by Part I, I.(i) of the Permit. These reports indicate that for the monitoring periods of January 1, 1987 through December 31, 1987, the facility violated the pollutant discharge limitations of the Permit, for Minimum Dissolved Oxygen (hereinafter "Min. DO"), 5 day Biochemical Oxygen Demand (hereinafter "BOD₅"), Total Suspended Solids (hereinafter "TSS"), and Ultimate Carbonaceous Biochemical Oxygen Demand (hereinafter "CBOD"). The reported results from the DMR's are outlined below.

<u>Monitoring Period</u>	<u>Discharge Parameter</u>	<u>Average Monthly Discharge Limitation</u>	<u>Actual Results Reported</u>
1/1 - 1/31/87	Min. DO mg/l	6	5.85
	BOD5 mg/l	26	76.2
	" kg/day	185	521
	" % removal	87.5	47.39
	CBOD mg/l	35	102
	" kg/day	249	697
	TSS mg/l	30	35.5
	" kg/day	213	242
	" % removal	85	75.92
2/1 - 2/28/87	Min. DO mg/l	6	5.96
	BOD5 mg/l	26	123.25
	" kg/day	185	815
	" % removal	87.5	26.35
	CBOD mg/l	35	165.1
	" kg/day	249	1091
	TSS mg/l	30	40
	" kg/day	213	264
	" % removal	85	76.48
3/1 - 3/31/87	BOD5 mg/l	26	110
	" kg/day	185	690
	" % removal	87.5	36.5
	CBOD mg/l	35	147
	" kg/day	249	922
	TSS mg/l	30	40.5
	" kg/day	213	254
	" % removal	85	82
4/1 - 4/30/87	Min DO mg/l	6	5.1
	BOD5 mg/l	26	73
	" kg/day	185	463
	" % removal	87.5	7.75
	CBOD mg/l	35	97
	" kg/day	249	615
	TSS mg/l	30	89
	" kg/day	213	565
	% removal	85	66.54

5/1 - 5/31/87	Min. DO mg/l	6	4.87
	BOD5 mg/l	26	118
	" kg/day	185	713
	" % removal	87.5	4
	CBOD mg/l	35	158
	" kg/day	249	348
	TSS mg/l	30	63
	" kg/day	213	381
	" % removal	85	68
	Oil + Grease	15	17
Ammo. Nitrogen	35	45	
6/1 - 6/30/87	Mip. DO mg/l	6	4.58
	BOD5 mg/l	26	53
	BOD5 kg/day	185	284
	" % removal	87.5	70.6
	CBOD mg/l	35	71
	" kg/day	249	381
	TSS % removal	85	77.7
7/1 - 7/31/87	Min. DO mg/l	6	4.87
	BOD5 mg/l	26	92.5
	" kg/day	185	479
	" % removal	87.5	51
	CBOD mg/l	35	124
	" kg/day	249	642
	TSS mg/l	30	57
	" kg/day	213	295
" % removal	85	43.75	
8/1 - 8/31/87	BOD5 mg/l	26	57.7
	" kg/day	185	277.7
	" % removal	87.5	58
	CBOD mg/l	35	77
	" kg/day	249	371.9
	TSS mg/l	30	51.75
	" kg/day	213	249.9
" % removal	85	69	
9/1 - 9/30/87	BOD5 mg/l	26	82
	" kg/day	185	406
	" % removal	87.5	56
	CBOD mg/l	35	109.8
	" kg/day	249	573
	TSS % removal	85	76
10/1 - 10/31/87	BOD5 mg/l	26	108.7
	" kg/day	185	530
	" % removal	87.5	52
	CBOD mg/l	35	145.6
	" kg/day	249	709.9
	TSS mg/l	30	35
" % removal	85	82	

11/1 - 11/30/87	BOD5 mg/l	26	88.5
	" kg/day	185	431.5
	" % removal	87.5	61.18
	CBOD mg/l	35	118
	" kg/day	249	575
12/1 - 12/31/87	min. DO mg/l	6	4.95
	BOD5 mg/l	26	128
	" kg/day	185	653
	" % removal	87.5	27.22
	CBOD mg/l	35	171
	" kg/day	249	872
	TSS mg/l	30	48.25
" % removal	85	73.23	

4. Based on the facts set forth in these FINDINGS, the Department has determined that PSA has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., specifically N.J.A.C. 7:14A-1.2.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

5. PSA shall discharge wastewater only in accordance with the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., and NJPDES permit No. NJ0021598.

6. This Order shall be effective upon receipt.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

7. Pursuant to N.J.S.A. 58:10A-10d and N.J.A.C. 7:14-8.1 et seq., and based upon the above FINDINGS, NJDEP has determined that a civil administrative penalty should be assessed against PSA in the amount of \$30,000.00.

8. Payment of the penalty is due when a final order is issued by the Commissioner subsequent to a hearing if any, or when this Notice of Civil Administrative Penalty Assessment becomes a final order (see following paragraph). Payment shall be made by check payable to "Treasurer, State of New Jersey" and shall be submitted to:

Edward H. Post, P.E., Chief
Southern Bureau of Regional Enforcement
Division of Water Resources
20 East Clementon Road, Suite 301 South
Gibbsboro, New Jersey 08026

9. If no request for a hearing is received within twenty (20) calendar days from receipt of this Notice of Civil Administrative Penalty Assessment, it shall become a final order upon the twenty-first calendar day following its receipt and the penalty shall be due and payable.

NOTICE OF RIGHT TO A HEARING

10. Pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 58:10A-10b and d, PSA is entitled to an administrative hearing. Any hearing request shall be delivered to the address referenced in paragraph eight (8) within twenty (20) calendar days from receipt of this Administrative Order and Notice of Civil Administrative Penalty Assessment.

11. PSA shall, in its request for a hearing, furnish NJDEP with the following:

- a. A statement of the legal authority and jurisdiction under which the hearing or action to be taken is to be held;
- b. A reference to the particular sections of the statutes and rules involved;
- c. A short and plain statement of the matters of fact and law asserted; and
- d. The provisions of this Administrative Order and Notice of Civil Administrative Penalty Assessment to which PSA objects, the reasons for such objections, and any alternative provisions proposed.

GENERAL PROVISIONS

12. This Administrative Order and Notice of Civil Administrative Penalty Assessment is binding on PSA, its principals, directors, officers, agents, successors, assigns, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.

13. PSA shall submit all documents required by this Administrative Order and Notice of Civil Administrative Penalty Assessment by certified mail, return receipt requested or by hand delivery to:

Edward H. Post, P.E., Chief
Southern Bureau of Regional Enforcement
Division of Water Resources
20 East Clementon Road, Suite 301 South
Gibbsboro, New Jersey 08026

14. Notice is given that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted without further notice. By issuing this Administrative Order and Notice of Civil Administrative Penalty Assessment the Department does not waive its rights to initiate additional enforcement actions.

15. No obligations imposed by this Administrative Order and Notice of Civil Administrative Penalty Assessment (with the exception of paragraph seven (7), above) are intended to constitute a debt, damage claim, penalty or other civil action which should be limited or discharged in a bankruptcy proceeding. All obligations imposed by this Administrative Order and Notice of Civil Administrative Penalty Assessment shall constitute continuing regulatory obligations imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and environment.

16. Notice is given that pursuant to N.J.S.A. 58:10A-10d, NJDEP is authorized to assess a civil administrative penalty of not more than \$50,000 for each violation, and each day during which violation continues shall constitute an additional, separate and distinct offense.

17. Notice is further given that pursuant to N.J.S.A. 58:10A-10e, any person who violates N.J.S.A. 58:10A-1 et seq. or an administrative order issued pursuant to N.J.S.A. 58:10A-10b or who fails to pay the civil administrative penalty in full after it is due shall be subject to a civil penalty not to exceed \$50,000 per day of such violation, and each day's continuance of the violation shall constitute a separate violation.

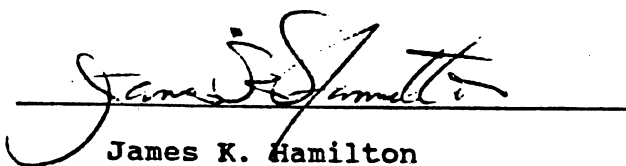
18. Notice is further given that pursuant to N.J.S.A. 58:10A-10f, any person who willfully or negligently violates this act shall, upon conviction, be guilty of a crime in the fourth degree and shall be punished by fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than one year or by both. Punishment for a second offense under this subsection shall be a fine of not less than \$10,000.00 nor more than \$100,000.00 per day of violation, or by imprisonment for not more than two years, or both. Any person who knowingly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate, any monitoring

device or method required to be maintained pursuant to this act shall, upon conviction, be subject to a fine of not more than \$20,000.00 or by imprisonment for not more than six months, or by both.

BY THE AUTHORITY OF
GEORGE G. McCANN, P.E.
DIRECTOR
DIVISION OF WATER RESOURCES
DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: _____

JUN 16 1988

A handwritten signature in dark ink, appearing to read "James K. Hamilton", is written over a horizontal line.

James K. Hamilton
Acting Assistant Director
Enforcement Element

PRESS RELEASE

James K. Hamilton, Acting Assistant Director of the Enforcement Element, Division of Water Resources within the Department of Environmental Protection today announced the issuance of an Administrative Order and Civil Administrative Penalty Assessment of \$30,000.00 against the Pennsville Sewerage Authority for violations of their New Jersey Pollutant Discharge Elimination System (NJPDES) permit limits.

According to Edward H. Post, Chief of the Division's Southern Bureau of Regional Enforcement (Atlantic, Cape May, Camden, Cumberland, Gloucester, and Salem), under the order Pennsville is required to discharge only in accordance with the New Jersey Water Pollution Control Act and the NJPDES permit issued by NJDEP. Pennsville Sewerage Authority has violated several of the discharge limitations in its NJPDES permit since January 1987.

The Pennsville Sewerage Authority is liable for additional penalties of up to \$50,000.00 per day for each day that the violations continue after the receipt of an Administrative Order and Notice of Civil Administrative Penalty Assessment should the Pennsville Sewerage Authority fail to comply with the terms of this order.

Approved: _____

James K. Hamilton 6-14-88
James K. Hamilton
Acting Assistant Director
Enforcement Element

Approved: _____

George G. McCann, P.E.
Director
Division of Water Resources

FINE RATIONALE

Pennsville Sewerage Authority, Pennsville Sewage Treatment Plant
Pennsville Township, Salem County

DISCHARGE VIOLATIONS

To calculate the penalty all discharge violations for each month were combined and viewed as a single monthly violation to yield a penalty amount.

Pursuant to N.J.A.C. 7;14-8.10 all violations were assigned a Type Factor of "Highly Foreseeable" with an assigned value of 1.00 (the violation continued for a period of 12 months or more without the violator taking steps to abate it) and a Seriousness Factor of "Slight Damage" with an assigned value of 0.50. The discharge has caused or is likely to cause damage to public health, safety or welfare or to the environment, but such damage is likely to be slight.

Slight damage

Highly Foreseeable

$$0.50 \times 1.00 \times \$5,000.00 = \$2,500.00 \text{ per month}$$

TSS
BOD₅
CBOD

12 months x \$2,500.00 per month = \$30,000.00

Total Penalty = \$30,000.00



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES

CN 029

Trenton, N.J. 08625-0029

Office of
the Director

(609) 292-1637
Fax # (609) 984-7938

IN THE MATTER OF :
PENNSVILLE SEWERAGE : ADMINISTRATIVE
AUTHORITY : CONSENT
ORDER

This Administrative Consent Order is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP") by N.J.S.A. 13:1D-1 et seq., and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Director of the Division of Water Resources pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. Pennsville Sewerage Authority ("PSA"), operates a facility located at Block 548A, Lot 7, Delaware Drive, Pennsville, New Jersey.
2. The NJDEP issued a New Jersey Pollutant Discharge Elimination System ("NJPDES") Permit No. NJ0021598 ("The Permit") to PSA on January 22, 1986. The effective date of the permit was March 1, 1986.
3. Pursuant to the Permit, PSA discharges pollutants, as defined by N.J.A.C. 7:14A-1.9 into the Delaware River, waters of the State.
4. No person shall discharge any pollutants, except in conformity with a valid NJPDES permit issued pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.
5. Part III-A, page 2 of 4, Table IIIA-1 of the Permit sets forth specific parameters to be reported on Discharge Monitoring Reports ("DMR's) and identifies discharge limitations for each parameter for the permitted outfall.

6. PSA has submitted DMRs to NJDEP as required by Part III-A, page 3 of 4 of the Permit for the period of May 1, 1990 through April 30, 1991. The DMRs demonstrate that PSA has violated the discharge limits of the Permit. Listed below are the dates and parameters which were violated:

<u>Monitoring Period</u>	<u>Parameter</u>	<u>Parameter Limit</u>	<u>Discharge Data</u>
4/91	BOD	26mg/L(av)	26.85
4/91	CBOD	35mg/L(av)	35.97
4/91	CBOD	87.5%(min)	87.15
3/91	BOD	26mg/L(av)	27.8
3/91	CBOD	35mg/L(av)	37
2/91	BOD	26mg/L(av)	27
2/91	CBOD	35mg/L(av)	35.73
1/91	BOD	26mg/L(av)	28
1/91	CBOD	35mg/L(av)	37.37
1/91	BOD%	87.5%(min)	87
1/91	CBOD%	87.5%(min)	87
12/90	BOD	26mg/L(av)	29
12/90	CBOD	35mg/L(av)	38.9
11/90	DO	6.0mg/L(min)	5.7
10/90	TRC	2.0mg/L(mx)	2.5
9/90	DO	6.0mg/L(min)	5.6
8/90	DO	6.0mg/L(min)	5.5
8/90	TRC	2.0mg/L(mx)	3.4
6/90	BOD%	87.5%(min)	86
6/90	CBOD%	87.5%(min)	86

The following abbreviations were used in the table above:

mg/L	-Milligrams per Liter	min	-Minimum
mx	-Maximum	av	-Average
CBOD	-Carbonaceous Biochemical Oxygen Demand		
DO	-Dissolved Oxygen		
BOD	-Biochemical Oxygen Demand		
TRC	-Total Residual Chlorine		

7. Based on these FINDINGS, NJDEP alleges that PSA has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., specifically N.J.A.C. 7:14A-1.2(c).

8. Based upon the information available to the parties on the effective date of this Administrative Consent Order and to amicably resolve the above matters, NJDEP and PSA, without any admission of unlawful or wrongful acts or omissions, enter into this Administrative Consent Order without any finding of fact or conclusion of law with respect to the alleged violations of the Permit.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED AND AGREED THAT PSA:

9. PSA shall in accordance with the following construction compliance schedule provide for additional wastewater treatment, capable of complying with the final effluent limitations as set forth in the Permit.

I. Enforcement Construction Compliance Schedule

<u>Activity</u>	<u>Date</u>
Submit to NJDEP a complete application for a Stage I Treatment Works Approval (TWA)	September 1, 1991
Submit to NJDEP a complete application for a Stage II TWA	March 1, 1992
Advertise for bids	July 1, 1992
Award Contract Commence Construction	September 1, 1992
Complete Construction and submit to NJDEP a complete application for a Stage III TWA	September 1, 1993
New treatment facilities fully operational/compliance with all permit final effluent limitations	November 1, 1993

10. On the effective date of this Administrative Consent Order and until June 30, 1993, PSA shall meet the interim enforcement effluent limitations as set forth below:

Interim Enforcement Effluent Limits

<u>Discharge Parameter</u>	<u>Concentration Limit mg/L</u>	<u>Percent Removal Limit %</u>
BOD	30mg/L(av)	85%min
CBOD	report only	report only

II. Progress Reports

11. PSA shall submit to NJDEP monthly progress reports. Each progress report shall be submitted to the Southern Bureau of Regional Enforcement office at the address referenced in paragraph twenty (20) of this ACO on or before the last day of the month following the month being reported. The first progress report shall be submitted by August 30, 1991.

12. Each progress report shall detail the status of PSA's compliance with this Administrative Consent Order and shall include the following:

- a. Identification of site and reference to this Administrative Consent Order;
- b. status of work at the site and progress to date;
- c. difficulties or problems encountered during the reporting period;
- d. actions taken or to be taken to rectify difficulties or problems;
- e. activities planned for the next reporting period;
- f. required and actual completion dates for each item required by this Administrative Consent Order;
- g. an explanation of any non-compliance with the approved schedule; and
- h. an evaluation of performance of all corrective remedial measures implemented to date; and
- i. one copy of the DMR and the Monitoring Report-Transmittal sheet, Form T-VWX-014.

III. Penalties

13. PSA shall pay to NJDEP the sum of \$24,000 in settlement of PSA's permit violations as follows:

(a) Within thirty (30) calendar days after the effective date of this Administrative Consent Order, PSA shall submit a cashier's or certified check in the amount of \$12,000.00 payable to "Treasurer, State of New Jersey" to the following address along with the white copy of form DEP-062A (copy attached):

Bureau of Revenue
New Jersey Department of Environmental Protection
Carroll Building, First Floor
428 East State Street
CN 402
Trenton, New Jersey 08625-0402

(b) On or before February 1, 1992, PSA shall submit a cashier's or certified check in the amount of \$12,000 to NJDEP as described above. This payment shall constitute full, final and complete settlement for the violations stated in paragraph six (6) above.

14. Upon a demand made by NJDEP, PSA shall pay stipulated penalties to NJDEP for its failure to comply with any of the provisions of this Administrative Consent Order including the interim enforcement effluent limitations as set forth in paragraph ten (10), the enforcement construction compliance schedule and those schedules established and approved by NJDEP in writing pursuant to this Administrative Consent Order. Each deadline, schedule or interim enforcement effluent limitation not complied with shall be considered a separate violation. Payment of stipulated penalties shall be made according to the following schedule, unless NJDEP has modified the compliance date pursuant to the Force Majeure provisions hereinbelow:

<u>Calendar days After Due Date</u>	<u>Stipulated Penalties</u>
1-7	\$1,000.00 per calendar day
8-14	\$2,000.00 per calendar day
15-over	\$5,000.00 per calendar day

For Interim Effluent Violations

"Conduct" pursuant to N.J.A.C. 7:14-8.5(f) is deemed to be "Minor" for the term of this Administrative Consent Order and "Seriousness" shall be determined pursuant to N.J.A.C. 7:14-8.5(e).

S E R I O U S N E S S

	<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
July 1, 1991 to July 1, 1992	\$10,000	\$2,250**	\$1,000**
July 1, 1992 to July 1, 1993	\$12,000	\$2,700**	\$1,050**

**The penalty for violations that trigger Significant Non-Compliance ("SNC") as defined in the Clean Water Enforcement Act, shall be no less than the \$5,000 statutory minimum.

15. Any such penalty shall be due and payable thirty (30) calendar days following receipt of a written demand from NJDEP. Payment of stipulated penalties shall be made by a corporate, cashier's or certified check payable to the "Treasurer, State of New Jersey" and shall be submitted to the address given in paragraph thirteen (13) above of this Administrative Consent Order.

16. If PSA fails to pay stipulated penalties pursuant to the preceding paragraph, NJDEP may institute civil proceedings to collect stipulated penalties or assess civil administrative penalties for violation of this Administrative Consent Order or take any other appropriate enforcement action.

17. The payment of stipulated penalties does not alter PSA's responsibility to complete any requirement of this Administrative Consent Order.

Force Majeure

18. If any event occurs which PSA reasonably believes will or may cause delay in the achievement of any provision of this Administrative Consent Order, PSA shall notify the NJDEP in writing within seven (7) calendar days of the delay or anticipated delay, as appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measure to prevent or minimize any such delay. PSA shall take all reasonably necessary actions to prevent or minimize any such delay.

19. If NJDEP finds that (a) PSA has complied with the notice requirements of the preceding paragraph; (b) that any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of PSA; and (c) that PSA has taken all reasonably necessary actions to prevent or minimize the delay, NJDEP shall extend the time for performance hereunder for a period no longer than the delay resulting from such circumstances. If NJDEP determines that PSA has not complied with the notice requirements of the preceding paragraph, the event causing the delay is not beyond the control of PSA, or PSA has not taken all reasonably necessary actions to prevent or minimize the delay, failure to comply with the provisions of this Administrative Consent Order shall constitute a breach of the requirements of the Administrative Consent Order. The burden of proving that any delay is caused by circumstances beyond the control of PSA, that all reasonably necessary actions were taken to prevent or minimize the delay and the length of any such delay attributed to those circumstances shall rest with PSA. Increase in the cost or expense incurred by PSA in fulfilling the requirements of this Administrative Consent Order shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Force Majeure shall not automatically include contractors' breach.

General Provisions

20. PSA shall submit three (3) copies of all documents required by this Administrative Consent Order by certified mail, return receipt requested or by hand delivery with an acknowledgement of receipt form for NJDEP's signature to:

Edward H. Post, P.E., Chief
Southern Bureau of Regional Enforcement
Division of Water Resources
20 East Clementon Road, Suite 301 South
Gibbsboro, New Jersey 08026

However, any payments shall be made as instructed and to the address in paragraph thirteen (13) above and any applications for a TWA shall be submitted to the following address with a copy of the cover letter to the address above.

New Jersey Department of Environmental Protection
Division of Water Resources
Bureau of Industrial Discharge Permits
401 East State Street
CN-029
Trenton, New Jersey 08625-0029

21. All provisions of the Permit shall remain in full force and effect. The enforcement construction compliance schedule and interim enforcement effluent limitations provided in paragraph nine (9) and paragraph ten (10) are enforcement compliance requirements that PSA shall meet while working to meet the final effluent limitations as established by NJDEP. The enforcement compliance requirements of this Administrative Consent Order do not modify any provisions of the Permit or any of the duties or liabilities of PSA thereunder.

22. Nothing in this Administrative Consent Order shall preclude NJDEP from taking enforcement action against PSA for matters not set forth in this Administrative Consent Order.

23. This Administrative Consent Order shall be binding on NJDEP and PSA, its principals, directors, officers, agents, successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.

24. PSA shall perform all work conducted pursuant to this Administrative Consent Order in accordance with prevailing professional standards.

25. This Administrative Consent Order shall not relieve PSA from obtaining and complying with all federal, state and local permits, as well as all applicable statutes and regulations while carrying out the obligations of this Administrative Consent Order.

26. This Administrative Consent Order shall not preclude NJDEP from requiring that PSA apply for any permit or permit modification issued by NJDEP under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and/or any other statutory authority for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Administrative Consent Order

even if the terms and conditions of any such permit are more stringent than the terms and conditions of this Administrative Consent Order.

27. All appendices referenced in this Administrative Consent Order, and all reports, work plans and documents specifically required under the terms of this Administrative Consent Order are, upon approval by NJDEP, incorporated into this Administrative Consent Order by reference and made a part thereof.

28. Obligations and penalties of this Administrative Consent Order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the public health, safety and welfare and are not intended to constitute debt or debts which may be limited or discharged in a bankruptcy proceeding.

29. In addition to NJDEP's statutory and regulatory rights to enter and inspect, PSA shall allow NJDEP and its authorized representatives access to the facility at reasonable times for the purpose of monitoring compliance with this Administrative Consent Order.

30. NJDEP reserves the right to demand PSA to take additional action should NJDEP determine that such actions are necessary to protect human health or the environment. Nothing in this Administrative Consent Order shall constitute a waiver of any statutory right of NJDEP to require PSA to undertake such additional measures should NJDEP determine that such measures are necessary.

31. PSA shall not construe any informal advice, guidance, suggestions or comments by persons acting on behalf of NJDEP, as relieving PSA of its obligation of obtaining written approvals as may be required herein, unless such advice, guidance, suggestions or comments by NJDEP shall be submitted in writing to PSA.

32. PSA hereby consents to and agrees to comply with this Administrative Consent Order in the New Jersey Superior Court upon the filing of a summary action for compliance pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

33. PSA agrees not to contest the authority or jurisdiction of NJDEP to issue this Administrative Consent Order and also agrees not to contest the terms of this Administrative Consent Order in any action to enforce its provisions.

34. PSA shall give written notice of this Administrative Consent Order to any successor in interest prior to transfer of ownership of the facilities which are the subject of this Administrative Consent Order, and shall simultaneously verify to NJDEP that such notice has been given.

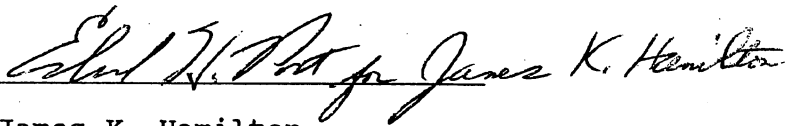
35. The requirements of this Administrative Consent Order shall be deemed satisfied upon the receipt by PSA of written notice from NJDEP that PSA has demonstrated, to the satisfaction of NJDEP, that all the terms of this Administrative Consent Order have been completed.

36. HEARING WAIVER. When this Administrative Consent Order becomes effective, PSA waives its right to a hearing on the matters contained hereinabove pursuant to N.J.S.A. 52:14B-1 et seq.

37. No modification or waiver of this Administrative Consent Order shall be valid except by written amendment duly executed by PSA and NJDEP, or by NJDEP's modification in writing of any of the provisions pursuant to the Force Majeure provisions hereinabove.

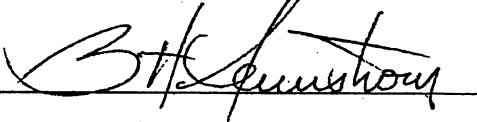
38. This Administrative Consent Order becomes effective upon the execution hereof by all parties.

DATE 6/28/91
6:30 P.M.

BY: 
James K. Hamilton
Assistant Director
Enforcement Element

PENNSVILLE SEWERAGE AUTHORITY

DATE 6/29/91

BY: 
TITLE: Secretary



State of New Jersey

Department of Environmental Protection

Christine Todd Whitman
Governor

Robert C. Shinn, Jr.
Commissioner

IN THE MATTER OF :
PENNS GROVE :
SEWERAGE AUTHORITY :
ADMINISTRATIVE ORDER
AND
NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT

This Administrative Order and Notice of Civil Administrative Penalty Assessment is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection and Energy ("the Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Bureau Chief, Water Compliance and Enforcement pursuant to N.J.S.A. 13:1B-4.

FINDINGS

- 1. Penns Grove Sewerage Authority (" Penns Grove") owns and operates a wastewater treatment facility commonly known as the Penns Grove Sewage Treatment Plant located at Block 118, Lot 2, 81 Beach Avenue, Penns Grove, Salem County, New Jersey.
2. The Department issued a New Jersey Pollutant Discharge Elimination System ("NJPDES") Discharge to Surface Water Permit No. NJ0024023 ("the Permit") to Penns Grove on June 17, 1994. The effective date of the Permit was August 1, 1994 and the expiration date is July 31, 1999.
3. Pursuant to the Permit, Penns Grove discharges pollutants, as defined by N.J.A.C. 7:14A-1.2, into the Delaware River.
4. No person shall discharge any pollutant except in conformity with a valid NJPDES Permit issued pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.
5. Part I - DSW, Page 3 of 5 of the Permit requires that discharge monitoring results obtained during the previous reporting period shall be summarized and reported to the Department on Discharge Monitoring Report ("DMR") forms. The DMRs are to be postmarked and submitted to the Department no later than the 25th day of the month following the completed reporting period.

6. A review of Department records indicates that Penns Grove did not submit DMRs for the monitoring period of July 1997 in conformity with the time frame set forth in the Permit, and did not notify the Department in writing, within thirty (30) days of the date on which the DMRs were required to be submitted to the Department, of the existence of extenuating circumstances beyond Penns Grove's control.

7. By letter dated October 3, 1997, the Department notified Penns Grove that no DMR had been received for July 1997 and requested that Penns Grove submit the missing DMR within ten (10) days of receipt of the notice in accordance with the grace period provided pursuant to N.J.A.C. 58:10A – 10.1d and N.J.A.C. 7:14-8.9 for inadvertent omissions. The Certified Mail receipt indicates that the notice letter was received by Penns Grove on October 7, 1997.

8. On October 23, 1997, Penns Grove submitted the July 1997 DMR.

9. Based on the facts set forth in these FINDINGS, the Department has determined that Penns Grove has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., specifically N.J.A.C. 7:14A-6.2(a)1.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

10. Penns Grove shall comply with its Permit.

11. This Order shall be effective upon receipt.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

12. Pursuant to N.J.S.A. 58:10A-10d, N.J.S.A. 58:10A-10.1 and N.J.A.C. 7:14-8.1 et seq., and based upon the above FINDINGS, the Department has determined that a civil administrative penalty should be assessed against Penns Grove in the amount of \$15,000. The Department's rationale for this civil administrative penalty is set forth in Appendix A which is attached hereto and incorporated herein.

13. Payment of the penalty is due when a final order is issued by the Commissioner subsequent to a hearing if any, or when this Administrative Order and Notice of Civil Administrative Penalty Assessment becomes a final order (see following paragraph). Payment shall be made by certified or cashier's check payable to "Treasurer, State of New Jersey" and shall be submitted along with the bottom portion of the attached enforcement invoice to:

New Jersey Department of Treasury
Division of Revenue
160 S. Board Street, 3rd Floor
P.O. Box 417
Trenton, New Jersey 08625-0417

14. If no request for a hearing is received within twenty (20) calendar days after receipt of this Administrative Order and Notice of Civil Administrative Penalty Assessment by Penns Grove, it shall become a final order upon the twenty-first calendar day following its receipt by Penns Grove, and the penalty shall be due and payable.

15. Notice is given that pursuant to N.J.S.A. 58:10A-10d and N.J.A.C. 7:14-8.13, the Department may, in addition to any civil administrative penalty assessed, amend such penalty assessment to include a civil administrative penalty for the economic benefit (in dollars) which a violator has realized as a result of not complying, or by delaying compliance, with this Act.

NOTICE OF RIGHT TO A HEARING

16. Penns Grove is entitled to an administrative hearing. Penns Grove shall, pursuant to N.J.A.C. 7:14-8.4(a) in its request for a hearing, furnish the Department with all of the information specified in the enclosed Administrative Hearing request Checklist and Tracking Form. This information must be delivered to the office of legal Affairs at the address referenced in the cover letter to this document within (20) calendar days from receipt of this Administrative Order and Notice of Civil Administrative Penalty Assessment. A copy of the hearing request shall be filed at the same time to the address referenced in paragraph eighteen (18) below.

GENERAL PROVISIONS

17. This Administrative Order and Notice of Civil Administrative Penalty Assessment is binding on Penns Grove, its principals, directors, officers, agents, successors, assigns, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.

18. Penns Grove shall submit all documents required by this Administrative Order and Notice of Civil Administrative Penalty Assessment by certified mail, return receipt requested or by hand delivery to:

Edward H. Post, P.E., Chief
Southern Bureau of Water Compliance and Enforcement
2 Riverside Drive, One Port Center, Suite 201
Camden, New Jersey 08103

except any payments shall be made as instructed and to the address in paragraph thirteen (13) above.

19. Obligations and penalties of this Administrative Order and Notice of Civil Administrative Penalty Assessment are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the public health, safety and welfare and are not intended to constitute debt or debts which may be limited or discharged in a bankruptcy proceeding.

20. Notice is given that this Administrative Order and Notice of Civil Administrative Penalty Assessment is issued only for the violations identified in the findings hereinabove and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted without further notice. By issuing this Administrative Order and Notice of Civil Administrative Penalty Assessment, the Department does not waive its right to initiate additional enforcement actions.

21. Notice is given that pursuant to N.J.S.A. 58:10A-10d, the Department is authorized to assess a civil administrative penalty of not more than \$50,000 for each violation, and each day during which the violation continues shall constitute an additional, separate and distinct offense.

22. Notice is further given that pursuant to N.J.S.A. 58:10A-10e, any person who violates N.J.S.A. 58:10A-1 et seq., or an administrative order issued pursuant to N.J.S.A. 58:10A-10b, or who fails to pay a civil administrative penalty in full after it is due or who fails to make payment pursuant to a payment schedule entered into with the Department shall be subject to a civil penalty not to exceed \$50,000 per day of such violation, and each day's continuance of the violation shall constitute an additional separate and distinct violation.

23. Notice is further given that pursuant to N.J.S.A. 58:10A-10f, any person who purposely, knowingly or recklessly violates N.J.S.A. 58:10A-1 et seq., including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a monitoring report, or any portion thereof, required pursuant to this act, shall, upon conviction, be guilty of a crime of the third degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.A. 2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$75,000 per day of violation, or by imprisonment, or by both. Any person who negligently violates N.J.S.A. 58:10A-1 et seq., including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a discharge monitoring report, or any portion thereof, shall, upon conviction, be guilty of a crime of the fourth degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.A. 2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or by both.

DATE: 5/12/99



Edward H. Post, P.E., Chief
Southern Bureau of Water
Compliance and Enforcement

Appendix A

Penalty Rationale

Penns Grove Sewerage Authority
NJPDES No. NJ0024023
Penns Grove, Salem County

Penns Grove Sewerage Authority ("Penns Grove") was issued a final New Jersey Pollutant Discharge Elimination System ("NJPDES") permit ("the Permit") No. NJ0024023 effective August 1, 1994.

In accordance with the terms of the Permit, Penns Grove is required to submit monthly Discharge Monitoring Reports ("DMRs") to the Department with a postmark date of no later than the 25th day of the calendar month following the completed reporting period.

Civil Administrative Penalty Assessment – Reporting Violations N.J.A.C. 7:14-8.9(e)

In accordance with N.J.A.C. 7:14-8.9(e), the Department shall assess a minimum mandatory civil administrative penalty against Penns Grove in the amount of \$100 per day for each effluent parameter omitted on a DMR beginning on the fifth day after the date on which the DMR was due and continuing to accrue for at least thirty (30) days, if the violation is not corrected, up to a maximum of \$50,000 per month for any one DMR.

<u>Monitoring Period</u>	<u>Number of Parameters</u>	<u>Duration of Violation</u>	<u>Penalty Assessed</u>
7/97	5 Parameters	30 days	\$15,000

Total Penalty Due: \$15,000

**ADMINISTRATIVE HEARING REQUEST CHECKLIST
AND TRACKING FORM FOR ENFORCEMENT DOCUMENTS**

I. Enforcement Document Being Appealed:

_____ **Title of Enforcement Document**

_____ **Issuance Date of Enforcement Document**

_____ **Document Number (if any)**

II. Person Requesting Hearing:

_____ **Name**

_____ **Name of Attorney, if applicable**

_____ **Address**

_____ **Address of Attorney**

III. Please Include the Following Information as Part of Your Request:

- A. The date the alleged violator received the enforcement document being contested;
- B. A copy of the enforcement document and a list of all issues being appealed;
- C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
- D. The defenses of each of the findings of fact in the enforcement document;
- E. Information supporting the request;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachments, to:

1. Office of Legal Affairs

ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
P.O. Box 402
Trenton, New Jersey 08625-0402

2. Edward H. Post, P.E., Chief

ATTN: Sandra Cawley
Southern Bureau of Water Compliance and Enforcement
One Port Center, 2 Riverside Drive, Suite 201
Camden, New Jersey 08103

3. All co-permittees (w/attachments)

IV. Signature: _____

Date: _____

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION



PENALTY INVOICE

INVOICE NO. 990517570

NIPDES NO. NJ0024023	Rationale No. 0001	Invoice Date 05/12/99	Due Date 21 DAYS FROM RECEIPT	Amount Due 15,000.00
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KEEP THIS PORTION FOR YOUR RECORDS

NEW JERSEY WATER POLLUTION CONTROL ACT
ADMIN ORDER/PENALTY

IMPROPER MONITORING OR SAMPLING

PENALTY ASSESSMENT = 15,000.00

TOTAL = 15,000.00

KEEP THIS PORTION FOR YOUR RECORDS

Send Billing Inquiries to :
NJDEP
SOUTHERN REGION OFFICE
2 RIVERSIDE DRIVE
CAMDEN, NJ 08103-0137

or contact directly
(609)968-2640

INVOICE NO.
990517570

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION



PENALTY INVOICE

INVOICE NO.
990517570

NIPDES NO. NJ0024023	Invoice Date 05/12/99	Due Date 21 DAYS FROM RECEIPT	Amount Due 15,000.00
-------------------------	--------------------------	----------------------------------	-------------------------

If there are changes to your mailing Name or Address, make the changes on the back of this invoice. Check here.

Enter the Amount of your Payment

DO NOT FOLD, BEND OR MARK

Return This Portion with

PENNS GROVE SEWERAGE AUTHORITY
PO BOX 31
81 BEACH STREET
PENNS GROVE, NJ 08069

your check made payable to:
TREASURER- STATE OF NEW JERSEY
and mail to:
NJDEP
BUREAU OF REVENUE
CN 417
TRENTON, NJ 08625-0417

10101010102420000002040002031111100150000000001990

N.T04455

New Jersey Department of Environmental Protection
Water Compliance and Enforcement Element - Southern Field Office
One Port Center - 2 Riverside Drive
Camden, New Jersey 08102
Telephone No. (609) 968-2640 Fax No. (609) 968-2641

AND ASSISTANCE

NJPDES FIELD COMPLIANCE REPORT

FACILITY NAME: Logan Generating Plant DATE OF INSPECTION: 8/26/98
NJ0076872 DSN# 00110000 NJ0076872 NJ0108111
PERMIT #: NJ0108111 DSN#: 00110000 TYPE: DSW JSIU DGW JUC
MUNICIPALITY: Logan Twp COUNTY: Camden

A review of your facility's Discharge Monitoring Reports and a random check of written summaries of certified laboratory test results from the period of 2/97 to 4/98 did not reveal any monitoring or reporting deficiencies. Furthermore, a visual inspection on this date did not reveal any significant operation and/or maintenance deficiencies.

Therefore, based on the information available at the time of the inspection, your facility has received a rating of "**ACCEPTABLE**". Please correct any minor deficiencies noted below:

Be advised that the Department of Environmental Protection reserves the right to revoke this report/rating and/or require additional corrective/remedial action on the part of the permittee should information become available to warrant such action.

INSPECTOR: K. J. [Signature]
TITLE: Environmental Engineer
SIGNATURE: [Signature]

FACILITY CONTACT: Tom Fromm
TITLE: Environmental Manager
SIGNATURE: Thomas W Fromm

PERMITTEE REQUESTS COPY OF FINAL INSPECTION REPORT []

DISTRIBUTION: White-Permittee (Paganò/MS/CEI/CA/DSW and DGW) Priv-I-NL-Minor
Yellow-Bureau Pink-Central File



01/04/96

State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Southern Bureau of Water & Hazardous Waste Enforcement
20 East Clementon Road, Suite 303 North
Gibbsboro, New Jersey 08026

Robert C. Shinn, Jr.
Commissioner

IN THE MATTER OF :
KEYSTONE ENERGY : SETTLEMENT AGREEMENT
SERVICE COMPANY, L.P. :
d/b/a LOGAN GENERATING PLANT :

The following Settlement Agreement is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Bureau Chief of the Division of Enforcement Field Operations, Water and Hazardous Waste Enforcement Element, pursuant to N.J.S.A. 13:1B-4.

WHEREAS Keystone Energy Service Company, L.P., d/b/a Logan Generating Plant ("Keystone") has submitted monthly Discharge Monitoring Reports ("DMRs") to the Department in accordance with New Jersey Pollution Discharge Elimination System ("NJPDES") permit number NJ 0076872 ("the permit"); and

WHEREAS a review of the DMRs indicate that Keystone has discharged pollutants in excess of the discharge limitations contained in Part III, pages 1 and 2 of 5 of the permit as indicated below:

<u>Monitoring Period</u>	<u>Discharge Number</u>	<u>Parameter</u>	<u>Permit Limits</u>	<u>Reported Results</u>
March 1995	001	TSS	50 mg/L	400 mg/L
March 1995	003	TSS	50 mg/L	240 mg/L
May 1995	001	Arsenic	.10 mg/L	0.15 mg/L

The following abbreviations were used in the table above:
TSS = Total Suspended Solids
mg/L = milligrams per Liter

WHEREAS Logan is liable for civil administrative penalties for the above referenced exceedances of the discharge limitations contained in the permit in accordance with N.J.A.C. 7:14-8.5; and

WHEREAS the Department may settle this matter in accordance with N.J.A.C. 7:14-8.3; and

Employer

WHEREAS, in the interest of resolving this matter, Keystone and the Department agree to settle this matter in accordance with the following terms:

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

1. Keystone shall submit a certified or cashier's check in the amount of \$3,000 within thirty (30) calendar days of execution of this Agreement. The check shall be made payable to "Treasurer, State of New Jersey," and shall be submitted with the bottom portion of the attached Enforcement Invoice Form to:

Bureau of Revenue
New Jersey Dept. of Environmental Protection
Carroll Building, 428 E. State Street, First Floor
CN 417
Trenton, New Jersey 08625-0417

2. This payment shall constitute full, final and complete settlement of the discharge limitation exceedances referenced above.

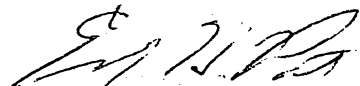
3. Keystone hereby waives its rights to a hearing on the matters contained hereinabove, pursuant to N.J.S.A. 52:14B-1 et seq.

4. Nothing in this Agreement shall preclude the Department from taking enforcement action against Keystone for violations not set forth in this Agreement.

5. This Agreement shall not in any way serve to compromise the rights, remedies, and enforcement authority available by law to the Department with respect to any harms from hazardous substances or pollutants discharged by Keystone.

6. Neither this Agreement, nor any payments or conduct hereunder, shall constitute any admission of fact, fault, or liability by Keystone for the reported discharge limitation exceedances referenced above.

Date: 1/4/96


Edward H. Post, P.E., Chief
Southern Bureau of Water &
Hazardous Waste Enforcement

Date: 12/22/95

By: Keystone Energy Service Co., L.P.

Name: Harley Grossman

Title: Plant Director



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Southern Bureau of Water & Hazardous Waste Enforcement
20 East Clementon Road, Suite 303 North
Gibbsboro, New Jersey 08026

Robert C. Shinn, Jr.
Commissioner

IN THE MATTER OF :
KEYSTONE ENERGY : SETTLEMENT AGREEMENT
SERVICE COMPANY, L.P. :
d/b/a LOGAN GENERATING PLANT :

The following Settlement Agreement is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and duly delegated to the Bureau Chief of the Division of Enforcement Field Operations, Water and Hazardous Waste Enforcement Element, pursuant to N.J.S.A. 13:1B-4.

WHEREAS Keystone Energy Service Company, L.P., d/b/a Logan Generating Plant ("Keystone") has submitted monthly Discharge Monitoring Reports ("DMRs") to the Department in accordance with New Jersey Pollution Discharge Elimination System ("NJPDES") permit number NJ 0076872 ("the permit"); and

WHEREAS a review of the DMRs indicate that Keystone has discharged pollutants in excess of the discharge limitations contained in Part III, pages 1 and 2 of 5 of the permit as indicated below:

Table with 5 columns: Monitoring Period, Discharge Number, Parameter, Permit Limits, Reported Results. Rows include March 1995 (TSS 400 mg/L), March 1995 (TSS 240 mg/L), and May 1995 (Arsenic 0.15 mg/L).

The following abbreviations were used in the table above:
TSS = Total Suspended Solids
mg/L = milligrams per Liter

WHEREAS Logan is liable for civil administrative penalties for the above referenced exceedances of the discharge limitations contained in the permit in accordance with N.J.A.C. 7:14-8.5; and

WHEREAS the Department may settle this matter in accordance with N.J.A.C. 7:14-8.3; and

WHEREAS, in the interest of resolving this matter, Keystone and the Department agree to settle this matter in accordance with the following terms:

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

1. Keystone shall submit a certified or cashier's check in the amount of \$3,000 within thirty (30) calendar days of execution of this Agreement. The check shall be made payable to "Treasurer, State of New Jersey," and shall be submitted with the bottom portion of the attached Enforcement Invoice Form to:

Bureau of Revenue
New Jersey Dept. of Environmental Protection
Carroll Building, 428 E. State Street, First Floor
CN 417
Trenton, New Jersey 08625-0417

2. This payment shall constitute full, final and complete settlement of the discharge limitation exceedances referenced above.


3. Keystone hereby waives its rights to a hearing on the matters contained hereinabove, pursuant to N.J.S.A. 52:14B-1 et seq.

4. Nothing in this Agreement shall preclude the Department from taking enforcement action against Keystone for violations not set forth in this Agreement.

5. This Agreement shall not in any way serve to compromise the rights, remedies, and enforcement authority available by law to the Department with respect to any harms from hazardous substances or pollutants discharged by Keystone.

6. Neither this Agreement, nor any payments or conduct hereunder, shall constitute any admission of fact, fault, or liability by Keystone for the reported discharge limitation exceedances referenced above.

Date: 1/4/96


Edward H. Post, P.E., Chief
Southern Bureau of Water &
Hazardous Waste Enforcement

Date: 12/22/95

By: Keystone Energy Service Co., L.P.

Name: Harley Grossman

Title: Plant Director

ENFORCEMENT ACTION TRACKING

RE: DOCUMENT BEING SUPERSEDED - DOCKET #: _____ ISSUE DATE: _____ EA TYPE: _____
 ID #: NJ0076872 ACTION DUE TO BNC (Y/N): N ACTION DUE TO INSPECTION (Y/N): yes
 PROGRAM: BW BU EX GW LRC BOWA WA CLASS MAJ MIN NJ REPORTING CLASS LOCAL NON-LOCAL
 EA TYPE: ACO(1) 22 ACO(2) 61 ADR(3) C2 ADR(4) 21 AOP(5) 63 APA(6) 59 AUTOPMT(7) 86 ED(9) 66 ROP(10) C1 Rescind
 JCO(1) 25 JCO(2) 65 JO(13) 35 JO(14) 55 NOV(15) 83 SA(16) 57 SAP(17) 68 SPOL(18) 67 TD(19) 28
 DOCKET #: SE010496 ★ ISSUE DT: 010496 EFFECTIVE DT: 010496
 CASE MANAGER: Fritz LAST INSP DATE: 11/20/95 DATE RESPONSE DUE FOR THIS ENF ACTION: February 5, 1996
 FACILITY: Logan Generating Plant LOT # _____ BLOCK # _____
 STREET: Box 169C, RT 130 South CITY: Swedesboro ZIP: 08085-9300
 COUNTY: Gloucester FACILITY OWNER CLASS: DSW/ P.U. - I - NL
 OWNER NAME: Keystone Energy Services d/b/a Logan Generating Plant ADDRESS: Box 169C, RT 130 South, Swedesboro, NJ 08085
 EA COMMENT: serious permit effluent violations for TSS during 3/95 (001, 003) & 5/95 Arsenic (001)
 ACO EFFECTIVE DT: _____ START CONST _____ END CONST _____ MEET LIMITS _____ CEASE DISCH _____

PENALTY INFORMATION (Enter PENALTY AMT ASSESSED, then list Economic Benefit Component of the penalty)

ADD'L PENALTIES ASSESSED - only incl NEW penalties in ACO/P, SAP etc.)

PENALTY AMT ASSESSED Penalty Amt Economic Ben Cmp't	SETTLEMENT OF ORIGINAL PEN AMT Penalty Amt Economic Ben Cmp't		ADD'L PENALTIES ASSESSED Penalty Amt Economic Ben Cmp't		INTEREST Assessed	TOTAL DUE	DATE DUE
\$3,000						\$3,000	2/03/96

PAYMENT SCHEDULE (PAYMENT DUE is the Total Penalty Installment Due including Interest)							
PAYMENT DUE	DATE DUE	INTEREST IN PYMT	PAYMENT DUE	DATE DUE	INTEREST IN PYMT	PAYMENT DUE	DATE DUE
\$3,000	02/03/96						

VIOLATION(S) (List only violation(s) that have not been counted on a previous tracking form)

DMR OMISSION VIOL # DMR OMISSIONS(PARAMETERS) _____
 DMR NON-SUBMIT # DMR NON-SUBMIT _____
 SCHEDULE VIOL # SCHEDULE VIOLS _____
 HAZ EFF VIOL # HAZ EFF VIOLS 1 Arsenic
 NON-HAZ EFF VIOL # NON-HAZ EFF VIOLS 2 TSS
 OTHER VIOL (SEE CWEA COMMENT) # OTHER VIOLS _____

TYPE BNC(C,JC or N/A) _____
 TRIGGER MONTH OF BNC _____ (MM/DD/YY)
 DESCRIPTION OF VIOLATION(S) THAT TRIGGERED BNC-
 HAZ EFF NON-HAZ EFF DMR OMBN DMR NON-PPT
 SERIOUS VIOLS - NOT CONTESTED/CONTESTED
 # HAZ NOT CONTESTED _____ # NON-HAZ NOT CONTESTED _____
 # HAZ CONTESTED _____ # NON-HAZ CONTESTED _____

TYPE SCHEDULE VIOLATED (LIST 18,2&3 & 17) START CONST COMPLETE CONST FINAL COMPLIANCE ENF ACTION VIOLATED (LIST 18.1,16,2&3 ONLY) AD

CWEA COMMENT (must have brief description if "OTHER VIOL") _____

AFFIRMATIVE DEFENSE

DATE AFF DEF REQUESTED _____ DENIED GRANTED - FULL PARTIAL
 SER VIOLS TYPE DEFENSE GRANTED UPSET BYPASS LAB ERROR
 # HAZ VIOLS DEF GRANTED _____ # NON HAZ VIOLS DEF GRANTED _____
 # HAZ VIOLS DEF DENIED _____ # NON HAZ VIOLS DEF DENIED _____

TYPE BNC SUBJECT TO AFF DEF 28 _____ 48 _____

CWEA ANNUAL REPORT LIST(S) Check appropriate list(s) for this document

LIST(S) 05 07 09 10 11 12 13 14 15 16-1 16-2&3 17 18 19 20 23

NEED MORE INFO FOR DATA ENTRY DATE RETURNED _____

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAYMENT SCHEDULE INVOICE

INVOICE NO. 960014050

NIPDES NO. NJ0076872	Rationale No. 0001	Invoice Date 01/05/96	Due Date 02/03/96	Amount Due 3,000.00
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KEEP THIS PORTION FOR YOUR RECORDS

NEW JERSEY WATER POLLUTION CONTROL ACT
SETTLEMENT AGREEMENT/PENALTY

PAYMENT SCHEDULE
01 OF 01
PENALTY ASSESSMENT = 3,000.00
TOTAL = 3,000.00

KEEP THIS PORTION FOR YOUR RECORDS

Send Billing Inquiries to :
NJDEP
SOUTHERN REGION OFFICE
20 EAST CLEMENTON ROAD
GIBBSBORO, NJ 08026

or contact directly
(609)346-8032

INVOICE NO.
960014050

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAYMENT SCHEDULE INVOICE

INVOICE NO.
960014050

NIPDES NO. NJ0076872	Invoice Date 01/05/96	Due Date 02/03/96	Amount Due 3,000.00
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If there are changes to your mailing Name or Address, make the changes on the back of this invoice. Check here. **DO NOT FOLD, BEND OR MARK**

Enter the Amount of your Payment

LOGAN GENERATING PLANT
BOX 169C ROUTE #130 SOUTH
SWEDESBORO, NJ 08085-9300

Return This Portion with your check made payable to:
TREASURER- STATE OF NEW JERSEY
and mail to:
NJDEP
BUREAU OF REVENUE
CN 417
TRENTON, NJ 08625-0417

101010101010242000000706080702111110003000000000196

NJ04445

NO. 11, ORIGINAL

In The
Supreme Court of the United States

STATE OF NEW JERSEY

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

**AFFIDAVIT OF KEVIN BRODERICK
IN SUPPORT OF MOTION
FOR LEAVE TO PETITION
TO REOPEN AND TO ENFORCE DECREE
OR FOR A SUPPLEMENTAL DECREE**

Kevin James Broderick, of full age, being duly sworn according to law, hereby deposes and says:

1. I am employed by the Land Use Regulation Program (the "Program") of the State of New Jersey Department of Environmental Protection ("NJDEP"). I have been employed by NJDEP since 1980. I have knowledge of the matters set forth herein, based upon my personal knowledge and upon my review of the NJDEP files in this matter.

2. The Program administers and implements the New Jersey Waterfront Development Act, N.J.Stat.Ann. § 12:5-3 et seq., Coastal Area Facility Review Act, N.J.Stat.Ann. § 13:19-1 et seq., ("CAFRA"), the Coastal Wetlands Act, N.J.Stat.Ann. § 13:9A-1 et seq., the Freshwater Wetlands Protection Act, N.J.Stat.Ann. § 13:9B-1 et seq. "FWPA", the Flood Hazard Area Control Act N.J.Stat.Ann. § 58:16 A-50 et seq., ("FHACA") and the Program issues Water Quality Certificates pursuant to Section 401 of the Federal Clean Water Act (33 U.S.C. § 1251 et seq) for projects which require a federal permit of license and which propose to discharge fill or dredge material into waters of the United States. The purpose of the Certification is to insure that all such activities are consistent with New Jersey Water Quality Standards at N.J.Admin.Code 7:9-4.11 and the Federal Clean Water Act. The Program also issues Coastal Zone Consistency Determinations for State action under Section 307 of the Federal Coastal Zone Management Act (16 U.S.C. § 1451 et seq.), as amended, and certifies the proposed projects are consistent with the approved New Jersey Coastal Zone Management Program.

3. The New Jersey Legislature adopted the Waterfront Development Act in 1914 to coordinate navigation and development along the New Jersey waterfront and to address the construction or alteration of a dock, wharf, pier, bulkhead,

bridge, pipeline, cable, or other similar or dissimilar waterfront development, N.J.Stat.Ann. § 12:5-3.

4. The Legislature adopted the Wetlands Act of 1970 to protect coastal wildlife and marine fisheries and to prohibit disturbances to coastal wetlands including altering marshes, salt meadows, swamps and flats subject to tidal action in the State of New Jersey along the Delaware Bay and Delaware River. N.J.Stat.Ann. § 13:9A-1a.

5. The Legislature adopted the New Jersey Coastal Area Facility Review Act in 1973 to protect New Jersey's bays, harbors, sounds, wetlands inlets, tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fastland, beaches and intertidal areas, all of which the Legislature has found to constitute an exceptional unique, irreplaceable and delicately balanced coastal area. N.J.Stat.Ann. § 13:19-1.

6. Since 2002, I have served as the Manager of the Program's Bureau of Coastal Regulation along the New Jersey coast in Monmouth, Ocean, Atlantic, Cape May, Salem, Cumberland, Gloucester and Camden counties. As manager of the Program's Bureau of Coastal Regulation, I supervise and direct the implementation of Coastal Zone Programs, as well as the FWPA and the FHACA along the New Jersey coast in Camden, Gloucester, Cumberland, Salem, Cape May, Atlantic, Burlington, Ocean and Monmouth counties along the Delaware River, the Delaware Bay and the Atlantic Ocean.

7. Previously, between 1989 and 2001, I served as the supervisor for all of the coastal development projects in Cape May, Cumberland, Salem, Gloucester, Camden and Ocean counties. This area includes the five New Jersey municipalities of Logan Township in Gloucester County, and Penns Grove,

Carneys Point, Pensville, and Elsinboro Township of Salem County, all of which include lands within the Twelve Mile Circle area defined in New Jersey v. Delaware, 295 U.S. 694, 55 S.Ct. 907, 79, L.Ed. 1659 (1935) (decree) (hereafter the "New Jersey Municipalities").

8. In my tenure as a supervisor for coastal development projects in Cape May, Cumberland, Salem, Gloucester, Camden and Ocean counties, I have inspected hundreds of sites for applications for proposed development for all types of structures which are attached to the adjoining uplands and which involve development of lands outshore of the low water line. These include, but are not limited to bulkheads, stormwater pipes, rip-rap, boat ramps, and docks and piers along the shorebanks and into the tidal waters of the Delaware River under the Waterfront Development Act, the Coastal Wetlands Act and CAFRA.

9. In cooperation with Mark Fedorowicz of the Program who serves as the custodian of the records of the actions of the Program in Salem and Gloucester Counties in which the Twelve Mile Circle lies, during the last month, I have caused a search to be done of records and files under the Program's various databases that exist for permits issued in the New Jersey Municipalities. The initial New Jersey coastal zone management rules were adopted in September 1978 and the databases of files date back to 1979. I have caused a search of the files to be done, both at the offices of the Program at 501 East State Street, Trenton, New Jersey 08611 and at the Program's warehouse at 1651 North Olden Avenue, Ewing Township, New Jersey 08638, for development applications involving waterfront property in the New Jersey Municipalities.

10. Altogether, I have caused to be searched the relevant databases at the Program offices and at the Ewing Township warehouse, including approximately 350 boxes of archived files of the Program for the years 1979 through 1989. As a result, the Program has identified 58 development applications seeking permits which were listed in the database for the New Jersey Municipalities and which were submitted to the Program between 1979 and 1989. I have reviewed the 14 application files that could be found at the warehouse for this timeframe. In addition, the Program has reviewed another 22 development applications for the years between 1989 and 2001 for lands which are located in the New Jersey Municipalities.

11. The Program has issued a number of permits for development that starts on the New Jersey shore and extends into the Delaware River beyond the mean low water line within the Twelve Mile Circle.

12. In particular, the Program issued a 1982 Waterfront Development permit for the Dupont facility in Carneys Point (Agency File Number 82-0519-1). This permit was for dredging of the berth area of an existing pier and authorized dredging at least 200 feet beyond the mean low water line within the Twelve Mile Circle.

13. In 1991, the Program issued to Keystone Cogeneration Systems Inc. in Logan Township stream encroachment, waterfront development and freshwater wetlands permits and a Water Quality Certificate (Agency File Numbers 0809-91-0010.1, 0010.2, 0010.3 and 0010.6) for a coal unloading facility and the approach-way pier. These facilities have a combined length of approximately 1700 feet, and extend beyond the low water line within the Twelve Mile Circle, at a point where the Delaware River is approximately 4000 feet wide. The coal unloading pier is approximately 2300 feet from

the main shipping channel of the river and 150 feet from the Marcus Hook Authorized Anchorage line. The State of Delaware also asserted jurisdiction and issued permits for this project.

14. In 1996, the Program issued a Waterfront Development permit to the Department's Division of Parks and Forestry for the rehabilitation of a pier at Fort Mott State Park in Elsinboro Township (Agency File Number 1708-95-0014.1). The pier extends 350 feet waterward of the high water line into the Delaware River. The New Jersey permit required approval by the State of Delaware for the installation of floating ferry mooring associated pilings and removal of rip-rap against the crib structure below mean low water. New Jersey's DEP application (dated September 19, 1995) indicates that it would apply to the Delaware Department of Natural Resources and Environmental Control.

15. In 2000, the Program issued to Pennsville Township a Waterfront Development permit for repairs and replacement to a municipal boat-ramp (Agency File Number 1708-00-0001.1, 1.2). At the boat-ramp location, mean low water is approximately 60 feet from the bulkhead and the ramp extends at least 30 feet beyond the mean low water line within the Twelve Mile Circle.

16. In 2001, the Program issued a Waterfront Development permit to Pennsville Township (Agency File Number 1708-01-0004.1), for installation of over 100 feet of stormwater force main pipes. The permitted improvements extend through the intertidal beach area to approximately 9 feet beyond the mean low tide line within the Twelve Mile Circle.

17. The above statements are true to the best of my knowledge and I am aware I am subject to penalties for any knowingly false statements contained herein.



Kevin J. Broderick, Manager
Bureau of Coastal Regulation
Land Use Regulation Program
New Jersey Department of Environmental
Protection
501 East State Street
P.O. Box 439
Trenton, New Jersey 08625-0439
(609) 984-3444

Sworn and subscribed
before me on this
June of 2005

Notary Public of the
State of New Jersey



STATE OF NEW JERSEY
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 CN 402
 Trenton, N. J. 08625
 PERMIT *



The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the permit.

Permit No. 82-0519-1	Issuance Date October 18, 1982	Effective Date October 18, 1982	Expiration Date October 18, 1987
Name and Address of Applicant E.I. Dupont DeNemours & Co., Inc. Chambers Works Administration Bldg. Deerwater, NJ 08023	Location of Activity/Facility Chambers Works Pennsville & Carney Point Twp. Salem County, New Jersey	Name and Address of Owner E.I. Dupont DeNemours & Co., Inc Chambers Works Administration Bldg. Deerwater, NJ 08023	
Issuing Division <input type="checkbox"/> Water Resources <input type="checkbox"/> Coastal Resources <input type="checkbox"/> Environmental Quality <input type="checkbox"/> Other	Type of Permit Waterfront Development Water Quality Certificate	Statute(s) 12:5-3 33 U.S.C. 1251, section 401 NJSA 58:12-1 to 13	Application No. 82-0519-1

This permit grants permission to:

Conduct maintenance dredging of an existing berthing area in the Delaware River adjacent to the E.I. Dupont DeNemours & Co., Inc. Chambers Works facility, Deerwater Salem County.

Approximately 100,000 cubic yards of spoil will be removed by hydraulic dredge and disposed of at the E.I. Dupont DeNemours & Co., Inc. upland disposal site located in Carneys Point Township, Salem County Block 185, Lot 1. Dredging will be performed as shown on two (2) sheets of plans prepared by William F. Lippincott P.E. dated July 29, 1982 and submitted to the Division of Coastal Resources on September 3, 1982.

This permit is authorized under and in compliance with, the Coastal Resource and Development Policies for Maintenance Dredging (7:7E-4.11(a)) and Dredge Spoil Disposal on Land (7:7E-7.12).

This permit authorizing maintenance dredging and disposal is issued in accordance with and solely with the area of grants to E.I. Dupont DeNemours & Company Inc. On August 21, 1916, November 20, 1916 and July 16, 1917 recorded in Liber v; page 92, Liber v; page 161 and Liber w; page 62, respectively.

This permit is issued subject to the approval of the Department of the Army, and provided the following conditions are met:

- No dredging be performed during the months of April, May, ~~August~~, September, October and November.

March
~~August~~
 see Whitney's letter of 5/30/82

Approved by the Department of Environmental Protection

J. R. [Signature]
 October 18, 1982
 DATE

Acting Director - Division of Coastal Resources

The word permit means "approval, certification, registration, ..."

GENERAL CONDITIONS ARE ON THE REVERSE SIDE

This permit is subject to the following general conditions:

1. This permit is revocable, or subject to modification or change, at any time, when in the judgement of the Department of Environmental Protection of the State of New Jersey such revocation, modification or change shall be necessary.
2. The issuance of this permit shall not be deemed to affect in any way action by the Department of Environmental Protection of the State of New Jersey on any future application.
3. The works, facilities, and/or activities shown by plans and/or other engineering data, which are this day approved, subject to the conditions herewith established, shall be constructed and/or executed in conformity with such plans and/or engineering data and the said conditions.
4. No change in plans or specifications shall be made except with the prior written permission of the Department of Environmental Protection of the State of New Jersey.
5. The granting of this permit shall not be construed to in any way affect the title or ownership of property, and shall not make the Department of Environmental Protection or the State a party in any suit or question of property.
6. This permit does not waive the obtaining of Federal or other State or local government consent when necessary. This permit is not valid and no work shall be undertaken until such time as all other required approvals and permits have been obtained.
7. A copy of this permit shall be kept at the work site, and shall be exhibited upon request of any person.

2. Diked areas of the disposal site be strengthened and heightened if necessary to prevent any leakage of spoil into adjacent waterways.
3. The outfall weir to the Delaware River be located on the opposite side of the disposal site from where the dredge spoils enter to provide for maximum settling of suspended solids.
4. Sedimentation (or turbidity) controls be utilized during the dredging and/or dewatering process.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
 Trenton, N.J. 08625
PERMIT

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the governing documents which are agreed to by the permittee upon acceptance of the permit.

Permit No. 87-0843-1	Issuance Date January 20, 1988	Effective Date January 20, 1988	Expiration Date January 20, 1993
Name and Address of Applicant E.I. DuPont De Nemours Chamber Works Deepwater, NJ 08072	Location of Activity/Facility Rennsville, & Carneys Point Block 1, Lot 1 Salem County, Delaware River		Name and Address of Owner as applicant
Issuing Division Coastal Resources	Water Quality Certificate No. WQC 73-005	Statute(s) 12:5-3	Application No. 87-0843-1

This permit grants permission to Water Quality Certificate No. 73-005 to conduct maintenance dredging of an existing berthing area in the Delaware River adjacent to the E.I. Dupont DeNemours & Co., Inc. Chamber Works facility, Deepwater, Salem County.

Conduct maintenance dredging of an existing berthing area in the Delaware River adjacent to the E.I. Dupont DeNemours & Co., Inc. Chamber Works facility, Deepwater, Salem County.

Approximately 80,000 cubic yards of spoil will be removed by hydraulic dredge and disposed of at the E.I. Dupont DeNemours & Co., Inc. upland disposal site located in Carneys Point Township, Salem County Block 185, Lot 1. Dredging will be performed as shown on two (2) sheets of plans prepared by William F. Lippincott P.E. dated April 16, 1987 and submitted to the Division of Coastal Resources on September 24, 1987 and November 20, 1987.

This permit is authorized under and in compliance with Coastal Resource and Development Policies for Maintenance Dredging (7:7E-4.119(e)) and Dredge Spoil Disposal on Land (7:7E-7.22).

This permit authorizing maintenance dredging and disposal is issued in accordance with and solely within the area of grants to E.I. Dupont DeNemours & Company Inc. On August 21, 1916, November 20, 1916 and July 16, 1917 recorded in Liber v; page 92, Liber v; page 161 and Liber w; page 62, respectively.

The previous NJDEP Waterfront Development Permit 82-0519-1 authorized dredging and dredge spoil disposal at these same locations. The spoil disposal site is located on Tidelands Map #351-1764. The permittee shall allow an authorized Division representative the right to inspect construction pursuant to N.J.A.C. 7:7-1.5(b)4.

Approved by the Department of Environmental Protection

SEE PAGE TWO

Page 1 of 2

DATE

* The word permit means "approval, certification, registration, etc."

(GENERAL CONDITIONS ARE ON THE REVERSE SIDE.)

This permit is subject to the following general conditions:

1. This permit is revocable, or subject to modification or change, at any time, when in the judgement of the Department of Environmental Protection of the State of New Jersey such revocation, modification or change shall be necessary.
2. The issuance of this permit shall not be deemed to affect in any way action by the Department of Environmental Protection of the State of New Jersey on any future application.
3. The works, facilities and/or activities shown by plans and/or other engineering data, which are this day approved, subject to the conditions herewith established, shall be constructed and/or executed in conformity with such plans and/or engineering data and the said conditions.
4. No change in plans or specifications shall be made except with the prior written permission of the Department of Environmental Protection of the State of New Jersey.
5. The granting of this permit shall not be construed to in any way affect the title or ownership of property and shall not make the Department of Environmental Protection of the State a party in any suit or question of ownership of property.
6. This permit does not waive the obtaining of Federal or other State or local government consent when necessary. This permit is not valid and no work shall be undertaken until such time as all other permits, approvals and permits have been obtained.
7. A copy of this permit shall be kept at the work site and shall be exhibited upon request of any person.

RECEIVED

FEB 9 1968

WILKINS AND LIPKOWITZ ENGINEERS
BRANCH

E.I. DePont. DeSencours

File #87-0843-1

Pennsville & Carneys Point Twps., Salem County

Page 2 of 3

This permit is issued subject to the approval of the Department of the Army, and provided the following conditions are met:

Physical

1. No dredging be performed during the months of March, April, May, September, October and November.
2. Turbidity and/or sedimentation controls shall be utilized by the applicant during dredging and disposal phases of the project by using the most practicable and best available technology.

Violation of the conditions above will be deemed to be violation of the NJMPCA, NJSA 58:10A-1 et seq., and subject to the penalties included therein.

July 20, 1988
Date

John R. Weingart
John R. Weingart, Director
Division of Coastal Resources



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
(See Issuing Division below)



PERMIT*

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the permit.		
Permit No. 0809-91-0010.1 .2, .3 and .6	Application No.	
Issuance Date SEP 24 1991	Effective Date SEP 24 1991	Expiration Date SEP 24 1996
Name and Address of Applicant Keystone Cogeneration System Inc. Suite 721, Market Tower Bldg. 901 Market Street Wilmington, Delaware 19801	Name and Address of Owner	Name and Address of Operator
Location of Activity/Facility (Street Address) Lot <u>2</u> Block <u>1</u>	Issuing Division Land Use Regulation Element	Statute(s) NJSA 58:16A-50 12:5-3 58:10A-1 13:9B-1 13:9A-1 et. seq.
Type of Permit Stream Encroachment, Individual Freshwater Wetlands, Wetlands Type A, Waterfront Development, Water Quality Certificate		
This permit grants permission to:		
<p>1. Under Flood Hazard Area Control Act (58:16A-50); establish stream encroachment lines; construct a pier and coal conveyor to perform associated dredging in the Delaware River and also to construct two stormwater outfall structures, two roadway culverts, an access roadway, a steam pipeline and trestle in the flood plain of the Delaware River at a location approximately 3500 feet westerly of the intersection of Route 130 and Center Square Road within Lot No. 2 of Block No. 1 in Logan Township, Gloucester County, New Jersey;</p> <p>2. Waterfront Development and Wetlands Type A Permits (12:5-3) (13:9A-1); This permit grants permission to construct a pulverized coal-fired cogeneration power plant consisting of one boiler, a stream turbine, material handling system, pollution, stormwater, wastewater and sewage treatment control systems and a pile supported coal handling barge facility to receive the coal. The barge facility will consist of a 1600 foot long by 22.5 foot wide approachway pier and a 110 foot long by 70 foot wide deck platform supporting a fixed clamshell coal unloader, 2 water intake structures, 2 barge hauling dolphins and 6 breasting dolphins connected by a 900 foot long by 4 foot wide walkway. Approximately 40,000 cubic yards of dredge material will be removed from a 910 foot by 150 foot barge berth and disposed of at a dredge spoil site owned and operated by American Dredging in Logan Township,</p>		
Revised Date	Approved by the Department of Environmental Protection	
	Name (Print or Type) _____	Title _____
	Signature see page 6 for signature	Date _____

* The word permit means "approval, certification, registration, etc."

(General Conditions are on the Reverse Side)

3. Individual Freshwater Wetlands Permit (NJSA 13:9B-1 et. seq.); This permit grants permission to fill 1.22 acres of freshwater wetlands for the purpose of widening an access road. It also authorizes the permittee to fill 0.08 acres of wetlands to install two stormwater outfall structures and to disturbance 0.31 acres for the construction of the approachway pier and utility lines. The total wetland disturbance authorized by this permit is 1.61 acres, 1.3 acres of filling and 0.31 acres of clearing.

The Waterfront Development permit included in this approval is authorized under and in compliance with the Rules on Coastal Zone Management Policies for: (7:7E-3.4) Prime Fishing Areas, (7:7E-3.5) Finfish Migratory Pathways, (7:7E-3.7) Navigation Channels, (7:7E-3.12) Submerged Infrastructure Routes, (7:7E-3.15) Intertidal and Subtidal Shallows, (7:7E-3.23) Filled Water's Edge, (7:7E-3.25) Flood Hazard Areas, (7:7E-3.27) Wetlands, (7:7E-3.28) Wetlands Buffer, (7:7E-3.36) Historic and Archaeological Resources, (7:7E-3.38) Endangered or Threatened Wildlife or Vegetation Species Habitat, (7:7E-4.7) Large Rivers, (7:7E-4.11) Acceptability Conditions for Use (g) New Dredging, (7:7E-7.4) Energy Use Policies, (7:7E-7.13) Dredge Spoil Disposal on Land, (7:7E-8.4) Water Quality, (7:7E-8.5) Surface Water Use, (7:7E-8.7) Stormwater Runoff, (7:7E-8.8) Vegetation, (7:7E-8.10) Air Quality, (7:7E-8.11) Public Access to the Waterfront, (7:7E-8.13) Buffers and Compatibility of Uses.

Prepared by:

William M. Berns
William M. Berns

David B. Fanz
David Fanz

THIS PERMIT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Any construction, grading, removal of vegetation, or other disturbance at this project site, within or affecting any regulated flood plain other than specifically approved by this permit or detailed on the approved drawings shall require additional approvals from the Land Use Regulation Element.
2. All construction and/or activities approved by this permit shall be performed under the supervision and direction of a Professional Engineer licensed in the State of New Jersey. Furthermore, all construction and/or activities on site shall be subject to inspection at any time by representatives of the Department.
3. Responsibilities of Applicant
 - a. The granting of this permit does not in any way relieve the applicant and/or its designated agents from the responsibility for damages caused by any construction or activities hereby approved; nor does the Department accept responsibility for the structural design.
 - b. This permit is NOT VALID until such time as the permit acceptance form has been signed by the applicant, accepting and agreeing to adhere to all permit conditions, and returned to the appropriate regional office within the Element. Furthermore, the Department reserves the right to declare this permit NULL and VOID should it be determined that adequate measures had not been taken by the applicant and/or its designated agents to ensure that all terms and conditions of this permit would be fulfilled or provided for at all times.
 - c. This permit, including all conditions listed herein, shall be recorded in the office of the County Clerk (the Registrar of Deeds and Mortgages if applicable) in the county or counties wherein the lands included in the permit are located within ten (10) days after receipt of the permit by the applicant. Verified notice of this action shall be forwarded to the Land Use Regulation Element immediately thereafter.
 - d. A construction notice on a prescribed form shall be prepared by the applicant or its designated agent and submitted to the Land Use Regulation Element fourteen (14) days prior to the commencement of the regulated activities.

TERMS AND CONDITIONS (Continued)

- e. A completion report on a prescribed form shall be prepared by a Professional Engineer licensed in the State of New Jersey and submitted to the Land Regulation Element within thirty (30) days after completion of the regulated activities.
4. All activities authorized by this permit shall be complete within five years of the issuance date; otherwise, this permit, if not previously revoked, shall automatically become null and void, and none of the activities referenced herein shall be commenced or continued until such time as this permit has been reinstated or until a new application has been submitted to and approved by the Department.
 5. Erosion Control and Maintenance of Stream Corridor
 - a. Adequate precautions shall be taken to prevent and/or minimize the discharge of sediments into all streams within or adjacent to the project area. The Department reserves the right to order the suspension of the proposed activity if unacceptable levels of turbidity result from the same.
 - b. All fill and other earth work on the lands encompassed within this permit shall be stabilized in accordance with "Standards for Soil Erosion and Sediment Control in New Jersey" (obtainable from local Soil Conservation District Offices), or equal engineering specifications, to prevent eroded soil from entering adjacent waterways at any time during and subsequent to construction.
 - c. Where any portion of the stream corridor is altered in the course of the construction of the herein approved activities, all affected areas shall be stabilized in such a manner as to prevent erosion and the subsequent silting of the subject stream channel. Furthermore, the applicant shall maintain the stream corridor as shown on the approved drawings(s) for either such time as is required for the channel and/or banks
 - d. During the course of construction, neither the applicant nor its designated agents shall cause or permit any unreasonable interference with the free discharge of the stream by the placing or dumping of any materials, equipment, debris or structure in or about the stream corridor. Upon completion or abandonment of the work, the applicant and/or its agents shall remove and dispose of in a lawful manner all excess materials, equipment, and debris from the stream corridor and adjacent lands.

6. Preservation of Stream Corridor - All those lands lying between the centerline of the stream and the lines labelled Stream Encroachment Lines, as shown on the approved drawings shall be reserved for the passage of flood waters and for the preservation of near stream vegetation and wildlife. No construction, grading, removal of vegetation, or other disturbance shall be permitted within this area unless specifically approved by this permit or detailed on the approved drawings.
7. The proposed water quality measures must be adequately maintained in proper working condition at all times. The applicant must make specific arrangements to insure continuous compliance with this condition.
8. All excavated material found unsuitable as backfill and/or all dredge spoils shall be removed from the project site and disposed of outside any Flood Hazard Area, wetland, wetland transition area or open water in such a manner that it does not interfere with positive drainage of the receiving area.
9. Any activity within or adjacent to the stream channel which may introduce sediment to the stream or cause the stream to become turbid is prohibited during the period of April 1 to June 30 and September 1 to November 30 in order to protect the migratory fishery resource.
10. ADMINISTRATIVE: Waterfront and Individual Freshwater Wetlands
 - a. Prior to construction the permittee must submit to the Element for review and approval a mitigation plan to compensate for the loss of the .139 acres of intertidal area. Mitigation must be completed in accordance with the approved plans.
 - b. Prior to construction the permittee must submit to the Element for review and approval a wetlands mitigation plan developed pursuant to section 7:7A-14.4 of the Freshwater Wetlands Protection Act Rules, to compensate for the filling and disturbance to 1.6 acres of freshwater wetlands. Mitigation must be completed in accordance with the approved plan.
 - c. Prior to the start of any construction in the waterfront area, the applicant will forward the results of the Phase 1 Archaeological survey to the Element for review and comment. Depending on the conclusions of that survey, the Element may require the permittee to conduct additional analysis and incorporate mitigative measures as directed.
 - d. Prior to conducting any dredging the permittee shall provide the Department with a copy of the referenced ACOE dredge disposal permit. The permittee will also submit to the Department the anticipated dredge schedule, noting how that schedule relates to the status of the dredge permit.

TERMS AND CONDITIONS (Continued)

- e. Prior to construction the permittee must submit copies of all the permits or approvals listed below to the Element.
 - 1. New Jersey Pollution Discharge Elimination System (NJDEPE);
 - 2. Amendment to the Areawide Water Quality Mgm. Plan (NJDEPE);
 - 3. Delaware River Basin Commission Approval;
 - 4. Subaqueous Land and Coastal Zone Mgmt. (Delaware);

 - f. The permittee shall formerly notify the Department of it's intended design modification to incorporate zero discharge. In addition, the plans referenced below must be revised to remove all reference to discharge structures;
 - 1 - Coal Unloading Pier, Keystone Cogeneration System Inc., Sections and Elevations, drawing 3 of 5, prepared by Alan L. Flinn, dated January 30, 1991 and last revised May 21, 1991.
 - 2 - Coal Unloading Pier, Keystone Cogeneration System Inc., Dredging Plan, drawing 4 of 5, prepared by Alan L. Flinn, dated January 30, 1991, last revised May 24, 1991;

 - g. The applicant must deliver a copy of a Water Allocation permit to the Element prior to the start of construction.
11. PHYSICAL: Waterfront and Individual Freshwater Wetlands
- a. The permittee shall complete the observation platform prior to the plant becoming operational.
 - b. This permit prohibits bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30.
12. The drawings hereby approved are seven (7) sheets prepared by Bechtel, entitled:
- "KEYSTONE COGENERATION SYSTEMS, INC. KEYSTONE COGENERATION PROJECT LOGAN TOWNSHIP, NEW JERSEY",
- "FINISH GRADING PLAN", drawing no.C0L0101, dated April 20, 1990, last revised August 7, 1991

TERMS AND CONDITIONS (Continued)

"ROUGH GRADING PLAN EAST OF PLANT", drawing no. COY0103, dated February 2, 1991, last revised July 29, 1991

"ROUGH GRADING DETAILS SHEET NO. 1", drawing no. COY0191, dated April 20, 1990, last revised June 28, 1991,

"ROUGH GRADING DETAILS SHEET NO. 2", drawing no. COY0192, dated June 8, 1990, last revised July 30, 1991,

"EROSION AND SEDIMENT CONTROL PLAN", drawing no. COA0003, dated June 8, 1990, last revised July 29, 1991,

"KEYSTONE COGENERATION PROJECT"

"CONSTRUCTION FACILITIES PLAN", drawing no. COA0105, dated March 12, 1990, last revised July 29, 1991,

"DETENTION/SEDIMENT BASIN CROSS SECTIONS", drawing no. COL0192, dated June 8, 1990, last revised August 7, 1991,

and four (4) sheets prepared by S.T. Hudson Engineers, Inc., entitled:

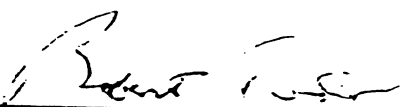
"COAL UNLOADING PIER LOGAN TOWNSHIP NEW JERSEY AND BRANDYWINE HUNDRED DELAWARE COUNTY OF: GLOUCESTER, NEW JERSEY AND NEW CASTLE, DELAWARE"

"RIPARIAN PLAN", drawing no. 2 of 5, dated January 30, 1991, last revised May 20, 1991,

"SECTIONS AND ELEVATION", drawing no. 3 of 5, dated January 30, 1991, last revised May 21, 1991,

"DREDGING PLAN", drawing no. 4 of 5, dated January 30, 1991, last revised May 24, 1991,

"SECTIONS", drawing no. 5 of 5, dated January 30, 1991, unrevised.



Ruth Ehinger, Manager
Bureau of Coastal Regulation

9/24/91
Date

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY
LAND USE REGULATION ELEMENT
BUREAU OF COASTAL REGULATION

Summary Analysis

September 24, 1991

Keystone Cogeneration Systems, Inc.
901 Market Street, Suite 721
Wilmington, Delaware 19801

Waterfront Development Permit Application
0809-91-0010.1

Wetlands Permit "Type A"
0809-91-0010.2

Individual Freshwater Wetlands Permit Application
0809-91-0010.3

Stream Encroachment Permit Application
0809-91-0010.6

Decision of the Administrator conditionally approving a Waterfront Development Permit, a Wetlands Type A Permit, a Stream Encroachment Permit, an Individual Freshwater Wetlands Permit and a Water Quality Certificate.

Based upon the analysis which follows and subject to the conditions expressed herein, the Administrator is able to make the positive findings required by the Waterfront Development Law as embodied by the Rules on Coastal Zone Management. This project also satisfies the requirements of the Freshwater Wetlands Protection Act and the Flood Hazard Area Control Act. The permit is expressly contingent upon compliance with all permit conditions and failure to comply with any or all of the permit conditions may result in appropriate enforcement actions, or suspension or revocation of the permits.

This permit includes conditions to ensure compliance with the following policies; Intertidal and Subtidal Shallows (7:7E-3.16), Wetlands (7:7E-3.27), Historic and Archaeological Resources (7:7E-3.36), Endangered or Threatened Wildlife or Vegetation Species Habitats (7:7E-

3.38), Acceptability Conditions for Uses (7:7E-4.11), Dredge Spoil Disposal on Land (7:7E-7.11), Water Quality (7:7E-8.4) and Public Access to the Waterfront (7:7E-8.11).

I. INTRODUCTION

The Waterfront Development Law of 1914 (N.J.S.A. 12:5-3), the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50); require that a permit be obtained from the Department of Environmental Protection and Energy-Land Use Regulation Element for: the filling or dredging of, or placement or construction of, structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways and, the alteration or disturbance in and around freshwater wetland areas and the discharge of dredged or fill material into State open waters within the State of New Jersey.

Section 401 of the Federal Clean Water Act (33 U.S.C. 1251 et seq.) requires that a Water Quality Certificate be obtained from the State of New Jersey for all projects which require a federal permit or license and which propose to discharge fill or dredge material into Waters of the United States. The purpose of the certification is to insure that all such activities are consistent with New Jersey Water Quality Standards (N.J.A.C. 7:9-4.1 et seq.), and the Federal Clean Water Act. The Land Use Regulation Element is the agency of the State of New Jersey responsible for the issuance of Water Quality Certificates.

II. SUMMARY ANALYSIS

Based upon the analysis that follows the Administrator is able to make a positive finding as required pursuant to the Rules on Coastal Zone Management. However this approval is contingent upon the permittee satisfying the conditions of the attached permit.

The Administrator is also able to make a positive finding as required by the Freshwater Wetlands Protection Act Rules, the Flood Hazard Area Control Act and the Wetlands Act of 1970 subject to the conditions contained herewith. Furthermore, the Department, acting under Section 307 of the Federal Coastal Zone Management Act (P.L. 92-583) as amended, certifies that this project is consistent with the approved New Jersey Coastal Management Program.

III. ADMINISTRATIVE HISTORY

On March 20, 1990 the Element received a Letter of Interpretation request from Keystone Shipping Company to

verify a wetland line on the subject property. The site was inspected on three separate occasions and after several revisions the wetland line was approved via letter dated October 17, 1990.

The Element received applications from Keystone Cogeneration Systems on February 28, 1991 for the proposed coal fired cogeneration facility and related structures. The applications submitted included an Individual Freshwater Wetlands Permit, a Waterfront Development Permit and a Wetlands Type A Permit.

On March 27, 1991 the Element requested additional information. The requested information was received on May 1, 1991 and the applications were determined complete for filing. A fact-finding Waterfront Development public hearing was held on June 26, 1991 at 7:00 p.m. at the Bridgeport Fire Hall, Steelman Avenue, Bridgeport New Jersey.

As specified under Section 7:7E-4.6(c) of the Coastal Permit Program Regulations, for non-CAFRA permit applications on which public hearings are held, the permit application is declared complete for review effective the day of the hearing. Accordingly, the statutory 90-day deadline for this permit application is September 24, 1991.

Keystone Cogeneration Systems also applied for a Stream Encroachment Permit on February 28, 1991. To facilitate a consistent review for the project, the Division suggested to the applicant that it may be prudent to withdraw the Stream Encroachment Permit application and to resubmit that application on the date of the public hearing. Consequently on May 22, 1991, Richard Ciliberti (Vice President, Keystone Cogeneration Systems) requested that the Stream Encroachment Permit application be withdrawn without prejudice. That withdrawal request was accepted by the Element. On June 26, 1991 that application was re-submitted to the Department.

The proposed cogeneration facility includes a barge delivery system that encroaches into the jurisdictions of both the State of New Jersey and the State of Delaware. In 1905 the State's of New Jersey and Delaware entered into a compact regarding riparian jurisdiction for this type of situation. Article VII of that compact authorizes each State, on its own side of the Delaware River to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective states.

As a result of that compact, the State of New Jersey required Keystone Cogeneration Systems to obtain a riparian instrument for the barge unloading facility. An interim license and long term lease was issued on September 9, 1991 (File #91-0190-T). The State of Delaware has also assumed

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jurisdiction and required a Coastal Zone Permit and a Subaqueous Lands Permit. Those permits were issued on September 13, 1991.

IV. PROJECT AND SITE DESCRIPTION

Keystone Cogeneration Systems proposes to construct a pulverized coal-fired cogeneration facility that will produce electrical energy for sale to Atlantic Electric Company and thermal energy for sale to Monsanto Company.

The Keystone Cogeneration Project (KCP) will occupy a 105-acre site between Oldmans and Raccoon Creeks in Logan Township, Gloucester County, New Jersey. This site is situated at Delaware River Mile 78.8, about 3 miles downstream of the Commodore Barry Bridge. It extends from U.S. Route 130 to the Delaware River. It's easterly boundary is occupied by a Monsanto chemical plant.

The project site is basically composed of an assemblage of six agricultural fields separated by various drainage ditches, farm roads, and hedgerows. The site was once a dredge spoil disposal area and only the two fields (approximately 34 acres) closest to U.S. Route 130 remain in a natural condition.

Project Overview

Steam and electricity will be produced, or cogenerated, at the proposed plant. The maximum steam production rate will be 1,575,000 pounds per hour (pph), with up to 50,000 pph exported to Monsanto Company. The electrical output of the generator (224 MW gross, 202 MW) will be sold to Monsanto and Atlantic Electric.

The cogeneration facility will require approximately 2,000 tons of eastern bituminous coal per day (sulfur content reported to be 1.5% or less). Coal will be delivered to the facility via barge. The offshore pier will be equipped with a fixed clamshell unloader and conveyor system used to unload and convey the coal from the barge to the upland coal storage building. As fuel is required, the coal will be reclaimed from the enclosed storage pile, conveyed to an enclosed crusher, pulverized and transported to the boiler.

The burned coal gases and ash will be filtered before discharging to the atmosphere through a 430 foot stack. Ash will be collected and pneumatically and mechanically conveyed to silos for storage. At intervals the accumulated ash will be removed by truck and returned to spent coal mines in Pennsylvania for use as reclamation.

Makeup water for both process and cooling at the plant will be withdrawn from the Delaware River via an offshore intake structure suspended from the pier. Water will be withdrawn through one of two water pumps, which will be

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housed at the outshore end of the pier. Water withdrawals will range from 5 to 11.2 cubic feet per second (cfs) and average 7 cfs (5,000 gallons per minute).

Following the publication of the Preliminary Staff Analysis (June 26, 1991), the facility was redesigned to incorporate a "Zero Discharge Treatment System". This system will continue to draw water from the Delaware River for processes in the plant but will not discharge any water back into the river other than stormwater runoff. All wastewater streams generated at the facility (including filter backwashes, softener blowdown, demineralizer regeneration wastes, reverse osmosis, brine, cooling tower blowdown, and floor drains), along with runoff from the emergency (inactive) coal pile will be treated and recycled within the facility.

Plant Facility

The major plant facilities will consist of one pulverized coal-fired boiler, a steam turbine, material handling systems, pollution, stormwater, wastewater and sewage treatment control systems and related facilities.

Pier

Coal will be delivered by barge from the Delaware River and unloaded on a pile supported coal handling barge facility consisting of a 1600' long, 22'-6" wide approachway, a 130'x75' platform, four (4) mono-pole breasting dolphins, two (2) mooring dolphins and a water intake. The majority of this structure is located in the State of Delaware.

Dredging

Approximately 40,000 cubic yards of dredge material will be removed from the 910'x150' barge berth. This material will be disposed of on land at an approved upland dredge spoil site in Logan Township. The 1600 foot long pier does not require dredging.

Wetland Impacts

The proposed project requires permanently disturbing approximately 1.6 acres of wetlands regulated pursuant to the Freshwater Wetlands Protection Act. No permanent impact to wetlands regulated pursuant to the Wetlands Act of 1970 is proposed.

V. ANALYSIS

Analysis of these pending permit applications is based upon the Rules on Coastal Zone Management (N.J.A.C. 7:7E-1.1 et seq.) adopted September 29, 1978 as amended to August 20, 1990 and the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) as amended July 17, 1989. This analysis

refers to applicable policies by administrative code section.

Location Policies (7:7E-2.0)

Location Policies classify all land and water locations into a General Area and some into one or more Special Areas. Special Areas are areas that constitute a highly valued resource, serve important purposes of human use, or form a significant natural hazard. The Special Areas policies supplement other Location Policies and take precedence in case of policy conflict.

Subchapter 3 - Special Areas

Special Areas are so naturally valuable, or so important for human use, or so hazardous, or so sensitive to impact, or so particular in their planning requirements, as to merit focused attention. This project involves the following Special Areas:

Prime Fishing Areas (7:7E-3.4)

Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. Prohibited uses include sand or gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas.

The applicant has indicated that during the sampling periods of the river, it was not unusual to observe several recreational fishermen in boats at the project site or in the vicinity. It was also noted that a small eel commercial fishing operation exists on the Delaware River. Due to the extensive mud flats at low tide (over 1000') there does not appear to be any significant use of the shoreline for recreational fishing. The Division of Fish, Game and Wildlife (NJDEPE), in their comments to the Element, did not express any concern to indicate that this section of the Delaware River was considered to be a prime fishing area or that the proposed project would have any impact on fishing opportunities at all.

As the pier facility does not appear to significantly impact fishing from boats, either recreational or commercial and there does not appear to be substantial use (or any use) of the shoreline for recreational fishing, the project is in compliance with this policy.

Finfish Migratory Pathways (7:7E-3.5)

Finfish migratory pathways are waterways (rivers, streams, creeks, bays, inlets) which can be demonstrated to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary are defined as Finfish Migratory Pathways.

Species of concern include river herring (Alosa pseudoharengus), blueback herring (Alosa aestivalis), American shad (Alosa sapidissima), striped bass (Morone saxatilis), Atlantic sturgeon (Acipenser oxyrhynchus), Shortnose sturgeon (Acipenser brevirostrum) and American eel (Anquilla rostrata).

The applicant has documented the occurrence of most species of concern in the vicinity of the project, particularly striped bass. The intent of this policy is to protect migratory fishery resources from activities including dams, dikes, intake pipes and from activities that would lower water quality to the extent that it would interfere with the movement of fish along finfish migratory pathways.

The KCP has the potential to impact migratory fisheries of the Delaware River in several ways:

1. The coal loading facility and pier has the potential to affect the route of migrating fish;
2. The intake system will cause entrainment and impingement of juvenile fish, fish larvae and fish eggs (Entrainment is the passage of small pelagic organisms such as fish eggs and larval through the water intake screen and impingement refers to the capture of aquatic organisms on the surfaces of the water intake screens);
3. Dredging associated with creating the barge berth has the potential to impact the fisheries resource by creating a localized plume of turbidity. This resuspension of sediments could also release toxicants into the water column should they be present (metallic and/or organic).

Impact 1. Migratory Fish Route

The Delaware River is approximately 4000 feet wide at the location of the proposed cogeneration facility. The proposed coal unloading facility and the approachway pier have a combined length of approximately 1700 feet. The approachway pier will not impede migrating fish as it is constructed on piles and will not act as a barrier. Given

the width of the river it is unlikely that the structures will impede or restrict the movement of migratory fishes.

Impact 2. Intake Structure

The project has an inherent need for large quantities of water for both processing and cooling purposes. To satisfy this demand it was necessary to site the KCP as close as possible to a large source of water. The applicant considered several alternatives for supplying water to the facility and decided on a system that utilized an offshore screened pump intake that would divert water to the facility via an elevated pipeline suspended from the pier.

To minimize impingement and entrainment the intakes will be fitted with 1 millimeter wedge-wire screens considered to be "state of the art". The intake velocity will not exceed 0.5 feet per second and intakes will be oriented parallel to the flow of the Delaware River. A parallel orientation to the river current, which averages 1.3 to 1.5 fps, reduces the pressure gradient across the screen and further reduces impingement. These design criteria were recommended by the U. S. Fish and Wildlife Service and the New Jersey Division of Fish, Game and Wildlife who have found this design acceptable.

Item 3. Dredging

The National Marine Fisheries Service, the United States Fish and Wildlife Service and the New Jersey Division of Fish, Game and Wildlife have all expressed the concern that the proposed dredging of the barge berth has the potential to impact migrating fishes. All three agencies mutually agreed that dredging could be authorized if the permit were conditioned to allow dredging only during specific "windows". Therefore this permit will be conditioned as recommended by the NJDEPE, Division of Fish, Game and Wildlife to prohibit bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30.

The Bureau of Monitoring Management (NJDEPE) has reviewed the Dredge Spoil Analysis prepared by EMA laboratories and has concluded that there is no need for additional sampling nor does there appear to be any threat of the release of toxicants (metallic and/or organic) into the water column during dredging.

The permit is conditioned to prohibit bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30. Provided the permitted maintains compliance with the above referenced condition, the project is in compliance with this policy.

Navigation Channels (7:7E-3.7)

Navigation channels include water areas in tidal rivers and bays presently maintained by NJDEPE or the Army Corps of Engineers and marked by the U.S. Coast Guard with bouys or stakes as shown on NOAA/National Ocean Survey Charts. Navigation channels also include channels marked with buoys, dolphins, and stakes, and maintained by the State of New Jersey, and access channels and anchorages. New or maintenance dredging of existing navigation channels is conditionally acceptable providing that the condition under the new or maintenance dredging policy is met. Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigative measures. Development which would result in loss of navigability is prohibited.

The applicant has maintained that the dredging of the 910 foot by 150 foot barge berth will not affect the navigation channel of the Delaware River. The coal unloading pier is approximately 2300 feet from the shipping channel of the river and 150 feet from the the Marcus Hook Authorized Anchorage Line.

The permittee has received a U.S. Army Corps of Engineers permit for the KCP (CENAP-OP-R-91-0347-11). That approval required the permittee to notify the Philadelphia Captain of the Port with the dates of commencement and estimated completion of the authorized work. It also required the permittee to submit information of all proposed activities that could affect navigation to the United States Coast Guard at least two (2) weeks prior to commencement of such activities.

As the U.S. Army Corps of Engineers has issued a permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and that permit specifically approved the navigational aspects of this project, and no activity is within a channel or anchorage, the applicant has demonstrated compliance with this policy.

Submerged Infrastructure Routes (7:7E-3.12)

A submerged infrastructure route is the corridor in which a pipe or cable runs on or below a submerged land surface. Any activity which would increase the likelihood of infrastructure damage or breakage, or interfere with maintenance operations is prohibited.

The applicant has indicated that seven underground pipelines transect the project site and that no aspect of the project other than the proposed cleaning of a tidal ditch has the potential to impact those lines. To demonstrate compliance with this policy the applicant

supplied plans of the proposed ditch cleaning that depicted the location and elevations of the underground pipelines as well as the final elevation of the ditch following dredging. The proposed ditch cleaning will not interfere with the pipelines therefore the project is in compliance with this policy.

Intertidal and Subtidal Shallows (7:7E-3.15)

Intertidal and subtidal shallows means all permanently or twice-daily submerged areas extending from the mean high water line to a depth of 4 feet below mean low water.

Intertidal and subtidal shallows play a critical role in estuarine ecosystems. They are a land-water ecotone, or ecological edge where many material and energy exchanges between land and water take place. They are critical habitats for many benthic organisms and are critical forage areas for fishes and many migrant waterfowl.

Development, filling, new dredging or other disturbance is generally discouraged but may be permitted in accordance with the Use Policy for the applicable water body type. New dredging is conditionally acceptable for the Delaware River which is defined as a large river. If destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary. Dredging does not require mitigation.

The intertidal area of the KCP site is part of a continuous flat located between the mouths of Raccoon and Oldmans Creeks. At the KCP site the intertidal area is some 1,200 feet wide. This expansive intertidal area is the justification for the 1600 foot approachway pier. The subtidal areas occur immediately offshore of the intertidal area (mean low water line) to a depth of -4.0 feet. Within the project area this includes a band generally ranging from 150 to 400 feet wide.

The total area of intertidal and subtidal habitats permanently destroyed by the installation of the steel pipe piles supporting the approachway pier and by the widening of the present access road is 0.139 acres. Approximately 0.1 acres of subtidal area will require dredging in order to accommodate the barge berth.

As previously stated, the Use Policy for Large Rivers (N.J.A.C. 7:7E-4), conditionally allows new dredging and the placement of piles provided any permanent disturbance to intertidal or subtidal areas (In this case the .139 acres of fill) are mitigated for. The applicant has developed an acceptable draft mitigation proposal for the loss of the

.139 acres and, as a condition to the permit, will be required to have a final mitigation plan approved prior to construction.

Provided the permittee maintain's compliance with the above noted condition the project is in compliance with this policy.

Filled Water's Edge (7:7E-3.16)

Filled Water's Edge areas are existing filled areas lying between Wetlands or Water Areas, and either: (1) the upland limit of fill, or (2) the first public road or railroad landward of the adjacent Water Area, whichever is closer to the water. Some existing or former dredge spoil and excavation fill areas are Filled Water's Edge. The waterfront portion is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of the navigable water's edge.

On Filled Water's Edge sites without direct water access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis. Along the Delaware River Region, where water dependent uses are deemed infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development if the developed land uses closest to the water's edge are water oriented.

With the exception of the 10.8 and 23.5 acre agricultural fields closest to Route 130, the entire project site is a filled water's edge created as a result of the deposition of dredge spoil material. The filled water's edge portion of this site is bounded along its Delaware River frontage by non-tidal wetlands, tidal emergent wetlands and expansive intertidal and subtidal zones. At normal low tide flats are exposed approximately 1000 feet channelward of the mean high water line.

This site does not have direct access to navigable waters and has limited potential for waterborne commerce or recreational use due to the mudflats that are exposed at low tide. Any development of the site for such projects would require extensive new dredging, frequent maintenance dredging and the filling of wetlands. A recreational marina or a commercial port facility is not suited for this site. Water dependent uses of this site appear not feasible.

The proposed plant utilizes a barge method for coal delivery that would not be feasible were the site not located at the waters edge. This mode of delivery was chosen after residents of Logan Township expressed their concern

and opposition to rail delivery. The facility also requires a high volume source of cooling and process water that can best be satisfied by a large surface water body such as the Delaware River.

The applicant has demonstrated that the site is not suitable for water dependent uses and that aspects of the facility are water oriented. The use of a barge delivery system promotes maritime support services and was instituted because of the opposition to rail delivery by local residents. If the applicant can demonstrate compliance with all other applicable policies, the project will be in compliance with this policy.

Flood Hazard Areas (7:7E-3.25)

Flood hazard areas are the floodway and flood fringe around rivers, creeks and streams as delineated by NJDEPE under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50), or by the Federal Emergency Management Agency (FEMA); or the flood hazard area around other coastal water bodies as defined by FEMA. They are areas subject to either tidal or fluvial flooding. Where flood hazard areas have been delineated by both DEP and FEMA, the DEP delineations shall be used. Where flood hazard areas have not been delineated by DEP or FEMA, limits of the 100 year floodplain will be established by computation on a case by case basis.

With the exception of the pier structure, 2 stormwater outfalls, the plant access road and the proposed wetland mitigation site, all development activities being part of the completed project, lie above the 100 year floodplain. The applicant withdrew the original Stream Encroachment Permit application on May 22, 1991 and submitted a revised application on June 26, 1991. The project conforms with the standards Flood Hazard Area Control Act and the Stream Encroachment Permit is hereby issued. With the issuance of a Stream Encroachment Permit the project will be in compliance this policy.

Wetlands (7:7E-3.27)

Wetlands or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Wetlands are regulated and protected under the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) or the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.).

The construction of the approachway pier will cross in a perpendicular fashion, tidal wetlands regulated pursuant to the Wetlands Act of 1970. As a result a Wetlands "Type A" permit is required. In general, development of all kinds is prohibited in such coastal wetlands, unless the Division can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity;
2. Has no prudent or feasible alternative on a non-wetland site;
3. Will result in minimum feasible alteration or impairment of natural tidal circulation or natural circulation; and
4. Will result in minimum feasible alteration or impairment of natural contour or the natural vegetation of the wetlands.

The permittee has determined that impacts to wetlands regulated pursuant to the Wetlands Act of 1970 will amount to 0.052 acres of shading due to the construction of the approachway pier. No fill is proposed within any tidal wetland. The permittee proposes to construct the approachway pier 14 feet above mean low water to minimize shading impacts. The proposed shading of 0.052 acres of wetlands for the installation of the approachway pier is in compliance with this policy.

Freshwater Wetlands Protection Act

Development in wetlands regulated under the Freshwater Wetlands Protection Act of 1987 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules. Construction of this facility will impact approximately 1.6 acres of "freshwater wetlands". It should be noted that while the drainage channels and ditches impacted by the plant access road are tidally influenced, these areas are not shown as regulated wetlands by the New Jersey Coastal Wetlands Maps and are therefore regulated pursuant to the Freshwater Wetlands Protection Act. Those impacts are outlined below:

Freshwater Wetland Impacts

Plant Access Road

Filling of tidal agricultural drainage ditch	0.13 acre
Filling of non-tidal wetlands	0.68 acre
Excavation of relocated drainage ditch	0.23 acre

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Vegetation disturbance	0.16 acre
Riprap for road culverts	<u>0.02 acre</u>
Wetland encroachment subtotal	1.22

Steam Pipeline and Electrical Distribution Lines

Clearing and structural support construction	0.0838
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Pier

Clearing of woody vegetation	0.2336
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Stormwater Outfall Culverts (2)

Clearing and riprap placement	0.089
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Total Freshwater Wetland Encroachment for project = 1.64 acres

7:7A-3.2 Requirements for Non-water Dependent Activities

Section 3.2(c) states that it shall be a rebuttable presumption that practicable alternatives exist to any non-water dependent regulated activity which does not involve a freshwater wetland, and that such an alternative to any regulated activity would have less of an impact on the aquatic ecosystem. An alternative shall be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes. An alternative shall not be excluded from consideration under this provision merely because it includes or requires an area not owned by the applicant which could reasonably have been, or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

Plant Access Road

Alternative #1. This is the preferred alternative and involves widening an existing farm road from one single lane to a two lane roadway. Wetland encroachments for this alternative cannot be avoided as there are existing wetlands on either side of the road. Total wetland disturbance is 1.2 acres with the majority of this area consisting of actively farmed agricultural fields and stands of phragmetes.

Alternative #2. This alternative involves constructing a new access road that would involve disturbing forested wetlands as well as agricultural fields. The permittee has

represented that this alternative would have a more significant impact to wildlife habitat than alternative #1 because of the currently undisturbed nature of the habitat.

Alternative #3. This alternative considers the construction of a 800 foot bridge to span the wetlands. Given the initial cost and maintenance of such a structure, this was never considered as a viable alternative by the permittee.

The Department recognizes the fact that in order to provide vehicular access to the site it is necessary to construct an access road. Alternative #2 involves destroying forested wetland areas and will bisect wetland areas that have been undisturbed since the area was last used for depositing dredge spoils (approximately 1969). An elevated bridge (Alternative #3) is not a viable alternative due to cost. The Department concurs with the finding that widening the existing farm road is the preferred alternative and that it will minimize wetland impacts. The wetland impacts of this alternative are limited to areas that are currently disturbed (mostly active agricultural fields).

Stormwater Outfall Channels 0.08 acres

Alternative #1. This represents the chosen alternative and involves disturbing 0.08 acres of wetlands for the installation of two stormwater outfall structures. The stormwater for KCP is managed by a series of water quality basins that have been designed to promote water quality and to reduce erosion and sedimentation.

Alternative #2. This represents the no-build alternative and is not acceptable to the Element.

The permittee has satisfied the Coastal Zone Management Policy for Stormwater (7:7E-8.7) by constructing water quality basins. Detention basins require a discharge point that generally involves filling or disturbing wetlands. As a result, to minimize surface water impacts, and to prevent erosion and sedimentation, the applicant has demonstrated that there was no feasible alternative other than disturbing the 0.08 acres of wetlands for the installation of the outfall structures.

Steam Pipeline, Electrical Distribution Line and Approachway Pier

Wetland impacts associated with these activities are linear in nature and involve clearing .31 acres. There will be no permanent disturbance to wetlands, only a change in the wetland type (i.e. forested wetland to scrub-shrub wetland). The permittee has proposed no other alternative for these activities.

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The applicant has demonstrated to the satisfaction of the Element that there is no practicable alternative to these activities. If coal is to be delivered by barge it is necessary to cross the band of wetlands that are parallel to the Delaware River. The same situation applies to the steam pipeline and the electrical distribution line. As the entire northern boundary of the site is mapped as a wetland (ditch) it is impossible to provide a steam and electric connection without disturbing wetlands.

The permittee has demonstrated to the satisfaction of the Department that the wetland disturbances associated with this project have been minimized and are approvable pursuant to the Freshwater Wetlands Protection Act (Subchapter 3). Therefore as a condition to this permit and prior to the initiation of any disturbance in freshwater wetlands, the permittee is required to submit a mitigation plan to the Department for review and approval. The permittee is obligated to mitigate for all permanent wetland disturbances (1.3 acres) at a ratio of 2:1 (gained/disturbance). Wetland impacts involving a change from one wetland type to another (.3 acres) will require mitigation at a ratio of 1:1.

Wetlands Buffers (7:7E-3.28)

"Wetlands Buffer or transition area" means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands and serves as an integral component of the wetlands ecosystem.

Development is prohibited in a wetlands buffer around wetlands regulated pursuant to the Wetlands Act of 1970, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible impact through the use of mitigation where appropriate on the wetlands, and the natural ecotone between the wetlands and the surrounding upland.

1. A wetlands buffer of up to 300 feet in width shall be established around wetlands regulated under the Wetlands Act of 1970.

2. A wetlands buffer or transition area of up to 150 feet in width shall be established within all wetland regulated under the Freshwater Wetlands Protection Act.

All wetlands buffers (that is, transition areas) associated with wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

In a Letter of Interpretation (File #0809-90-0008.1-LI) dated October 17, 1990, the Department classified all wetlands on this site regulated pursuant to the Freshwater

Wetlands Protection Act as intermediate resource value and imposed a buffer of 50 feet. This buffer requirement will also be applicable to wetlands regulated pursuant to the Wetlands Act of 1970.

The permittee has provided at least a 50 foot buffer from all wetlands with the exception of those areas that are the subject of the Individual Freshwater Wetlands Permit and the Coastal Wetland Type "A" permit application. The Individual Freshwater Wetlands Permit includes a transition area waiver authorizing disturbance to the transition area for access. The project is in compliance with this policy.

Historic and Archaeological Resources (7:7E-3.36)

"Historic and Archaeological Resources" include objects, structures, neighborhoods, districts, and other features of the landscape and seascape, including archaeological sites, which either are on, or are eligible for inclusion on the State or National Register of Historic Places.

Development that detracts from, encroaches upon, damages, or destroys the value of historic and archaeological resources is discouraged. Scientific recording and/or removal of historic and archaeological resources or other mitigation measures must take place, if the proposed development would irreversibly and/or adversely affect historic and archaeological resources."

The applicant has entered into a contract to have a Phase 1 Archeological Survey conducted at the Keystone site. That survey is being coordinated through the Office of New Jersey Heritage. As a condition to the permit and prior to the start of any construction in the waterfront area, the applicant will forward the results of the Phase 1 survey to the Element for review and comment. Depending on the conclusions of that survey, the Element may require the permittee to conduct additional analysis and incorporate mitigative measures as directed.

Endangered or Threatened Wildlife or Vegetation Species Habitats (7:7E-3.38)

Areas known to be inhabited on a seasonal or permanent basis by any wildlife (fauna) or vegetation (flora) identified as "endangered" or "threatened" species on official Federal or State lists of endangered or threatened species, or under active consideration for Federal or State listing, are considered Special Areas. The definition also includes a sufficient buffer area to insure continued survival of the species. NJDEPE - Division of Fish, Game and Wildlife intentionally restricts dissemination of data

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showing the geographic distribution of these species habitats, in order to protect the habitats.

Development of this Special Area is prohibited unless it can be demonstrated that endangered or threatened wildlife or vegetation species habitat would not be adversely affected either directly or through secondary impacts.

The applicant has indicated that the New Jersey Natural Heritage Program has no records of any endangered or threatened vertebrate species occurring at the project site. The Element also has issued a Letter of Interpretation classifying the freshwater wetlands as Intermediate Resource Value. That classification would indicate that the Element's review of the wetlands on-site revealed no documented habitat for threatened or endangered wildlife species.

There are however three species of protected fish that are known to occur near the project site. They include American shad (Alosa sapidissima), Shortnose sturgeon (Acipenser brevirostrum) and Atlantic sturgeon (Acipenser oxyrhynchus). The potential impacts to these species were addressed in a report prepared by T. Lloyd Associates, "Impact Assessment of the Keystone Cogeneration Project on Nearby Aquatic Resources", January 30, 1991. In that report, T. Lloyd Associates concluded that none of the above listed species are believed to spawn in the project area. Therefore any impact to eggs, larvae or juvenile fishes of these species appears to be negligible. T. Lloyd's report also indicates that shad may be sensitive to turbid water that would occur as a result of dredging.

The NJDEPE, Division of Fish, Game and Wildlife recognized the potential for this project to impact the above noted species and consequently requested the Element to impose timing restrictions on dredging. With the exception of the dredging, the permittee has demonstrated to the satisfaction of the Division that the construction and operation of the coal-fired cogeneration facility will have a minimal impact to the above noted endangered and threatened fish species. However to protect the anadromous fishes during migration, and as a condition the Waterfront Development Permit, no bucket dredging will be permitted between the dates of March 15 and November 30 and hydraulic dredging will not be permitted between the dates of April 15 and June 30. With the inclusion of the above noted dredging windows the project is in compliance with this policy.

Subchapter 4 - General Water Areas

General Areas are first divided into Water and Land by the same definitions used for Special Areas, Section 7:7E-3.1. Water and land are further subdivided into General

Area types. The water's edge has no General Area types since all water's edge areas are one or more Special Area types. In many cases, an area already identified as a Special Area will also fall within the definition of a General Area. In these cases, both General and Special Area policies will apply. In cases of conflict between General and Special Area policies, the more specific Special Area Policy shall apply.

General Water Areas are areas which lie below either the Mean High Water Line or the normal water level of non-tidal waters. Except at time of drought or extreme low tide, these areas are permanently inundated. General Water Areas are divided by volume and flushing rate into, Oceans; Open Bays; Semi Enclosed and Back Bays; Tidal Guts; Large Rivers; Medium Rivers, Creeks and Streams; and Lakes, Ponds and Reservoirs. Some of these types are further divided for policy purposes into different depths.

Large Rivers (7:7E-4.7)

This channel type includes flowing waterways with watersheds greater than 1,000 square miles which means the Delaware, Hudson and Raritan Rivers. Large rivers are the principal freshwater input to the Open Bays, and the critical estuarine functions performed by these bays depends, in large part, on maintenance or improvement of water quality and flow patterns in tidal rivers.

Acceptability Conditions for Uses (7:7E-4.11)

(d) Docks and Piers (for Cargo and Commercial Fisheries)

Definition

1. Docks and piers are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargos, including fluids, connected to or associated with a single industrial or manufacturing facility or to commercial fishing facilities. Docks and Piers for cargo are conditionally acceptable in most General Water Areas provided that the width and length of the piers are limited to only what is necessary, they will not pose a hazard to navigation and the associated land use meets all Coastal Zone Management Policies.

The proposed barge facility is not located within any navigational channel or anchorage in the Delaware River and will not pose a hazard to navigation. A 1600' approachway pier is required to reach deep water thereby reducing the amount of new and maintenance dredging. The project is in compliance with this policy.

(g) Dredging - New

Definition

1. New dredging is the removal of sediment from the bottom of a water body that has not been previously dredged, for the purpose of increasing water depth, or the widening or deepening of navigable channels to a newly authorized depth or width. In addition to conditions imposed by this policy, the project must also satisfy all conditions applicable under Dredging - Maintenance 7:7E-4.11(f)2 (i) through (vii).

The applicant is proposing to remove 40,000 cubic yards of material by clamshell method from the 910 foot by 150 foot berth area to a depth of 25 feet below mean low water with 3:1 side slopes. All of the dredged material would be disposed of at the American Dredging Company's approved Logan Township dredged material upland disposal site (U.S. Army Corps of Engineers permit NAPOP-N dated August 15, 1973).

The permittee has indicated that the American Dredging Company's permit for the upland dredge spoil site is currently under review by the ACOE for an extension. The ACOE authorized the dredging for this project via permit dated June 20, 1991 (CENAP-OP-R-91-0347-11) and referenced American Dredging Company's site in that permit. The Department, however, has no documentation that the 1973 ACOE permit has been extended, and what, if any, conditions are imposed on that permit. Therefore, prior to conducting any dredging, and as a condition to the permit, the permittee shall provide the Department with a copy of the referenced ACOE dredge disposal permit. The permittee will also submit to the Department the anticipated dredging schedule noting how that schedule relates to the status of the ACOE dredge permit.

The Department has also determined that this dredging complies with the Acceptability Conditions for maintenance dredging. However to protect migratory finfish from turbidity associated with dredging, the Department has imposed restrictions on when dredging is authorized to occur (Refer to page 8, Finfish Migratory Pathways).

Subchapter 5 - General Land Areas

7:7E-5.1 Definition

(a) General Land Areas include all mainland features located upland of Special Water's Edge Areas.

Stone Cogeneration Facility

With the exception of several small nodes and islands of land located in the two agricultural fields closest to Route 130, the entire project site is composed of Special Water's Edge Areas. Therefore this policy is not applicable.

Subchapter 7 - Use Policies

7:7E-7.4 Energy Use Policies

(a) General Definition of Energy Uses

Energy uses include facilities, plants or operations which produce, convert, distribute, or store energy.

(b) General Energy Facility Siting Procedures

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by a review process that includes both the Department and the Board of Public Utilities (BPU), (N.J.S.A. 52:27F-6 and 52:27-11 et seq.) according to the procedures defined in the Memorandum of Understanding between NJDEP and the BPU on Coordination of Permit Review.

2. BPU will determine the need for future coastal energy facilities according to three basic standards. BPU will submit an Energy Report to DEP with its determination of the need for a coastal energy facility based on three required findings:

- i. The existing sources of supply will not be adequate to meet future levels of demand, including careful consideration of the potential effects of conservation;
- ii. That no better technological alternative exists to meet future levels of demand; and
- iii. That no better locational alternative to the proposed site exists.

The Public Utility Regulatory Policies Act of 1978 (PURPA) encouraged the development of cogeneration facilities which use fossil fuels more efficiently than traditional utility generating facilities. As a result, the BPU has encouraged the development of cogeneration facilities as an economic, efficient and environmentally sound alternative to traditional utility generating facilities.

In accordance with those policies, in 1987 BPU staff and Atlantic Electric entered into a stipulation which was ultimately approved by the BPU outlining the terms and conditions by which Atlantic Electric would purchase energy

from PURPA qualifying facilities. A part of the stipulation review required the BPU to consider the need for additional capacity including the potential effects of conservation. It was determined that an additional 700 MWs was needed. The stipulation also included a Standard Price Methodology that established a system for ranking projects that considered factors including location, dispatchability and whether or not the facility would use a renewable fuel. Based on this ranking, Keystone was awarded a pricing agreement and ultimately entered into a power purchase agreement with Atlantic Electric which was approved by the BPU on December 28, 1988.

With regards to site location, a cogeneration facility must be located at or near the site of its thermal user (Monsanto). This is required due to the economics related to the cost of running steam lines, and the fact that heat losses increase with the length of lines. Therefore, the site is appropriate given the location of the Monsanto facility. The proposed site is also located near both marine and rail facilities that have the potential to deliver coal.

The KCP has demonstrated conditional compliance with all applicable Coastal Zone Management policies. The BPU has documented that KCP is an approved facility and that it has been sited in an appropriate location based on transportation, energy host location and the need to satisfy regional energy and capacity requirements. Based on the above discussion the permittee has demonstrated compliance with the policy.

(r) Electric Generating Stations

New or expanded electric generating facilities and related facilities are conditionally acceptable provided:

- i. The construction and operation of the proposed facility shall comply with the Coastal Resource and Development Policies, with special reference to air and water quality standards and policies on marine resources and wildlife.
- ii. NJDEPE and BPU shall find that the proposed location and design of the electric generating facility is the most reasonable alternative for the production of electrical power that BPU has determined is needed. The finding shall be based on a comparative evaluation by the applicant of alternative sites within the coastal zone and inland, and of alternative technologies for the transportation and conversion of energy as well as the productive use of plant residuals, including thermal discharges.

The permittee has demonstrated conditional compliance with all applicable Coastal Zone Management policies. The NJDEPE, Division of Environmental Quality has issued all applicable air permits for this project. The KCP is designed to have zero discharge to the Delaware River which will eliminate the potential for any thermal plume impacts.

To meet the demand for energy in New Jersey, Atlantic Electric petitioned the BPU for additional energy producing facilities. As previously stated, the BPU, as a result of the Public Utility Regulatory Policies Act of 1979, is encouraging the use of cogeneration facilities. Cogeneration facilities are unique in that they have several operational, environmental and location requirements that must be satisfied in order for the facility to properly function. The KCP site was chosen based on those requirements which are discussed below.

The site provides a 110 acre industrial zoned location adjacent to a steam host along the Delaware River. It's remote location away from densely populated areas, provides easy access to Route 295 and Route 130. The majority of the plant will be constructed on an existing 40 acre agricultural field (dredge spoils) which reduces impacts to environmentally sensitive areas. The river location provides the plant with the water volume that is needed for operations.

Based on the above analysis the project is in compliance with this policy.

Dredge Spoil Disposal on Land (7:7E-7.12)

Dredge spoil disposal is the discharge of sediments, known as spoils removed during dredging operations. The criteria applicable to this policy govern Land and Water's Edge disposal only. The policies regulating dredge spoil disposal in Water Areas are found in N.J.A.C. 7:7E-4.11.

The dredge spoils will be disposed of at an approved upland disposal site authorized by the U.S. Army Corps of Engineers. The Bureau of Monitoring Management has determined that the Dredge Spoil Analysis prepared by EMA laboratories do not indicate any contamination. The project is in compliance with this policy. (Please refer to page 29, Acceptability for Use (7:7E-4.11(g) Dredging, New) for a discussion regarding other compliance issues associated with dredge disposal).

High Rise Structures (7:7E-7.14)

All high rise structures more than six stories or more than sixty feet from existing pre-construction ground level

Keystone Cogeneration Facility

to the mid-point of sloped roof or top of parapet wall on flat roofs. High rise structures are encouraged to locate in an area of existing high density, high-rise and/or intense settlements.

The proposed plant facility contains one structure defined as "high rise" within the waterfront development area. The coal storage enclosure is 80 feet tall and is located 380 feet from the mean high water line. The structure is oriented so that the longest lateral dimension is perpendicular to the Delaware River and it will not block any views of the waterfront currently enjoyed by the public. The Federal Aviation Administration has indicated that no structure in the plant is a hazard to navigation. The applicant has demonstrated compliance with this policy.

SUBCHAPTER 8 - RESOURCE POLICIES

Water Quality (7:7E-8.4)

As required by Section 307(f) of the Federal Coastal Zone Management Act, federal, state and local water quality requirements established under the Clean Water Act shall be the water resource standards of the coastal management program.

Coastal development which would violate the federal Clean Water Act, or State laws, rules and regulations adopted pursuant thereto, is prohibited. In accordance with such rules as may be adopted by the Department concerning the Water Quality Management Planning and Implementation process, coastal development that is inconsistent with an approved Water Quality Management (208) Plan under the New Jersey Water Quality Planning Act (N.J.S.A. 58:11A et seq.) is prohibited.

The Keystone Cogeneration Facility requires and has applied for the following permits or approvals that are applicable to this policy:

1. New Jersey Pollution Discharge Elimination System (NJDEPE);
2. Amendment to the Areawide Water Quality Mgm. Plan (NJDEPE);
3. Delaware River Basin Commission Approval;
4. Subaqueous Land and Coastal Zone Mgmt. (Delaware);
5. Section 10, Rivers and Harbors Act (ACOE);
6. Federal Water Pollution Control Act (ACOE).

Keystone Cogeneration Facility

The permittee, to demonstrate compliance with this policy and as a condition to this permit, must submit copies of all the above listed permits to the Element prior to conducting any work in the regulated Waterfront Area.

During the course of the application review the design of the project was modified to incorporate zero discharge to the Delaware River. However, there has not been any formal representation to the Department that this method has been adopted, nor have the plans been modified to reflect the change. Therefore, prior to any construction in the waterfront area, and as a condition to this permit, the permittee shall formerly notify the Department of it's intended design modification. In addition, the plans referenced below must be revised to remove all reference to any discharge structures.

1 - Coal Unloading Pier, Keystone Cogeneration System Inc., Sections and Elevations, drawing 3 of 5, prepared by Alan L. Flinn, dated January 30, 1991 and last revised May 21, 1991.

2 - Coal Unloading Pier, Keystone Cogeneration System Inc., Dredging Plan, drawing 4 of 5, prepared by Alan L. Flinn, dated January 30, 1991, last revised May 24, 1991;

Surface Water Use (7:7E-8.5)

Surface water is the water in lakes, ponds, streams, rivers, bogs, wetlands, bays and ocean that is visible on land. Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns.

The applicant has applied for a Water Allocation (operation) permit from NJDEPE to divert a maximum of 223.2 million gallons of water during any month (mgm) at a maximum rate of 5,000 gallons per minute (gpm) from the Delaware River and from a low capacity groundwater well (2 gpm) to be screened in the Cape May formation. The surface water diversion is to be used as cooling and process water. The project also requires 3.8 Approval from the Delaware River Basin Commission (DRBC). That approval is contingent upon the applicant obtaining a NJPDES permit and the Water Allocation permit for withdrawal.

To demonstrate compliance with this policy, and as a condition to the permit, the permittee is not authorized to

begin construction within the Waterfront Area until the Water Allocation permit and the 3.8 Approval from the DRBC have been obtained and copies of those permits have been forwarded to eht Element.

Groundwater Use (7:7E-8.6)

Groundwater is all water within the soil and subsurface strata that is not at the surface of the land. It includes water that is within the earth that supplies wells and springs. Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower water table or piezometric surface, or significantly decrease the base flow of adjacent water courses. Groundwater withdrawals shall not exceed the aquifer's safe yield.

As previously stated, the permittee has applied for a Water Allocation permit for a low capacity groundwater well (2 gpm) from the NJDEPE. The permittee must provide the Element with a copy of that permit to demonstrate compliance with this policy.

Stormwater Runoff (7:7E-8.7)

Stormwater Runoff is flow on the surface of the ground, resulting from precipitation. Coastal development shall use the best available technology to minimize off-site storm water runoff, increase on-site infiltration, simulate natural drainage systems, and minimize offsite discharge of pollutants to ground or surface water and encourage natural filtration functions. Best available technology may include measures such as retention basins, recharge trenches, porous paving and piping, contour terraces, and swales provided such techniques can be demonstrated to satisfy these policies. Provisions for elimination of curbs, reduction of roadway widths, and rooftop recharge basins are strongly encouraged.-

The project has been designed to incorporate drainage system that will discharge uncontaminated stormwater to the Delaware River via two (2) water quality basins. Stormwater that has contamination potential (coal pile runoff) will be routed through the wastewater treatment plant and reused in the operation of the power plant. Nearly all stormwater runoff will pass through oil/water separating catch basins prior to entering the water quality detention basins. The project is in compliance with this policy.

Vegetation (7:7E-8.8)

Vegetation is the plant life or total plant cover that is found on a specific areas, whether indigenous or introduced by humans. Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate species, to the maximum extent practicable.

The permittee has provided a satisfactory landscaping plan for the waterfront area of this project and is in compliance with this policy.

Air Quality (7:7E-8.10)

The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and to attainment and maintenance of State and Federal air quality goals and the prevention of deterioration of current levels of air quality. Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP).

The Department (Division of Environmental Quality, Bureau of Air Quality Planning and Evaluation) issued a Federal Prevention of Significant Deterioration (PSD) permit and state Air Pollution Control permits on September 9, 1991. The project is in compliance with this policy.

Public Access to the Waterfront (7:7E-8.11)

Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts. Coastal development adjacent to all coastal water, including both natural and developed waterfront areas, shall provide perpendicular and linear access to the water front to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of waterfront experiences is discouraged.

The permittee has indicated that due to the nature of the facility it is not feasible to allow public access into the envelope of the site. The operation and safety plans of the proposed cogeneration facility cannot reasonably accommodate public access, restricted or otherwise, to the project location. However, the applicant has developed a plan that would allow the employees to access the waterfront via an observation deck. To demonstrate compliance with this policy, and as a condition to the permit, the permittee shall complete the observation platform prior to the plant becoming operational.

Buffers and Compatibility of Uses (7:7E-8.13)

Buffers are natural or man made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

Development shall be compatible with adjacent land and water uses to the maximum extent practicable. Development that is likely to adversely affect adjacent areas, particularly Special Areas (N.J.A.C. 7:7E-3.1 through 7:7E-3.48) or residential or recreational uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.

The facility is located on a former dredge spoil disposal area that is zoned industrial and adjacent to the Monsanto Chemical Company. The KCP will have a 2,100 foot set back from Route 130 and will be partially obstructed by existing hedgerows and proposed plantings.

Existing forested wetlands adjacent to the Delaware River will not be disturbed except for clearing in the area of the approachway pier and installation of the outfall structures. The project will maintain at least a 50 foot set back from all freshwater wetland areas.

The proposed pier and associated barge traffic will not adversely affect the present commercial or recreational uses of the Delaware River as this section of the river is already heavily industrialized.

The permittee has demonstrated through compliance with other policies that the KCP will not adversely affect adjacent areas, particularly Special Areas. The facility is designed to maintain adequate buffers and in some areas (uplands adjacent to the Delaware River) additional vegetative plantings are proposed. The permittee has demonstrated compliance with this policy.

VI CONCLUSION

Based on information provided by the applicant, the preceding analysis, and the conditions expressed herein, the Administrator is able to make the positive findings required by the Waterfront Development Law as embodied by the Rules on Coastal Zone Management. This project also satisfies the requirements of the Freshwater Wetlands Protection Act, the Wetlands Act of 1970 and the Flood Hazard Area Control Act. The permit is expressly contingent upon compliance with all

permit conditions and failure to comply with any or all of the permit conditions may result in appropriate enforcement actions, or suspension or revocation of the permit.

This permit includes conditions to ensure compliance with the following policies. Intertidal and Subtidal Shallows (7:7E-3.16), Wetlands (7:7E-3.27), Historic and Archaeological Resources (7:7E-3.36), Endangered or Threatened Wildlife or Veegetation Species Habitats (7:7E-3.38), Acceptability Conditions for Uses (7:7E-4.11), Dredge Spoil Disposal on Land (7:7E-7.11), Water Quality (7:7E-8.4) and Public Access to the Waterfront (7:7E-8.11).

VII. Administrative Conditions

The following conditions shall be met in addition to the standard conditions found in the Coastal Permit Program Rules, dated May 7, 1989 (N.J.A.C. 7:7), the Freshwater Wetlands Protection Act Rules as amended to July 17, 1989 (N.J.A.C. 7:7A) and the Flood Hazard Area Regulations (N.J.A.C. 7:13-1.1).

This permit is issued subject to and provided the following conditions can be met to the satisfaction of the Land Use Regulation Element. All conditions must be met prior to construction unless otherwise specified. Compliance with all Administrative Conditions shall be determined once copies of all specified permits, certifications, plans agreements, etc. have been approved by the Land Use Regulation Element. All Physical Conditions are subject to on-site compliance inspection by the Bureau of Enforcement, PO Box 188, Duerer Road, Pomona, NJ 08240, in writing at least 5 days prior to commencement or site preparation.

ADMINISTRATIVE

1. The permittee is required to mitigate for the loss of .139 acres of intertidal area at a ratio of one to one. Prior to construction the permittee must submit a mitigation plan to the Element for review and approval pursuant to section 7:7A-14.4 of the Freshwater Wetlands Protection Act.
2. The permittee is required to mitigate for the filling and disturbance of 1.6 acres of freshwater wetlands at a ratio of 2:1 (gained:destroyed). Prior to construction, the permittee must submit to the Element, for review and approval, a wetlands mitigation plan developed pursuant to section 7:7A-14.4 of the Freshwater Wetlands Protection Act Rules.
3. Prior to the start of any construction in the waterfront area, the applicant will forward the results of the Phase 1 Archaeological survey to the Element for review and comment. Depending on the conclusions of that survey, the Element may

require the permittee to conduct additional analysis and incorporate mitigative measures as directed.

4. Prior to conducting any dredging the permittee shall provide the Department with a copy of the referenced ACOE dredge disposal permit. The permittee will also submit to the Department the anticipated dredge schedule, noting how that schedule relates to the status of the dredge permit.

5. Prior to construction the permittee must submit copies of all the permits or approvals listed below to the Element.

a. New Jersey Pollution Discharge Elimination System (NJDEPE);

b. Amendment to the Areawide Water Quality Mgm. Plan (NJDEPE);

c. Delaware River Basin Commission Approval;

d. Subaqueous Land and Coastal Zone Mgmt. (Delaware).

6. The permittee shall formally notify the Department of it's intended design modification to incorporate zero discharge. In addition, the plans referenced below must be revised to remove all reference to discharge structures;

1 - Coal Unloading Pier, Keystone Cogeneration System Inc., Sections and Elevations, drawing 3 of 5, prepared by Alan L. Flinn, dated January 30, 1991 and last revised May 21, 1991.

2 - Coal Unloading Pier, Keystone Cogeneration System Inc., Dredging Plan, drawing 4 of 5, prepared by Alan L. Flinn, dated January 30, 1991, last revised May 24, 1991;

7. The applicant must deliver a copy of a Water Allocation permit to the Element prior to the start of construction.

PHYSICAL

1. The permittee shall complete the observation platform prior to the plant becoming operational.

2. This permit prohibits bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30.

Prepared by:

David B. Fanz
David B. Fanz, Principal Environmental Specialist

Approval Recommended By:

Ruth Ehinger
Ruth Ehinger, Manager
Bureau of Coastal Regulation

Approved By:

Robert A. Tudor
Robert A. Tudor, Administrator
Land Use Regulation Element

9/24/91
Date

Stone Cogeneration Facility

2. This permit prohibits bucket dredging between the dates of March 15 and November 30 and hydraulic dredging between the dates of April 15 and June 30.

Prepared by:

David B. Fanz

David B. Fanz, Principal Environmental Specialist

Approval Recommended By:

Ruth Ehinger

Ruth Ehinger, Manager
Bureau of Coastal Regulation

Approved By:

Robert Tudor

Robert A. Tudor, Administrator
Land Use Regulation Element

9/24/91

Date



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
TRENTON

Division of Coastal Resources

March 14, 1991

Please address reply to:
CN 401
Trenton, N.J. 08625-0401

Anthony P. Pratt - (302) 739-4411
Division of Soil and Water Conservation
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, Delaware 19903

RE: Joint Review of Project within the States of Delaware and New Jersey
Keystone Cogeneration Systems

Dear Tony:

The Division of Coastal Resources recently received an application for several coastal permits for a coal fired cogeneration facility with a coal handling pier. This mooring and offloading pier is shown in the application to be located in the State of Delaware.

Considering our federal Coastal Zone Management Grant task to produce a better coordination effort for development of this kind, I am forwarding to you this application for your review. This application might be a good prototype for us to scope out some the details we will need to address.

The Division project reviewer is Dave Fanz. He can be reached at the above address or (609) 984-0266. He can provide you with details of this particular application. Any matters related to coordination should be addressed through me for the time being while we proceed with the CZM grant task.

*Delaware Contact
Dennis Brown: Coastal Zone Coordinator
(302) 739-5409*

Sincerely,

Steven

Steven Whitney
Assistant Director

C: Dave Fanz





SEP 21 1998

State of New Jersey By

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

Greg Cook
Logan Generating Company
Box 169c, Route 130 South
Swedesboro, NJ 08085

SEP 14 1998

RE: Water Quality Certificate
LURP # 0809-91-0028.32
Logan Generating Company

Dear Mr. Cook:

Enclosed, please find the approved permit for the above referenced application. Please review this permit and note any conditions which may have been imposed, and promptly complete and return the enclosed permit acceptance form to the Department at the above address. This approval is valid for five years and the terms of the permit are detailed within the document.

Any interested person who considers themselves aggrieved by this permit decision may request a hearing by addressing a written request for such a hearing to the following address: Office of Legal Affairs, Department of Environmental Protection, P.O. Box 402, Trenton NJ 08625, Attention: Adjudicatory Hearing Requests.

This written request must include a completed copy of the attached Administrative Hearing Request Checklist and all information identified in Section III of that list.

Should you have any questions concerning the above, please contact Kevin Broderick of my staff, at (609) 984-0288.

Sincerely,


Richard H. Kropp, Director
Land Use Regulation Program

C: Larry Baier, ODST

Water Quality Certificate

There is reasonable assurance that the proposed activity as described above, will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and will be conducted in a manner which will not violate applicable water quality standards of the State of New Jersey.

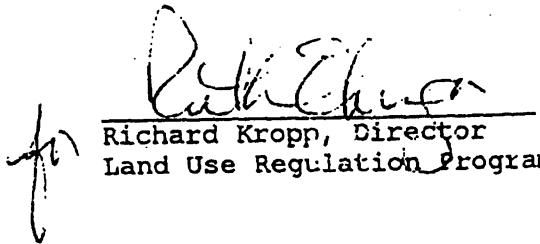
The foregoing applies only and exclusively to the effect the proposed work would have on water quality as defined in the regulations establishing certain classifications to be assigned to the waters of this State and standards of quality to be maintained in water so classified. This certification does not apply to broader ecological, biological or environmental effects, which may result from the project, nor does this certification evaluate the degree of public interest the project generates.

This certification is being issued subject to the following conditions:

1. Best management practices to control sedimentation/turbidity shall be utilized during the disposal and dewatering process.
2. Violations of any of the conditions of this Water Quality Certificate will be violations of the NJ WPCA < NJSA 58:1-A-1 et seq., and subject to the penalties included therein.
3. This Water Quality Certificate only authorizes the disposal of 15,000 cubic yards of dredge material into White's Basin. Any additional dredging will require that the material be sampled and tested as per the Department's most recent guidance document, as amended and entitled "The Management and Regulation of Dredging Activities and Dredged Material in New Jersey's Tidal Waters".

Date

9/14/98


Richard Kropp, Director
Land Use Regulation Program

KJB/cas
Disk: FW-1

File: 0809-91-0028.32



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Environmental Regulation
Land Use Regulation Program
501 E. State St., CN 401
Trenton, New Jersey 08625-0401
Fax #(609)292-8115

Robert C. Shinn
Commissioner

Dear Sir or Madam:

Enclosed, please find an approved construction permit for the application(s) you submitted to our office. Please review this permit and note any conditions which may have been imposed, and promptly complete and return the enclosed permit acceptance form to the Department at the above address. This approval is valid, for five years the terms of the permit are detailed within the document.

If a tidelands grant, lease or license is required as noted by conditions of this permit, this permit is not valid until said conveyance has been delivered for the project area by the Bureau of Tidelands Management. You are **NOT AUTHORIZED TO BEGIN CONSTRUCTION** until you have received a tidelands instrument. If you begin construction beforehand, you are subject to fines of up to \$1000 plus \$100.00 per day pursuant to the Waterfront Development Law. In addition, the cost for the tidelands instrument may be higher since the property claimed will be appraised as improved property. Further, you may be required to remove any structures placed in tidelands claimed areas without proper authorization

Any interested person who considers himself or herself aggrieved by this permit decision may request a hearing by addressing a written request for such hearing to the following address: Office of Legal Affairs, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402, Attention: Adjudicatory Hearing Requests.

This written request must include a completed copy of the attached Administrative Hearing Request Checklist and all information identified in Section III of that list.

**WATERFRONT DEVELOPMENT, COASTAL WETLANDS, CAFRA AND
STREAM ENCROACHMENT PERMITS:**

Pursuant to the Coastal Permit Program Rules, specifically N.J.A.C. 7:7-5.1, and the Ninety-Day Construction Permit rules, specifically N.J.A.C. 7:1C-1.9, written appeals must be received by the Department at the above address within 10

days of publication of notice of the final decision in the DEP Bulletin, or within 10 days of publication of notice by the permittee pursuant to N.J.A.C. 7:7-4.8 (b), whichever occurs first.

FRESHWATER WETLANDS PERMITS:

Pursuant to the Freshwater Wetlands Protection Act Rules, specifically N.J.A.C. 7:7A-12.7, written request for an administrative hearing must be received by the Department at the above address within 30 days of the DEP Bulletin publishing date or the date of receipt of the permit decision, whichever is later.

In order to promote inter-governmental cooperation in the management of our natural resources, a copy of this decision shall be shared with appropriate local and federal agencies. If you should have any questions regarding the enclosed permit, please contact the Project Manager identified on the first page of the permit at (609) 292-0060.

Sincerely,


Richard H. Kropp, Director
Land Use Regulation Program

Enclosures:

Permit
Permit Acceptance Form
Construction Notice
Completion Notice
Administrative Hearing Request Checklist

**ACCEPTANCE OF
REVOCABLE CONSTRUCTION PERMIT/S**

Mail to:

State of New Jersey
Department of Environmental Protection
Land Use Regulation Program
CN 401
Trenton, New Jersey 08625

Review Engineer: K. Broderick

Engineering Section: Land Use Regulation Program

Permit Number(s): 0809-91-0028.32

Date Issued: Sept 14, 1998

The undersigned hereby accepts the above referenced revocable permit/s, subject to the terms and conditions included therein, including but not limited to the right of the State to revoke said permit/s with cause, and also subject to all provisions of law, rules, and regulations of any applicable government agency.

Signature: Thomas W. Fromm

Printed Name: Thomas W. Fromm

Title/Affiliation: Environmental Manager
Logan Generating Co

Attest: _____
(To be properly witnessed, signed, and sealed)

**ADMINISTRATIVE HEARING REQUEST CHECKLIST
AND TRACKING FORM**

I. Documents Being Appealed:

<hr/>	1
<hr/>	<hr/>
Issuance Date of Document	Document Number (if any)

II. Person Requesting Hearing:

<hr/>	<hr/>
Name/Company	Name of Attorney (if applicable)
<hr/>	<hr/>
<hr/>	<hr/>
Address	Address
<hr/>	<hr/>
Telephone #	Telephone #

III: Please include the following information as part of your request:

- A. The date the permittee received the permit;
- B. A copy of the Denial of Permit and a list of all issues being appealed;
- C. The legal and factual questions at issue;
- D. A statement as to whether or not the permittee raised each legal and factual issues during a public comment period on the permit;
- E. Suggested revised or alternative permit conditions;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law, and
- I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

1. New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
401 E. State Street, CN 402
Trenton, New Jersey 08625

2. Richard Kropp, Director
Land Use Regulation Program
501 E. State Street, 2nd Floor
CN 401
Trenton, New Jersey 08625

IV. Signature _____ **Date** _____



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
(See Issuing Division below)

Mailed
3-23-00



P E R M I T*

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the permit.

Permit No. 1708-00-0001.1 & 2		Application No. 1708-00-0001.1 & 2	
Issuance Date MAR 22 2000	Effective Date MAR 22 2000	Expiration Date MAR 22 2005	
Name and Address of Applicant Pennsville Township 90 N. Broadway Pennsville, NJ 08070		Name and Address of Owner Same as Applicant	Name and Address of Operator
Location of Activity/Facility (Street Address) Boat Ramp Pennsville Township, Salem Co Delaware River Lot _____ Block <u>3428</u>		Issuing Division Land Use Regulation Program	Statute(s) 12:5-3 58:10A
Type of Permit		Maximum Approved Capacity, if applicable	

This permit grants permission to: **WATERFRONT DEVELOPMENT PERMIT**
UPLAND WATERFRONT DEVELOPMENT PERMIT
Water Quality Certificate

Removal of an existing concrete boat ramp and construct a 125' x 40 reinforced concrete boat ramp in its place along the Delaware River. The project also includes the construction of parking facilities along approximately 900 linear feet of the Delaware River. The work is shown on 2 sheets, sheet 1 entitled, "Site Plan Prepared for Pennsville Township, Pennsville Township, Salem County, New Jersey", prepared by Albert A. Fralinger, Jr., P.A. T/A, dated August 18, 1999, revised through December 28, 1999. Sheet 2 entitled, "Details Prepared for Pennsville Township, Pennsville Township, Salem County, New Jersey", prepared by Albert A. Fralinger, Jr., P.A. T/A, dated August 18, 1999, unrevised.

The work is acceptable under the Rules on Coastal Zone Management (7:7E-1.1 et. seq.).

This permit is issued subject to and accordance with a riparian instrument issued by the Bureau of Tidelands Management File No. 00-0012-T.

Prepared by: Charles Welch
Charles Welch
Bureau of Coastal Regulation

Page 1 of 3

Revised Date	Approved by the Department of Environmental Protection <i>SEE PAGE THREE (3)</i>
Name (Print or Type) _____	Title _____
Signature _____	Date _____

* The word permit means "approval, certification, registration, etc."

(General Conditions are on the Reverse Side)

The permittee shall allow an authorized representative of the New Jersey Department of Environmental Protection the right to inspect construction pursuant to N.J.A.C. 7:7-1.5(b)4.

This permit is issued subject to, and provided, the following conditions can be met to the satisfaction of the Land Use Regulation Program. All conditions must be met prior to construction unless otherwise specified. Compliance with Administrative Conditions shall be determined once copies of all specified permits, certifications, plans, agreements, etc. have been received, not less than 30 days prior to construction, and approved by the Land Use Regulation Program. All Physical Conditions are subject to on-site compliance inspection by the Bureau of Coastal and Land Use Enforcement. As per N.J.A.C. 7:7-1.5(b)1, you must notify the Bureau of Coastal and Land Use Enforcement, (Toms River Office-1510 Hooper Avenue, Toms River, N.J. 08753), in writing at least three (3) days prior to commencement of construction or site preparation.

This permit shall be RECORDED in the office of the County Clerk (the REGISTRAR OF DEEDS AND MORTGAGES in the applicable counties) in the county wherein the lands included in the permit are located within ten (10) days after receipt of the permit by the applicant and verified notice shall be forwarded to the Land Use Regulation Program immediately thereafter.

This permit is NOT VALID until the permit acceptance form has been signed by the applicant, accepting and agreeing to adhere to all permit conditions, and returned to the Land Use Regulation Program at P. O. Box 439, Trenton, N.J. 08625.

PHYSICAL CONDITIONS

1. Prior to any construction activities, the permittee must submit to this Program for review and approval a revised Site Plan that provides for a 4' x 80' floating dock adjacent to the western side of the ramp. This revised plan must also eliminate all proposed bituminous concrete within the parking areas and instead propose crushed stone.

ADMINISTRATIVE CONDITIONS

1. This permit does not obviate you from obtaining any other necessary federal or local approvals.
2. The permittee must receive a tidelands grant, lease or license (File No. 00-0012-T). Failure to comply with this condition will result in fines up to \$100 plus \$1000 per day, a higher fee for the conveyance and possible prosecution by the Attorney General's Office to remove structures and pay use and occupancy charges.
3. No regulated work may commence until such time as you have obtained a Department of the Army authorization. You are advised to contact the Philadelphia District at (215) 656-6728.

- 4. Prior to any construction activities, the permittee must submit for review and approval the above requested revised Site Plans to the Department's, Division of Fish & Wildlife. This Program shall be copied on the Division's Fish & Wildlife's written acceptance of these plans.

Date: 3/22/2000

so K. Budorick
Ruth Ehinger, Manager
Bureau of Coastal Regulation
Land Use Regulation Program



STATE OF NEW JERSEY

DEPARTMENT OF ENVIRONMENTAL PROTECTION
(See Issuing Division below)

file



PERMIT*

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the permit.		
Permit No. 1708-00-0001.3	Application No. 1708-00-0001.3	
Issuance Date FEB 20 2001	Effective Date FEB 20 2001	Expiration Date .Feb 20, 2006
Name and Address of Applicant Pennsville Township 90 N. Broadway Pennsville, NJ 08070	Name and Address of Owner Same as Applicant	Name and Address of Operator
Location of Activity/Facility, (Street Address) Rivera Dr. & Fordham Rd. Pennsville, Salem Co. Delaware River Lot <u>1</u> Block <u>3428</u>	Issuing Division Land Use Regulation Program	Statute(s) 12:5-3 58:10-1
Type of Permit Upland Waterfront Development	Maximum Approved Capacity, if applicable	
This permit grants permission to: Waterfront Development & Water Quality Certificate		
<p>Installation of a 113 linear feet of 30" PVC stormwater force main pipes with a 30" steel goose necks for discharge into the Delaware River. This permit also authorizes the placement of 60 square yards of rip-rap beneath the proposed gooseneck on an intertidal beach area. The work is shown on 1 sheet, entitled, "Stormwater Management Plan, Prepared for Pennsville Township, Station 10+0 To Station 20+0", Pennsville Township, Salem County, New Jersey", prepared by Albert A. Fralinger, JR., P.A., dated September 1, 2000, unrevised.</p> <p>The work is acceptable under the Rules on Coastal Zone Management (7:7E-1.1 et. seq.).</p>		
Prepared by: <u><i>Charles Welch</i></u> Charles Welch Bureau of Coastal Regulation	Page 1 of 2	
SEE PAGE TWO (2)		
Revised Date	Approved by the Department of Environmental Protection	
	Name (Print or Type) _____	Title _____
	Signature _____	Date _____

*The word permit means "approval, certification, registration etc."

(General Conditions are on the Reverse Side)

This permit is subject to the following general conditions:

1. This permit is revocable, or subject to modification or change at any time, pursuant to the applicable regulations, when in the judgement of the Department of Environmental Protection of the State of New Jersey such revocation, modification or change shall be necessary.
2. The issuance of this permit shall not be deemed to affect in any way action by the Department of Environmental Protection of the State of New Jersey on any future application.
3. The works, facilities, and/or activities shown by plans and/or other engineering data, which are this day approved, subject to the conditions herewith established, shall be constructed and/or executed in conformity with such plans and/or engineering data and the said conditions.
4. No change in plans or specifications shall be made except with the prior written permission of the Department of Environmental Protection of the State of New Jersey.
5. The granting of this permit shall not be construed to in any way affect the title or ownership of property, and shall not make the Department of Environmental Protection or the State a party in any suit or question of ownership.
6. This permit does not waive the obtaining of Federal or other State or local government consent when necessary. This permit is not valid and no work shall be undertaken until such time as all other required approvals and permits have been obtained.
7. A copy of this permit shall be kept at the work site, and shall be exhibited upon request of any person.
8. In cases of conflict, the conditions of this permit shall supersede the plans and/or engineering data.

The permittee shall allow an authorized representative of the New Jersey Department of Environmental Protection the right to inspect construction pursuant to N.J.A.C. 7:7-1.5(b)4.

This permit is issued subject to, and provided, the following conditions can be met to the satisfaction of the Land Use Regulation Program. All conditions must be met prior to construction unless otherwise specified. Compliance with Administrative Conditions shall be determined once copies of all specified permits, certifications, plans, agreements, etc. have been received, not less than 30 days prior to construction, and approved by the Land Use Regulation Program. All Physical Conditions are subject to on-site compliance inspection by the Bureau of Coastal and Land Use Enforcement. As per N.J.A.C. 7:7-1.5(b)1, you must notify the Bureau of Coastal and Land Use Enforcement, (Toms River Office-1510 Hooper Avenue, Toms River, N.J. 08753), in writing at least three (3) days prior to commencement of construction or site preparation.

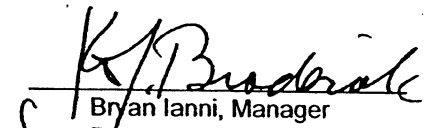
This permit shall be RECORDED in the office of the County Clerk (the REGISTRAR OF DEEDS AND MORTGAGES in the applicable counties) in the county wherein the lands included in the permit are located within ten (10) days after receipt of the permit by the applicant and verified notice shall be forwarded to the Land Use Regulation Program immediately thereafter.

This permit is NOT VALID until the permit acceptance form has been signed by the applicant, accepting and agreeing to adhere to all permit conditions, and returned to the Land Use Regulation Program at P. O. Box 439, Trenton, N.J. 08625.

CONDITIONS

1. This permit does not obviate you from obtaining any other necessary federal or local approvals.
2. Prior to construction activities, a silt fence shall be erected upland of the mean high water line with a 10 foot return on each end. This fence must remain in place until all construction and landscaping activities are completed.
3. All disturbed lawn areas as result of the project shall restored to original condition upon completion of all construction activities.
4. Prior to any construction activities, and to demonstrate compliance with the rule on Intertidal and subtidal shallows (7:7E-3.15) the permittee shall submit to this Program for review and approval a mitigation plan for the loss of the 60 square yards of intertidal beach area as a result of the placement of the rip-rap. This mitigation shall consist of a one to one ratio.

Date: 2/20/01


 Sr Bryan Ianni, Manager
 Bureau of Coastal Regulation
 Land Use Regulation Program



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
(See Issuing Division below)



PERMIT*

The New Jersey Department of Environmental Protection grants this permit in accordance with your application, attachments accompanying same application, and applicable laws and regulations. This permit is also subject to the further conditions and stipulations enumerated in the supporting documents which are agreed to by the permittee upon acceptance of the permit.

Permit No. 1708-95-0014.1		Application No. 1708-95-0014.1	
Issuance Date JAN 24 1996	Effective Date JAN 24 1996	Expiration Date JAN 24 2001	
Name and Address of Applicant NJ Dept. of Env. Protection Div. of Parks & Forestry 501 E. State Street Trenton, NJ 08625		Name and Address of Owner Same as Applicant	Name and Address of Operator Same as Applicant
Location of Activity/Facility (Street Address) Fort Mott State Park Pennsville Twp., Salem Co. Lot <u>5301</u> Block <u>3</u>		Issuing Division Land Use Regulation	Statute(s) 12:5-3 58:10-1 to 13
Type of Permit Waterfront Development, WQC		Maximum Approved Capacity, if applicable	
This permit grants permission to: <p>Reconstruct/rehabilitate the historically existing Fort Mott Pier within the dimensions of the still existing pier line and to it historic elevation of 10 feet NGVD. The structure shall be backfilled with gravel and stone and a floating 30' by 100' ferry landing shall be constructed at the terminus of the pier with pedestrian and handicap ramp access. [ferry landing to be within Delaware state waters]</p> <p>Proposed work is as shown on four plan sheets entitled "Pier Rehabilitation And New Floating Ferry Dock, Fort Mott State Park, New Jersey", dated September 13, 1995, sheets 1 and 2 revised December 22, 1995, and prepared by S. T. Hudson Engineers, Inc.</p> <p>This permit is authorized under, and in compliance with the following Rules on Coastal Zone Management (N.J.A.C. 7:7E-1.1 et seq.): Navigation Channels (7:7E-3.7), Intertidal & Subtidal Shallows (7:7E-3.15), Beaches (7:7E-3.22), Wetlands (7:7E-3.27), Historic & Archaeological Resources (7:7E-3.36), Acceptability Conditions for Miscellaneous Use [Floating ferry dock] (7:7E-4.2(s)), and Public Access to the Waterfront (7:7E-8.11).</p>			
Prepared by: <u>Bruce Stoneback</u> Bruce Stoneback			
Revised Date	Approved by the Department of Environmental Protection		
	Name (Print or Type) <u>SEE PAGE 3</u>	Title _____	
	Signature _____	Date _____	

* The word permit means "approval, certification"

(General Conditions are on the Reverse Side)

The permittee shall allow an authorized representative of the Department of Environmental Protection & Energy the right to inspect construction pursuant to N.J.A.C. 7:7-1.5(b)4.

This permit is issued subject to and provided that the following conditions can be met to the satisfaction of the Land Use Regulation Program.

PHYSICAL CONDITIONS

1. No work is authorized by this permit outshore of the existing crib structure facing timbers [Delaware State Waters].

ADMINISTRATIVE CONDITIONS:

1. Permitted activities are subject to approval of the Army Corps of Engineers.
2. The following project aspects are subject to approval of the State of Delaware: a) installation of floating ferry mooring associated pilings, and b) removal of rip-rap against the crib structure below mean low water.
3. Prior to any construction, the permittee shall submit and have approved by the Program a suitable mitigation site and mitigation plan to compensate for the loss of 0.25 acres of wetlands and intertidal shallows [0.17 acres of wetland/0.09 acres of intertidal shallow]. Wetland mitigation proposal requirements can be found within Subchapter 14.4 of the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A-1.1 et seq.).
4. Prior to or concurrent with permitted work, the permittee shall perform mitigation activities to compensate for the authorized filling of wetlands and intertidal shallows area according to the requirements of 7:7E-3.15(c) and 7:7E-3.27(h). A model deed restriction for the chosen mitigation site is included as a permit addendum.
5. Prior to initiation of any work on the crib structure the permittee shall obtain from the Tidelands Program a finalized "Management Agreement" approved by the Tidelands Resource Council. [in lieu of license]

6. This permit shall be RECORDED in the office of the County Clerk (the REGISTRAR OF DEEDS AND MORTGAGES in the applicable counties) in the county wherein the lands included in the permit are located within ten (10) days after receipt of the permit by the applicant and verified notice shall be forwarded to the Land Use Regulation Program immediately thereafter.
7. This permit is NOT VALID until the permit acceptance form has been signed by the applicant, accepting and agreeing to adhere to all permit conditions, and returned to the Land Use Regulation Program at CN 401, Trenton, NJ 08625.

DATE: Jan 24, 1996

SIGNATURE: *R. Broderick*
for Ruth E. Ehinger, Manager
Bureau of Coastal Regulation

CRESSE AND CARR
COUNSELLORS AT LAW
39 COOPER STREET
P.O. BOX 357
WOODBURY, NEW JERSEY 08096
856-845-0037

WARREN H. CARR
JOHN G. CARR

May 6, 2005

WADSWORTH CRESSE, JR. (1910-1976)
AMOS J. PEASE, JR. (1923-1989)
FAX: 856-384-8778

MEMBER NEW JERSEY
AND FLORIDA BARS

FEDEXED 5/6/05

John A. Hughes, Secretary
Depart. of Natural Resources and
Environmental Control
Division of Water Resources
Wetlands & Subaqueous Lands Section (WSLS)
89 Kings Highway
Dover, Delaware 19901

RE: Application of Fenwick Commons, L.L.C.
Subaqueous Lands Lease No. SL-312/04
Water Quality Certification: WQC-313/04

Dear Mr. Hughes:

Enclosed is the Subaqueous Lands Lease/Water Quality Certification for Fenwick Commons, L.L.C., together with a copy of your letter [not dated] for purposes of your identification. The document has been executed before a Notary Public of the State of New Jersey, and is being returned with the Lease fee in the amount of \$1,000.00 pursuant to your instructions.

Financing considerations compel us to execute this document, however, with a notation that the issue as to the ownership of lands is in dispute as to the Riparian Grants from the State of New Jersey. We are however, returning the documents in completed form, together with the appropriate fee, in order that we may proceed with the Riverwalk project at Penns Grove, New Jersey.

Our position is that we will leave the issue of riparian rights and Delaware ownership to be resolved at a different time and in a different form. We do not acknowledge by this document, the issue of ownership.

Very truly yours,

WHC:jec
Encl. [3 original Lease Documents
Check - \$1,000.00]

Warren H. Carr
General Counsel



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER RESOURCES

WETLANDS & SUBAQUEOUS
LANDS SECTION

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

TELEPHONE (302) 739-4691
FACSIMILE (302) 739-6304

MEMORANDUM

To: **John A. Hughes, Secretary**
Department of Natural Resource and Environmental Control

Through: **Kevin C. Donnelly, Director**
Division of Water Resources

From: **Laura M. Herr**
Wetlands and Subaqueous Lands Section

Subject: **Recommendation for Reduction of Subaqueous Lands Lease Fee for the
Riverwalk Project in Penns Grove, NJ**

Date: **March 10, 2005**

In recognition of the public nature and community revitalization aspects of the above-referenced project, as well as its location substantially within the State of New Jersey, the Wetlands and Subaqueous Lands Section recommends that you reduce the subaqueous lands "filled lands" lease fee for this project from \$1,050.00/year to \$50.00/year, for a total of \$1,000 for the 20 year term of Subaqueous Lands Lease No. SL-312/04.

We make this request pursuant to 7 Del.C., Chapter 60, §6003(h), which allows the Secretary to "reduce the amount of any fee charged for any permit or license issued pursuant to the provisions of this title . . ."

Approved Disapproved

John A. Hughes, Secretary
Department of Natural Resources and
Environmental Control

3/10/05
Date



Com
CR
1/10/72

February 17, 1972

Hon. Richard Sullivan
Commissioner
Dept. of Environmental Protection
P. O. Box 1390
Trenton, N. J. 08625

Dear Mr. Sullivan:

RE: El Paso Eastern Company

Please find a letter that we received from the subject firm for a status decision under our Coastal Zone Act. Before I render a decision telling them whether they are prohibited or need a permit or do not fall within the scope of the Act, I would like to have your reaction to their proposal. In general terms, do you control projects of this type under New Jersey law at this time. If so, have you approved the project or will you?

I would like to receive New Jersey's views on the project since a part of the project would be located in New Jersey but the pier which is necessary for the project to be undertaken is located in Delaware. In addition to getting your reaction to the subject project, I think it would be helpful if we could establish a system of communications for other projects of this type that will undoubtedly develop.

If you have any questions or would like to discuss the project, please call me.

Sincerely,

David R. Keffer
Director

DRK:ans

Encl.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
PLANNING OFFICE
DOVER

RUSSELL W. PETERSON
GOVERNOR

DAVID R. KEIFER
DIRECTOR

February 23, 1972

Mr. Barry Huntsinger
El Paso Eastern Company
2727 Allen Parkway
Houston, Texas 77019

Dear Mr. Huntsinger:

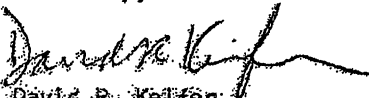
This is to inform you of my status decision regarding the El Paso Eastern Company proposed project for a pier within Delaware's jurisdiction in the Delaware River to serve as a tanker berthing facility in connection with a Liquefied natural gas terminal near Penns Grove, New Jersey.

The status of the pier facility for this El Paso Eastern Company project is that it is an offshore bulk product transfer facility which is prohibited in the Delaware coastal zone by the terms of Section 7003 of the Coastal Zone Act (Chapter 70, Title 7, Delaware Code). No coastal zone permit may be issued for such a use. This opinion is based on the advice of Attorney General Stabler and my examination of the descriptive material provided in your letter of December 21, 1971.

If you wish to file an appeal from this decision it should be filed within fourteen (14) days of your receipt of this notice on the appeal form provided herein. Items A, B, and E on the appeal form should be filled in, as well as the date of the appeal application. At this time there is no appeal fee required. The appeal should be sent to the State Coastal Zone Industrial Control Board at the address shown on the appeal application form.

If you have any questions, please contact me.

Sincerely,


David R. Keifer
Director

DRK/dat

Enclosure

CC: Secretary Austin N. Heiler
Commissioner Richard Sullivan

Date Received (to be filled in by State Planner)

Appeal Application No. (to be filled in by State Planner)

STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD
APPLICATION TO APPEAL FROM A DECISION OF THE
STATE PLANNER

DATE _____ 19__

- A. Name of the Appellant _____
Address and Telephone Number _____

- B. Name of the Project Being Appealed _____
- C. Coastal Zone Permit Application Number of the Project Being Appealed (if known) _____
- D. Date of Public Notice of State Planner's Decision _____
- E. Signature of the Appellant _____
Position or Title (if any) _____

Please include the appeal fee of _____ with this Appeal Application. The check or money order should be made out to the:

State Coastal Zone Industrial Control Board

Submit the completed Appeal Application including the appeal fee, within fourteen (14) days of the State Planner's public notice of his decision on the Coastal Zone permit application to:

State Coastal Zone Industrial Control Board
Thomas Collins Building
530 South DuPont Highway
Dover, Delaware 19901



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
PLANNING OFFICE
DOVER

RUSSELL W. PATRICKSON
GOVERNOR

DAVID R. KUTNER
DIRECTOR

February 23, 1972

Commissioner Richard Sullivan
Department of Environmental Protection
P.O. Box 1390
Trenton, New Jersey 08625

Dear Commissioner Sullivan:

The Director of the State Planning Office has asked me to provide your Department with a copy of his state decision under terms of Delaware's Coastal Zone Act on the proposed plan for a liquefied natural gas terminal of the El Paso Eastern Company planned for a site near Penns Grove, New Jersey.

I believe Mr. Kelfer has spoken to you on the telephone about this project. He mentioned that perhaps you would bring this to the attention of Mr. Richard D. Goodenough of the Division of Marine Services.

If you have any questions or comments, please don't hesitate to call or write at any time.

Yours very truly,

John Sherman
Planner III

JS/dat

Enclosure



March 2, 1972

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

TRENTON 08646

OFFICE OF THE COMMISSIONER

March 2, 1972

Mr. David R. Keifer
Director of State Planning
Thomas Collins Building
Dover, Delaware

Dear Mr. Keifer:

Under the riparian laws of New Jersey, anyone proposing to alter or build upon lands below mean high tide must have the necessary approval from this Department. It is our policy to consider applications with respect to the degree of the public interest to be served and to the degree of environmental damage to be rendered.

On major proposals such as that apparently contemplated by El Paso Eastern Company we would require a complete environmental impact statement including base line studies before any decision is made. This would apply not only to that part of the proposal situated below mean high tide, but to the entire project.

In this case it is difficult to be more specific as to the status of the case and the probability of our decision, since El Paso has not made any application to this Department and we have no specific knowledge of their proposal.

I agree it would be useful to communicate on matters of joint interest. You can expect to hear from Richard D. Goodenough, Director of the Division of Marine Services whenever an application appears to effect the statutes of both of our States.

Very truly yours,

Richard J. Sullivan
Commissioner

MAR 8 1972

El Paso Eastern Company

372 Allen Parkway

Houston, Texas 77002

BARRY HUNAKER
MEMBER

BARRY HUNAKER
MEMBER

March 3, 1972

Mr. David R. Keifer
Director of State Planning
Thomas Collins Building
Dover, Delaware

Dear Mr. Keifer:

Thank you for your letter of February 23, 1972, rendering your status opinion that the pier facility of the LNG plant which El Paso Eastern Company had proposed is prohibited by the Delaware Coastal Zoning Act.

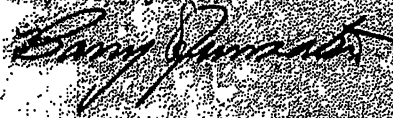
Your letter was presumably written in response to our letter dated December 21, 1971. We did not intend our letter to be a formal application for a permit under the Coastal Zoning Act. Rather, we merely sought your preliminary advice concerning the applicability of the Act to the project in order to assist us in deciding what course of action we should take.

A few days before your letter of February 23, 1972, was received, a decision was made by El Paso to abandon the project. Consequently, we will not be making a formal application under the Coastal Zoning Act and the matter will not be before you for decision.

Under the circumstances, we respectfully request that you withdraw your decision on the project in order to eliminate any contention that we have acquiesced in your decision by our failure to appeal.

We regret the misunderstanding and very much appreciate the assistance you have given us.

Very truly yours,



BH:hg

- cc: Mr. James P. Lister
- Mr. David T. Burleson
- Mr. Kenneth G. Johnson
- Mr. Dickinson R. Debevoise

CERTIFIED MAIL No. 879820

March 17, 1972

Mr. Barry Hunsaker
Vice President
E. I. Paso Eastern Company
2727 Wilton Parkway
Houston, Texas 77019

Dear Mr. Hunsaker:

This is in reply to your letter of March 3, 1972, on the subject of the plan for your proposed liquefied natural gas terminal and your request regarding my letter of February 25, 1972, regarding a decision on that project proposal under the Coastal Zone Act.

Following our meeting where you outlined the project, in your letter of December 21, 1971, you stated, "E. I. Paso Eastern Company will, therefore, seek approval for the installation and operation of the terminal from the states of Delaware and New Jersey." In that letter you also noted that I had suggested that you write to me concerning the project so that I could consider it and comment on it in the context of the Coastal Zone Act. My comment on the project was the status decision in my letter of February 25, 1972.

In your letter of March 3, 1972, you said that it was decided a few days prior to receiving my letter of February 25, 1972, to abandon the project. Certainly you have the right to abandon the project. However, I do not feel that I can withdraw my status decision. Since, as you say, the decision to abandon this project was made prior to your having any knowledge of my status decision the reason for abandoning the project cannot be my decision. It would seem to be illogical to expect an appeal from a decision prohibiting a project which had previously been voluntarily abandoned. Your failure to appeal my status decision is understandable by the logic of the situation, rather than as an acquiescence to the decision.

Mr. Barry Hunsaker

-2-

March 17, 1972

If I should now withdraw my objection and you decided at some time to go ahead with this project, you would already know my status decision and would, therefore, have more than the time specified by the Act and more time than allowed to all other applicants to prepare your appeal.

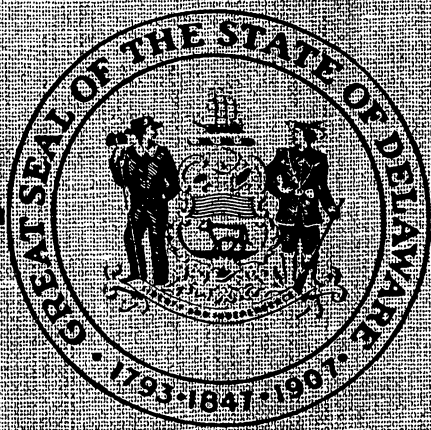
The Coastal Zone Act provides that a final decision of the State Planner can be appealed. A status decision that a project is prohibited in the Coastal zone is a final decision; otherwise it could not be appealed. My decision in this letter denying your request to withdraw the status decision of February 23, 1972, is not covered by appeal provisions of the law. I believe that my decision here is proper under terms of the Coastal Zone Act.

Sincerely,

David R. Kettler
Director

DRK:ms

The Coastal Zone of Delaware



The Governor's Task Force
on Marine and Coastal Affairs

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THE COASTAL ZONE OF DELAWARE

A Plan for Action in Delaware

THE FINAL REPORT OF THE GOVERNOR'S TASK FORCE
ON
MARINE AND COASTAL AFFAIRS

April 1970—October 1971

Presented to
The Honorable Russell W. Peterson
Governor of the State of Delaware
July 1972

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STATE OF DELAWARE
GOVERNOR'S TASK FORCE ON MARINE AND COASTAL AFFAIRS

July 1, 1972

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*Secretary, Department of Natural
Resources and Environmental Control*

Charles H. Mason
*Amor L. Lane
Executive Secretary*

The Honorable Russell W. Peterson
Governor of Delaware
Dover, Delaware 19901

Dear Governor Peterson:

I have the honor to present to you the final report of your Task Force on Marine and Coastal Affairs, dealing with utilization of Delaware's Coastal Zone.

Key recommendations were submitted by former Chairman James H. Wakelin, Jr., in the preliminary report on February 18, 1971. Following that report, the Task Force worked intensively with State Executive Departments, University of Delaware Faculty and its own staff to formulate detailed information on the present status, trends and problems relating to the resources of the Coastal Zone, together with additional recommendations not included in the preliminary report.

Special appreciation is due not only to those who have worked so hard to prepare this report, but also to the many citizens and organizations in Delaware and the surrounding region who have contributed the essential background information on which the Task Force has relied in its work.

Sincerely,

Robert W. Cairns
Robert W. Cairns
Acting Chairman

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Preface

This document, the final report of Governor Russell W. Peterson's Task Force on Marine and Coastal Affairs, provides recommendations concerning the future of Delaware's Coastal Zone. In view of the urgency of certain decisions facing the state concerning the use of its Coastal Zone, the Task Force submitted a preliminary report to the Governor in February 1971.

This final report contains information on the present status, trends, and problem areas of the Delaware Coastal Zone, along with additional recommendations not included in the preliminary report. It addresses the following principal subjects: the major resources of Delaware, including its surface- and ground-water supplies, fisheries, and wildlife; the various aspects of recreation, including parks, resorts, boating, sport fishing, and hunting; environmental quality, encompassing the effects of oil spills, waste disposal, thermal pollution, and pesticides; protection of the beaches and shoreline from the forces of nature and the effects of man's intervention; and the problems created by biting insects, such as tabanid flies and certain types of mosquitoes. This report also addresses various methods available to the state for regulating certain activities and for acquiring critical areas in the Coastal Zone. In essence, this final report is the first compilation of available information and data on Delaware's Coastal Zone.

The recommendations of the Task Force are, by necessity, based on information found in currently available reports and through interviews, hearings, and conferences. However, many factors related to the use and quality of Delaware's land and water resources in the Coastal Zone will not be well understood for 5 years or more. Nevertheless, principal features and trends are quite clear.

While this document responds to the assignments given the Task Force by Governor Peterson, in a larger sense it is a report to the members of the legislature and to the citizens of Delaware. The Task Force is fully aware of the impact that some of its recommendations will have on the state and on the well-being of its citizens. In the conflicts and competition for the use of the Coastal Zone, the issues made plain to the Task Force here in Delaware are essentially the same as those now faced by the 29 other coastal-zone states of our country.

The State of Delaware is an integral part of a highly developed industrial complex. In this context, Delaware has responsibilities as part of the Delaware Valley region. However, Delaware also has responsibilities to its own citizens concerning the quality of life, which includes the quality of the en-

Preface

vironment. Recognizing the pressures for the many diverse and often conflicting uses of Delaware's Coastal Zone, the Task Force has recommended a course of action that will enhance this quality of life and conserve and improve the natural resources of this area. This may well be the last time that such an opportunity is so readily available to the citizens, to the legislature, and to the executive branch of government of Delaware.

We wish to thank all of the contributors to this report, as listed in the acknowledgment section. We give special recognition to the assistance of Norman G. Wilder, Special Assistant to the Secretary of the Department of Natural Resources and Environmental Control, and to Dr. Donald E. Outlaw, the Consultant to the Task Force, who were particularly helpful in the preparation of the report. We also acknowledge the work of Nancy R. Demarest as production editor for this final report.

We especially wish to thank Amor L. Lane, Executive Secretary of the Task Force, whose leadership and dedicated effort helped make this report possible.

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¹ Dr. Wakelin resigned from the Task Force on 1 March 1971 when he was appointed Assistant Secretary of Commerce for Science and Technology.

² Dr. Cairns became Acting Chairman of the Task Force on the resignation of Dr. Wakelin and is now Deputy Assistant Secretary of Commerce for Science and Technology.

³ Mr. Evans resigned from the Task Force 18 January 1971.

⁴ Mr. Higgins was appointed to the Task Force on 9 March 1971.

Acknowledgments

In addition to the Task Force members, members of state agencies and the University of Delaware contributed significantly in the preparation of the final report through attendance at Task Force meetings, writing sections of the report, and evaluating the entire report. They are listed below:

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Summary

Early in 1970, Governor Russell W. Peterson appointed a Task Force on Marine and Coastal Affairs "to develop a master plan for our coastal and bay areas." Since its first meeting on 28 April 1970, the Task Force has been analyzing the diverse facets of Delaware's problems in the Coastal Zone. It was early recognized that many of the factors essential to a sensible master plan were either unavailable or were incompletely understood. Accordingly, the approach the Task Force took was to define as its major objective the preparation of policy guidelines and certain key recommendations for the management and conduct of marine and coastal affairs for the State of Delaware.

Today Delaware is faced with two phenomena existing simultaneously—an accelerating scarcity of desirable coastal lands and a burgeoning market supported by financially strong industry eager to buy the property it needs. In the past, the traditional pressures of the marketplace have prevailed. The destiny of Delaware's Coastal Zone could be wholly determined by the buyers and sellers of the lands within its bounds without regard to public benefit. However, new dimensions of environmental awareness now dictate that broader considerations must be recognized.

Accordingly, the Task Force has introduced additional factors to land-use planning for the Coastal Zone which consider the need to preserve and improve the quality of life. Identification of these factors became the principal goal of the Task Force in its 1½ years of active work. The makeup of the Task Force itself guaranteed that a variety of views and backgrounds would be applied to the problem: local, industrial, educational, conservational, residential, and governmental. Consequently, the planning for multiple use of Delaware's Coastal Zone did include those who could respond to the varied, and often conflicting, pleas of potential industrial developers, conservationists, sportsmen, farmers, marine scientists, engineers, and vacationers.

One of the first responsibilities of the Task Force was defining Delaware's Coastal Zone. The Task Force has recommended that, for government regulatory purposes, the Coastal Zone be defined to include a Primary and a Secondary Coastal Zone. Throughout this report, unless otherwise specified, the term "Coastal Zone" refers to the Primary Coastal Zone.

The Task Force has recommended that the seaward boundary of the Coastal Zone be determined by the jurisdiction of the State of Delaware in the bay and the ocean. The state's jurisdiction in the bay extends to the

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Delaware-New Jersey state line. In the ocean, Delaware's jurisdiction extends 3 miles offshore, although the possible extension of jurisdiction is before the courts. It was recommended that the Primary Coastal Zone be defined on the landward side as that portion which is subject to submersion by salt water, whether caused by tides or storms, at a frequency of at least once in a hundred years. The territory thus defined is approximated by land at or below the 10-foot contour line; for the portion of the zone south of the Chesapeake and Delaware Canal, it may extend to a distance of 1 mile from the mean sea-level-mark of either the Delaware Estuary or the ocean shore, whichever is the greater distance inland. In 1971 Delaware enacted House bill 300 as amended, called the Coastal Zone Act. (Chapter 175, Volume 58, Laws of Delaware, creating a new Chapter 70, Title 7, Delaware Code) This law established that the landward extent of the Coastal Zone be determined by a series of certain state-maintained coastal roads. Obviously the latter system is somewhat artificial, but it possesses the advantage of better definition to the public.

It is widely believed that the existing developments along the shores of the upper Delaware River from the Chesapeake and Delaware Canal to Philadelphia exemplify the ultimate fate of substantial portions of the shoreline from the canal to Cape Henlopen, unless a rational program for land and water use is instituted.

Prior to the onset of municipal and industrial pollution in the Delaware River, resorts and beaches along the river and upper bay were popular. They were served by railroads and river boats from Wilmington and Philadelphia, before automobiles provided more convenient transportation. Since the early 20th century, the extent of this recreation potential has decreased because of deteriorating water quality and readily available high-quality alternative recreation. Therefore, subsequent resort development has been primarily confined to the Atlantic coast and the shores of the Little Bays. However, because of increasing congestion in these areas, attention is now being diverted to desirable locations on the shores of Delaware Bay.

The frontage along the river and bay in Delaware is not much more than 90 miles long. Much of it is taken up by public wildlife-management areas, including the Bombay Hook and Primehook National Wildlife Refuges and the state's Woodland Beach and Little Creek Wildlife Areas, and by the private holdings of Delaware Wild Lands, Inc. Most of the remaining shoreline consists of wetlands, tributaries of the river, and private beaches. The obviously limited extent of this resource requires extreme measures for its preservation and wise use.

Only those people who have directly experienced the wetlands that line the shores of our bay can appreciate their mystic qualities. The beauty of rising mists at dusk, the ebb and flow of the tides, the merging of fresh and salt waters, the turmoil of wind and weather—all unite to create an environment that man has only superficially explored.

The Task Force has unconditionally recommended that the Coastal Zone be dedicated to active and passive recreational use and be compatible with other uses of an agricultural, commercial, industrial, or educational na-

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ture. It is important to note that compatibility does not, in the last analysis, always depend only on pollution standards; in the judgment of the Task Force, compatibility also depends on other factors such as the acreage required, the nature of the occupancy of the land, the ratio of employees to the land area required, and the number and type of public services needed.

The Task Force preliminary report was issued in February of 1971, at the request of the governor, to provide him and the Delaware Legislature with guidance for a Coastal Zone legislative program. Publication of the report soon led to passage of the Coastal Zone Act by the legislature in June of 1971. While this law differs in some respects from certain specific Task Force recommendations, it is an essential first step in implementing important controls over industrial development in the Coastal Zone.

Meanwhile, work continued on the more detailed final report. This report would present the extensive background information which the Task Force had been developing on a much more deliberate time scale. Input from departments of the state and federal governments, the University of Delaware, and the private sector would be utilized. The magnitude of this information was very substantial, and its preparation and organization would, therefore, take a great deal of detailed effort by many people for more than 18 months.

In its basic choice of priorities the Task Force places great emphasis on outdoor recreation as a fundamental activity in Delaware's Coastal Zone. Although it offers a broad series of recommendations concerning recreation, it also has to enunciate clearly the basic criteria regarding new industry and other uses. The Task Force recommends the encouragement of compatible new industry while, at the same time, it seeks to discourage the types of industry that are incompatible with a recreation environment. Accordingly, the Task Force recommends exclusion of new petroleum refineries, steel mills, and paper mills within this narrow peripheral Coastal Zone.

The special case concerning the need for a deepwater terminal and the impact of oil transport by supertanker on the environment and the quality of life is particularly controversial. There is no question that the Delaware Bay has been an essential lifeline for the transport of petroleum and petroleum products to the entire Atlantic coast. For a very special reason, the Delaware Bay may have an even more important role in future decades; there extends into the sheltered waters of the central lower bay a deep channel that can accommodate, with some dredging, vessels having drafts of more than 70 feet.

This deep natural channel is unique along the Atlantic coastline from Maine to Florida in that it is the only place for a naturally sheltered, deep-water port (handling vessels of up to 250,000 deadweight tons) so close to industrial markets. From a regional viewpoint, the potential availability of deepwater-port transfer facilities in the Delaware Bay is of great significance. Unfortunately, from Delaware's viewpoint, such a development could be harmful in its seemingly inevitable encouragement of the onshore development of an incompatible heavy-industry complex and the potential for catastrophic spills. A full range of alternative solutions to this problem has not yet been formulated.

Consequently, the Task Force recommends against approval at the

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present time of any deepwater port facility or offshore island in the lower Delaware Bay. It suggests that the feasibility of an offshore oil facility on the Continental Shelf be explored on a cooperative basis with the federal government. A federal government study is now in progress under the sponsorship of the U.S. Department of Commerce as a further contribution to the resolution of this critical problem.

The Delaware Legislature, in response to the Task Force's concern, passed House Joint Resolution 18 (July 1971) calling for the governor to appoint a Delaware Bay Oil Transport Committee to study the logistics of transport of oil to and from Delaware River and Bay port facilities. In this resolution it was noted that the committee should work as closely as possible with the U.S. Department of Commerce in fulfilling its task, and that it should report its findings within 1 year. Thus the solution to the problem of rapidly growing demands for oil transportation in the Delaware Bay must await a further detailed study of the various options available in the light of their economic and environmental significance. The examination of the problem must involve state, regional, and federal perspectives.

The Task Force recommends that an important responsibility of the State of Delaware should be to assess the total outdoor recreational activities in the Coastal Zone, including swimming, boating, sport fishing, diving, camping, hunting, and sightseeing. Recognizing the need for adequate recreation facilities and attending adequately to such factors as housing, commercial services, transportation, utilities, water management, and insect control are unavoidable in optimizing the recreation potentials of the Coastal Zone. Specifically, the state should help local communities develop additional recreation areas and shoreline access in order to provide adequate public facilities for tourists.

The attitude of the Task Force toward the recreation potentials of Delaware stems from the recognition that Delaware's limited amount of shoreline along the ocean and bay lies in the midst of the most densely populated multi-state region of the nation. Access from this regional population center, whose people have greater proportions of leisure time, has been enhanced by the construction of high-speed highway systems. Thus recreation demands will increase in the future. Certain areas located on the Atlantic coast and the Little Bays are now obviously overpatronized. Hence, the evaluation of the less utilized and more promising portions of the Delaware Bay shores must now be the subject of special planning.

It is now known that about two-thirds of commercial and sport fish spawn and develop in shallow coastal waters. Part of the planning process, therefore, includes provisions for the enhancement of the fisheries resources in Delaware's Coastal Zone. In the future, inshore and marsh areas must be protected from pollution and unwise exploitation. If properly protected, these habitats can provide areas of clean water greater than the critical minimum size needed to support enough finfish and shellfish for both commercial and sport fishing. Thus, in order to rebuild Delaware's fisheries resources, proper provision must be made for habitat restoration and improvement.

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It is apparent, then, that measures must be taken to institute land-use planning of a type that has not been customary in the past. Coastal Zone management must plan land use at a time when the land is still essentially undeveloped. After the first stages of development have taken place, economic commitments are usually irrevocable; for example, those wetlands that have been dredged or filled are not readily subject to restoration. The first step recommended by the Task Force regarding Coastal Zone legislation, therefore, is the postponement of Coastal Zone development until carefully thought-out legislation has been enacted for adequate land- and water-use controls. In the meantime, it is recommended that the governor's moratorium be maintained. The proper management of the Coastal Zone of Delaware presents a statewide problem which is, in many aspects, becoming a regional and national problem. Hence, the political scene must accommodate an overall view; state and national issues must be included in the reviewing processes that will lead to proper allocation of land use.

The Task Force recommends that the state continue its jurisdiction in determining patterns of activity through state zoning for the subaqueous portions of the maritime areas. The state's responsibility must be to set enforceable minimum standards for land-use control in the landward portions of the Coastal Zone. However, such actions should not arbitrarily ignore county and municipal planning and zoning. A maximum opportunity should be offered to local governments to determine future uses for their respective land areas. Nevertheless, the state must have responsibility for an overall plan. This necessitates the power of review and approval of county and municipal actions in the Coastal Zone.

To supplement the zoning or permit regulations, sufficient funds should be made available for the state to acquire certain key areas to prevent environmental damage, to maintain the desired development pattern, and to protect the options on Coastal Zone use by future generations. Accordingly, the Task Force has recommended strong fiscal support for land acquisitions in the Coastal Zone by the state. As an alternative, the Task Force suggests that the state seek and promote private support of such acquisition for public use of strategically located private lands.

To those who have made a study of the Coastal Zone, the lack of knowledge of the technical and socioeconomic aspects of the biota has been tantalizing. For example, in recent years adverse influences such as pollution and biological infections, compounded by poor management, have decimated Delaware Bay's oyster crop. Although restoration of the oyster beds has started, the question remains as to how one can optimize shellfish and finfish cultivation appropriate to the Delaware environment. The University of Delaware has been attracted to this question as one for which research can have profound effects on use of the Coastal Zone.

Accordingly, the Task Force recommends a substantial increase in funding for a Coastal Zone Research Program to furnish the scientific and technical information on which the state will make its Coastal-Zone-management decisions. This research program should include economic, social, and

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legal considerations, in addition to aspects pertinent to the natural and physical sciences and engineering. The state should recognize the recent efforts of the University of Delaware in expanding its capabilities in marine and coastal research. It is further expected that the University's College of Marine Studies will be called upon by the state for special projects, such as the research elements of the proposed Delaware Estuary baseline study. The creation of a Coastal Zone Technical Services Division by the College of Marine Studies will facilitate services to the state over and above those already provided by the University in its Coastal Zone student-training program.

The Delaware Bay represents a wide variety of coastal conditions typical of a much larger area. Estuarine-environment studies are worthy of much stronger support than the State of Delaware can provide. The Task Force has, therefore, been mindful of the opportunities for the College of Marine Studies to seek substantial support from both federal and regional sources. The attention of the federal government has been directed by the President's Commission on Marine Science, Engineering and Resources (the Stratton Commission) toward coastal-zone management and the underlying data base needed for enlightened decisionmaking. The federal government has implemented its interest through an increasingly well defined program—the Sea Grant Program of the National Oceanic and Atmospheric Administration (NOAA). The Task Force strongly supports the present effort of the College of Marine Studies which has already qualified it as a Sea Grant institution. The Task Force also recommends establishing a Marine Science Center—managed by the College of Marine Studies—which would include a Coastal Zone research laboratory.

As a further step in the development of such a center, it has been suggested that the University of Delaware initiate cooperation with research centers of other states presently concerned with the Delaware Estuary. The Task Force urges that ties with the Delaware River Basin Commission be strengthened because of its key role in coordinating interstate interests.

In order to bring together the considerations of recreation, compatible industrial and commercial development, and conservation into one planned structure, the Task Force recognizes that the state must formulate a strong Coastal-Zone-management structure. The peculiarly tenuous character of the Coastal Zone, the competitive forces at work to modify its nature and its strong influence on the quality of life in Delaware create special responsibilities for the state government. Legislation, regulations, controls, and guidelines must be rigorously applied in order to optimize the use of the Coastal Zone in the interests of Delaware's citizens and, also, her visitors.

At the time the preliminary report was issued, the Department of Natural Resources and Environmental Control (DNREC) was suggested as the state agency having predominant interest in Coastal Zone affairs. Despite the fact that the Coastal Zone Act of 1971 focuses on the State Planning Office as the agency to control industrial development in the Coastal Zone, the Task Force maintains that the DNREC should be the nucleus of Coastal Zone management in Delaware.

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Although some of the regulatory aspects of industrial development of the Coastal Zone have now been established through legislation, there are many other Coastal-Zone-management responsibilities that need continuing implementation. These include the formulation and updating of a plan for other users of coastal and estuarine waters and lands; they also include the continuing development or nondevelopment of these areas in the public interest, according to plan. The provision of such public services as a State of Delaware Port Authority, beaches, marinas, or other waterfront improvements and the leasing of offshore areas are examples. Obviously, delegating these responsibilities to a single department of the state does not eliminate the need for interdepartment coordination. Because many state departments will be involved, the Task Force recommends that the governor establish an interdepartmental group for coordinating state Coastal Zone activities and that he also appoint the group's chairman.

Coastal Zone management is quite complex; it requires the merging of statewide, regional, and federal interests with the interests of citizens' groups, municipalities, and counties. Because of this, a nongovernment mechanism is also vitally needed. Recently the governor established an Advisory Council on Science and Technology which, in effect, was the point of origin of the Task Force. To avoid unnecessary duplication, the Task Force recommends that the governor extend the responsibility of his present Council on Science and Technology so that it can provide guidelines for the management of the Coastal Zone. The scope of this advisory service should include science, technology, law, economics, environmental quality, recreation, conservation, commercial fisheries, water supply and quality, and marine transportation. The Task Force further recommends that the membership of the present council be broadened in order to meet these new responsibilities, and that its name and representation be changed to reflect this expanded scope. In addition, the scope of the membership should represent the interests of county and municipal governments, appropriate private organizations, and the public.

Recognizing the pressures for the many diverse and often conflicting uses of Delaware's Coastal Zone, the Task Force has recommended a course of action that will enhance the quality of life and conserve and improve the natural resources of this area. The nature of many of the recommendations contained in this report is such that their consideration should not be delayed. Moreover, implementation of the recommendations in this report should be regarded only as a first step toward the development of a long-range master plan for the Coastal Zone, a plan which the Task Force considers mandatory. This may well be the last time that such an opportunity is so readily available to the citizens, to the legislature, and to the executive branch of government of Delaware.

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On 26 January 1970 Governor Russell W. Peterson appointed Dr. James H. Wakelin, Jr., his Special Assistant for Marine and Coastal Affairs as a first step toward adoption of future management policies for Delaware's coastal and bay areas. Shortly thereafter, Governor Peterson established a Task Force on Marine and Coastal Affairs to work with Dr. Wakelin "to develop a master plan for our coastal and bay areas."

Since its first meeting on 28 April 1970, the Task Force has been analyzing the diverse facets of Delaware's problems in the Coastal Zone. Many of the factors essential to a sensible master plan were either unavailable or were incompletely understood. Accordingly, the approach the Task Force took was to define as its major objective the preparation of policy guidelines and certain key recommendations for the management and conduct of marine and coastal affairs for the State of Delaware. Such guidelines must include the wise use of the water and land resources of the state's Coastal Zone for the economic and social benefit of its citizens. This plan should guide the future actions by the state required to achieve a balance among the following desirable goals:

- Preserve and improve the quality of life and the quality of the marine and coastal environment for recreation, the conservation of natural resources, wildlife areas, aesthetics, and the health and social well-being of the people.
- Promote the orderly growth of commerce, industry, and employment in the Coastal Zone as it proves to be compatible with the first goal.
- Increase the opportunities and facilities in Delaware for education, training, science, and research in marine and coastal affairs.

The Task Force agreed at the outset that the study should embrace the following areas to the limits of the state's jurisdiction:

- 1—The Delaware River and Bay
- 2—The Atlantic Ocean
- 3—The Little Bays
- 4—The Chesapeake and Delaware Canal
- 5—Those lands and wetlands which are affected by their proximity to these waters.

In this document the term "Coastal Zone" will be considered to include all of the five regions. The first chapter recommends a more specific definition of Delaware's Coastal Zone.

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In addition, the Task Force found it necessary to evaluate certain land and water uses occurring outside Delaware which have strong impact on Delaware's Coastal Zone.

The work of the Task Force was sponsored jointly by the State of Delaware, private individuals and foundations, and the University of Delaware. The state paid a nominal dollar for the services of the Task Force Chairman, Dr. James H. Wakelin, Jr., and contributed the time of many of its regular employees. Direct costs and expenses were provided as grants from the Oceanic Foundation of Hawaii, the Brittingham Foundation, the Longwood Foundation, the University of Delaware Research Foundation, and Mrs. George Callory of Delaware. Additional support was provided by the National Science Foundation and the Office of Sea Grant Programs of the National Oceanic and Atmospheric Administration. Secretarial services and office space were made available to Dr. Wakelin by Teledyne-Ryan Aeronautical in Washington, D.C., and to the Task Force Executive Secretary, Mr. Amor L. Lane, by AMF, Incorporated, also in Washington, D.C. Production and final editing of this report were provided by the University of Delaware. This assistance is gratefully acknowledged by the Task Force.

The Task Force held 15 formal meetings during its existence. Numerous additional meetings have been held between the chairman and one or more individual members of the Task Force. Mr. Lane, the executive secretary, has had lengthy discussions with many of those who have contributed written drafts for the various sections of the report.

In order to accumulate the information necessary to develop recommendations, the Task Force as a whole, or as individual members, met with many groups and officials. These included representatives of local communities, counties, and companies now doing business in Delaware or planning to do so. For example, the Task Force met with Mayor Harry G. Haskell, Jr., of Wilmington, David C. Neville, Director of Wilmington's Department of Planning and Development, Richard M. Bauer, Director of the New Castle County Department of Planning, and Robert W. O'Brien, Director of the Kent County Planning and Zoning Office. Meetings were also held with civic leaders and members of the Levy Courts of Sussex and Kent Counties. Mr. Clarence Lantis, Director of the Planning and Zoning Commission for Sussex County, was also consulted and kept informed of our progress in acquiring information for the report.

Through the courtesy of Mr. Gerald Wright of the Delmarva Power and Light Company, the chairman addressed a meeting of civic and business leaders in Wilmington in May 1970 to describe the approach adopted by the Task Force to prepare recommendations for a plan for the Coastal Zone of Delaware. At the invitation of Mr. Baird Brittingham, Chairman Wakelin and Drs. Cairns and Gaither met with business and professional leaders in Wilmington in October 1970 to describe the status of the work of the Task Force.

During November 1970 the Task Force held meetings in Dover with representatives of civic organizations concerned primarily with conservation and education. The following are the organizations and their representatives: Save Our Shores (Mr. Houston Wilson and Dr. Donald Maurer); Delaware Wild

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Lands, Inc., and Delaware Wildlife Federation (Mr. Houston Wilson); Delaware Nature Education Center (Mrs. R. D. Williams and Mr. Charles E. Mohr); Delmarva Ornithological Society (Mr. Jack Lanahan); Sierra Club (Mr. Alan L. Goodman); League of Women Voters (Mrs. William T. Laffey); American Association of University Women (Mrs. Charles D. Adams); Delaware Federation of Business and Professional Women's Clubs (Mrs. Mary E. Durrill); the Governor's Youth Council (Miss Cathy Marshall); Delaware Conservation Association Center (Dr. Norman Dill); Ducks Unlimited (Mr. William K. du Pont); and Milford School District Marine Laboratory (Dr. Maura Geens).

These meetings were exceedingly valuable to the Task Force, and the written statements from these organizations formed part of the background information necessary to prepare recommendations for the Coastal Zone.

In the spring of 1970, members of the Task Force met with representatives of Ogden Transportation System on the matter of their earlier proposal to construct an island in the lower Delaware Bay, initially for the transshipment of coal and perhaps, later, for iron ore. The proposed island would be built 3 to 4 miles off the mouth of the Mispillion River using spoils dredged from the surrounding area. Ogden Transportation Systems then joined with Zapata Norness, Inc., resulting in the decision to form a Delaware company, Zapata Bulk Systems, Inc. In February 1971 Zapata Bulk Systems, Inc., and its parent company Zapata Norness, Inc., met with the Task Force and presented a more detailed proposal on the same subject.

Discussions were also held with Mr. Ralph Hooper of the Interstate Oil Transport Company about lightering operations in the lower bay and the facilities required to handle the transfer of oil from supertankers of increased tonnage and draft.

Members of the Task Force attended and participated in those meetings to discuss a deepwater terminal convened by the Commanding Officer of the Philadelphia District, U.S. Army Corps of Engineers, on 31 March 1970 in Dover and on 1 April 1970 in Philadelphia. At the Dover meeting, Secretary Heller read a statement reflecting the intent of the State of Delaware with regard to the proposed terminal. The proceedings of these public meetings form valuable records of the proposals to dredge channels of various depths in the Delaware Estuary leading to the Philadelphia industrial complex and to construct a deepwater terminal in the lower Delaware Bay; they also record the opposition from individual citizens and organizations.

In December 1970 the Task Force met with representatives of the Delaware Bay Transportation Company, a consortium of 13 oil companies, on their proposal to construct an island in the lower Delaware Bay 4 miles east of Big Stone Beach. Mr. R. E. Howe of the Atlantic Richfield Company made the principal presentation for the consortium. The proposal also included the construction of a pipeline from the island to a tank farm to be constructed west of Big Stone Beach. The crude oil would then be transported by pipeline to refineries up the bay and river.

Meetings were held with representatives of First State Pipeline Company (E. T. Callis) and IMODCO, Inc., (W. D. Leggett) who proposed an offshore monobuoy system from which oil would be pumped through a pipe-

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line laid on the sea floor to a tank farm located in the Lewes area. The large moored buoy would be anchored 24 miles from Cape Henlopen.

The Task Force also met in December 1970 with representatives of the Shell Oil Company (J. H. Sheehan and S. C. Stiles) to hear their proposal to construct an oil refinery on land owned by the company in the Coastal Zone in southern New Castle County. Shell is also a member of the consortium associated with the Delaware Bay Transportation Company. Several members of the Task Force subsequently visited two Shell Oil Company refineries, one near New Orleans, Louisiana, and one in Anacortes, Washington, near Puget Sound. This tour took place early in March 1971.

The Task Force met with Mr. Christopher Weeks of Gladstone Associates, Washington, D.C., to discuss their report entitled "Potentials for a Delaware Deepwater Port" prepared under contract to the State Planning Office in conjunction with the work of the Task Force.

In order to keep abreast of progress in neighboring states, members of the Task Force have held discussions with representatives of the Delaware River Basin Commission, in particular with Commissioner Paul van Wegen and Executive Director James Wright; with Commissioner Richard Sullivan of the New Jersey Department of Environmental Protection; and with Mr. L. A. Duscha and his technical and engineering associates of the Philadelphia District, U.S. Army Corps of Engineers. These discussions also included plans for a cooperative baseline study of the Delaware Estuary.

With regard to future planning for the Wilmington Port Authority, Dr. Robert W. Cairns of the Task Force and Mayor Harry G. Haskell, Jr., of Wilmington visited the Port of Baltimore Authority to discuss its management, organization, and sources of financial support.

Through Delaware's membership in the Coastal States Organization, recently formed to provide liaison among the coastal states and between these states and the federal government in coastal-zone affairs, Secretary Heller has had the opportunity to meet and discuss coastal-zone problems with representatives of states other than those bordering on the Delaware Estuary. The Task Force has formed valuable guidelines on coastal-zone affairs using the report of the Commission on Marine Science, Engineering and Resources (*Our Nation and the Sea*, 1969), as well as reports on specific studies conducted by Rhode Island, New York, Florida, the Virgin Islands, California, Washington, and Hawaii.

Mr. Edmund Harvey and Dr. Norman Wilder visited the state planner for Rhode Island and members of the faculty of the University of Rhode Island in January 1971.

The Task Force received invaluable assistance from the University of Pennsylvania's Institute of Environmental Studies through Mrs. Ann L. Strong, the Institute's Director, and Mrs. Sondra K. Slade. (Mr. Amor Lane and Dr. Norman Wilder met with Mrs. Strong and Mrs. Slade concerning their written contributions.) Portions of their report to the Task Force which deal with legal/regulatory considerations are reproduced in chapter 5.

Professor Garrett Power, of the University of Maryland School of Law, also submitted written material for use by the Task Force.

8 Delaware and the Middle Atlantic Region

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8.1 IMPORTANCE OF THE DELAWARE COASTAL ZONE TO THE MIDDLE ATLANTIC REGION

8.11 Industrial and Commercial Activities

Delaware Bay is the water gateway for commercial shipping to and from the port of Philadelphia (including Wilmington, Chester, Paulsboro, Camden, Bristol, and Trenton) and for most freighter traffic serving Baltimore by way of the Chesapeake and Delaware Canal. In combination, the ports served by the Delaware Bay rank second in the United States in tons of cargo handled. Delaware Bay is one of the very few east coast bodies of protected water with access deep enough to accommodate the new supervessels. In this case a natural trough in the bottom of the estuary extends several miles inside the capes.

Accompanying the water-transportation system is a major network of railroads operated principally by the Penn Central and Baltimore and Ohio lines. It provides trunk connections to New York, Pittsburgh, Philadelphia, Baltimore, and Washington, D.C.

Pipelines for petroleum products, including natural gas, tie the Delaware Coastal Zone to all of the Eastern Megalopolis between New York and Washington. An electric power grid maintained by the Delmarva Power and Light Company connects four generating stations in Delaware and Maryland to other power systems throughout the Northeast.

The Delaware Coastal Zone is accessible from U.S. Interstate 95, which is supported by a secondary highway network of U.S. Routes 13, 40, 301, and 113. Dover Air Force Base is a major airfreight terminal for military shipments serving the Armed Forces throughout the world. Most of Delaware's domestic air traffic is served by the Philadelphia International Airport; secondary traffic moves through the Greater Wilmington Airport, which has flights to Washington, D.C., Richmond, Atlanta, and Philadelphia.

One of the world's largest refineries, with its adjacent petrochemical-industry complex, is located in the northern part of the Coastal Zone. In addition, there are three power-generating stations which use fossil fuels and an assortment of manufacturing establishments whose products are sold throughout the world.

8.12 Environmental Assets

The shores of the Atlantic Ocean and Rehoboth and Indian River Bays are summer recreational areas of prime regional importance. Also important, locally and regionally, are the tidelands of lower Delaware Bay. Most summer residents and visitors to the Delaware Coastal Zone are from out of state, principally from metropolitan Washington, D.C., and Baltimore and from eastern Pennsylvania.

The Delaware Coastal Zone is part of a coastal complex of relatively shallow waters which are the spawning and nursery grounds for most of the species of fish of economic importance to the Eastern United States. Oysters, clams, crabs, menhaden, shad, weakfish, rockfish, flounder, and bluefish are found in these waters. These fish support commercial and sport fishing of both regional and national importance. The state's Coastal Zone is important as breeding and rearing grounds for many species of birds and mammals, some of which are classified as rare and endangered. It is also a principal wintering area for migratory birds of the Atlantic flyway. These birds attract hunters and naturalists from all the Middle Atlantic States.

8.2 MAJOR INTERSTATE COMPACTS AND REGIONAL ORGANIZATIONS CONCERNED WITH THE DELAWARE COASTAL ZONE

Delawareans have recognized that the present and future uses of their Coastal Zone may rest not only upon Delaware alone but also upon the political decisions of the several government jurisdictions which occur throughout the entire drainage basin and by expression of the national interest of the U.S. Government. As a consequence, various compacts, agreements, and organizations have been created.

8.21 Interstate-Federal Compacts

The Delaware River Basin Commission (DRBC) was created in 1961 by a compact ratified and signed by the States of

Delaware, New Jersey, Pennsylvania, and New York and by the federal government. The commission has broad powers on matters of water conservation, control, use, and management throughout the entire Delaware River watershed to carry out its authority to plan, allocate, set standards, and approve all projects which affect water resources. No project of any kind which has a substantial effect on the water resources of the basin may be undertaken without the approval of the commission. Commissioners are the governors of each member state and the U.S. Secretary of the Interior or their designated alternates.

8.22 Interstate Compacts Authorized by the Federal Government

8.221 The Atlantic States Marine Fisheries Commission

The Atlantic States Marine Fisheries Commission was created in 1941 by a compact signed by all of the Atlantic coastal states from Maine to Florida and ratified and approved by the U.S. Congress.

Through its executive secretary, the commission provides liaison among the state and federal natural resources agencies and lobbies for coastal fisheries' interests before the U.S. Congress. Each state appoints three members representing the legislative and executive branches of state government and private fishing interests. At annual meetings and special committee meetings, policies are recommended and cooperative research and management programs are submitted. Its actions are advisory and are not binding upon member states.

8.222 The Delaware-New Jersey Fisheries Compact

The Delaware-New Jersey Fisheries Compact was approved by both states in 1907 and thereafter was ratified and approved by the U.S. Congress. The commissioners appointed by the two states to draw up the compact established the dividing line between the Delaware River and the Delaware Bay for the purpose of fisheries regulation. They drafted a uniform law for the taking of finfish in these waters. The compact specified that changes in the uniform law could not take place unless both states passed similar legislation. It is highly significant that, since its enactment in 1907, no changes have occurred. Although several attempts were made to modify the law, they met with failure because it was not possible to get both states to pass the necessary legislation simultaneously.

8.23 Interstate Agreements Required by the Federal Government

8.231 The Metropolitan Philadelphia Air Quality Control Region

The Metropolitan Philadelphia Air Quality Control Region was established 17 December 1968 by the U.S. Secretary of Health, Education, and Welfare for the evaluation, planning, and coordination of air-pollution control. It includes the counties of Bucks, Chester, Delaware, and Montgomery and the city of Philadelphia in Pennsylvania; the counties of Burlington, Camden, Gloucester, Mercer, and Salem in New Jersey; and New Castle County in Delaware. The region contains 4,580 square miles with more than 5 million residents.

The federal government through the U.S. Environmental Protection Agency sets minimum air-quality standards and approves the plans and programs of each political unit responsible for air-pollution control before federal grants-in-aid are approved. In Delaware the political unit is the Department of Natural Resources and Environmental Control.

8.232 *The Wilmington Metropolitan Area Planning Coordinating Council*

The Wilmington Metropolitan Area Planning Coordinating Council (WILMAPCO) was founded in 1968 as a requirement for future federal grants-in-aid which come under the provisions of the Bureau of the Budget Circular A-95. Included are funds of the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of the Interior. It is a compact consisting of voting members representing New Castle County, Delaware; Salem County, New Jersey; and Cecil County, Maryland; and the cities of Wilmington and Newark in Delaware. The governors of Delaware, Maryland, and New Jersey are represented through nonvoting appointees. The council has a staff financed by the local and county governments.

The objective of WILMAPCO is to prepare and update a comprehensive land-use plan for the metropolitan area. A planning program is required before local governments and counties are eligible to receive federal assistance for planning, water and sewer systems, open-space programs, etc.

A counterpart to WILMAPCO is the Delaware Valley Regional Planning Commission serving the greater Philadelphia

area. Although Delaware governments are not a part of this commission, representatives from this state may sit in on the meetings and are kept fully advised of its actions.

8.24 *Interstate Organizations Authorized by the Member States*

8.241 *The Coastal States Organization*

The Coastal States Organization (CSO) was created in 1970 by an agreement among delegates appointed by the governors of the 35 coastal states and territories of the United States. This organization was established in recognition of the need for planned development and preservation of the invaluable and irreplaceable marine resources of the coastal area. It expects to accomplish this in the following ways:

- By assuring adequate state representation and participation in the development of national oceanographic and national coastal-zone-management programs.
- By facilitating communication, coordination, cooperation, and mutual assistance among the coastal states on marine and coastal resources and environmental matters.
- By defining roles of local and federal governments in state marine affairs.

Delaware's delegate to the organization has been the Secretary of the Department of Natural Resources and Environmental Control. The Coastal States Organization is now serving as a clearing-house for federal and state legislation pertaining to coastal areas. The decisions of the Coastal State Organization are advisory in nature and are not binding on its members.

8.242 The Delmarva Advisory Council

The Delmarva Advisory Council (DAC) was established in 1965 pursuant to an accord of the governors of Delaware, Maryland, and Virginia. The founding governors, recognizing the mutuality of problems and goals in the tristate area of the Delmarva Peninsula, thus created an entity to advocate programs responsive to the economic development needs and aspirations of the area. Under the organization plan, the council was composed of 15 members, five appointed by the governor of each participating state. An administrative and program staff under an executive director was authorized. Funds for council functions were provided by the participating states according to a financing formula.

In 1967 the council was designated as the Economic Development District (EDD) Agency for the Delmarva Peninsula by the U.S. Economic Development Administration (EDA). The state contributions continue, but the dominant source of funds is now EDA. As an EDD agency, the Delmarva Advisory Council is expected to identify local and regional needs for economic development and to match such needs with grant and loan assistance available through EDA.

It is basic in the council mission to emphasize those goals and activities representing problems and benefits to the Delmarva Peninsula as a whole. It is DAC's philosophy that what is most worthwhile in this context broadly represents the sum total of plans and aspirations of local governments under state guidance, and the thoughtful recommendations of informed citizens. The council stimulates effective relationships between elected local officials of counties and towns. Furthermore, DAC organizes and cooperates with citizen

committees concerned with special endeavors such as fishing, agriculture, conservation, education, and transportation and with migrant labor.

8.243 The Delaware River and Bay Authority

The Delaware River and Bay Authority was organized in 1962 with the approval of the governors and legislatures of Delaware and New Jersey. This organization operates the Delaware Memorial Bridge and the Cape May-Lewes Ferry on an interstate basis. Ten commissioners are appointed, five by each state; they select a director to supervise operations.

8.244 The Commission for Regional Development

The Commission for Regional Development (CORD) was created in 1968 by an agreement of the governors of Delaware, Pennsylvania, and New Jersey; it was originally commissioned to make recommendations to the governors for future regional air transportation facilities. Later, its function was broadened to advise the governors on all future regional transportation matters.

The commission maintained a staff until 1971, when it issued a final report recommending that an interstate compact be drafted creating a regional transportation authority to develop and manage commercial air and water traffic as well as certain interstate motor vehicle and rail traffic.

8.25 Private Interstate Organizations

Several privately sponsored, non-profit, conservation agencies, including the

Brandywine Valley Association, the Red Clay Valley Association, the Tri-County Conservancy, and the Water Resources Association of the Delaware River Basin, operate to enhance and support the wise use of natural resources in specific regions which extend beyond the boundaries of Delaware. Such organizations play an important role focusing public attention and support on conservation matters. They have been particularly helpful in pressing for legislation necessary for the proper management of natural resources.

8.3 MAJOR UNRESOLVED INTER-STATE ISSUES AFFECTING THE DELAWARE COASTAL ZONE

8.31 Fisheries Management and Regulation

Although most marine and all anadromous fish inhabiting Delaware waters are migratory and may spend a part of their life cycle in several state, national, and international jurisdictions, the principal responsibility for regulating fisheries in this country is vested in the individual states. As a result, even rudimentary progress toward regional management of fisheries has been very difficult to achieve. Existing interstate and interstate-federal agencies have been helpful in coordinating research, but they have not been successful in instituting the regional harvest quotas which are essential for sustained yield management. The existence of the Delaware-New Jersey Fisheries Compact has actually been a disadvantage because the provisions for changes in fisheries regulations have been so cumbersome that, despite many efforts, no changes have taken place; moreover, this has occurred even though there have been obvious

changes in the prevalent fish species, technology, and market conditions. For example, although their harvest in Delaware Bay would be a compatible use of the fisheries resource, menhaden, whose flesh is unpalatable to humans but contains an abundance of oil for industrial and animal-feed uses, cannot legally be taken under the compact.

In a scientific field such as fisheries management, where the wise use of the resource is closely tied to a great number of everchanging environmental factors, the requirement of approval by one state legislature of each harvest limitation is unrealistic and the requirement of approval by two legislatures is unworkable.

Although a regional approach to upgrading and sustaining water quality amenable to healthy fish life has been undertaken by the Delaware River Basin Commission, four major problems remain unsolved. They are the extreme water pollution in the area between Philadelphia and Wilmington which greatly restricts fish migration; minimizing the adverse effects of alterations to the Chesapeake and Delaware Canal; the mechanics of building and operating the Tocks Island Reservoir which, if not done properly, could seriously alter water regimes essential to shellfish and finfish production and could effectively block fish migration; and meeting the requests from New York City and northern New Jersey for additional fresh-water diversions out of the watershed. In the past, such diversions have adversely affected water regimes in the estuarine portion of the Delaware River system, as sections 2.2 and 3.4 have illustrated.

8.32 Water Supply

Growing needs for fresh water in the Coastal Zone, particularly in northern

Delaware, will probably require the development of additional surface-water supplies, much of which will originate in Pennsylvania and possibly in Maryland. The Delaware River Basin Commission has the authority to help solve water-distribution problems that might arise between Delaware and Pennsylvania; however, water development involving Delaware and Maryland would require some additional interstate cooperation.

8.33 Future Location of Industrial and Electric-Power Plants

Because of the present and future regional, national, and international impacts of the industrial and electric-power complexes located in or adjacent to the Coastal Zone of Delaware, and because of the important ecological considerations arising from such complexes, many concerned people have suggested a regional approach to the siting of these installations. The enactment of legislation in Delaware in 1971 to prohibit heavy industry in the Coastal Zone and to regulate strictly the introduction and operation of other industry further emphasizes the need for a regional or national approach to industrial sitings.

8.34 Transportation

The exploratory work of the Commission for Regional Development in the field of a regional approach to air, land, and water transportation needs in the Delaware Valley illustrates the growing concern about such things as a deepwater port for bulk cargoes, facilities to replace or supplement the Philadelphia International Airport, an effective system of passenger transporta-

tion by rail, and a more fully integrated system of roads and water crossings for motor vehicles.

8.35 Offshore Mineral Exploitation and Dumping

Predictions of the increased exploitation of the Coastal Zone for refuse dumping and for the possible extraction of oil, sand, gravel, shells, and other products raise serious questions about the effects of such activities. Both the local and regional environments may be altered. There is a need for interstate and national policies and management arrangements for such activities. The Coastal States Organization can provide guidance to its member states in proposing workable management systems.

8.36 Research and Education

The rapidly expanding scientific studies of estuaries and oceans by both public and private institutes and businesses are not confined to organizations located in the coastal states. Because of its strategic importance for both industry and recreation, Delaware has an excellent opportunity to serve as a regional and national center for marine research and education. Joint research programs between Delaware and its neighbors in the Delaware Estuary, Chesapeake and Delaware Canal, and Atlantic Ocean typify the cooperation required in scientific regional programs.

8.4 RECOMMENDATIONS

- ◆ THE TASK FORCE RECOMMENDS THAT THE DELAWARE-NEW JERSEY FISHERIES

COMPACT BE NULLIFIED; DELAWARE SHOULD TAKE THE INITIATIVE IN DEVELOPING A COASTAL FISHERIES ORGANIZATION WITH FEDERAL-INTERSTATE REGULATORY AUTHORITY FOR FISHERIES MANAGEMENT THAT IS BINDING ON ALL MEMBERS.

The organization should include the Atlantic coast states from Maine to Florida and the federal government through the U.S. Department of Commerce. Also, provisions should be made for coordinating their actions with international fisheries agreements.

- ◆ THE TASK FORCE RECOMMENDS THAT THE STATE PLANNERS CONSIDER SURFACE-WATER SOURCES AVAILABLE TO DELAWARE BEYOND ITS BOUNDARIES AND THAT, IF THESE SOURCES WILL BE NEEDED IN THE FORESEEABLE FUTURE, ACTION BE INAUGURATED IN TIME TO ENSURE AMPLE WATER FOR THE NEEDS OF THE STATE.

Planning and preliminary action to assure future water supplies should be made as much as 30 or more years in advance of needs. If Delaware needs to develop water supplies from beyond its borders to meet the needs of the year 2000, decisive steps based on the best information available should be taken now.


- ◆ THE TASK FORCE RECOMMENDS THAT, FOR THE PURPOSES OF COORDINATED RESEARCH, THE UNIVERSITY OF DELAWARE EXPLORE WITH OTHER INSTITUTIONS AND THE DELAWARE RIVER BASIN COMMISSION THE POSSIBLE ADVANTAGES OF BECOMING PART OF AN ACADEMIC CONSORTIUM WHOSE MEMBERS WOULD STUDY MATTERS PERTAINING TO THE NATURAL RESOURCES OF THE DELAWARE RIVER BASIN.

Because natural forces interact throughout the entire Delaware River drainage basin, there are many possible advantages of a planned approach to their study on a multi-institutional level. At least two public and three private academic institutions are conducting important water-related research within the basin. Full endorsement by the Delaware River Basin Commission, in its role as an interstate-federal coordinating and regulating agency for water resources within the Delaware River Basin, is important in institutional planning for water-based research supported by federal, interstate, or private funding.

- ◆ THE TASK FORCE RECOMMENDS THAT THE STATE EXERCISE ITS FULL PREROGATIVE AS AN EQUAL AND INDEPENDENT MEMBER OF ANY STUDY OR ADVISORY GROUP APPOINTED BY FEDERAL OR STATE GOVERNMENTS THAT MAY AFFECT THE CHOICE OF LOCATIONS FOR INDUSTRY, ELECTRIC-POWER PLANTS, DEEPWATER PORTS, OR COMMERCIAL FACILITIES IN THE COASTAL ZONE OF DELAWARE.

Because of the actual or potential environmental incompatibility of some industrial and commercial enterprises with the recreational uses of the Coastal Zone and the life pattern of many Delawareans, Delaware should use the legal means at its disposal to forestall binding decisions regarding the location of such enterprises in the Coastal Zone of Delaware by authorities outside the state government, such as federal or interstate agencies. When it is legally feasible, such decisions should only be made by the state after consulting with regional and national bodies.



A Division of Sun Oil Company of Pennsylvania 

ROBERT O. LEWERS
General Attorney
Tax Department

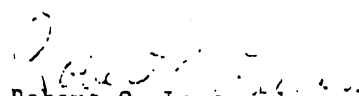
August 9, 1979

Mr. John Phillips
South Atlantic Regional Manager
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Phillips:

Please find enclosed the comments of Sun Oil Company of Pennsylvania on the proposed Delaware Coastal Management Plan and Final Environmental Impact Statement.

Very truly yours,


Robert O. Lewers
General Attorney

jm
Enclosure

Enclosed is a copy of the comments on the Delaware Coastal Management Plan and Final Environmental Impact Statement.

COMMENTS OF SUN OIL COMPANY OF PENNSYLVANIA
ON THE PROPOSED DELAWARE COASTAL
MANAGEMENT PROGRAM AND FINAL
ENVIRONMENTAL IMPACT STATEMENT

Sun Oil Company of Pennsylvania ("Sun") is concerned by the proposed approval under the Coastal Zone Management Act (the "Act") of the State of Delaware's proposed Coastal Management Plan (the "Plan"). This concern arises in particular because Sun is the owner of an undeveloped tract of land located in the State of New Jersey, across the Delaware River from the State of Delaware, and because certain statements in the Draft and Final Environmental Impact Statements on the proposed federal approval of the Plan indicate that the proposed Plan, as presently constituted, and as interpreted by Delaware officials and Department of Commerce staff, (i) violates the Act, (ii) is an unconstitutional violation of an inter-state compact, and (iii) substantially and adversely affects Sun's rights to use its New Jersey property. Consequently, we urge the Secretary of Commerce to withhold approval of that proposed Plan.

An issue not raised by other commenters thus far, which directly affects Sun's property in New Jersey, is the failure to recognize, or include any reference to, the Compact of 1905. This is a major defect in the proposed Plan since the Compact is an express limitation on Delaware's ownership of the land under the Delaware River and on Delaware's authority to control the use of that land. The Supreme Court decision in the case of New Jersey v. Delaware is explicit on this point.

The Compact of 1905 was entered into between New Jersey and Delaware in that year, see 23 Dela. Laws 1905, Ch. 5, P. 12, March 20, 1905); N.J. Laws, 1905, Ch. 42. P. 67 (March 21, 1905); and was adopted by Congress in 1907, see Act of January 24, 1907, 34 Stat. pt. 1, Ch. 394, P. 858. The text of the Compact is set forth at N.J.S.A. 52:28-34, et. seq.

The Compact of 1905 expressly authorizes New Jersey to exercise riparian jurisdiction of every kind, and therefore New Jersey, not Delaware, has the exclusive right to regulate construction of docks, dredging and other activities necessary to obtain access to the navigable portion of the Delaware River from the New Jersey side.

The failure of the proposed Delaware Plan to incorporate, mention, or refer to the Compact of 1905 is coupled with statements of opinion by Delaware officials contained in an Appendix to the Draft Environmental Impact Statement which indicate that they apparently believe that Delaware has the authority to regulate or prohibit certain kinds of riparian activity occurring on the New Jersey side of the Delaware River. These statements of opinion are erroneous, and if they are left uncontradicted in the record, they are likely to prejudice future activities of Sun or other persons which may take place on the New Jersey side of the Delaware River.

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The proposed Plan should not be approved by the Secretary of Commerce until it expressly incorporates the Compact of 1905 as a limitation on it. We note that Section 307(c) of the Act requires that federal licenses affecting a coastal zone must be certified to be consistent with an applicable coastal management plan. If consistency or compliance with a plan is to be determined by reference to the documents officially submitted by the State and approved by the Secretary of Commerce, the Secretary must require inclusion of appropriate limitations on the scope of the plan. Failure to include appropriate limitations would, at minimum, cause confusion in determining which projects are subject to the consistency requirement and whether they are consistent with the plan. At worst, it could cause some projects to be improperly subjected to certification or to be improperly denied certification.

Both the Draft and the Final Environmental Impact Statements on the proposed Delaware Plan show a lack of awareness by the Department of Commerce staff of the issue or the effect of the Compact of 1905. Failure by the Secretary to require revision of the Delaware Plan to take account of the Compact of 1905 would specifically run afoul of Section 307(e) of the Act, which preserves inter-state compacts. Because of the importance of this issue, we strongly recommend that no action be taken on the proposed Delaware Plan until this issue is properly resolved.

Additionally, we urge the Secretary of Commerce to withhold approval of Delaware's Plan because of a related issue; namely, whether the "federal consistency authority by Delaware [extends] beyond the statutory limits of Delaware's coastal management boundary and the state itself." The Commerce Department staff's comment on this issue was that "Activities outside the State which [affect] Delaware are subject to program policies." This response should be reconsidered since it is an over-expansive interpretation of the effect of a plan under the Act. The Act envisions each state preparing a plan for its own coastal area, not for another state's coastal area. The Act encourages cooperation among the states, but this merely underscores the fact that each state is master in its own house for purposes of regulating and controlling activities in its coastal zone.

At a minimum, the above staff comment requires clarification and qualification since there is no explanation of what "affect" means in this context. The Act cannot be read to bring every activity with an incidental effect on a particular state's coastal zone under the aegis of that state's coastal management program. For example, a project which takes place entirely within the border of one state, except for ship navigation through the navigable waters of a second state might, in a broad sense, be said to "affect" the second state's coastal zone since there is a possibility that a ship on its way to the first state might collide with another ship or run aground and spill its cargo in the second state's waters. However, this cannot be the type of effect envisioned by the Act since regulation of vessel safety and navigation lies exclusively in the

-3-

hands of the federal government and since there is no indication in the Act of any intention to let states override or interfere with that authority. To conclude otherwise would also allow states to interfere with federal regulation of Commerce with foreign nations and among the states, in violation of the United State Constitution.

Similarly, a discharge of wastes into the river upstream from Delaware could arguably be said to "affect" Delaware's coastal zone, but the power to regulate such discharges is given to the state where the discharge occurs and to the federal government under other federal statutes. The Act cannot reasonably be read to require a certification of consistency of upstream waste discharge permits with Delaware's Coastal Management Program.

As a general matter, the consistency requirements under the Act should be read as applying only to projects which take place primarily in the state which has the plan and which otherwise has the power under existing law to regulate the activity. Such a position would be consistent with the preservation of existing state jurisdiction in Section 307(e) of the Act and with the overall intent of the Act.

Sun Oil Company of Pennsylvania therefore urges that the Final Environmental Impact Statement be revised so that the above staff response is deleted or appropriately clarified and qualified.

SUN OIL COMPANY OF PENNSYLVANIA

By Robert O. Lewers
Robert O. Lewers
Vice President and General Attorney

NO. 11, ORIGINAL

In The
Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

**AFFIDAVIT OF STEVEN C. WHITNEY
IN SUPPORT OF MOTION TO REOPEN
AND FOR A SUPPLEMENTAL DECREE**

Steven C. Whitney, of Little Deer Isle, Maine, of full age, being duly sworn according to law hereby deposes and says:

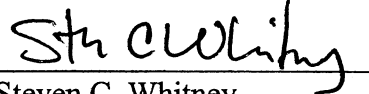
1. I am retired from a twenty-seven year career at the New Jersey Department of Environmental Protection ("DEP") from 1970 to 1997.
2. From January 1975 to July 1979, I served as Supervisor in the Office of Coastal Zone Management in the Division of Coastal Resources. The office implemented and administered New Jersey's Coastal Area Facilities Review Act, N.J. Stat. Ann. 13:19-1 to -33, first effective September 18, 1973. During that time, I was part of the staff that prepared the New Jersey Coastal Management Program and Final Environmental Impact Statement (August 1980) ("1980 CMP"). New Jersey's CMP was adopted in two segments. In 1978, New Jersey adopted a CMP for the Bay and Ocean Shore (1978 CMP). With respect to the area known as the Twelve Mile Circle, the 1978 CMP stated that continued coordination and work toward appropriate agreements between the coastal management programs of the two states would be required to resolve potential conflicts between the coastal policies of New Jersey and Delaware. (1978 CMP at 19.) In 1980, New Jersey adopted a revised CMP, which also covered waterfront areas along New Jersey's tidally influence waterways. (1980 CMP).
3. The 1980 CMP was an extensive document, covering many issues. With respect to the area known as the Twelve Mile Circle, the 1980 CMP stated that New Jersey and Delaware coastal management agencies had discussed the boundary issue and concluded that "... any New Jersey project extending beyond mean low water must obtain coastal permits from both

states. New Jersey and Delaware, therefore, will coordinate reviews of any proposed development that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state coastal management programs." (1980 CMP, page 20). However, as set forth below, the States were unable to reach any final agreement about how to accomplish this. Further, during my term of service with the DEP, to my knowledge, New Jersey never adopted any regulation requiring any person seeking to construct an improvement appurtenant to the New Jersey side of the River to obtain any permit or approval from the State of Delaware.

4. From July 1979 to June 1988, I served as Chief of the Bureau of Planning and Project Review in the Division of Coastal Resources. Then, from June 1988 to July 1991, I served as Assistant Director of the Division of Coastal Resources. From July 1991 to January 1997, I served as Manager, Environmental Planning, Coastal/Land Planning Group.
5. In these capacities, I participated in discussions with the Coastal Management Program regulatory and planning staffs about the New Jersey/Delaware boundary line and what effects it had on permit decision-making. I also participated in other discussions and conferences with Delaware staff which addressed these topics.
6. The 1978 and 1980 CMPs and the discussions which followed led my office to develop between 1991 and 1994 a draft Memorandum of Agreement between New Jersey and Delaware. The purpose of the MOA was to establish a framework within which the DEP and Delaware's Department of Natural Resources and Environmental Control could share relevant

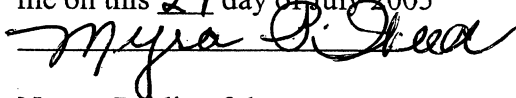
information regarding specified regulatory programs and actions along the States' common boundary within the Twelve Mile Circle.

7. The June 16, 1994 draft MOA would have provided that New Jersey and Delaware would share information concerning relevant applications and concerning proposed relevant rulemaking, and that the States would agree to work together to resolve inconsistencies between the Programs. In addition, the draft MOA stated that each agency had "the independent authority to approve or deny applications pursuant to its own regulations."
8. However, during the review process of the draft MOA within DEP, objections were raised. In general, there were concerns about becoming involved in an overly cumbersome approval process, and about giving a veto to Delaware as to projects that otherwise would have met New Jersey standards. As a result, in 1994, New Jersey abandoned efforts to reach an agreement on these matters.
9. The above statements are true to the best of my knowledge, and I am aware I am subject to penalties for any knowingly false statements contained herein.



Steven C. Whitney
27 Mourning Dove Lane
Little Deer Isle, ME 04650

Sworn and subscribed before
me on this 27 day of July 2005



Notary Public of the
State of Maine

MYRA P. WEED
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES JANUARY 25, 2007



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
TRENTON

PLEASE ADDRESS REPLY TO:
P. O. BOX 1889
TRENTON, N. J. 08625

DIVISION OF MARINE SERVICES

SEP 16 1977

SUBJECT: E. I. Du Pont De Nemours & Co., Inc., Permit to
Perform Maintenance Dredging in the Delaware River
at the Chambers Works Wharf in Pennsville Township,
Salem County, New Jersey
File: #77-0368

E. I. Du Pont De Nemours & Co., Inc.
Chambers Works
Deepwater, New Jersey 08023

Attention: Mr. George H. Cassedy, Superintendent
Environmental Control Division

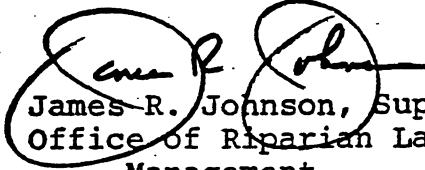
Dear Mr. Cassedy:

Enclosed herewith find permit for the above described work.

The enclosed acceptance of permit should be promptly executed
and returned to this office.

A certified copy of this permit, with plan, has been trans-
mitted to the United States District Engineer.

Very truly yours,


James R. Johnson, Supervisor
Office of Riparian Lands
Management

JRJ/PRM/rk
enclosures

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MARINE SERVICES
OFFICE OF RIPARIAN LANDS MANAGEMENT
P. O. BOX 1889
TRENTON, NEW JERSEY 08625

September 16, 197

E. I. Du Pont De Nemours & Co., Inc.
Chambers Works
Deepwater, New Jersey 08023

SIR: The Department of Environmental Protection, Division of Marine Services, Office of Riparian Lands Management, acting under Title 12, Chapter 5, Section 12:5-3 of the Revised Statutes of New Jersey hereby grants a revocable permit to carry out work in accordance with your application filed September 9, 19 and in accordance with plans and specifications accompanying same and applicable laws and regulations. This permit is also subject to the further conditions and stipulations hereinafter written which are definitely agreed to by the permittee upon his acceptance of this permit.

The application in general contemplates the following work:

Maintenance dredging at applicants Chambers Works Wharf in the Delaware River in Pennsville Township, Salem County, New Jersey.

The plan provides for dredging an area in the Delaware River at the northerly end of applicant's wharf at the above described location. An area measuring approximately 300 feet by 250 feet is to be dredged to a depth of 34 feet below mean low water of a volume of approximately 15,000 cubic yards. The dredged materials are to be disposed of at an approved rehandling basin in Logan Township, Gloucester County, New Jersey which is covered by riparian permit No. 73-184. As shown on a plan in two (2) sheets submitted by Edward C. Elener, licensed engineer and filed with the Department of Environmental Protection, Division of Marine Services September 9, 1977.

This permit is issued subject to the approval of the Department of the Army.

This permit is issued as Part I of two parts of an overall larger area, the remainder of which is to be covered by Part II. Approval of Part I is granted as emergency maintenance dredging to accommodate the applicant in loading a ship for a major customer. The remainder of dredging is to be covered by Part II after normal permit processing takes place, and under no circumstances should dredging beyond the 250' by 300' area of Part I be undertaken until the permit for Part II is issued.

The granting of this permit shall not be construed to in any way affect the title or ownership of property, and shall not make the Department of Environmental Protection, Division of Marine Services, Office of Riparian Lands Management or the State a party in any suit or question of ownership of property.

The granting of this permit shall not affect any title or claim the State or any municipality or county has or may have in any lands or property.

The granting of this permit shall not relieve the permittee from the necessity of his observing any and all laws and ordinances.

The granting of this permit shall in no way make the Department of Environmental Protection or the State responsible for the sufficiency or correctness of the design of any structure or structures. The Department of Environmental Protection or the State shall in no way be responsible or become a party to any action for loss of life or property, or for damage to persons or property which may occur by the carrying out of the work covered by this permit.

The permittee shall notify the Supervisor, Office of Riparian Lands Management, three days before the actual work under this permit is contemplated to be begun.

The permittee shall allow the Department of Environmental Protection, Division of Marine Services, Office of Riparian Lands Management or its authorized representative, free access to all parts of the work at all times and shall provide free of charge all necessary facilities for inspection.

No change in plans or specifications shall be made except with the written permission of the Department of Environmental Protection.

A copy of this permit shall be kept at the work, displayed in a conspicuous place and shall be exhibited upon request of any person.


The permittee shall sign and return to the Supervisor, Office of Riparian Lands Management, upon receipt of this permit the form of acceptance of permit herewith enclosed.

This permit is subject to revocation and shall be in force until revoked, but in no event longer than one year from its date.

Application for extension of permit for the work described herein shall be in letter form.



Director
Donald T. Graham



Supervisor, James P. Johnson
Office of Riparian Lands Management

(SEAL)

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

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

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

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

**VOLUME 6 of 7
(PAGES 940A-1116A)**

STUART RABNER
Attorney General

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BARBARA L. CONKLIN*
Deputy Attorneys General

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Assistant Attorney General
JOHN R. RENELLA
Deputy Attorney General

* *Counsel of Record*

On the Brief

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AMY C. DONLON

DEAN JABLONSKI
EILEEN P. KELLY

Deputy Attorneys General

Richard J. Hughes Justice
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(609) 984-6811

New Jersey's Appendix

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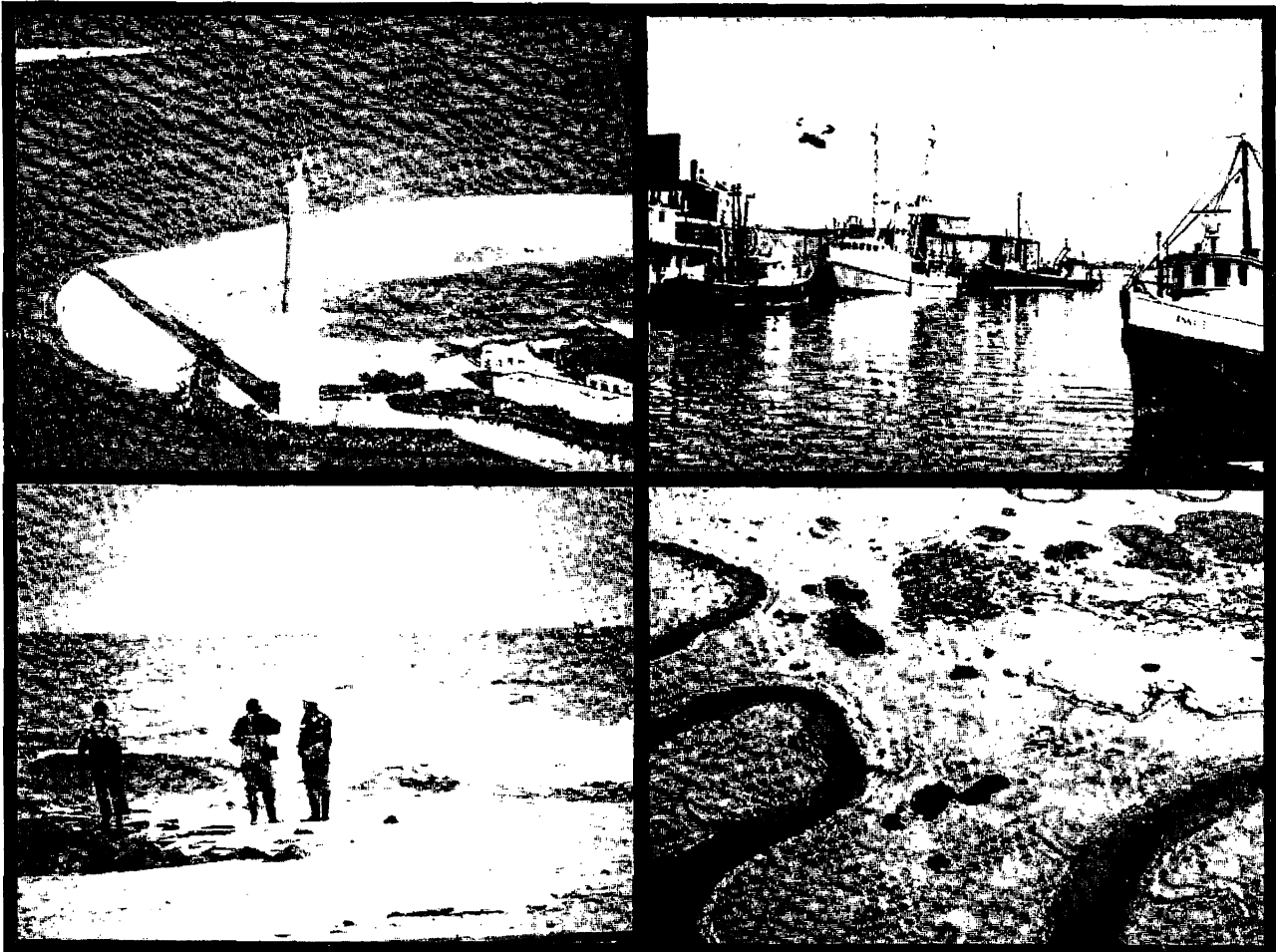
STATE OF NEW JERSEY COASTAL MANAGEMENT PROGRAM BAY AND OCEAN SHORE SEGMENT

MAY 1978

DRAFT ENVIRONMENTAL IMPACT STATEMENT

US DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

**COASTAL ZONE
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The New Jersey Coastal Management Program - Bay and Ocean Shore Segment
was prepared in part with financial assistance from the National Oceanic and
Atmospheric Administration, Office of Coastal Zone Management, under the provisions
of Section 305 of the federal Coastal Zone Management Act (P.L. 92-583, as amended).

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BAY AND OCEAN SHORE SEGMENT
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STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ROCCO D. RICCI, COMMISSIONER
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APR 19 1978

Mr. Robert Knecht
Assistant Administrator for Coastal Zone Management
U. S. Department of Commerce
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

COASTAL ZONE
INFORMATION CENTER

Dear Mr. Knecht:

The State of New Jersey takes pride in submitting to you the New Jersey Coastal Management Program - Bay and Ocean Shore Segment, to begin the federal review process under Section 306 of the federal Coastal Zone Management Act.

The Department of Environmental Protection, as New Jersey's lead coastal management agency, will undertake a series of public hearings and informal workshops throughout the state to discuss the proposed Coastal Management Program - Bay and Ocean Shore Segment with a wide range of federal, state, and local agencies, interest groups, and citizens to help identify, over the next three months, the revisions that may be appropriate before the Governor's formal review and request that you approve the program.

New Jersey's coast is a fragile and coveted resource facing conflicting opportunities and pressures. This Coastal Management Program provides the framework for sound decision-making to conserve this resource and achieve a balanced use of the Bay and Ocean Shore region of New Jersey's coast.

Very truly yours,

Rocco D. Ricci, P. E.
Commissioner

NOTE TO READER/NEPA SUMMARY

The National Environmental Policy Act of 1969 (NEPA) mandates that an environmental impact statement be prepared as part of the review and approval process of major actions by Federal agencies. The action contemplated is approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment under Section 306(h) of the Federal Coastal Zone Management Act of 1972, as amended (CZMA). An immediate effect of approval is the qualification of the State for Federal matching funds for use in administering the Coastal Program for the Segment. In addition, the Coastal Zone Management Act stipulates that Federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with an approved State management program.

This document is organized as follows:

Part I - Introduction - prepared by the Federal Office of Coastal Zone Management (OCZM) with the assistance of the State of New Jersey.

Part II - New Jersey Coastal Management Program - Bay and Ocean Shore Segment - prepared by the state and relied upon by the Federal OCZM as a description of the proposed action.

Part III-VIII - Environment Impacts - prepared by Federal OCZM with the assistance of the State of New Jersey.

For purposes of reviewing this proposed action, the key concerns are:

- whether the Bay and Ocean Shore Segment is consistent with the objectives and policies of the national legislation,
- whether the State management authorities are adequate to implement the segment,
- whether the award of Federal funds under Section 306 of the Federal Act will help New Jersey to meet those objectives, and
- whether there will be a net environmental gain as a result of Program approval and implementation.

The Federal Office of Coastal Zone Management believes the answers to these key questions are affirmative. The Office wants the widest possible circulation of this document to all interested agencies and parties in order to receive the fullest expression of opinion on these questions.

This Program is of major significance, not only to New Jersey, but to the Nation. It is one of the first Programs submitted from an eastern coastal state. Further, the New Jersey coast represents a concentration of natural, historic, and economic attributes that is of national importance. The Federal Office of Coastal Zone Management thanks those participating in the review of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment and this environmental impact statement.

Federal approval of the Coastal Program will permit NOAA-OCZM to award New Jersey annual program administration grants to implement the program, grants for continued funding under the Coastal Energy Impact Program (CEIP), and grants to plan and manage for shorefront access and shoreline erosion. In addition, federal actions in this segment of New Jersey's coastal zone will be required to be consistent with the Coastal Program, to the maximum extent practicable.

The award of federal funds will allow New Jersey to:

- a) continue to develop and implement the Program's Location Policies, also referred to as the Coastal Location Acceptability Method (CLAM).
- b) undertake three mapping programs which will chart the natural, social and economic features of the coastal zone.
- c) prepare a Coastal Handbook.
- d) increase coordination on coastal decision making between state and local governments.
- e) continue educational and information programs and projects to increase coastal awareness.
- f) develop specific energy facility siting criteria and policies jointly with the Department of Energy.
- g) coordinate with Atlantic City and County officials in the redevelopment of Atlantic City.
- h) support and promote access to beaches and other waterfront areas and continue the Beach Shuttle service to Island Beach State Park.
- i) improve coastal management enforcement and monitoring programs.
- j) fully consider the national interests in the use of the coastal zone.

NEPA Summary

- Draft Environmental Impact Statement Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Attn: Ms. Kathryn Cousins
Regional Manager, North Atlantic Region or
Richard S. O'Connor
Assistant Manager, North Atlantic Region
3300 Whitehaven Street, N.W.
Washington, D.C. 20235
Phone: 202/634/4235

1. Type of Action

Proposed Federal approval of New Jersey Coastal Management Program - Bay and Ocean Shore Segment.

- Administrative Legislative

2. Brief Description of Action

It is proposed that the Secretary of Commerce approve the Coastal Zone Management Program (Bay and Ocean Shore Segment) of the State of New Jersey pursuant to P.L. 92-583. Approval would permit implementation of the proposed segmented program, allowing program administration grants to be awarded to the State, and require that Federal actions be consistent with the Program, to the maximum extent practicable.

3. Summary of Environmental Impacts and Adverse Environmental Effects

Approval and implementation of the Program will allow the State to more effectively implement existing State management within the Bay and Ocean Shore region. The State will condition, restrict, or prohibit selected land and water uses in some parts of the New Jersey coast, while encouraging development in other parts. Each coastal municipality will retain primary responsibility for managing land use along its coast. The impacts of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment will be generally beneficial, although there may be some adverse, short-term economic impacts on some coastal users, and the Program will entail the irreversible commitment of coastal resources.

4. Alternatives Considered

A. Federal Alternatives

The Assistant Administrator could delay or deny approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment under the following conditions if:

1. The Program does not have the authorities necessary to implement the Program at the time of Section 306 segment approval.
2. The Program does not adequately achieve the goals of the Coastal Zone Management Act as expressed by Congress in Section 302 of the Act.
3. The national interest in the siting of facilities in the coastal zone were not adequately considered.
4. The Bay and Ocean Shore Segment could not be unified with the entire state coastal management program.

B. State Alternatives

1. The State could withdraw its application and not seek Federal assistance.
2. The State could wait until the entire State Program is submitted.
3. The State could wait until new legislation is adopted that recodifies the Wetlands Act, CAFRA and Riparian Laws.
4. The State could reduce the coastal boundary under CAFRA jurisdiction.

5. The State could wait until more precise policies using the Coastal Location Acceptability Method (CLAM) have been completed or mapped.

6. The State could seek legislation delegating coastal zone management authority to localities.

5. A list of all Federal, State and Local Agencies and other parties from which comments have been requested is in the Appendix.
6. This DEIS was submitted to EPA on April 28, 1978, and a notice of availability was published in the Federal Register on May 5, 1978. Public comments on the DEIS should be submitted to the Federal Office of Coastal Zone Management by June 19, 1978.

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PART I:
INTRODUCTION

The New Jersey Coastal Management Program - Bay and Ocean Shore Segment has been prepared to determine and describe New Jersey's strategy to manage the future protection and development of the coast. The State of New Jersey is seeking approval of the Program by the U. S. Department of Commerce to obtain the benefits of the federal Coastal Zone Management Act, which will aid State efforts to manage the often conflicting pressures facing the coast.

This document serves as a combined Coastal Management Program for the Bay and Ocean Shore Segment and as a Draft Environmental Impact Statement, because federal approval of a state coastal management program is considered a "major action" requiring an environmental impact statement under the National Environmental Policy Act (NEPA). The New Jersey Department of Environmental Protection, Office of Coastal Zone Management (DEP-OCZM) prepared the Coastal Program in part with funding provided by the National Oceanic and Atmospheric Administration (NOAA).

New Jersey is preparing its coastal management program in two phases. The geographic area addressed by this first part of the New Jersey Coastal Management Program includes a 1,382 square mile land area and related coastal waters in a region stretching from the Raritan Bay along the Atlantic oceanfront to the Delaware Bay. This is the area defined by the State Legislature in the Coastal Area Facility Review Act (CAFRA) of 1973, plus tidal wetland areas inland of the CAFRA boundary which are regulated under the Wetlands Act of 1970.

This report defines and explains the Coastal Resource and Development Policies and the management system the Department of Environmental Protection and the Department of Energy will use in managing activities in this Coastal Program Segment. The Coastal Policies are divided into three groups: (1) Location Policies evaluate specific types of coastal locations, such as wetlands and prime farm land; (2) Use Policies are directed at different uses of the coastal zone, such as housing and energy facility development; and (3) Resource Policies focus on controlling the effects of development, such as water runoff and soil erosion.

The major choices and basic direction provided in the many specific policy statements are represented by four Basic Coastal Policies:

1. Protect the coastal ecosystem.
2. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort-oriented development, and encourage the preservation of open space.
3. Employ a method for decision-making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development.
4. Protect the health, safety and welfare of people who reside, work, and visit in the coastal zone.

The Coastal Program will be implemented through existing laws and agencies. The principal legal authority will be the coordinated use of the Coastal Area Facility Review Act (CAFRA), Wetlands and waterfront development (riparian) programs, shore protection program and the regulatory activities of the Department of Energy. The Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.) is New Jersey's major coastal law. In CAFRA, the Legislature entrusted the Department of Environmental Protection with the responsibility to regulate the location, design, and construction of housing developments of 25 or more units and most major industrial, sewer, and energy facilities in the legislatively-defined "Coastal Area". Since CAFRA took effect in September 1973, DEP has received 244 applications for CAFRA permits. To date, more than 165 applications have been approved, while 18 residential projects and one sanitary landfill have been denied CAFRA permits.

DEP also has authority to regulate certain activities on mapped coastal wetlands, under the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.). Virtually any development in a mapped tidal wetland must receive a Wetlands permit before construction can begin. In addition, certain activities are prohibited in the wetlands, including dumping solid waste, discharging treated or untreated sewage waste, storing or disposing of pesticides, applying persistent pesticides, and applying pesticides on significant stands of wetlands vegetation.

New Jersey's third major coastal law is the set of riparian statutes which apply to the lands now or formerly flowed by tidal waters. Under these statutes, DEP and the Natural Resource Council (an autonomous but closely related citizen body, with members appointed by the Governor with the consent of the State Senate) can sell or lease these lands, and manage most activities on the lands through the administration of the Waterfront Development permit program. Through the riparian statutes, DEP requires a permit for construction or alteration of facilities such as a dock, wharf, pier, bulkhead, bridge, pipeline or cable, and dredging and filling involving lands flowed by the tide.

New Jersey's fourth key coastal law concerns the shore protection program of state aid to municipalities to finance structural and non-structural solutions to shoreline erosion.

The policies and procedures outlined in Part II, Chapter Three will be promulgated as rules prior to Section 306 approval by the Assistant Administrator.

The Coastal Program will also rely upon the consistency of federal actions and actions of other agencies to carry out the Basic Coastal Policies, to the extent statutorily permissible. Finally, the Coastal Program will serve as guidance to municipal, county and regional agencies with coastal decision-making responsibilities.

This document is a revision of the Coastal Management Strategy for New Jersey-CAFRA Area submitted by DEP to the Governor, Members of the State Legislature, and the general public in the Fall of 1977. More than 80 individuals, groups, and agencies submitted comments on the Strategy either in writing or at one of the eight public meetings convened by DEP and attended by more than 300 people. Although the Basic Coastal Policies and the Use Policies have remained substantially the same, the public comments led to numerous revisions and additions between the Strategy and present document. The most significant change was the total reor-

ganization and rewriting of the Location Policy, defined in the Coastal Management Strategy as the Coastal Location Acceptability Method or CLAM. The individual comments and DEP responses to them are summarized in Appendix C and E of this document and presented in greater detail in a separate document, Coastal Management Strategy-Public Comments and DEP Responses.

The New Jersey Coastal Management Program-Bay and Ocean Shore Segment is a draft document. The State of New Jersey will be able to make additional revisions on the basis of public comment during a sixty day comment period ending in early July 1978, during the environmental impact statement review process. A schedule of public hearings to review the New Jersey Coastal Management Program - Bay and Ocean Shore Segment is on the back cover of this document.

PART II

DESCRIPTION OF THE PROPOSED ACTION:

NEW JERSEY COASTAL MANAGEMENT PROGRAM - BAY AND OCEAN SHORE SEGMENT

This Part presents the New Jersey Coastal Management Program - Bay and Ocean Shore Segment in seven chapters, as prepared by the State of New Jersey. Chapter One presents background information and the Basic Coastal Policies that serve as the Program's foundation. Chapter Two defines the geographic scope of the Program. Chapter Three presents the heart of the Program, the policies on what should or should not take place in the coastal zone. All of Chapter Three will be proposed and adopted, with appropriate revisions based on public comments, as an agency rule prior to federal approval of the Coastal Program, according to the provisions of New Jersey's Administrative Procedures Act. Chapter Four indicates how decisions will be made to carry out the Program. Chapter Five addresses the national interests, federal consistency, and uses of regional benefit. Chapter Six addresses specific coastal resource and development policy concerns required under the federal Coastal Zone Management Act. Chapter Seven concludes with the next steps in the coastal management process in New Jersey. Several appendices in this document are also part of the Program.

Chapter One: COASTAL MANAGEMENT IN NEW JERSEY

Purpose
Major Issues and Opportunities
Coastal Management Efforts in New Jersey
New Jersey's Approach to the Federal Coastal Zone Management Program
Basic Coastal Policies

Purpose

The Department of Environmental Protection (DEP) has prepared the New Jersey Coastal Management Program - Bay and Ocean Shore Segment to protect the state's coastal resources while accommodating needed future development. The Program provides the statements of policy which will be followed by DEP in making coastal decisions and which will guide other public and private actions affecting the coast. The Coastal Program is also designed to enable New Jersey to meet the requirements, and thereby reap the benefits of the federal Coastal Zone Management Act, particularly greater consistency between state and federal actions in the coastal zone and federal funds for New Jersey's coastal management efforts.

This document describes a draft coastal program for the Delaware and Raritan Bay and Atlantic Ocean Shore Segment of the New Jersey Coastal Zone. The Coastal Program for the Segment includes a boundary description, statements of policy, and a management system to apply the policies within the described boundary, as well as a discussion of the next steps in the coastal planning process. Most regulatory determinations will be made through the permit application process.

The Coastal Program also presents the standards DEP will use to determine the consistency of actions proposed in the coastal zone by federal, state, and local agencies. New Jersey's coastal policies will be used to determine the consistency with the approved program of federal activities, development projects, licenses, permits, and financial assistance to the State and local governments under Section 307 of the federal Coastal Zone Management Act. The Coastal Program will aide DEP when it is called upon to review federal domestic financial assistance applications under the A-95 Project Notification and Review Process, as well as Environmental Impact Statements prepared under the National Environmental Policy Act. From time to time, DEP is also likely to receive requests for advice or comments on the adequacy or appropriateness of plans and proposals by government agencies and private interests. The Coastal Policies provide a visible basis for offering an informed comment on the consistency of these plans and proposals.

State funding decisions that affect coastal resources will also be guided by the Coastal Program. In particular, several important State aid, and direct State financing programs administered by DEP involve decision-making in the Bay and Ocean Shore Segment: (1) the Green Acres Open Space Acquisition and Outdoor Recreation program of grants to local governments and direct DEP efforts, (2) the Shore Protection program of matching grants to local governments, and (3) the wastewater treatment facilities construction grants program.

This Coastal Management Program is a tool for making decisions, but it is not a panacea. It is important to understand that this document is not a detailed, rigid plan indicating only one activity which can or should take place on each site, block, or acre in the coastal zone. New Jersey has deliberately designed a program which accommodates the creativity and initiative of individual land owners, developers and others, and recognizes the State's historic commitment to a strong role for local governments in land use decision-making. The Program, therefore, focuses on coastal resource management decisions with greater than local significance that the Legislature has entrusted to State agencies. The Coastal Program provides enforceable policies to form predictable and consistent decisions which will best manage New Jersey's coast.

Major Issues and Opportunities

Sand dunes, power plants, surf clams and tankers all share the resources of New Jersey's coast. Over the years, numerous competing and often conflicting activities have converged on the Jersey Shore. New Jersey residents and tourists from all regions of the country spend their vacations at the Jersey Shore which accounts for the vitality of New Jersey's second largest revenue-producing industry, tourism. Boaters, fishermen, divers, young and old enjoy the ocean breezes and salt air. Rapid development of the shore area to accommodate those seeking relief from hot summers in the city, as well as those desiring permanent residence in a healthy environment, however, has created many competing pressures for the coast's fragile resources. New Jersey's wetlands were disappearing until the passage of the Wetlands Act. The barrier islands are overbuilt. The shoreline is eroding. Fish and shellfish resources are under intense pressure from recreational, commercial and industrial interests. The energy industry continues to examine the coast for potential sites for energy facilities. How can the Jersey coast be maintained as a healthy ecosystem and guard against the depletion of natural resources, while accommodating those resort-oriented and other activities and facilities which belong on the coast? Recognizing the coast as one of the nation's and state's most important resources, coastal laws were passed in 1970 and 1973 at the state level in New Jersey and 1972 and 1976 at the federal level to provide funding, regulatory techniques and governmental and public focus on the management of coastal areas.

One of the major issues the Coastal Program addresses is water quality. The water bodies in the coastal area are crucial to the vitality of the coastal ecosystem and the protection of the health and safety of coastal and many inland residents. Proper management can alleviate problems of contaminated ground and surface water, stream turbidity and land and bank erosion. Good water quality is also essential to the fish and shellfishing industry, as well as to sport fishermen and boaters.

Recent storms and increased development have contributed to New Jersey's eroding shoreline. Beach restoration and preservation are essential for maintaining New Jersey's thriving tourist industry. Construction along the beach and waterfront areas can also limit public access to the shore. High-rises built in the past have obstructed some panoramic vistas, and some beachfront development interferes with passive and active coastal recreation.

The coast does not just include pristine areas. Many of the once thriving urban waterfronts in New Jersey are now vacant land and unused, poorly maintained docks. Atlantic City faces a unique set of development pressures from casino gambling and offshore oil and gas exploration.

Energy is one of the most complex issues facing the entire country. The Jersey coast currently has two operating nuclear plants and four more are under construction. The prospect of oil and gas exploration and development off New Jersey's coast is now a reality. New Jersey will have to grapple with the new demands which will be placed on the coast's resources by the activities and facilities associated with exploration, and later, possible development and production of offshore oil and gas.

Public concern for prudent coastal management reflects a general concern for the quality of life. People want to live in a healthy environment, and provide a healthy environment for all the other living resources which are part of the coastal ecosystem. However, the public often expresses concern over the morass of regulations at all levels of government directed toward management of public goods and resources. Often, the applications, fees, permits and time delays appear to overshadow the intended benefits of a resource management program.

Despite the federal and state legislation for coastal management in New Jersey, the coastal program faces several constraints. The real property tax system has led to inter-municipal rivalry for ratable-producing property. Construction and development often take precedence over concern for open space in some financially hard pressed municipalities. New Jersey's strong tradition of home rule has meant that some municipalities make individual development decisions with little regard for regional impacts, posing severe constraints for the proper management of coastal regions. In addition, the actions, or lack of action, of neighboring states can affect New Jersey's coast.

Coastal management in New Jersey is a delicate process, balancing fragile and sensitive environmental resources with development essential to the economy of the state. The public wants to work, live, and play, in the coastal zone, as well as to develop, restore and protect the coast. The agenda of coastal zone management ranges from dredge spoil disposal to offshore oil, from protection of surf clam beds to preservation of dunes. This requires a program that is dynamic and flexible to change, and, most important, responsive to the concerns of the citizenry while being sufficiently specific to indicate to public officials and private interests the implications of the program.

Coastal Management Efforts In New Jersey

In New Jersey, the Legislature has given increasing responsibility for coastal management to the state government. The State's active involvement in coastal management dates back to 1776 when it became owner of all tide-flowed lands, as a result of the American Revolution. During the past 200 years, the state's policies and practices have reflected the concerns and perception of the time. In the late 1800's and early 1900's for example, the State sold considerable amounts of riparian land to railroad and land development companies at bargain rates. In the early 1900's the State began to more actively regulate construction along the tidal waterfronts of New Jersey.

Within the past decade, however, as the public's environmental consciousness has grown, the State's role has increased. The Department of Environmental Protection, created in 1970, has had the lead responsibility for the state's coastal management activities. Through the Shore Protection Program, DEP has disbursed millions of dollars for shore protection structures and programs. In recent years, DEP has used that funding as an incentive to encourage municipalities to provide public access to adjacent waters and shorefront areas.

In 1970, the Legislature passed the Wetlands Act and, in 1973, the Coastal Area Facility Review Act (CAFRA). The two resulting regulatory programs, together with the State's responsibility to approve all activities on riparian land, solidified the State's role in coastal management. The pressures faced by the New Jersey coast for oil and gas, recreation, casino gambling, and many other activities, along with the opportunities provided by the federal Coastal Zone Management Act of 1972, have further intensified and concentrated the State's efforts to manage the coast.

New Jersey Approach to the National Coastal Zone Management Program

The federal Coastal Zone Management Act of 1972 (P. L. 92-583, as amended in 1976 by P.L. 94-370) established a voluntary national program to encourage coastal states to define and carry out comprehensive programs to manage coastal areas. Administered by the National Oceanic and Atmospheric Administration's Office of Coastal Zone Management (NOAA-OCZM) in the U. S. Department of Commerce, the basic national program offers states two chief incentives: First, funds for coastal planning and management, and second, an opportunity to increase the consistency of federal actions in a state's coastal zone with the state's own coastal policies.

It is important to note that unlike the Clean Air Act and the Federal Water Pollution Control Act, no direct federal coastal management standards or regulations will be imposed if New Jersey fails or declines to develop a federally acceptable coastal management program.

New Jersey began participating in the national coastal management program in June 1974, by receiving its first coastal planning, or program development, grant from NOAA-OCZM. Since 1974, federal grants have provided more than two-thirds of the funds, or approximately \$1.2 million, used by the Department of Environmental Protection and other state and county agencies for coastal planning. Upon federal approval of New Jersey's coastal management program, the State may expect to continue receiving federal grants.

The federal Coastal Zone Management Act and the NOAA-OCZM regulations concerning the approval of management programs (15 CFR 923, Federal Register, Vol. 43, No. 41, March 1, 1978, pp. 8378-8431) define the framework, program approval standards, and options available to states in formulating a coastal management program. The New Jersey approach to the national program features submission of a management program for federal approval in two phases and reliance upon direct state controls to carry out the program.

The region defined by state law as the "Coastal Area" in the Coastal Area Facility Review Act of 1973, and commonly referred to as the "CAFRA Area", generally defines the geographic extent of the first phase, or segment, of New Jersey's coastal management program to be submitted for federal approval. Approximately 3,750 acres of wetlands already regulated under the Wetlands Act, located inland of the CAFRA boundary, are also included in the geographic scope of the

Bay and Ocean Shore Segment. New Jersey's use of the option to pursue federal approval of the Segment recognizes the fundamental adequacy of the State's coastal management program in the major, Delaware Bay, Raritan Bay and Atlantic Ocean front portion of New Jersey's coastal zone.

This document constitutes the Bay and Ocean Shore Segment management program submission to NOAA-OCZM. The second phase, completing the management program for the entire coastline of the state as described in Chapter Seven, is expected to be submitted for federal approval in late 1978.

State coastal management programs vary across the nation, and properly so given the diversity of resources and pressures facing the shorelines of the United States. One important distinction between state coastal programs is the approach to governmental decision-making. New Jersey's program has been fashioned by drawing upon New Jersey's pattern of selected State involvement in coastal land and water use decision-making, within a tradition of strong municipal land use decision-making.

The federal Coastal Zone Management Act offers a state three broad options for implementing its coastal program:

- Technique A - Local Implementation - Section 306(e)(1)(A)
- Technique B - Direct State Control - Section 306(e)(1)(B)
- Technique C - Case-by-Case Reviews - Section 306(e)(1)(C)

Technique A means that states may establish criteria and standards for local implementation, under state review and enforcement procedures. Technique B means that states may engage in direct regulation. Technique C means that states may operate through the administrative review of local plans, projects and regulations for consistency with statement management.

New Jersey opts for the direct state control approach (Technique B), relying upon existing state laws which entrust the Department of Environmental Protection and Department of Energy with direct state control over selected coastal areas and selected uses of coastal resources:

In particular, the DEP enabling legislation, and the Coastal Area Facility Review Act (CAFRA), Wetlands Act, and riparian and shore protection statutes, as well as the Department of Energy Act, provide a strong mandate and basis for direct State agency involvement in key decisions involving the coastal region.

The strong direct State role does not mean that DEP will regulate every proposed use of coastal resources within the defined coastal zone. Local governments in the coastal zone will continue to be solely responsible for the considerable amount of land and water use decision-making in the coastal zone which has no regional impact.

New Jersey's management program for the Bay and Ocean Shore Segment has three inter-related, basic elements: First, a boundary defining the general geographic scope of the program; second, Coastal Resource and Development Policies defining the standards for making decisions on what activities may take place within the boundary; and third, a management system defining the types of decisions subject to the program, and the process by which those decisions will be made. The Coastal Management Program, a guide to decision-making, resembles a tripod. All three

legs, or elements, must be firmly in place for the Program to stand and work. All three elements function together and must be read and understood together, especially because of New Jersey's direct state control approach.

For example, if read out of the context of the overall management program, the Coastal Resource and Development Policies could be applied to every land and water use decision in the coastal zone, from the location of a single gas station to a nuclear generating station. That is not the intent here. Rather, the Coastal Resource and Development Policies are to be applied as substantive standards for decision-making for only those selected coastal decisions defined in the management system, particularly on CAFRA, Wetlands, and riparian permit applications. The Coastal Policies could, however, because of their comprehensive nature, be used to guide other decisions not strictly subject to the New Jersey Coastal Program. The heart of the program remains, however, the combination of boundary definition, policy statements, and decision-making processes that in concert spell out New Jersey's approach to managing its coastal resources.

Basic Coastal Policies

Chapter Three of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment contains many specific Coastal Resource and Development Policies which DEP will use to make coastal land and water use decisions. The major choices and the basic direction represented by the specific policies are summarized by the following Basic Coastal Policies:

1. Protect the coastal ecosystem.

The ecosystem of the Bay and Ocean Shore Segment is fragile and special, and is characterized by a combination of beaches and the ocean, tidal and inland wetlands, flood plains, estuarine areas, bays, stream and stream corridors, vegetation and wildlife habitats. These natural features make the area a desirable place to visit, which in turn fosters the state's tourist industry. The same features make the coastal region a productive area for agriculture and commercial and recreational fishing. If the ecosystem is not protected, however, not only will natural resources and processes be harmed and disrupted, but the economy of the area, and of the state, will suffer.

2. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development and encourage the preservation of open space.

The special characteristics of the coast attract many different types of development to an area which is limited in size. The concentration of development is the most efficient way to use this limited space because it allows a large variety of activities to be located in the Bay and Ocean Shore Segment while minimizing conflicts which would occur between activities such as industry and recreation if they were located near each other. In addition, the concentration of development can provide large expanses of open space which can be more useful to the public than a similar amount of open space scattered among many small parcels. The policy to concentrate development does not apply to nuclear generating stations and liquefied natural gas (LNG) facilities.

3. Employ a method for decision-making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development.

Traditionally, land and water use planning has focused exclusively on environmental features which offer disadvantages for development or which should be preserved. Each location, however, can also be evaluated in terms of the advantages it offers for development. A site near existing roads, for example, could be developed with less cost and environmental disturbance than a more isolated site. This policy insures that both types of factors will be considered in decision-making under the Coastal Program.

4. Protect the health, safety and welfare of people who reside, work and visit in the coastal zone.

The last basic policy is a reminder that people use the coast for different purposes and have different needs and expectations. The quality of human life improves if needed development is built in a manner which respects the natural and built environment.

The development of the Coastal Program has also been based on two procedural principles which have been particularly significant in shaping the Management System described in Chapter Four. These principles are the following:

1. Consider only coastal resource and coastal land and water use decisions of greater than local significance, and create mechanisms to insure that decisions on coastal land and water uses are made at the lowest practicable level of government, consistent with these guiding principles.

Land and water decisions with limited impact that affect only one municipality should be made by local citizens and officials. Other decisions, however, such as the use of a beach or other natural resource, or the construction of a major development, can affect a much larger area and group of people. The Coastal Program is designed to involve DEP in only the second type of decisions, those that require direct State management.

2. Provide information in understandable terms to citizens, interest groups, and public agencies about the use of coastal resources.

The success of the Coastal Program is dependent upon the number of people who read and understand this and subsequent documents. The Program relies upon comments and responses from the public for its vitality, and also relies upon public advocacy and understanding of the need for wise management of coastal resources in the future.

Chapter Two: BOUNDARY-DEFINING THE COASTAL ZONE

Introduction

Inland Boundary - Bay and Ocean Shore Segment

Seaward and Interstate Boundaries - Segment

Introduction

Different people and various interest groups hold different perceptions of the geographic extent of New Jersey's coastal resources. This chapter defines the boundary of the Bay and Ocean Shore Segment of New Jersey's coastal zone under the federal Coastal Zone Management Act. At this stage of New Jersey's participation in the national coastal management program, the geographic scope of the New Jersey Coastal Program submitted for federal approval is limited to this initial segment. New Jersey's coastal management program for federal purposes does not yet include the entire coastline of the state. This boundary must not be considered in a vacuum. It must be read and understood in concert with the Coastal Resource and Development Policies of Chapter Three and the Management System of Chapter Four that defines how decisions on uses of coastal resources will be made within the defined boundary under the Coastal Program.

Inland Boundary - Bay and Ocean Shore Segment

The geographic scope of the Bay and Ocean Shore Segment includes lands along New Jersey's Atlantic Ocean shoreline, lands along the bays behind the barrier islands, and lands along the Delaware Bay and Raritan Bay. This general description provides the basis for the term "Bay and Ocean Shore Segment", as depicted in Figure 1. The actual inland boundary of the Segment uses the CAFRA boundary and the Upper Wetlands Boundary, and is defined as:

The landward boundary of the Coastal Area as defined in the Coastal Area Facility Review Act, or the Upper Wetlands Boundary of coastal wetlands located landward of the CAFRA boundary along tidal water courses that flow through the CAFRA Area, whichever is more landward, including State-owned tidelands.

In 1973, the Legislature enacted and the Governor signed into law the Coastal Area Facility Review Act (CAFRA). This law includes a statutory "Coastal Area" that generally describes the inland boundary of the Bay and Ocean Shore Segment, with the exception of certain additional wetlands areas as defined in this chapter. The inland boundary of the "Coastal Area" delineated under CAFRA in 1973 appears on Figure 2. It extends from the Raritan Bay east to Sandy Hook, south to Cape May Point and north and west up the Delaware estuary almost to the Delaware Memorial Bridge north of Salem. The total land area is 1,376 square miles or 17 percent of New Jersey's land area. The coastline is more than 215 miles in length, with 126 miles along the Atlantic oceanfront from Sandy Hook to Cape May. Inland the CAFRA boundary ranges from a few thousand feet from the ocean in Monmouth County, to 24 miles from the Atlantic Ocean around the Mullica River at Batsto in Burlington County. Major roads and rights-of-way, such as the Garden State Parkway and county roads, define the inland boundary. The law excluded a small area around the Cape May County Airport from the "Coastal Area". A metes-and-bounds description of the "Coastal Area" may be found in the statute, at N.J.S.A. 13:19-4. Maps indicating the CAFRA boundary on U.S. Geological Survey topographic quadrangle maps (scale of one inch = 2,000 feet or 1:24,000) are available for public inspection at the Trenton offices of DEP's Division of Marine Services.

Figure 1

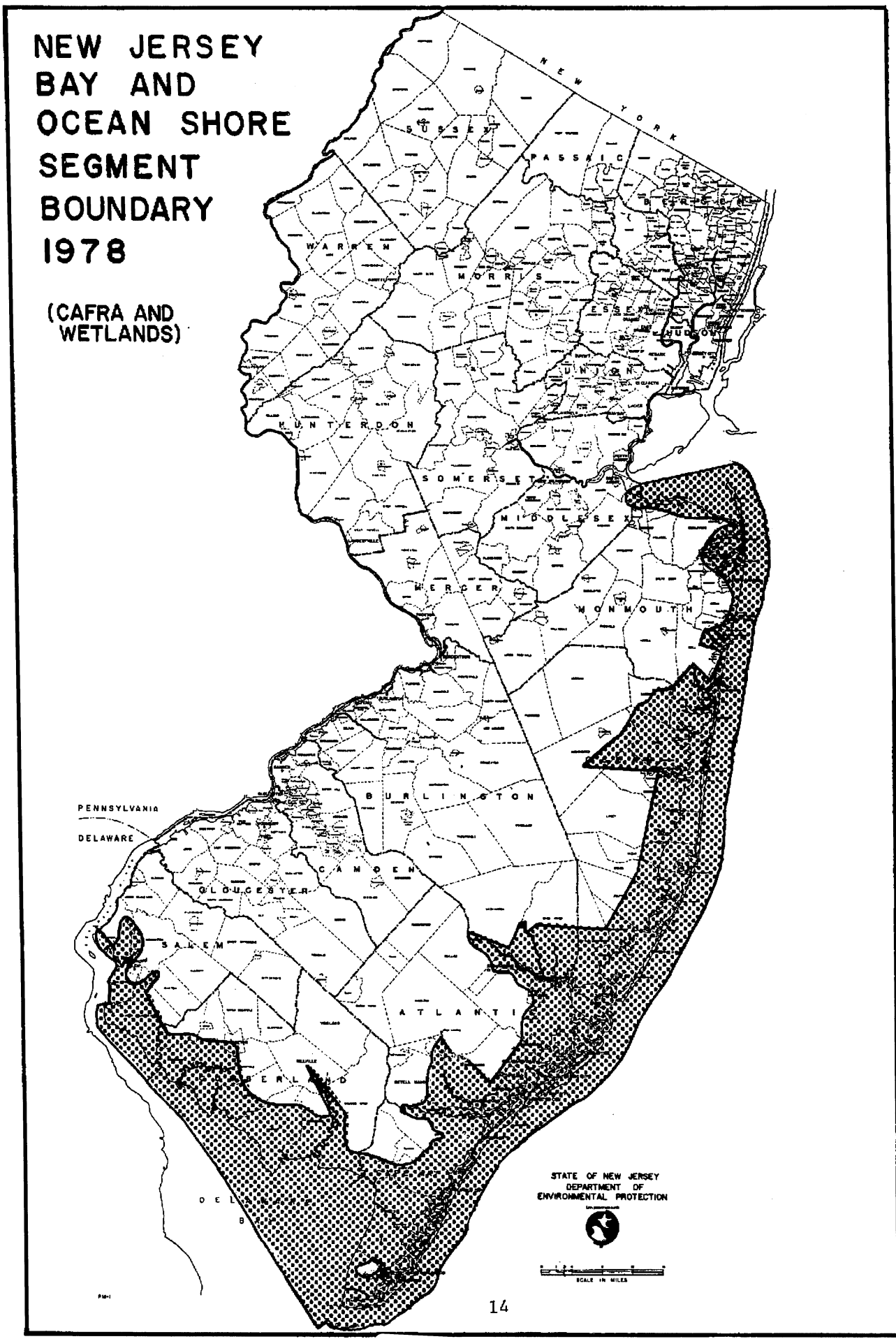
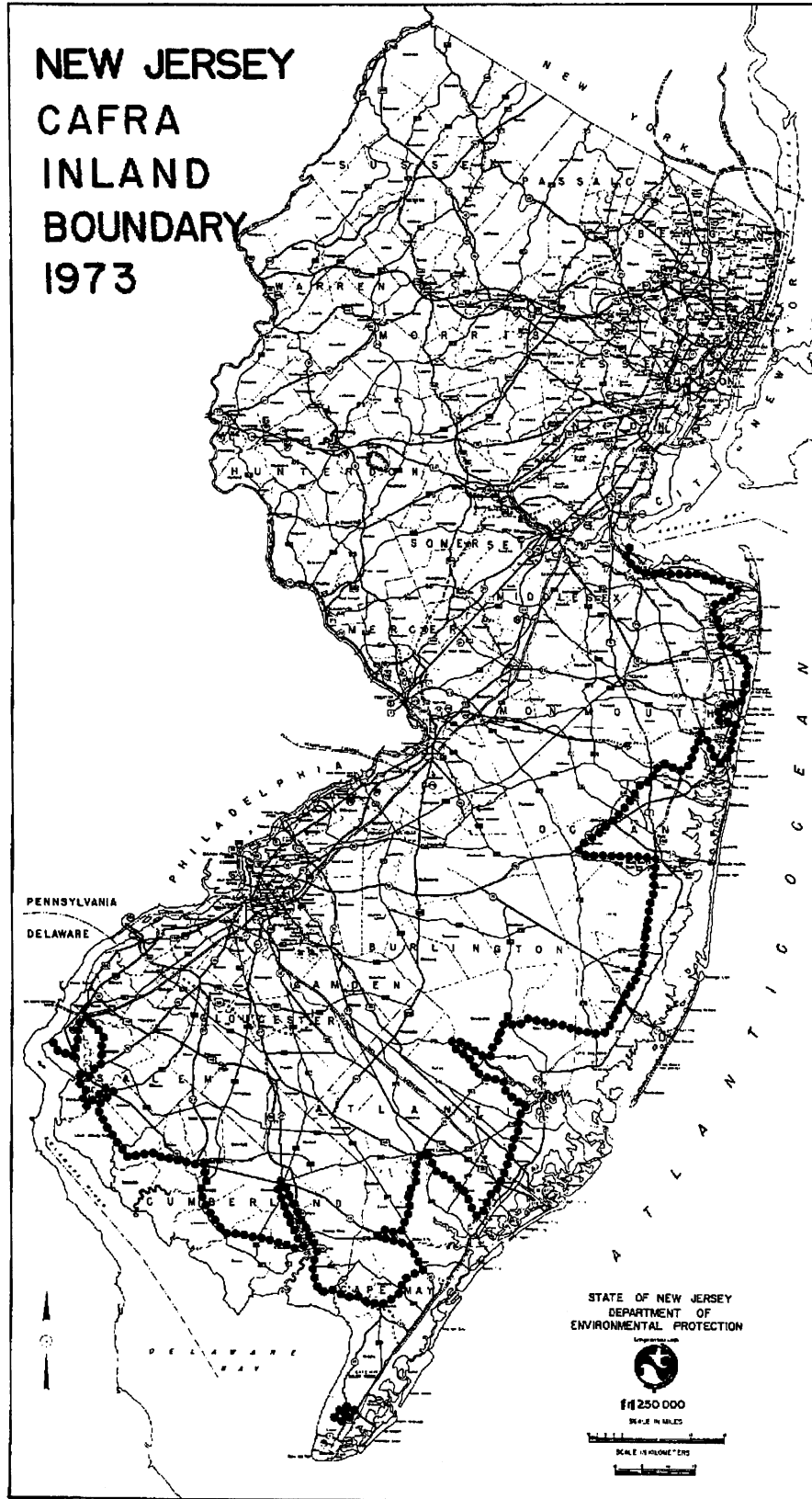


Figure 2



The CAFRA Area features the stretch of barrier islands and headlands traditionally called the "Jersey Shore," long known as a recreation area for the state, northeastern United States, and Canada. This area includes all of the state's oceanfront beaches. Parts of the unique Pine Barrens, as well as the shores of the Delaware Bay and Raritan Bay are also included within the "Coastal Area". All of Atlantic City, which faces new opportunities and problems as a result of casino gambling and offshore oil and gas exploration, lies within the CAFRA Area.

While the statutory CAFRA Area does include considerable portions of the regulated coastal wetlands, DEP completed the rigorous delineation and mapping of coastal wetlands required by the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) after enactment of CAFRA. As a result, approximately 3,750 acres of selected coastal wetlands are found landward of the present CAFRA inland boundary, along tidal streams that are largely included within the CAFRA Area. This situation occurs primarily in Atlantic, Burlington, Cumberland, Monmouth and Salem counties. In order to comply with the inland boundary requirements of the federal Coastal Zone Management Act, these coastal wetlands must be included with this first segment of New Jersey's coastal management program. State-owned tidelands along these same tidal streams are also included by definition.

The Upper Wetlands Boundary defines land areas subject to the jurisdiction of the Wetlands Act, on photo-maps (scale of one inch = 200 feet or 1:2,400) on file at county court houses and available for inspection at the Trenton offices of DEP's Division of Marine Services. Appendix F lists the DEP Wetlands maps that include wetlands areas considered to be within the inland boundary of the Bay and Ocean Shore Segment. Figure 3 shows an example of an area in Monmouth County where wetlands extend landward of the CAFRA boundary. As the inland boundary of the Segment is not exactly the same as the CAFRA inland boundary, the phrase "Bay and Ocean Shore" will be used to describe the geographic area that includes the CAFRA Area and these directly adjacent Wetlands, for the purposes of the federal Coastal Zone Management Act. This term will also be used to distinguish the Bay and Ocean Shore Segment from the waterfront areas of New Jersey's coastline along the Delaware and Hudson rivers.

Finally, as DEP completes its multi-year tidelands delineation program, the inland boundary of the Bay and Ocean Shore Segment may require further revision to include tidelands that may also be located landward of the present CAFRA boundary.

Seaward and Interstate Boundaries - Bay and Ocean Shore Segment

The seaward boundary of the Bay and Ocean Shore Segment and indeed the entire coastal zone is the outer limit of the United States territorial sea. This limit is three nautical miles from base lines established by international law and defined by the United States. The geographic jurisdiction of the Coastal Area Facility Review Act extends seaward to the State's territorial limit.

New Jersey has potential interstate coastal zone boundaries with Delaware, New York, and Pennsylvania, but the Pennsylvania boundary will not be addressed here as it does not affect the Bay and Ocean Shore Segment.

Figure 3



New Jersey's Bay and Ocean Shore Segment boundary with the State of Delaware through Delaware Bay and the Delaware River was established in 1933 by the U.S. Supreme Court in New Jersey v. Delaware (291 U.S. 361). The interstate boundary is generally along the ship channel in the middle of Delaware Bay. However, from a point near the northern tip of Artificial Island, in Lower Alloways Creek Township, Salem County, the interstate boundary between New Jersey and Delaware extends north at the mean low water line on the New Jersey shoreline, until the Delaware-Pennsylvania boundary. Resolution of potential conflicts between the coastal policies of Delaware and New Jersey will require continued coordination and work in the first year of Program approval, toward appropriate agreements between the coastal management programs of both states, Salem County and the affected municipalities.

The extensions on the open sea of New Jersey's boundaries with New York and Delaware are not yet determined. The issue of the lateral seaward boundary is receiving focused attention as a result of the 1976 amendments to the federal Coastal Zone Management Act, which created a Coastal Energy Impact Program to assist states financially to cope with the onshore effects of offshore oil and gas energy activities. Each state's share of this financial assistance depends in part upon the leased Outer Continental Shelf acreage adjacent to a particular coastal state. Adjacency is determined by the extension of the lateral seaward boundary of each state. The New Jersey Department of Environmental Protection and the New Jersey Department of Energy, the designated lead agency for administration of the Coastal Energy Impact Program in New Jersey, are taking steps to define the lateral seaward boundaries of New Jersey with Delaware and with New York.

PART IV

ALTERNATIVES TO THE PROPOSED ACTION

This Part describes the four most likely reasons the Assistant Administrator might deny or delay program approval, as well as the five most likely State alternatives to submitting the proposed program. In order to determine the full implications of these alternatives, the reader should consider the impacts described under each Federal alternative.

The proposed action is Federal approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment. The essential alternative to be considered by the Assistant Administrator is whether to approve the Segment. He must determine whether or not to approve the Segment as submitted. In deciding whether to approve the Bay and Ocean Shore Segment he must determine whether the Program meets the requirements of the Coastal Zone Management Act as specified in the twenty-six findings needed for Program approval. This determination ultimately requires that discretion be used in interpreting the intent of Congress as expressed in the Act. This environmental impact statement and public comments are intended to assist the Assistant Administrator in determining the adequacy of the proposed program.

A variety of alternatives are available to the State, represented by all possible amendments to the Bay and Ocean Shore Segment that might be adopted. Clearly, however, the alternatives that will be considered by the State will depend on what action is taken by the Assistant Administrator. In particular, if the Assistant Administrator delays or denies approval the State will be required to consider a wide range of options. If the Segment is approved, the State is unlikely to consider alternatives to Program implementation.

These Federal and State alternatives could be carried out in several different ways. As indicated, Federal approval would probably lead to implementation of the Segment under Section 306. On the other hand, a decision by the Assistant Administrator not to approve the Segment as submitted could lead New Jersey to withdraw from the Federal Program and wait to submit an entire State Coastal Zone Management program.

A. FEDERAL ALTERNATIVES

1. The Assistant Administrator could delay or deny approval if the State does not have the authority necessary to implement the Bay and Ocean Shore Segment at the time of segment approval.

The Federal Office of Coastal Zone Management has made an initial determination that the authorities that will be in place at the time of Segment approval will be adequate to carry out the Bay and Ocean Shore Segment management program and meet the objectives of the CZMA. This impact statement solicits the views of the public and affected government agencies on the specific issues outlined below.

The Coastal Area Facility Review Act (CAFRA) of 1973 (N.J.S.A. 13:19-1 et seq.) is New Jersey's major coastal law. In CAFRA, the Legislature entrusted the Department of Environmental Protection with the responsibility to regulate the location and construction of housing developments of 25 or more units and most

major industrial, sewer and energy producing facilities in a defined "Coastal Area" stretching from Raritan Bay and Sandy Hook to Cape May and from Cape May to the Delaware Memorial Bridge. The inland boundary established by the Legislature varies from several thousand feet to 24 miles. This coastal area includes 17 percent of the land and more than 75 percent of the waters in New Jersey, including coastal waters out to the three mile limit of the State's jurisdiction in the Atlantic Ocean. Other relevant laws that apply include the Wetlands Act, Riparian Statutes and Shore Protection Statutes.

If the Assistant Administrator determines that these authorities were not adequate to meet the requirements of the Coastal Zone Management Act, he could delay or deny approval until the state submitted the entire State program, unified through legislation the Wetlands Act, Riparian Statutes and CAFRA, or waited until new legislation was passed for the entire coastal zone of New Jersey.

The implications of this alternative include a delay in Bay and Ocean Shore Segment implementation, no increase in Federal funds for New Jersey under Section 306, and the possibility that Federal actions affecting the New Jersey Segment might be inconsistent with the policies of the Segment. Therefore, under this alternative, the monetary and Federal consistency benefits of Federal approval would be deferred for some period of time. Improved environmental protection anticipated under a Federally approved program would not be achieved as rapidly. Momentum for effective protection of the State's coastal resources, gained through preparation of this Bay and Ocean Shore Segment might be lost.

2. The Assistant Administrator could delay or deny approval of the New Jersey Bay and Ocean Shore Segment if the segment does not adequately achieve the goals of the Coastal Zone Management Act as expressed by Congress in Section 303 of the Act.

Section 303 of the Coastal Zone Management Act states that it is national policy

"... to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic and esthetic values as well as to needs for economic development."

The initial determination of approval on this issue was based on the policies adopted pursuant to this program regarding housing, major facility policies, recreation, performance standards and case law under CAFRA (i.e. Toms River Condominium high rise case CA #73-003 decided July 10, 1974, CAFRA Opinion No. 1).

The majority of visual and cultural concerns are left to the discretion of local governments if they do not involve major facilities as defined by CAFRA. However, the Department of Environmental Protection will have a direct role in determining the visual aspects of the New Jersey coast by precluding certain major facilities in some areas, while encouraging development in other areas.

The implications of selecting this alternative include a delay in Segment implementation, no increase in Federal funds for New Jersey under Section 306, and the possibility that Federal actions affecting the New Jersey coast might be inconsistent with the policies of the Segment. Therefore, under this alternative, the monetary and Federal consistency benefits of Federal approval would be deferred for some period of time. Improved environmental protection anticipated under a Federally approved coastal program would not be achieved as rapidly.

3. If the national interest in the siting of facilities in the Bay and Ocean Shore Segment were not adequately considered, the Assistant Administrator could delay or deny approval of the Program Segment.

The Federal Coastal Zone Management Act states that prior to granting approval of a segmented management program the Secretary shall find "the segmented management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities...) necessary to meet requirements which are other than local in nature."

No major facility is excluded from the coast through the CAFRA permit application program. However, each facility must be consistent with the policies and performance criteria established by the Department of Environmental Protection. The Assistant Administrator has undertaken a review of the general process and results of the Program's consideration of and responses to Federal agency and national interest views. Based on the information presented, the Bay and Ocean Shore Segment appears to have considered adequately these matters. However, the review process which is initiated with the distribution of this Draft Environmental Impact Statement and Program document is designed to provide further opportunity for interested parties to comment on whether New Jersey has adequately considered the national interests. If it is shown that New Jersey has not adequately considered the national interests in the planning for and siting of facilities which are other than local in nature, then the Assistant Administrator could delay or deny the Program.

This Federal alternative could result in a delay in Program implementation, loss of Federal funding that would otherwise be available, and allow Federal actions in the coastal zone to be inconsistent with the management program.

4. The Assistant Administrator could deny or delay approval of the Bay and Ocean Shore Segment if the Segment could not be unified with the entire state program.

This alternative would encompass a finding by the Assistant Administrator that a delay in Segment approval was necessary until it was unified into the entire State program, so that all necessary authorities were in place.

The Assistant Administrator could find that the Bay and Ocean Shore Segment could not be unified into the entire state program due to a lack of adequate authorities outside the Segment area.

The Federal Office of Coastal Zone Management has made an initial determination that the Segment does meet the minimum requirements. However, the Office will review specific comments on the consistency of the New Jersey coastal program with the requirements outlined in the Federal Act and with the specific standards for Section 306 approval provided in 40 CFR 923.

The three primary impacts of a negative decision would be that New Jersey would not receive necessary funds to implement the Program; Federal consistency would not apply to Federal agencies' activities in the coastal zone; and national interest would not be taken into account.

In addition some delay in Program implementation would occur; the length of the delay would depend on the type of Program deficiency that was found and the types of remedial action taken by the State.

B. STATE ALTERNATIVES

1. The State would withdraw its application and not seek Federal assistance.

The State could withdraw its application and not seek Federal assistance. The Department of Environmental Protection would continue to manage that area of the New Jersey coast under its regulatory jurisdiction. The State has spent \$1.2 million in Federal money in preparation of its State coastal zone management program. Without Federal assistance, the DEP would continue to operate the coastal program, but at reduced funding levels. The State under this alternative would not be subject to Federal regulations in the management of the Segment.

The coastal management efforts in New Jersey began prior to the passage of the Coastal Zone Management Act and will continue even if Federal approval is not received. However, the State would not receive (1) Federal money to assist in the day to day management of the program, (2) the provisions of the Federal consistency section of the Coastal Zone Management Act and (3) loan guarantees and credit assistance to help mitigate onshore impacts of outer continental shelf development. Federal funding support will greatly help in the DEP's implementation of the Segment.

2. The State could wait to submit the Bay and Ocean Shore Segment as part of the entire State Coastal Program.

The State could wait until early 1979 to submit a unified State coastal zone management program including the areas outside CAFRA jurisdiction, along the Delaware River and in Northern New Jersey and the area under the Hackensack Meadows Development Commission. Section 306(h) allows a state to submit a segment of the management program as long as it is consistent with the State's coastal program. This will allow Section 306 funds to be used in managing the Bay and Ocean Shore portion of the coastal zone. Tasks for this area have been completed under Section 305, and the State can now implement the policies and plans in this region of the coast. The negative impact of this alternative include: (1) the State will lose Section 305 funding by December, 1978, and (2) the DEP and DOE can implement the program now.

3. The State could wait until new legislation is passed combining the three key coastal laws.

The State could submit legislation recodifying the present Wetlands Act, Riparian Statutes and CAFRA into one unified Act. This alternative might eliminate any conflicts which might develop between these three Acts. The negative impacts include: (1) the uncertainty of legislative action and (2) the State will lose Section 305 funding by December, 1978.

4. The State could diminish the CAFRA boundary and then submit a segmented management program.

The area under CAFRA permit jurisdiction was established by the New Jersey legislature in 1973. It extends from the Raritan Bay east to Sandy Hook, south to Cape May Point and north and west up the Delaware estuary almost to the Delaware Memorial Bridge near Wilmington, Delaware. The total land area is 1,376 square miles or 17 percent of New Jersey's land area. The coastline is more than 215

miles in length, with 126 miles along the Atlantic oceanfront from Sandy Hook to Cape May. Inland the CAFRA boundary ranges from a few thousand feet from the ocean in Monmouth County, to 24 miles around the Mullica River at Batsto in Burlington County. Major roads and rights-of-way, such as the Garden State Parkway and county roads, define the boundary. A small segment around the Cape May County airport was excluded from the Coastal Area by the law.

A change in this boundary would require an amendment being passed by the Legislature.

5. The State could seek legislation delegating authority for major facility siting in the coastal zone to the local governments.

The State could seek legislation which would delegate authority for major coastal facilities to local governments. The coastal program could wait until this legislation was passed and then submit an expanded program. The Legislature chose in 1973 not to delegate this authority to local governments, but to give this authority to the DEP.

PART V

PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH
CANNOT BE AVOIDED

The probable effects of New Jersey Bay and Ocean Shore Segment implementation will, on the whole, be environmentally beneficial. However, there will probably be a number of adverse impacts to both the natural and socio-economic environments which cannot be avoided.

Numerous adverse impacts will continue to be associated with the siting of major facilities for purposes of defense, transportation, energy requirements and others in which both the State and Federal governments have interest. The Program makes provisions for consideration of the siting of facilities which are in the national interest. It is important to note, however, that under the federal Coastal Zone Management Act and related Federal Acts (e.g., National Environmental Policy Act), each such project will be evaluated as to the impacts on the natural coastal environment. That is, investigations will be made, alternatives considered, etc.

FIGURE 23

Agency	Attend Public Agency Advisory Conference, Feb. 21, 1975	Attend Second NJ CZM Conference, May 2, 1975	Respond to 1975 "Call for Information," Dec. 1975	Receive Proposed CAFRA Rules and Regulations	Provide comments on CAFRA Rules and Regulations	Attend Federal Agency Meeting, Aug. 31, 1976	Attend meeting with Dept. of Interior, Sept. 1976	Attend meeting with energy related agencies, Oct. 1976	Return completed questionnaire on agency's involvement in CZM	Attend public meetings on <u>Alternatives for the Coast</u> , Nov.-Dec. 1976	Provide comments on <u>Alternatives for the Coast</u>	Attend workshops on <u>Alternative Boundaries</u> , Jan.-Feb. 1977	Receive Staff Issue Papers	Provide comments on Issue Papers	Receive the <u>Coastal Management Strategy for New Jersey</u>	Provide comments on <u>Strategy</u>	Attend meeting on <u>Strategy</u> , Nov. 21, 1977	Meet individually with DEP-OCZM staff during program development, 1975-1978
Dept. of Agriculture	X																	
Soil Conservation Service		X		X		X			X			X	X		X	X	X	X
Dept. of Commerce																		
NOAA			X	X		X			X			X	X		X	X	X	X
National Marine Fisheries Service				X		X			X			X	X		X	X	X	X
Economic Development Adm.				X		X			X			X	X		X	X	X	X
Maritime Administration				X		X			X			X	X		X	X	X	X
Dept. of Defense																		
Air Force				X		X			X			X	X		X	X	X	X
Army Corps of Engineers	X			X		X			X			X	X		X	X	X	X
Navy	X			X		X			X			X	X		X	X	X	X
Dept. of Energy			X			X			X			X	X		X	X	X	X
Formerly FPC						X			X			X	X		X	X	X	X
ERDA						X			X			X	X		X	X	X	X
FEA						X			X			X	X		X	X	X	X
Dept. of Health, Education, Welfare				X		X			X			X	X		X	X	X	X
Dept. of Housing and Urban Development				X		X			X			X	X		X	X	X	X
Dept. of Interior	X			X		X			X			X	X		X	X	X	X
Bureau of Land Management				X		X			X			X	X		X	X	X	X
Bureau of Mines				X		X			X			X	X		X	X	X	X
Bureau of Outdoor Rec.				X		X			X			X	X		X	X	X	X
Fish and Wildlife Service	X			X		X			X			X	X		X	X	X	X
National Park Service				X		X			X			X	X		X	X	X	X
U.S. Geological Survey				X		X			X			X	X		X	X	X	X
Dept. of Transportation				X		X			X			X	X		X	X	X	X
U.S. Coast Guard				X		X			X			X	X		X	X	X	X
Federal Aviation Adm.						X			X			X	X		X	X	X	X
Federal Highway Adm.						X			X			X	X		X	X	X	X
Federal Railroad Adm.						X			X			X	X		X	X	X	X
National Hwy. Traffic Safety						X			X			X	X		X	X	X	X
Urban Mass. Trans. Adm.						X			X			X	X		X	X	X	X
Material Trans. Bureau						X			X			X	X		X	X	X	X
Nuclear Regulatory Comm.				X		X			X			X	X		X	X	X	X
General Services Adm.				X		X			X			X	X		X	X	X	X
Environmental Protection Agency	X			X		X			X			X	X		X	X	X	X
Council of Env. Quality				X		X			X			X	X		X	X	X	X
Advisory Council on Historic Preservation						X			X			X	X		X	X	X	X
Marine Mammal Commission						X			X			X	X		X	X	X	X

Department of Agriculture
Soil Conservation Service
Department of Commerce
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Department of Defense
US Air Force
US Army Corps of Engineers
US Navy
Department of Energy
Department of Housing and Urban Development
Department of the Interior
Bureau of Land Management
Bureau of Mines
Fish and Wildlife Service
Department of Transportation
US Coast Guard
Federal Aviation Administration
Environmental Protection Agency

Comments from the Federal agencies touched on all sections of the Coastal Management Strategy from use and resource policies, to particular questions on federal consistency and excluded federal land. More general comments on the Strategy included a question on DEP's authority over land and water uses in the coastal zone. Another commentor praised the Strategy for its emphasis on concentration of development and preservation of open space.

The comments and DEP responses are summarized in detail in a separate document entitled Coastal Management Strategy for New Jersey - CAFRA Area; Public Comments and DEP Responses, available from DEP-OCZM. Several of the specific comments are summarized below.

BOUNDARY

Comment: The Navy noted that Fort Dix, Lakehurst and the Naval Weapons Station-Earle were not in the coastal zone.

DEP-OCZM Response:

Lakehurst and Fort Dix were deleted from the list of federal lands. The pier at Earle and part of the road and railroad running to Earle are within the Segment and were therefore left on the list of excluded federal lands. See Chapter Two.

Comment: The National Marine Fisheries Service noted the existence of regulated wetlands inland of the CAFRA boundary. The Fish and Wildlife Service asked if all wetlands along the Delaware River had been included.

DEP-OCZM Response:

The boundary of the Segment has been changed to include the indicated wetlands. See Chapter Two.

LOCATION POLICIES

SPECIAL WATER'S EDGE AND LAND AREAS

DUNES

Comment: The U.S. Department of Agriculture commented that the coastal program should further address dune restoration, stabilization and protection.

DEP-OCZM Response:

The location policy for Dunes under Special Land Areas encourages restoration, stabilization, protection and creation of new dunes. See Chapter Three.

WATER'S EDGE

LOWER WATER'S EDGE

WETLANDS

Comment: EPA said the Strategy should stress that Atlantic City redevelopment avoid the taking of any wetlands.

DEP-OCZM Response:

In general, the Coastal Program discourages development of all kinds in wetlands. For further clarification refer to the wetlands policy included in the Lower Water's Edge policy in Chapter Three.

USE POLICIES

General

Comment: Fish and Wildlife Service said the use policies should be more specific and definitive.

DEP-OCZM Response:

Use policy section has been reorganized to include a definition of uses, succinct policy statements, and basis and background for the statement.

HOUSING

Comment: HUD recommended that motel, hotel and other visitor-serving facilities be located only in existing non-residential areas, to the maximum extent practicable.

DEP-OCZM Response:

The hotel-motel development policy in Chapter Three reflects HUD's comment.

Comment: HUD asked that DEP-OCZM take affirmative steps to ensure that low and moderate income housing development will occur in the CAFRA Area.

DEP-OCZM Response:

The program's policies encourage accommodation of low and moderate income housing. Affirmative steps will be taken during the implementation phase of the program and by the N.J. Department of Community Affairs.

Comment: HUD further suggested the program encourage new or expanded road or highway projects in developing areas to allow for the development of efficient regional settlement patterns.

DEP-OCZM Response:

The Coastal Program encourages locations suitable for public transportation and does not promote continued car dependent development.

ENERGY

Comment: The Department of Energy praised the Strategy for consideration of advanced energy resource development and encouragement of conservation of energy in the development of facilities in the coastal zone.

Comment: EPA asked that the Great Bay area and mouth of the Mullica River be specifically included as areas to be avoided in pipeline construction.

DEP-OCZM Response:

The pipeline energy policy does not list specific sites to be avoided but the policy does say the initial corridor shall, to the maximum extent feasible, specifically avoid the Mullica River watershed.

INDUSTRY-COMMERCE

Comment: The Department of Transportation suggested that New Jersey's program include regulatory procedures for commercial vessels or other activities not directly involving land use decisions.

DEP-OCZM Response:

The New Jersey Coastal Program will be concerned primarily with land and water use activities or funding authority. Also, the U.S. Supreme Court recently ruled in Ray v. Atlantic Richfield Company that states could not regulate the size and operating conditions of oil tankers, with some exceptions for pilot and tug requirements.

SHORE PROTECTION

Comment: EPA supported the program's beach nourishment program along as the extraction method of the sand used for replacement is not environmentally degrading.

DEP-OCZM Response:

The shore protection policies address the beach nourishment issue. See Chapter Three.

RESOURCE POLICIES

Comment: The National Marine Fisheries said the program should have greater recognition of the value and importance of fisheries.

DEP-OCZM Response:

The Coastal Program does recognize the importance of fish in its resource policy which specifically addresses marine fish and fisheries. The program also identifies Special Water Areas related to fish productivity, commercial use of fish stocks and recreational fish areas. See Chapter Three.

BUFFERS AND COMPATABILITY OF USES

Comment: EPA and DOT said the Program should consider noise impacts.

DEP-OCZM Response:

The Coastal Program policy on buffers and compatability of uses requires the project applicant to analyze the use and adjacent uses and where juxtapositions occur that could cause compatibility problems, the analysis is to demonstrate that a buffer will adequately ameliorate the impact.

MANAGEMENT SYSTEM

DIRECT AUTHORITY

Comment: BLM questioned DEP's authority to insure control of land and water uses within the coastal zone.

DEP-OCZM Response:

CAFRA, coupled with the Wetlands Act and the riparian statutes, give DEP significant land and water use authority within the coastal zone.

LOCAL GOVERNMENT ROLE

Comment: EPA suggested the coastal program require local government to comply with the coastal policies formulated by the State, rather than only be urged to follow them.

DEP-OCZM Response:

New Jersey is opting for Technique B - Direct State Control, to implement the Coastal Management Program. DEP-OCZM is continuing to explore the feasibility of new legislation which would improve weaknesses of the current division of authority between State and local governments.

OTHER STATE RESOURCE MANAGEMENT PLANS

Comment: HUD suggested adding a fifth policy to the four Basic Coastal Policies to assure to the maximum extent practicable, consistency with the policies in the Department of Community Affairs State Development Guide Plan.

DEP-OCZM Response:

DEP-OCZM has been working with the New Jersey Department of Community Affairs and the two agencies intend to have consistent policies for managing the resources and development of New Jersey. This coordination was not considered to be of the same broad scope as the Basic Coastal Policies.

FEDERAL CONSISTENCY

Comments: DOT suggested a more detailed description of Federal Consistency procedures. The U.S. Air Force and the U.S. Navy said the coastal program should clearly state that federal agencies make consistency determinations on their projects.

DEP-OCZM Response:

The Coastal Program includes more detailed and specific consistency procedures. The procedures spell out who should make the consistency determination regarding various federal activities. The procedures were written to comply with the adopted federal consistency regulations issued by NOAA/OCZM. See Chapter Five.

FEDERAL LAND

Comment: DOT said the Strategy should include the procedure the State intends to follow to gain access to federal lands. The Navy and Air Force reiterated the coastal program should exclude all federal lands, owned, leased, or held in trust by the United States.

DEP-OCZM Response:

Regarding DOT's concern of access to Federal lands, there may be cases in which activities on federal lands could encourage access to shorefront not federally owned. In response to the Air Force and Navy, the Coastal Program clearly excludes all lands, owned, leased, or held in trust by the United States. See Chapter Two.

NEXT STEPS IN COASTAL MANAGEMENT

Comment: U.S. Fish and Wildlife Service said the Strategy cannot be successfully implemented until new regulatory legislation addressing sub-threshold development in the CAFRA area and all upland development outside of the CAFRA area is enacted.

DEP-OCZM Response:

CAFRA, the Wetlands Act, Riparian Statutes, and Shore Protection Program give DEP significant coastal land and water use authority.

APPENDIX D: LOCAL GOVERNMENT PARTICIPATION: 1975-1978

DEP-OCZM has worked to involve county and municipal officials in coastal planning for New Jersey. The involvement has taken many forms, including sharing draft documents, convening and attending meetings in many localities and conducting many one-on-one conversations.

County governments have participated largely through the offices of the county planning directors. In particular, the New Jersey County Planners Association organized a Coastal Committee to work closely with DEP-OCZM on coastal zone management. The major product of this cooperation to date has been a special state-county partnership in 1977 to study and plan for possible onshore impacts of offshore oil and gas exploration and development and coastal energy facility siting in general.

DEP contracted with twelve coastal counties, including all eight counties in the Bay and Ocean Shore Segment, to provide assistance to DEP in developing the energy facility siting element of the New Jersey Coastal Program. Each county was awarded \$15,000, for the 12 month study. The joint State-county project had three main objectives. The primary purpose was for counties to become familiar with oil and gas industry operations and the other energy facilities likely to locate in the coastal area. A second objective was for counties to identify sites that might be potentially suitable or non-suitable for energy facilities and provide documentation for their findings. The study also became a learning experience for both DEP and the counties. DEP, for example, invited representatives and arranged field trips for the study team to visit energy facilities. DEP also held monthly meetings with the county representatives around the state, in order to increase communications between the two levels of government.

The final reports submitted by the counties reflected this learning process and showed an increasing grasp of the greater than local issues involved in energy facility siting. While not all the county reports were site specific, the counties did demonstrate an understanding of the concepts involved in coastal energy facility siting. This knowledge should provide a useful background for further energy siting studies and specific siting decisions. As expected, counties with local economies largely based on tourism showed a greater concern for the environment than did other counties.

In 1978, DEP has continued this cooperative relationship by passing through funds to most of the same coastal county planning boards to allow them to contribute county and municipal input to the entire range of issues addressed by coastal management. The counties will comment on state coastal planning documents, evaluate their consistency with municipal plans and ordinances, and comment on specific coastal permit applications.

DEP-OCZM relied heavily upon county planning directors in the preparation of the Interim Land Use and Density Guidelines for the Coastal Area, particularly in the period from October 1975 through March 1976, for critical review and comment on drafts of working papers. County officials have also commented on Alternatives for the Coast, Alternative Boundaries for New Jersey's Coastal Zone, selected issue papers and the Coastal Mangement Strategy in both draft and final form, and the republication draft of this document.

At the municipal level, DEP-OCZM has worked closely with the mayor, planning board and environmental commission of the municipalities in which CAFRA permit applications or other coastal issues have been particularly prominent. Dover Township in Ocean County is the location of considerable CAFRA permit activity and was also the site used for DEP-OCZM's demonstration project on coastal decision-making called the "Intuitive-Interactive Model". Lower Township was the site used for DEP-OCZM's pilot study of Lower Cape May County. Atlantic City has been subjected to many potentially conflicting development initiatives, and DEP-OCZM staff have participated in many meetings with city officials. In addition, DEP-OCZM staff have met with officials from many other municipalities both within, and outside the proposed coastal zone, to discuss the coastal program in general and in terms of its local implications.

County and municipal groups and officials in the coast are included on the DEP-OCZM mailing list. They have each received copies of the CAFRA Rules and Regulations, Interim Land Use and Density Guidelines, Alternatives for the Coast, Coastal Management Strategy and issues of The Jersey Coast.

DEP-OCZM has intentionally held and attended public meetings in varied locations so that officials and other citizens of many municipalities would have an easy opportunity to learn about, and comment on the evolving coastal program. From 1975 to 1977, DEP-OCZM staff attended public meetings in 38 municipalities, in addition to holding public hearings in 59 municipalities on CAFRA permit applications. Officials from neighboring municipalities also attended many of these meetings.

DEP-OCZM's implementation of CAFRA has created a working relationship with many county and municipal governments. With the county energy facility planning project, this direct involvement has spread beyond the CAFRA boundary to include jurisdictions covering all of the potential coastal zone.

APPENDIX E: COMMENTS ON THE COASTAL MANAGEMENT STRATEGY FOR
NEW JERSEY - CAFRA AREA; SEPTEMBER 1977

In September, 1977, the Department of Environmental Protection submitted the report, Coastal Management Strategy for New Jersey - CAFRA Area to the Governor, Legislature, and public. Prepared by DEP's Office of Coastal Zone Management, the document was required by the Coastal Area Facility Review Act of 1973 and represented the first major step toward submission of a coastal management program for New Jersey's Bay and Ocean Shore Segment.

DEP-OCZM distributed 3,000 copies of the Strategy and an additional 5,000 copies of a four page summary to federal and state agencies, regional authorities, county and municipal agencies, industry and environmental groups, and interested citizens. In November, 1977, DEP-OCZM conducted a series of eight public meetings throughout the state to review and discuss the Strategy with interested citizens. During the same month, the staff met individually with representatives of approximately 20 state agencies and interest groups.

These meetings provided a forum in which individuals could discuss their concerns and suggestions for revisions to the Strategy. Their comments were recorded by DEP-OCZM staff members. In addition, the Office received more than 80 letters and statements commenting on the Strategy. The chart at the end of this Appendix lists the agencies and groups who provided comments at a public meeting and/or in writing.

DEP-OCZM addressed these many statements by grouping the comments within each statement according to the subject or policy to which they referred. A single letter might contain comments on several different parts of the Strategy. The result was a workbook with more than 450 individual comments, organized in the order of the relevant sections of the Strategy. This format allowed DEP-OCZM staff to analyze and respond to the comments raised by each section of the report.

DEP cannot reproduce all the comments in this Appendix, but the Department will make copies of its workbook of comments available to interested people. It is called Coastal Management Strategy for New Jersey - CAFRA Area; Public Comments and DEP Responses. Several major themes and concerns emerged from the comments.

The most prevalent comment, which was expressed in several ways, was that the Strategy lacked sufficient specificity and predictability. This led to concern that a potential land owner, developer or otherwise concerned person could not have advance certainty of the outcome of an application for a coastal permit. Others feared that the policies of the Strategy did not have to be enforced and would leave too much discretion in the hands of the officials who happened to work in DEP at a given time. A related concern was that the Strategy did not provide maps indicating where different types of development would or would not be allowed.

DEP responded to these comments in two ways. First, a concerted effort has been made to make the Coastal Resource and Development Policies in this document more specific and clear. The description of the Coastal Location Acceptability Method (CLAM), which was cited by many as intriguing but confusing, was totally reorganized and rewritten (see Chapter Three). In addition, the policies were rewritten so that they could be formally adopted by DEP as substantive administrative rules and regulations.

Second, some of these comments represented unrealistic expectations for the coastal management program. The level of funding for coastal zone management in New Jersey would not allow the level of detailed, site specific planning for the entire 1,382 square miles in the Segment which some people apparently expected. Nor would New Jersey, with its strong reliance on municipal zoning, be able to use such plans at a state level. Furthermore, unlike such a plan which can quickly become outdated by changing events, the New Jersey Coastal Program is designed to be sufficiently specific to provide predictability, but sufficiently flexible to accommodate new ideas and information.

The second major concern raised by comments on the Strategy addressed the extent of regulation it would produce. Some observers had the mistaken impression that the coastal zone management program would lead to additional permits and obstacles to development, and others believed the existing permit programs cover too large a geographic area and are too great a hindrance to development.

Third, some people felt that the policies for what is now called the Bay and Ocean Shore Segment would have the effect of channelling industrial development to the waterfront areas outside the CAFRA Area. This implication was alternately criticized and applauded by different people. In response, DEP noted that development in the other parts of the coastal zone, which will be addressed by the second phase of the coastal program, to be prepared later in 1978, will be required to follow a similar set of policies. Thus, while certain types of energy facilities may be encouraged for location in the urban waterfront area rather than in the CAFRA Area, such facilities would still have to meet air and water quality standards and many of the other policies listed in Chapter Three.

Many comments suggested specific additions, changes, and corrections, while others addressed more general aspects of the coastal planning process, such as public participation. Although these comments are not each described in this Appendix, they are the reason that this Draft Environmental Impact Statement contains many structural and substantive changes from the Coastal Management Strategy (September 1977).

List of Commenting Agencies and Groups on Coastal Management Strategy

(Individuals who submitted comments are not listed here, but are listed in the companion report on Coastal Management Strategy, Public Comments and DEP Responses)

Regional Agencies

Delaware River Basin Commission
Delaware State Office of Management, Budget, and Planning
Delaware Valley Regional Planning Commission
Port Authority of New York and New Jersey
Tri-State Regional Planning Commission
Wilmington Metropolitan Area Planning Council

State Agencies

Department of Agriculture
Department of the Public Advocate
Division of Energy Conservation and Planning, NJ DOE
Division of Environmental Quality, DEP
Division of Fish, Game, and Shellfisheries, DEP
Division of State and Regional Planning, Department of Community Affairs
Division of Water Resources, DEP
Green Acres Program, DEP

County and Municipal Agencies

Atlantic County Executive Offices
Burlington County Board of Chosen Freeholders
Burlington County OCS Study Team
Camden City Department of Economic Development
Cape May County Board of Health
Cape May County Environmental Council
Cape May County Planning Board
Cumberland County Board of Freeholders
East Brunswick Township Planning Board
Jersey City Planning Department
Lawrence Township Planning Board (Cumberland County)
Lower Raritan / Middlesex County Policy Advisory Committee
(208 Water Quality Management Planning Board)
Middlesex County Planning Board
Monmouth County Planning Board
Ocean County Planning Board
Salem County Planning Board

Industrial and Energy Development Organizations

Asarco Inc.
Association of General Contractors
Atlantic City Electric Company
Dredge Harbor Yacht Basin
Hartz Mountain Industries, Inc.
Jersey Central Power and Light Company
Mercer County Building Construction Trades Union
New Jersey Asphalt and Pavement Association
New Jersey Builders Association
New Jersey Marine Trades Association
New Jersey Petroleum Council
New Jersey State Chamber of Commerce
Public Service Electric and Gas Company
Pureland Industrial Complex
Society for Economic and Environmental Development (SEED)
Utility Contractors Association of New Jersey

Environmental Groups

American Littoral Society
Association of New Jersey Environmental Commissions
Atlantic Audubon Society
Bayonne Against Tanks
Citizens Association to Protect the Environment (CAPE)
Conservation Society of Long Beach Island
League for Conservation Legislation
League of Women Voters
Natural Resource Defense Council, Inc.
New Jersey Conservation Foundation
New Jersey Shore Audubon Society
Save Our River Environment
Sierra Club

APPENDIX F: COASTAL ZONE BOUNDARY

Introduction
History of CAFRA Boundary
Municipalities within the Bay and Ocean Shore Segment
Wetlands Landward of the CAFRA Boundary
Preliminary Boundary of the Coastal Zone - Entire State
Municipalities within the Preliminary Boundary of the Coastal Zone
of the Entire State

Introduction

One of the fundamental requirements of the federal Coastal Zone Management Act is the definition of the state's coastal zone for purposes of the federal law. In December 1976, DEP-OCZM released a staff working paper entitled Alternative Boundaries for New Jersey's Coastal Zone, which began public discussion on New Jersey's approach to addressing this requirement. That discussion has culminated in the Bay and Ocean Shore Segment boundary presented in Chapter Two. This Appendix describes the background of the CAFRA boundary, lists the municipalities within the CAFRA Area, identifies the coastal wetlands considered part of the Bay and Ocean Shore Segment, and presents the preliminary boundary for the coastal zone of the entire state.

History of the CAFRA Boundary

New Jersey defined the present CAFRA boundary in 1972-1973 by a process combining scientific analysis, public hearings, and legislative compromise. In early 1972, a bill was introduced in the Legislature (A-722) proposing a "Coastal Area" from the head of tide of the Delaware River around the state's shoreline to the center line of the Raritan River at its mouth, with an inland boundary at the 10 foot contour interval above mean sea level and a seaward boundary at the mean high water line. An alternative inland boundary, recommended by DEP, was included in a substitute bill (A-1429) introduced in mid-1972. The DEP prepared the recommended "Coastal Area" boundary by analyzing the geography of New Jersey in terms of five criteria:

- (1) Limit the Coastal Area to the Coastal Plain geological province,
- (2) Include Wetlands,
- (3) Include tidal portions of streams, and their adjacent fast lands, that empty into the Raritan Bay, Atlantic Ocean, Delaware Bay, and Delaware River,
- (4) Include areas with soils limitations such as poor drainage, propensity for flooding, poor septic tank suitability, poor landfills suitability, limited agricultural value, regions with muck, tidal marsh, swamp, and bog soils, and areas with depth to seasonal high water table, and
- (5) Include densely populated areas whose sanitary wastes could affect water quality.

DEP then interpreted aerial photography and soil surveys to delineate a recommended inland boundary by using fixed, legally-describable cultural features such as roads and railroads to define the land area that met the boundary criteria. This recommended boundary also extended along the Delaware River from Trenton around the bay and ocean shorelines to the Raritan River.

Various legislators, local government officials, business interests, organized public interest groups and citizens expressed strong and often conflicting views on the DEP-prepared inland boundary for the "Coastal Area" during the legislative process of hearings and debate in 1972-1973. In June 1973, after numerous amendments to the bill revising the boundary, the Legislature passed what is now known as the Coastal Area Facility Review Act. The revised and final "Coastal Area" boundary deleted the Delaware River waterfront, excluded a small area around the Cape May County Airport to facilitate economic development, and reduced the scope of the Coastal Area in Middlesex and Monmouth counties.

Eight of New Jersey's 21 counties are represented in the CAFRA Area, including parts of Middlesex, Monmouth, Ocean, Burlington, Atlantic, Cape May, Cumberland, and Salem. The portions of each county within the area vary considerably from less than one percent of Middlesex to 57 percent of Ocean and 93 percent of Cape May. A total of 126 municipalities, as diverse as urban Asbury Park in Monmouth County, suburban Dover Township in Ocean County, and rural historic Greenwich Township in Cumberland County, are wholly or partially within the statutory Coastal Area. This appendix lists these 126 municipalities.

Municipalities Within the Bay and Ocean Shore Segment

All or parts of 126 of New Jersey's 567 municipalities lie within the CAFRA Area, and are included within the geographic scope of the Bay and Ocean Shore Segment. In addition, part of Alloway Township in Salem County is included in the Bay and Ocean Shore Segment as it contains coastal wetlands inland of the CAFRA boundary. The 127 municipalities included, in whole or in part, within the Bay and Ocean Shore Segment are listed below, by county:

Atlantic County

Absecon City	Longport Borough
Atlantic City	Margate City
Brigantine City	Mullica Township
Corbin City	Northfield City
Egg Harbor City	Pleasantville City
Egg Harbor Township	Port Republic City
Estell Manor Township	Somers Point City
Galloway Township	Ventnor City
Hamilton Township	Weymouth Township
Linwood City	

Burlington County

Bass River Township	Washington Township
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Cape May County

Avalon Borough
Cape May City
Cape May Point Borough
Dennis Township
Lower Township
Middle Township
North Wildwood City
Ocean City
Sea Isle City

Stone Harbor Borough
Upper Township
West Cape May Borough
West Wildwood Borough
Wildwood City
West Wildwood Crest Borough
Woodbine Borough

Cumberland County

Bridgeton City
Commercial Township
Downe Township
Fairfield Township
Greenwich Township

Hopewell Township
Lawrence Township
Maurice River Township
Millville City
Stow Creek Township

Middlesex County

Old Bridge Township (Madison)

Monmouth County

Aberdeen Township (Matawan)
Aberdeen Borough (Matawan)
Allenhurst City
Asbury Park City
Atlantic Highlands Borough
Avon-by-the-Sea Borough
Belmar Borough
Bradley Beach Borough
Brielle Borough
Deal Borough
Eatontown Borough
Fair Haven Borough
Hazlet Township
Highlands Borough
Holmdel Township
Interlaken Borough
Keansburg Borough
Keyport Borough
Little Silver Borough

Loch Arbour Village
Long Branch City
Manasquan Borough
Middletown Township
Monmouth Beach Borough
Neptune City
Neptune Township
Ocean Township
Oceanport Borough
Red Bank City
Rumson Borough
Sea Bright Borough
Sea Girt Borough
Shrewsbury Borough
South Belmar Borough
Spring Lake Borough
Union Beach Borough
Wall Township
West Long Branch Borough

Ocean County

Barnegat Light Borough
Barnegat Township (Union)
Bay Head Borough
Beach Haven Borough
Beachwood Borough
Berkeley Township
Brick Township
Dover Township
Eagleswood Township
Harvey Cedars Borough
Island Heights Borough

Jackson Township
Lacey Township
Lakehurst Borough
Lakewood Township
Lavallette Township
Little Egg Harbor Township
Long Beach Township
Manchester Township
Mantoloking Borough
Ocean Gate Township
Ocean Township

Ocean County - Cont.

Pine Beach Borough
Point Pleasant Beach Borough
Point Pleasant Borough
Seaside Heights Borough
Seaside Park Borough

Ship Bottom Borough
South Toms River Borough
Stafford Township
Surf City Borough
Tuckerton Borough

Salem County

Alloway Township (not in CAFRA Area)
Elsinboro Township
Lower Alloways Creek Township
Mannington Township

Pennsville Township
Quinton Township
Salem City
Upper Penns Neck

Wetlands Landward of the CAFRA Boundary

Parts of 45 of DEP's wetlands maps include wetlands areas considered to be within the inland boundary of the Bay and Ocean Shore Segment, as defined in Chapter Two. The numbers of these maps are listed below:

133-1932	259-1788	294-1998
140-1920	266-1766	301-1770
140-1926	266-1787	301-1776
168-1914	266-1788	301-1787
175-1980	273-1782	301-1794
182-1914	273-1794	308-1770
203-1880	280-1758	308-1776
224-1788	280-1782	462-2166
224-1794	280-1788	546-2160
224-1980	280-1794	553-2160
231-1789	287-1752	574-2118
245-1782	294-1788	574-2154
252-1788	294-1794	581-2106
		588-1106

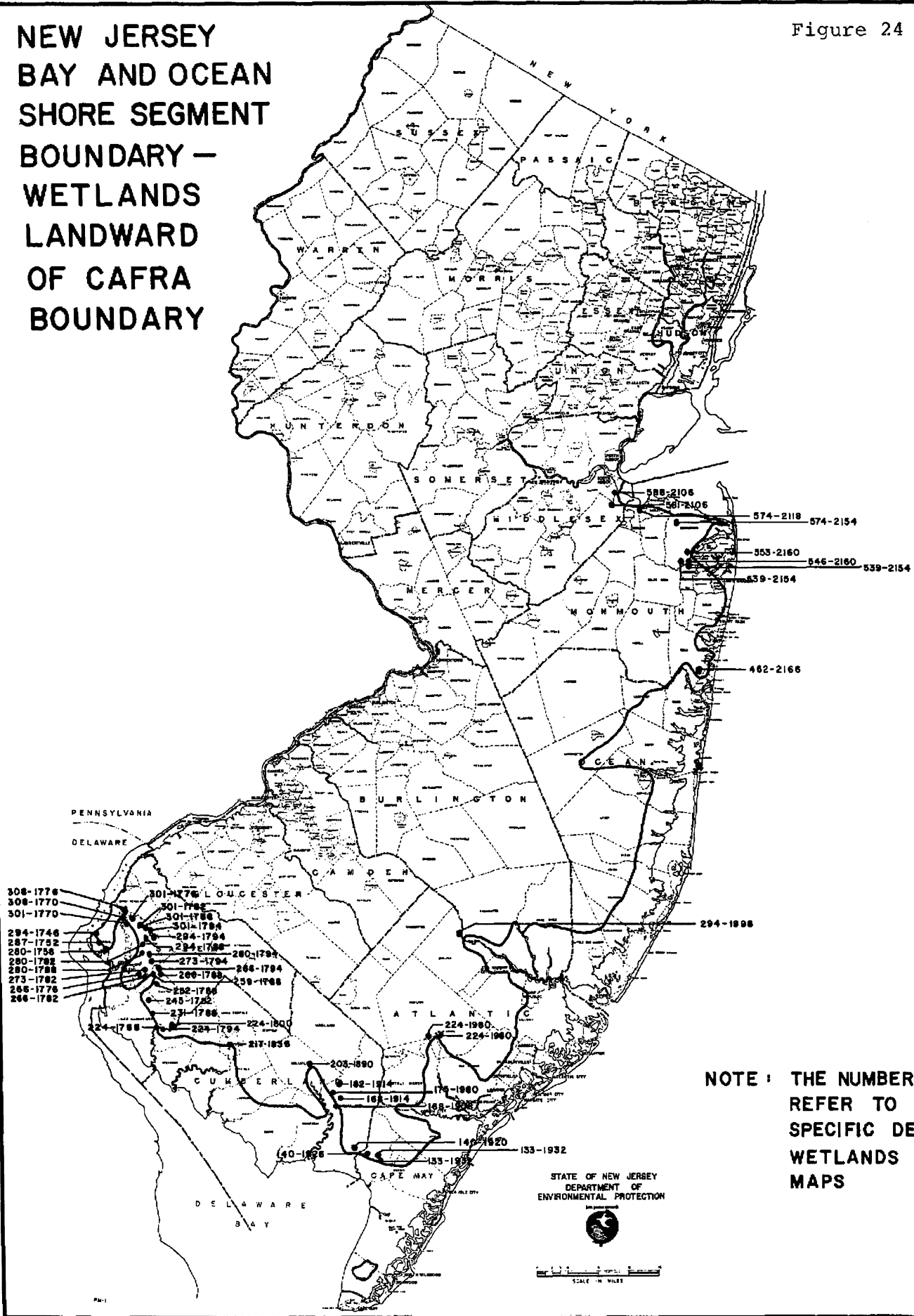
Figure 24 shows the approximate locations of these wetlands, by map number.

Preliminary Boundary of the Coastal Zone - Entire State

While New Jersey is submitting only the Bay and Ocean Shore Segment for federal review and approval at this time, federal regulations [15 CFR 923.61(a)(3)] require the coastal zone boundary to be determined initially for the entire coastal zone throughout the state at the time of segment submission. The Coastal Management Strategy for New Jersey - CAFRA Area (September 1977) defined an initial, proposed state-wide "coastal zone", under the federal Coastal Zone Management Act. That proposal included the entire CAFRA Area, as well as all coastal waters to the limit of tidal influence, a narrow strip of adjacent shorelands, and the Hackensack Meadowlands Development Commission District. Figure 25 depicts generally this proposed coastal zone, and its four regions. This proposed "coastal zone" is based on a definition of coastal waters, an inland boundary drawn along easily-recognized roads and railroads immediately landward of the defined coastal waters, and the jurisdiction of the Hackensack Meadowlands Development Commission.

Figure 24

**NEW JERSEY
BAY AND OCEAN
SHORE SEGMENT
BOUNDARY —
WETLANDS
LANDWARD
OF CAFRA
BOUNDARY**



**NOTE: THE NUMBERS
REFER TO
SPECIFIC DEP
WETLANDS
MAPS**

STATE OF NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL PROTECTION
1000
SCALE IN MILES

The coastal waters of New Jersey include: the Atlantic Ocean to the limit of New Jersey's seaward jurisdiction; the Hudson River, Upper New York Bay, Newark Bay, Arthur Kill, and Raritan Bay to the New York boundary; Delaware River and Bay to the State of Delaware boundary; Delaware River to the Pennsylvania boundary; and the tidal portion of the Delaware Raritan, Passaic, and Hackensack Rivers, including the tidal portions of their tributaries and other tidal streams of the Coastal Plain.

The landward extent of coastal waters can be defined either by the limit of waters containing a specified percentage of salinity, the extent of the salt wedge, or tidal influence. Figure 26 displays selected salinity levels at various points along New Jersey's coastal waters, using the limited available data. Salinity levels are highly variable geographically throughout the seasons and from year-to-year, and therefore not appropriate for fixed boundaries, given the complexity and diversity of New Jersey's estuaries. The landward penetration of tidal influence in a watercourse does, however, provide a readily measurable dividing line for coastal and non-coastal waters. (The tidal limit also coincides with the extent of State-owned tidelands and permit regulation under the riparian lands management program).

Two methods have been used to define the upstream limit of tidal activity. First, the approximate tidal limits specified in the annual Compendium of New Jersey Fish Laws, published by DEP's Division of Fish, Game, and Shellfisheries have been used where available. These limits are typically defined as bridges or dams. Second, the point where the 20 foot contour interval crosses the water course is used to define the approximate limit of tidal influence along other tidal water courses. In the future, DEP's completed tidelands delineation maps, prepared by the Office of Environmental Analysis in the Office of the Commissioner, will precisely and legally define New Jersey's tidal limits. These delineations will become part of the official boundary of the coastal zone.

This proposed coastal zone includes at least a small part of a total of 243 municipalities in seventeen of New Jersey's twenty-one counties, including municipalities in the Bay and Ocean Shore Segment. The next section of this appendix lists these municipalities. Only Hunterdon, Morris, Sussex, and Warren counties have no coastal waters and are excluded from the coastal zone. This relatively large zone, united by the presence of coastal waters, is quite diverse, stretching from the port at Camden to the vast wetlands along Delaware Bay, to the beaches of the barrier islands along the ocean, to the industrialized waterfront of northern New Jersey.

Tidal influence makes the Delaware River region immediately adjacent to these waters "coastal" in the sense intended by the federal Coastal Zone Management Act. Although the CAFRA boundary stops south of the Delaware Memorial Bridge, the tidal influence on the Delaware River extends 60 miles further north to Trenton. Because of the flat topography of the Coastal Plain, tidal tributaries from the Delaware River extend up to 10 miles inland. NOAA-OCZM does not require inclusion of the Delaware River within New Jersey's coastal zone as the quantity of seawater is less than 5 parts per thousand. However, the State of New Jersey does today manage the wetlands and riparian lands along this part of the coast and prefers to include these areas within the proposed coastal zone for the second phase of New Jersey's coastal management program under federal law.

Figure 25

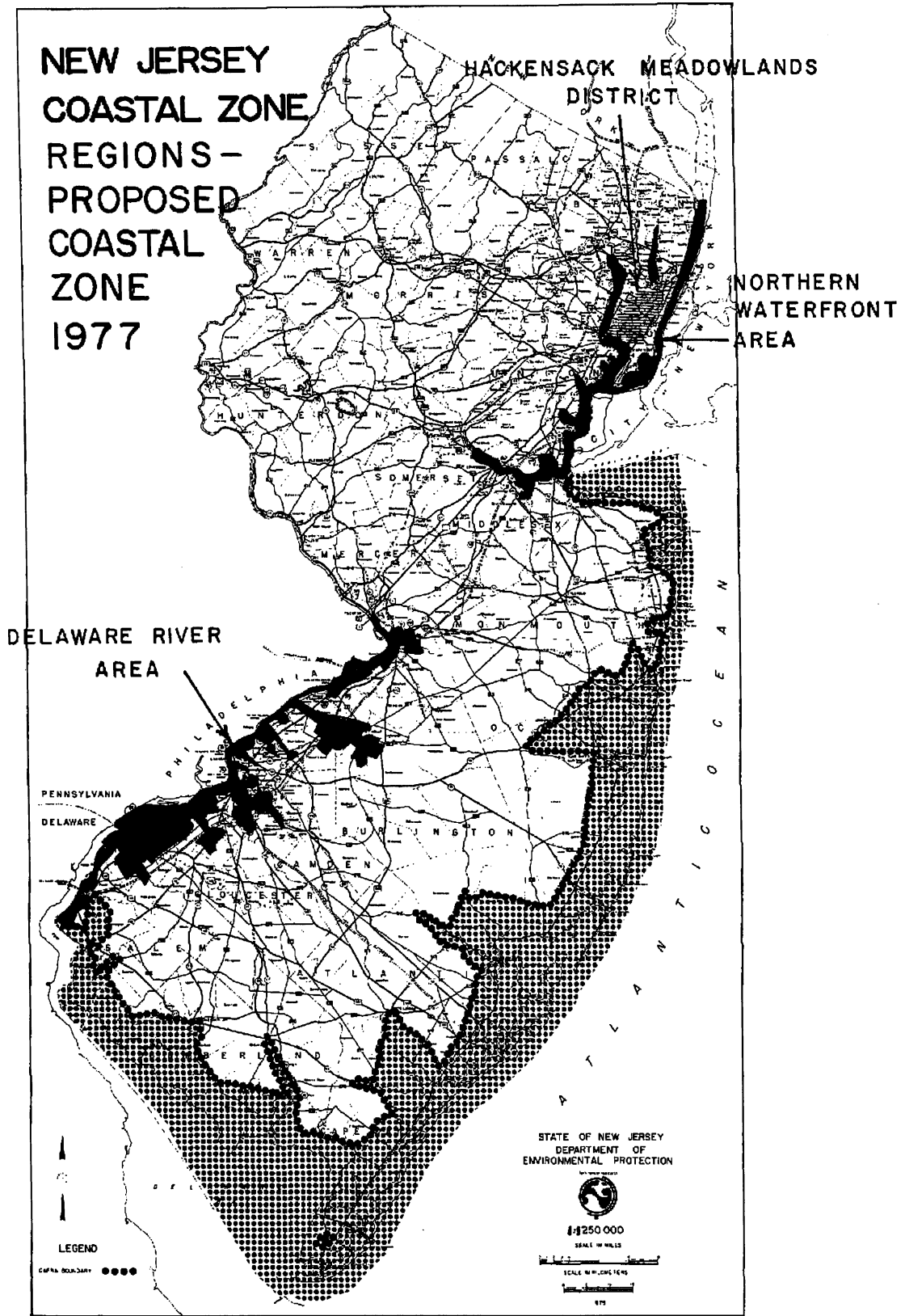
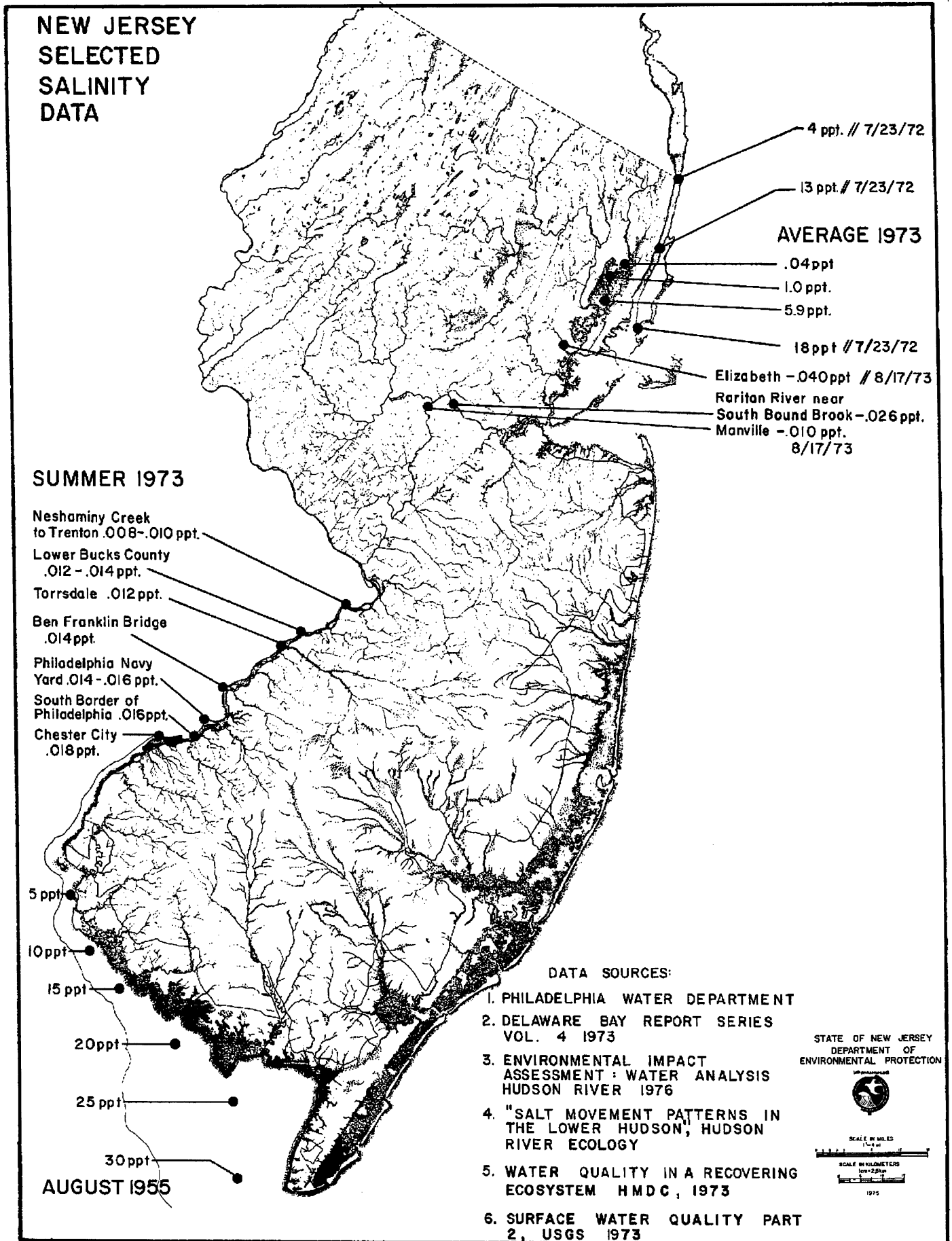


Figure 26



Municipalities Within the Preliminary Boundary of the Coastal Zone of the Entire State

All or part of 238 of New Jersey's 567 municipalities are included in the preliminary state-wide coastal zone. These municipalities, in addition to those listed above for the Segment, are listed below, by county, by regions, either Delaware River Area or Northern Waterfront Area (which includes the Hackensack Meadowlands District). It is important to note that this is only a proposal at this stage. The definition of the state-wide or the coastal zone will become final only after the Governor's submission of the coastal management program for the entire State to NOAA-OCZM, which will take place in late 1978 at the earliest.

DELAWARE RIVER AREA

Burlington County

Beverly City
Bordentown City
Bordentown Township
Burlington City
Burlington Township
Chesterfield Township
Cinnaminson Township
Delanco Township
Delran Township
Edgewater Park Township
Fieldsboro Borough
Florence Township
Hainesport Township

Lumberton Township
Mansfield Township
Maple Shade Township
Medford Township
Moorestown Township
Mount Holly Township
Mount Laurel Township
Palmyra Borough
Riverside Township
Riverton Borough
Southampton Township
Westhampton Township
Willingboro Township

Camden County

Audubon Park Borough
Barrington Borough
Bellmawr Borough
Brooklawn Borough
Cherry Hill Township
Gloucester City
Gloucester Township
Haddon Township
Hi-Nella Borough

Laurel Springs Borough
Lindenwold Borough
Mount Ephraim Borough
Oaklyn Borough
Pennsauken Township
Runnemede Borough
Somerdale Township
Stratford Borough

Gloucester County

Deptford Township
East Greenwich Township
Greenwich Township
Mantua Township
National Park Borough
Paulsboro Borough

Swedesboro Borough
Wenoah Borough
West Deptford Township
Westville Borough
Woodbury City
Woolwich Township

Mercer County

Hamilton Township

Trenton City

Salem County

Olmans Township
Penns Grove Township

Pennsville Township
Pilesgrove Township

NORTHERN WATERFRONT AREA

Bergen County

Alpine Borough
Bogota Borough
Carlstadt Borough
East Rutherford Borough
Edgewater Borough
Englewood Cliffs Borough
Fairview Borough
Fort Lee Township
Garfield City
Hackensack City
Little Ferry Borough

Lyndhurst Township
Moonachie Borough
New Milford Borough
North Arlington Borough
Oradell Borough
Ridgefield Borough
River Edge Borough
Rutherford Borough
Teaneck Township
Teterboro Borough
Walington Borough

Essex County

Belleville Town
Newark City

Nutley Town

Hudson County

Bayonne City
East Newark Borough
Guttenberg Town
Harrison Town
Hoboken City

Jersey City
Kearny Town
North Bergen Township
Secaucus Town
West New York Town

Middlesex County

Carteret Borough
East Brunswick Township
Edison Township
Highland Park Borough
New Brunswick City
Old Bridge Township

Perth Amboy City
Piscataway Township
Sayreville Borough
South Amboy City
South River Borough
Woodbridge Township

Passaic County

Clifton City

Passaic City

Somerset County

Franklin Township

Union County

Elizabeth City
Linden City

Rahway City

The preliminary inland boundary of the proposed coastal zone in this region is, therefore, the first road or cultural feature (such as a railroad or transmission line) that is parallel to the coastal watercourse, usually a river or stream. This definition includes wetlands and transitional areas between the tidal waters and the appropriate road or cultural feature. Moreover, this area should be part of the coastal zone under federal law because several land use activities are dependent on coastal waters, such as marine terminals. In addition, the area's coastal location provides certain attributes for recreation and industry. The Delaware River Area includes parts of Camden, waterfront residential communities such as Riverside, historical areas in Roebling and Bordentown, and two oil refineries in West Deptford and Greenwich Townships.

Tidal influence in New Jersey also extends north of the Bay and Ocean Shore Segment on the east side of the state. The tidally influenced water bodies in this region includes the Hudson River, Upper New York Bay, Newark Bay, Kill van Kull, Arthur Kill, Passaic River, Hackensack River, and Raritan River and Bay, and their tributaries. The proposed inland coastal boundary in the Northern Waterfront Area would be the first road or cultural feature as along the Delaware River. This narrow preliminary boundary is appropriate because the highly developed state of this area confines direct coastal impacts. This region includes the industrialized waterfront with outmoded docks, abandoned piers, and closed industrial plants, as well as modern container ports, refineries, tank farms, shipyards, and new industrial facilities. The area also includes the developing Liberty State Park and other waterfront sites which could one day accommodate future parks.

The Hackensack Meadowlands Development District is a 19,600 acre area in Bergen and Hudson counties defined by the 1968 legislation establishing the Hackensack Meadowlands Development Commission (N.J.S.A. 13:17-1 et seq.), an autonomous agency associated with the New Jersey Department of Community Affairs. The District includes a large undeveloped expanse of salt marsh, disturbed land and built-up areas covering parts of 14 municipalities. The District also includes the New Jersey Sports Complex. Inclusion of some portion of the shorelands of the Meadowlands District within the coastal zone is required under the federal Coastal Zone Management Act because the salinity level of some of the tidal waters of the District is above the NOAA-OCZM threshold of 5 parts per 1000. Also, DEP already exercises coastal management responsibilities in the Meadowlands District in the riparian lands management program, as much of the District includes land now or formerly flowed by the mean high tide. Further, DEP's present riparian lands management and tidelands delineation programs in the Meadowlands are already carried out in close coordination with staff of the Hackensack Meadowlands Development Commission.

In conclusion, the inland boundary of the coastal zone beyond the boundary of the Bay and Ocean Shore Segment is a proposal to be debated and refined as DEP conducts further coastal planning in 1978. The final boundary for the entire coastal zone will depend in part upon the legal authority to carry specific coastal policies to be defined for these regions of the coast. At this stage, however, the most important boundary is the one defined in Chapter Two for the Bay and Ocean Shore Segment.

APPENDIX H: RECIPIENTS OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

Comments on this Draft Environmental Impact Statement have been requested from the following Federal, State, and local agencies, interest groups and individuals. In addition, the 5,000 groups and individuals on the DEP-OCZM mailing list are being offered copies for review and comment.

Federal

U.S. Senate and House of Representatives - New Jersey Congressional Delegation
Advisory Council of Historic Preservation
Council on Environmental Quality
Department of Agriculture
 Soil Conservation Service
Department of Commerce
 Economic Development Administration
 Maritime Administration
 National Marine Fisheries Service
 National Oceanic and Atmospheric Administration
Department of Defense
 Air Force
 Army Corps of Engineers
 Navy
Department of Energy
Department of Health, Education, and Welfare
Department of Housing and Urban Development
Department of Interior
 Bureau of Land Management
 Bureau of Mines
 Heritage Conservation and Recreation Service
 Fish and Wildlife Service
 Geological Survey
 National Park Service
Department of Transportation
 Coast Guard
 Federal Aviation Administration
 Federal Railroad Administration
 Federal Highway Administration
 Urban Mass Transportation Administration
 Materials Transportation Bureau
 National Highway Traffic Safety Administration
Environmental Protection Agency
General Service Administration
Marine Mammal Commission
Nuclear Regulatory Commission
U.S. Water Resources Council

State of New Jersey

Governor
All State Senators and Members of the Assembly
Department of Agriculture
Department of Banking
Department of Civil Service
Department of Community Affairs

State of New Jersey - Cont.

Department of Defense
Department of Education
Department of Energy
Department of Health
Department of Human Services
Department of Insurance
Department of Labor and Industry
Department of Law and Public Safety
Department of the Public Advocate
Department of State
Department of Transportation
Department of the Treasury
Delaware and Raritan Canal Commission
Governor's Pinelands Review Committee
Hackensack Meadowlands Development Commission

Local and Regional Government

Coastal Counties (17) -- Executives, Freeholder Directors,
Planning Agencies, and Environmental Agencies:

Atlantic County
Bergen County
Burlington County
Camden County
Cape May County
Cumberland County
Essex County
Gloucester County
Hudson County
Mercer County
Middlesex County
Monmouth County
Ocean County
Passaic County
Salem County
Somerset County
Union County

Coastal Municipalities (242) -- (Mayors, Planning Boards, and
Environmental Commissions, for municipalities in the Bay and Ocean Shore
Segment and preliminary Coastal Zone, listed in Appendix J)

Delaware River Basin Commission
Delaware River Port Authority
Delaware Valley Regional Planning Commission
Mid-Atlantic Regional Fishery Management Council
Port Authority of New York and New Jersey
Regional Plan Association
South Jersey Resource Conservation and Development Council
Tri-State Regional Planning Commission
Wilmington Metropolitan Area Planning Council (WILMAPCO)
Berkeley Department of Parks and Recreation
Brick Town Recreation Department
Camden City Division of Planning
Cape May County Department of Health
Monmouth County Park System
North Jersey District Water Supply Commission

National Special Interest Groups

American Association of Port Authorities
American Farm Bureau Federation
American Fisheries Society
American Institute of Architects
American Institute of Planners
American Littoral Society
American Mining Congress
American National Cattlemen's Association
American Petroleum Institute
American Right of Way Association
American Shore and Beach Protection
American Society of Civil Engineers
American Society of Planning Officials
American Waterways Operators
Atlantic States Marine Fisheries Institute
Atomic Industrial Forum
Boating Industry Association
Chamber of Commerce of the U.S.
Coastal Society
Coastal States Organization
Conservation Foundation
Council of State Planning Agencies
Cousteau Society
Edison Electric Institute
Environmental Defense Fund, Inc.
Environmental Policy Center
Friends of the Earth
Isaak Walton League
League of Women Voters of the U.S.
Marine Technology Society
Mortgage Bankers Association of America
National Association of America
National Association of Counties
National Association of Electric Companies
National Association of Engine & Boat Manufacturers
National Association of Home Builders
National Association of Realtors
National Association of Regional Councils
National Association of State Boating Law Administration
National Audubon Society
National Boating Federation
National Cannery Association
National Coalition for Marine Conservation, Inc.
National Commission on Marine Policy
National Conference of State Legislators
National Environmental Development Association
National Farmers Union
National Federation of Fishermen
National Fisheries Institute
National Forest Products

National Special Interest Groups - Cont.

National Governors Conference
National League of Cities
National Ocean Industries Association
National Parks and Conservation Association
National Recreation and Parks Association
National Science Foundation
National Science Teachers Association
National Waterways Conference
National Wildlife Federation
Natural Resources Defense Council
Nature Conservancy
Sierra Club
Society of Real Estate Appraisers
Soil Conservation Society of America
Sport Fishing Institute
United Brotherhood of Carpenters and Joiners of America
U.S. Conference of Mayors
Western Oil and Gas Association
Wilderness Society
Wildlife Management Institute
Wildlife Society
World Dredging Association

State and Local Interest Groups

Environmental Groups

American Littoral Society
Association of New Jersey Environmental Commissions (ANJEC)
Atlantic Audubon Society
Atlantic County Citizens Council on Environment
Bayonne Against Tanks
Citizens Association to Protect the Environment (CAPE)
Concerned Citizens for Clean Water
Conservation Society of Long Beach Island
Delaware Raritan Canal Coalition
Hoboken Environment Committee
League for Conservation Legislation
New Jersey Audubon Society
New Jersey Conservation Foundation
New Jersey Sierra Club
Ocean County Sierra Club
Oceanic Society
Passaic River Coalition
S.A.V.E. - Stockton College
Save Our River Environment (SORE)
South Branch Water Shed Association
Stony Brook - Millstone Watershed Association
Upper Raritan Watershed Association
Waterfront Coalition of Bergen and Hudson
West Jersey Sierra Club

Private Sector

Asarco Incorporated
Atlantic City Electric Co.
Cold Spring Realty
Dredge Harbor Yacht Basin
P. Evanson Yacht Co., Inc.
Exxon Corporation
Gordon Terminal Service Corporation
Hardeis Electrical Contracting
Hartz Mountain Industries, Inc.
Jersey Central Power and Light Co.
Leisure Technology Corporation
Mobil Oil Corporation
National Association of Office and Industrial Park
Developers - New Jersey Chapter
New Jersey Asphalt Pavement Association
New Jersey Builders Association
New Jersey Business and Industry Association
New Jersey Marine Trades Association
New Jersey Petroleum Council
New Jersey Shore Builders Association
New Jersey State Chamber of Commerce
Northville Linden Terminal Company
Public Service Electric and Gas Co.
Pureland Industrial Complex
Society for Economic and Environmental Development (SEED)
Somers Point Yacht Harbor, Inc.
Utility Contractors Association of New Jersey
Winter Yacht Basin, Incorporated.

Public Interest Groups

League of Women Voters of New Jersey
New Jersey Beach Buggy Association
New Jersey League of Municipalities
Public Interest Research Group
Princeton University Center for Environmental Studies
Rutgers University Center for Coastal and Environmental
Studies

Library

The document will be available in all New Jersey depository
libraries as well as many university and public libraries
throughout New Jersey and the country.

APPENDIX K: LEGAL AUTHORITIES

Introduction

The New Jersey Coastal Management Program - Bay and Ocean Shore Segment relies upon certain New Jersey State laws and adopted rules for its legal authority and the enforceability of its coastal resource and development policies. This Appendix briefly describes these key legal authorities and gives the appropriate citation reference to either the New Jersey Statutes Annotated (N.J.S.A.) or the New Jersey Administrative Code (N.J.A.C.). In addition, this Appendix concludes by reprinting two laws in their entirety: the Coastal Area Facility Review Act and the Wetlands Act.

Coastal Area Facility Review Act

Law

N.J.S.A. 13:19-1 et seq. enacted June 20, 1973; effective September 19, 1973 (reprinted in this Appendix).

Rules

N.J.A.C. 7:7D-1.0 et seq. - Coastal Area Review Board; effective November 18, 1975. These rules establish the procedures of the Coastal Area Review Board, a body composed of three cabinet members and created by N.J.S.A. 13:19-13, and which may hear appeals from decisions on CAFRA permit applications by the Director of the Division of Marine Services.

N.J.A.C. 7:7D-2.0 et seq. - CAFRA Procedural Rules and Regulations; effective April 5, 1977. These rules establish the permit application and exemption request procedures of DEP under the Coastal Area Facility Review Act.

Administrative Order

No. 32, November 3, 1975, by DEP Commissioner David J. Bardin; effective November 10, 1975. This Administrative Order delegated decision-making authority on CAFRA permit applications from the Commissioner to the Director, Division of Marine Services.

No. 35, December 4, 1975, by DEP Commissioner David J. Bardin, effective December 8, 1975. This Administrative Order established the Office of Coastal Zone Management in DEP's Division of Marine Services. Under the Administrative Order, the Chief of the Office of Coastal Zone Management reports directly to the DEP Commissioner with respect to planning under N.J.S.A. 13:19-16 and under the federal Coastal Zone Management Act, but reports to the Director of the Division of Marine Services with respect to the CAFRA permit program.

Wetlands Act

Law

N.J.S.A. 13:9A-1 et seq.; effective November 5, 1970 (reprinted in this Appendix)

Rules

N.J.A.C. 7:7A-1.1 et seq.; effective April 13, 1972. The New Jersey Wetlands Order Basis and Background, adopted in 1972, defined the rationale for the regulation of coastal wetlands. Independent contractors for DEP prepared maps of wetlands at a scale of 1:2,400 (one inch = 200 feet). DEP then adopted the Wetlands Order, including the maps delineating wetlands areas, on a county-by-county rule-making process, with notice to affected property owners, from 1972-1977 (N.J.A.C. 7:7A-1.2). The order defines regulated activities, and prohibits certain activities on wetlands, while the Procedural Regulations (N.J.A.C. 7:7A-1.3 et seq.) establish permit application procedures and project review criteria, and list the wetlands maps.

Administrative Order

No. 12, December 8, 1977, by DEP Commissioner Rocco D. Ricci; effective December 8, 1977. This Administrative Order delegated decision-making authority on Wetlands permit applications from the Commissioner to the Director, Division of Marine Services and specified that appeals of the Director's decision shall be submitted to the Commissioner.

Riparian Statutes

Law

N.J.S.A. 12:3-1 through 12:3-71; enacted at various dates beginning 1869. These laws define the procedures and standards for leases, grants, and conveyances of riparian lands.

N.J.S.A. 12:5-1 through 12:5-11; enacted at various dates beginning 1914. These laws define the procedures and standards for the management of waterfront and harbor facilities, including waterfront development permits.

N.J.S.A. 13:1B-10, 11, 12; enacted at various dates beginning 1948. These laws define the powers, functions, and duties of the Natural Resource Council, which decides riparian lands management real estate matters and reviews some waterfront development permit applications.

N.J.S.A. 13:1B-13; enacted 1948. This law defines the procedure for approval of riparian leases and grants.

N.J.S.A. 13:1B-13.1 through 13:1B-13.51; enacted 1968. This law, part of the statute creating the Hackensack Meadowlands Development Commission, mandates tidelands delineation studies and the surveys in the Meadowlands and defines procedures for conveyances of State-owned riparian lands in the Meadowlands.

90 Day Construction Permits Law

Law

C.232, L. 1975 (supplements N.J.S.A. 13:1D-1 et seq., amends N.J.S.A. 12:5-2, 12:5-3, 58:1-26 and 58:1-27, and repeals N.J.S.A. 12:5-4); enacted October 23, 1975; effective December 22, 1975. The law provides for the

approval, conditional approval, or disapproval of applications under five DEP-administered construction permit programs within 90 days of completion of an application. Otherwise it is deemed approved.

Rules

N.J.A.C. 7:1C-1.0 et seq.; effective December 22, 1975; revised October 10, 1977. These rules implement the 90 Day Construction Permits Law.

Rules

N.J.A.C. 7:1C-1.0 et seq.; effective December 22, 1975; revised October 10, 1977. These rules implement the 90 Day Construction Permits Law.

Shore Protection

Law

N.J.S.A. 12:6A-1 et seq.; enacted at various dates beginning 1940. The law authorizes DEP to carry out structural and non-structural shore protection programs and undertake dredging of waterways and streams.

Department of Energy

Law

N.J.S.A. 52:27-1 et seq.; enacted and effective July 11, 1977. This law created a new cabinet-level executive department, with co-extensive jurisdiction with other State agencies, including DEP, on energy facility siting.

Reprinted Laws

The Coastal Area Facility Review Act and the Wetlands Act are reprinted in full on the following pages.

APPENDIX L - LEGAL COMMENTARY

Introduction

Judicial decisions in New Jersey courts have upheld the constitutionality of the State's key coastal laws, the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.) and the Wetlands Act (N.J.S.A. 13:9A-1 et seq.). New Jersey courts have also expanded the Public Trust Doctrine to protect beach access and recreational uses of the waterfront, as well as the traditional navigation, commerce and fishing rights of the public at the water's edge. Also, the State of New Jersey is actively establishing its claim of ownership of the riparian lands now or formerly flowed by the mean high tide. This Appendix provides a legal commentary to the principal recent judicial decisions involving the laws concerning coastal management in New Jersey.

Coastal Area Facility Review Act

In the case of Toms River Affiliates and Lehigh Construction Company v. Department of Environmental Protection and Coastal Area Review Board 140 N.J. Super 135 (App. Div.), certif den. 71 N.J. 345 (1976), the Appellate Division of Superior Court upheld the constitutionality of CAFRA. The case arose after DEP denied a CAFRA permit application for a ten story, high-rise luxury apartment complex on a 9.5 acre tract of land in Toms River, Ocean County. The developer then administratively appealed to the Coastal Area Review Board. The Coastal Area Review Board unanimously upheld the Department's decision. The applicant then filed an appeal for relief to the Appellate Division, challenging the constitutionality of the CAFRA statute on five points. The applicant contended that: (1) CAFRA did not provide adequate standards for the administration of the Act prior to the preparation of the studies mandated in Section 16 of the Act; it therefore was in violation of Article III, Paragraph I of the New Jersey Constitution; (2) The Act granted zoning powers to the DEP in contravention of the constitutional delegation of such powers to a municipality in violation of Article IV, Paragraph II of the New Jersey Constitution; (3) the Act created an invalid classification by designating a delineated coastal area and omitted other coastal areas in violation of Article I, Paragraph I of the New Jersey Constitution; (4) The Act denied equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; and (5) The Act constituted the taking of property in violation of Article I, Paragraph 20 of the Constitution of New Jersey.

On the issue that the CAFRA statute lacked reasonably adequate standards to guide the administrative agency in processing permit applications, the Court stated that Sections 10 and 11 of the Act set forth specific criteria by which the Environmental Impact Statement required for a CAFRA permit could be evaluated.

The Court rejected the applicant's contentions that the statutory delegation of power to the DEP to grant or deny permits for construction of housing was in violation of the constitutional provision authorizing the Legislature to enact general laws under which municipalities may adopt zoning ordinances and that CAFRA did not provide guidelines parallel to those incorporated in the Municipal Zoning Enabling Act (N.J.S.A. 40:55-30 et seq.).

The Court stated unequivocally that the police power of the State was not exhausted by the delegation of zoning power to the municipality. The State retained a quantum of reserved police power to delegate such authority to one or more agencies of the State government as the Legislature may deem appropriate. The State's delegation of such authority to the Hackensack Meadowlands Development Commission provided a precedent on this issue. On the issue of conflict between a local zoning regulation and CAFRA, the Court noted that the exercise of such power by the State was a valid exercise of police power and that the conflict represents no constitutional infirmity.

The assertion by appellants that CAFRA violated Article IV, Section 7, Paragraph 9 of the New Jersey Constitution and the Fourteenth Amendment to the United States Constitution because it classified one section of the coastal area and excluded others was struck down as without substance. The Court noted that the CAFRA Statute should be read in light of the intention of the Legislature which recognized that the coastal area was a unique and irreplaceable portion of the state. Its importance to the public health and welfare supports the reasonableness of the special legislative treatment regulating that area. In view of the presumption of the constitutional validity, the court noted, the limitation of the Act to the portion delineated by the statutory boundaries constituted a valid exercise of discretionary power vested in the Legislature. Boundaries of areas demanding regulations cannot be formulated with mathematical perfection. The mere fact that the property of the appellants is subject to the Act's provision, while property in other parts of the state is not so regulated does not establish a Fourteenth Amendment deprivation of equal protection. In addition, the Court stated that the appellants presented no evidence for the claim of arbitrariness in the classification adopted by the Legislature. If the classification is not arbitrary and all persons within a controlled area are treated alike, the legislation is not a special law nor violative of the Fourteenth Amendment.

The Court labeled the taking issue in this case as specious. A particular use of property may be frustrated, but so long as alternative uses for development exist, no taking of private property can be claimed by the appellants.

In the case of Public Interest Research Group of New Jersey, et. al. v. Department of Environmental Protection and Public Service Electric and Gas Co., 153 N.J. Super 191 (App. Div.), certif. den. ___ N.J. ___ (1977), the Court upheld the decision of DEP, as upheld unanimously on appeal by the Coastal Area Review Board, to approve a CAFRA permit for the Hope Creek Nuclear Generating Station (Units 1 and 2) at Artificial Island in Lower Alloways Creek Township, Salem County. The Court rejected the appellants' procedural contention that DEP should have conducted an adversarial hearing with cross-examination of witnesses and findings of fact and conclusions of law, instead of the two quasi-legislative, fact-finding hearings held before the DEP decision. The Court also ruled that the DEP decision to grant a conditional permit was reasonable. The Court concurred with DEP that Public Service Electric and Gas Co. complied with the findings of Section 10 and 11 of the Act.

The Court also rejected the contention of appellants and the Public Advocate, who submitted an amicus brief, that the environmental impact statement submitted by Public Service Electric and Gas Company was legally deficient.

Wetlands Act

In the case of Sands Point Harbor, Inc. v. Richard J. Sullivan, 140 N.J. Super 436 (App. Div. 1975), the Appellate Division found that the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. and the regulations N.J.A.C. 7:7A-1 et seq. adopted pursuant to the Wetlands Act did not violate the Constitutions of the State of New Jersey and of the United States.

The applicant, a private developer, alleged that the statute and regulations both deprived him of equal protection under law as guaranteed by the Fourteenth Amendment of the Constitution of the United States and by Article I, Paragraph I of the New Jersey Constitution, and further that the statutes and regulations constituted a taking of property without just compensation in violation of Article I, Paragraph 20 of the New Jersey Constitution.

The applicant's "equal protection" argument was predicated upon the fact that only coastal wetlands were regulated by the Wetlands Act and that wetlands subject to the Hackensack Meadowlands Development Commission (N.J.S.A. 13:17-1 et seq.) were specifically excluded from the Wetlands Act. The Court tersely noted that classification in legislation is not constitutionally prohibited, and that the Legislature is granted a wide range of discretion to treat subject matter of legislation differently, so long as the classification is reasonable and related to the basic object of the legislation. The Appellate Division stated that classifying coastal wetlands as a separate object of protection was reasonable, considering that wetlands north of Raritan Bay are characterized by heavy industrial, commercial, or residential development. The only other broad contiguous area of wetlands in the state was within the special legislatively defined Hackensack Meadowlands Development District, and a classification by statute of this area afforded reasonable grounds for the disparate treatment of land in these different areas of the State.

On the so-called "taking issue", the applicant relied upon a New Jersey Supreme Court case which struck down a municipal zoning ordinance severely restricting the use of swamp land. The restrictions in this case, however, were of such a nature that the only practical use which could be made of the property was as a hunting or fishing preserve. The taking test, as defined by the New Jersey Supreme Court, was whether no practical use could be made of the land so as to constitute a taking without just compensation.

The Appellate Division found in the Sands Point case that the only activities absolutely prohibited under the Wetlands Act were the dumping of solid waste, discharging of sewage, and storage and application of pesticides. Since the Commissioner of Environmental Protection must consider the effect of a proposed activity upon the public health and welfare, marine and shellfisheries, wildlife, and the protection of property from flood, hurricane or other disasters, such criteria were reasonable and did not so restrain virtually all activities so as to be in violation of the New Jersey Constitution.

In Carton et al vs. State of New Jersey, Commissioner of Environmental Protection (A-638-73 (1978)), argued before the Appellate Division of the Superior Court in December 1977, the plaintiffs argued that the Wetlands Act constituted a taking of private property without just compensation. The plaintiffs contended that

the Act was vague, unreasonable and unconstitutional, but the Court, citing Sands Point Harbor held that the Act was a valid exercise of governmental power and did not constitute a taking. The Carton case is currently under appeal to the New Jersey Supreme Court.

Tidelands and Riparian Cases

Numerous issues concerning riparian or tidelands management in the coastal zone of New Jersey are not expressly addressed or resolved in Titles 12 and 13 of the Revised New Jersey Statutes, which contain the bulk of riparian statutory authority. The case law decisions described in this section have established key principles in riparian law.

The case of O'Neill v. State Highway Department 50 N.J. 307 (1967) involved an ownership dispute of lands along the Hackensack River. The State asserted title to these lands. In its opinion, the Court laid down several principles. First, the State owns in fee simple all lands that are flowed by the tide up to the high water line or mark. The high water line or mark is the line formed by the intersection of the tidal plain of mean high tide with the shore. In establishing this line, the average to be used should be, if possible, the average of all the high tides over a period of 18.6 years. Second, the State cannot acquire interior land by its construction of artificial works such as ditching which enables the tide to ebb and flow on lands otherwise beyond it. The riparian owner cannot, however, enlarge his holdings by excluding the tide. Third, the party who challenges the existing scene must satisfy the court that the tidelands status of the property was changed by artificial measures.

Rules concerning erosion and its effect on riparian ownership were discussed in the case of Leonard v. State Highway Department of New Jersey 29 N.J. Super 188 (App. Div. 1954). Where erosion is by natural means, the riparian owner loses title to the State. The owner suffers no such loss, however, in the event of a sudden and perceptible loss of land. The high water mark may shift from time to time through erosion, and persons who own or purchase tide-flowed land are well aware of this natural process. Where there is erosion, they lose title to the State. Where there is accretion, they gain title at the expense of the State.

The State's procedure for tidelands delineation was challenged in the case of the City of Newark v. Natural Resources Council 133 N.J. Super 245 (Law Div. 1974). Two riparian statutes relevant to the State's tideland delineation procedure provided that "the (Natural Resource) Council is hereby directed to undertake title studies and surveys of meadowlands throughout the State and to determine and certify those lands which it finds are State owned lands." (N.J.S.A. 13:1B-13.2.) "Upon completion of each separate study and survey the Council shall publish a map portraying the results of its study and clearly indicating those lands designated by the Council as state owned lands". (N.J.S.A. 13:1B-13.4) The Natural Resource Council is a twelve member citizen body appointed by the Governor, with the advice and consent of the State Senate.

In 1970 the State issued a grey and white map of New Jersey which designated grey portions of the State as representing lands claimed by the State. However, in 1971 the Court held that these maps did not comply with the intent of the legislation.

The State then began a new delineation of tidelands based on aerial photography. This mapping procedure resulted in thirty-seven panels of land, each of approximately 964 acres, mapped at a scale of 1:2,400. In 30 of the 37 panels the maps produced resulted in substantial claims to the land by the State. However in seven of the panels it was very difficult for the State to determine ownership, and so these areas were characterized as "hatched" (areas of filled meadowlands adjacent to virgin meadowlands). The "hatched" areas indicated a claim by the State that the filled areas were once tide flowed, and so the State was likely to own them. The court held that the "hatching" procedure did not conform with the statutory requirement that the State define its interests in unequivocal terms. (N.J.S.A. 13:1B-1 et seq.). The State was ordered to prepare new maps clearly indicating the riparian lands. The Office of Environmental Analysis in DEP began the mapping based on new overlay techniques. The State filed these maps with the Court in January 1978. A decision by the Court on whether to accept their validity is now pending. If the validity of the maps is accepted, the Court will then have to determine the claims to the land.

An appeal by an owner of a riparian grant whose application for a waterfront development permit was denied by the Natural Resource Council was reviewed in Kupper v. Bureau of Navigation, Council of Resources, etc., Docket No. A-737-71 (unpublished opinion of Appellate Division, decided April 9, 1976). The application involved a request to construct a bulkhead in a substantially developed residential area. The Court observed that although they were sympathetic to DEP's efforts to preserve the ecological balance in any area of the State, they were equally sympathetic to the rights of individual property owners who would be deprived of the economic use of their land. The Court felt that the granting of a riparian permit in this case would lead to a minimal effect on the immediate environment.

Public Access to Shorefront Areas

Increasing and maintaining public access to the shorefront in the coastal zone of New Jersey is public policy evolved from the Public Trust Doctrine as defined by New Jersey case law. (See Martin v. Waddel's Lessee 81 U.S. (PET) 367 (1842), Arnold v. Mundy 6 NJL 1 (Sup. Ct. 1821), and Avon v. Neptune 61 N.J. 296 (1976).)

The cases concerning shorefront access have dealt with public access to publicly owned land rather than public access to privately owned land. This latter issue which concerns public access across privately owned land in order to reach publicly owned land, has not been decided by the courts although the issue was raised in Le Compte v. State of New Jersey, (65 N.J. 447, 450, N.1) 1975. The court indicated that it would like to consider the problem at a suitable time. However, the court is expected to discuss this issue in Mathews v. Bay Head Improvement Association, (Docket No. L-23410-73).

The Avon case expanded the Public Trust Doctrine to cover recreational uses of the shoreline beyond the traditional public rights of navigation, commerce, and fishing. The New Jersey Supreme Court held that tidal lands between the mean high and mean low water marks, as well as the oceanland seaward, are owned by the public. In this case the beach front had been dedicated to the public. The court held that this dedication was irrevocable, and for the municipality to charge a discriminatory fee to users of the beach was analogous to erecting a physical barrier.

The Avon Court and the trial court in the case of New Jersey v. Borough of Deal 139 N.J. Super 83 (Ch. Div., 1976) rev'd 145 N.J. Super. 368 (App. Div. 1976), cert. granted 74 N.J. 262 (1976), held that the upland or dry sand areas may be subject to the Public Trust Doctrine and, in the Deal case, that a municipality cannot exclude a non resident from using the upland and beach area upon payment of a reasonable non-discriminatory fee. In the Deal case there was not a clear public dedication of land and the trial court decided the case on statutory construction. The court held that a municipality does not have the right to exclude people from beach front properties. However, in 1976 the Appellate Division of the Superior Court overturned a portion of the Deal trial court opinion which stated that a municipality's "residents-only policy", with respect to the upland beach areas was not beyond the scope of authority delegated to the municipality by State statutory enactment. The Appellate Division did not address the applicability of the Public Trust Doctrine to the dry sand area, but decided the case on whether a municipality had statutory authority to make a reasonable differentiation between residents and non-residents using a municipal beach, in a town which provides for equal access at an adjoining non-restricted beach. The Deal case is now awaiting action in the New Jersey Supreme Court.

The case of Allenhurst v. New Jersey A-1429-75 (1976), decided in the Appellate Division of Superior Court, partially modifies the Public Trust Doctrine with respect to artificial improvements placed in the dry sand area. The Appellate Division narrowly distinguished the Avon and Deal cases and noted that the Public Trust Doctrine applies only to access to natural resources and not to man-made improvements which may be placed upon the dry sand area. In the Avon case, there were no man-made improvements on the dry sand area. However, the Appellate Division left intact a section of the Allenhurst trial court opinion which required equal fees for both residents and non-residents. Thus, the central holding of the Avon case remains unchanged.

APPENDIX M: GLOSSARY

Introduction

This glossary is intended to provide the reader with understandable definitions of technical terms used and undefined in the text. Terms which have been previously defined include a reference to the appropriate section of Part II.

- accretion - the process of gradual and imperceptible addition of solid material, thus extending the shoreline.
- adverse impact - a net negative effect.
- algae - non-vascular simple aquatic plants, without true roots, stems, or leaves, that vary from single celled to large multicellular forms; most noted groups are: green, brown, red, blue-green and diatoms.
- alluvial - deposits of flowing water; clay, silt, sand, gravel, and/or organic detritus.
- aquifer - a water-bearing underground layer of sand, gravel, or rock; a porous sub-terranean water-bearing stratum of unconsolidated sediments.
- anadromous - marine or estuarine species of finfish that spawns in freshwater.
- assimilative capacity - the amount of adverse impacts (pollutants) that a water body or land area can absorb and neutralize before it begins to display a significant reduction in biological diversity, chemical, and/or physical quality.
- bathymetry - the measurement of depths of water areas; underwater topography.
- benthic - occurring or living on or in the bottom of a water body.
- biota - the plant and animal assemblage of a biological community.
- brackish - partially saline water.
- built-up urban areas - land areas already intensely developed for housing, commerce, industry, etc.
- carcinogen - capable of causing cancer in humans.
- clay lense - a lense-shaped deposit of clay.
- coastal waters - include the Atlantic Ocean to the limit of New Jersey's seaward jurisdiction; Raritan Bay to the New York State boundary; Delaware River and Bay to the State of Delaware boundary and tidal portions of their tributaries; and other tidal streams, rivers, and bays of the coastal plain.

- critical - a condition, measurement, or point at which some quality, property, or phenomenon suffers a definite change. An essential component.
- datum - a reference point, line or plane used as a basis of measurements.
- detritus - Particulate matter, especially of organic vegetative origin in varying stages of decomposition.
- development - a facility, use, or alteration as defined in enabling legislation. See - potential.
- direct impact- is a change in the built or natural environment that is either the immediate result of an impacting activity or is linked to the impacting activity through an identified chain of cause and effect without further human intervention.
- disturbance - a disruption or perturbation; significant changes in the equilibrium of natural or social processes and resources from artificial or natural causes.
- diversity - the variety of species present in a habitat or ecosystem. High diversity indicates environmental health.
- ecotone - an edge or border zone between different habitats usually with high species diversity.
- effluent - a discharge of pollutants into the environment; untreated or partially or completely treated.
- ephemeral - lasting only a short time; temporary; transient.
- erosion - the wearing away of the land surface by running water, wind, or other geological agents. (See Chapter Three, Section 7.0).
- escarped foredune - wave eroded sand dune, with steep slope in ocean front adjacent to beach.
- estuarine - of, relating to, formed, or living within an estuary.
- estuary - any confined coastal water body with a connection to the sea and measurable quantity of marine salt in the waters; greater than 0.5 parts per thousand (ppt).
- euthrophication - nutrient enrichment, leading to excessive growth of aquatic plants, usually resulting in anoxic (lack of dissolved oxygen) water conditions.
- fauna - a collective term for the animal species present in an ecosystem.
- flora - a collective term for the plant species present in an ecosystem.
- flushing rate - the rate at which the water in a water body is replaced, usually expressed as the time needed for one complete replacement.

- food chain - the step-by-step transfer of food energy and materials, by consumption, from the primary source in plants through increasingly higher forms of animals.
- food web - the network of feeding (trophic) relationships in and between (a) biological community(ies).
- forage - food source.
- gabion - loose rock held together with wire mesh used to promote groundwater recharge.
- habitat - place of residence of plants and animals; community of species.
- impact - ecological or sociological effect; impinge; an impelling or compelling effect.
- indigenous - having originated in and being produced, growing, or living naturally in a particular region or environment; native species.
- infill - development of vacant land within generally built-up area; development of land parcel with at least 50% of boundary of site presently developed in the same way as that type proposed. [see Chapter Three, Section 5.7.1(iv)]
- inorganic - non-living or of non-organic origin; mineral.
- intertidal - the area between high and low tide levels, twice daily exposed and flooded.
- littoral - shoreline; related to edge of the sea or ocean.
- littoral drift - the movement of sedimentary material, e.g.: sand, silt, gravel, parallel to shoreline under the influence of wind, waves, and currents; commonly used as synonymous with longshore transport.
- maximum practicality - best available technology; all alternative mitigation measures have been considered resulting in selection of measure, technique, or level which produces most environmentally desirable effect.
- mean high water (MHW) - a tidal datum; the arithmetic average of the high water heights observed over a specific 18.6 year Metonic cycle (the National Tidal Datum Epoch).
- mean high water line - the line formed by the intersection of the tidal plane of mean high water with the shore.
- mean low water (MLW) - a tidal datum; the arithmetic average of the low water heights observed over a specific 18.6 water Metonic Cycle (the National Tidal Datum Epoch).
- multi-purpose marina - a small harbor facility that maximizes diversity of user groups and activities.

- organic - living, related to living substance or living organisms. Chemical compounds formed of carbon united with hydrogen (hydrocarbons).
- pathogenic - capable of causing disease.
- perennial - present at all seasons; persisting for several years; continuing without interruption.
- permeability - See Chapter Three, Section 5.4.
- permit - a writing, issued by a person in authority, empowering the grantee to do some act not forbidden by law, but not allowed without such authorization.
- photo-synthesis - the vegetative manufacture of organic carbohydrates from carbon dioxide and water in the presence of chlorophyll by utilizing light energy and releasing oxygen.
- phyto-plankton - the single-cell plant component of plankton.
- plankton - small suspended aquatic plants and animals which passively drift or swim weakly.
- potential - existing in possibility; capable of development into actuality. (See Chapter Three, Section 5.7 for discussion of Development Potential).
- Pre-appli- - informal meeting with Division of Marine Services staff member, cation prospective permit applicant and consultant to discuss development Conference proposal prior to formal application, to determine consistency with coastal policies and define specific application requirements.
- preservation - to maintain in existing condition; protection from permanent alteration by human activity.
- productivity - (primary or biological) - The amount of organic matter produced by photosynthesis usually expressed as weight per area over a given period of time.
- riparian - land now or formerly flowed by the mean high tide. lands
- riprap - a foundation of stones or rocks loosely placed together without order in deeper waters to prevent scour and erosion.
- rookery - a communal breeding site for certain species of aquatic birds.
- runoff - the portion of precipitation on land that flows over the land surface; overland flow (see Chapter Three, Section 6.0).
- salinity - a measure of the quantity of dissolved salts in water expressed in parts per thousand of water (ppt).

- salt water intrusion - the movement of salt water inland into subterranean aquifers.
- salt wedge - estuarine water mass of higher salinity found along the bottom over which lighter fresher waters move.
- sediment - material deposited by water, wind, or glaciers.
- sedimentation- the process of gravitational deposition of organic and/or inorganic suspended particles by water (See Chapter Three, Section 7.0).
- sensitivity - the capacity of an organism, community, or area to respond to stimulation; susceptibility to disturbance and change.
- significant - a measurable change in the built or natural environment that is cause for concern.
- silt - fine particulate matter suspended in water and later deposited on water body bottom.
- storm surge - the piling up of water against (or withdrawal from) a coast by strong winds and reduced atmospheric pressure such as that accompanying a hurricane or other intense storms.
- shellfish - a misnomer of common use for a group of organisms none of which are true vertebrate finfish; includes mollusks and crustaceans such as clams, oysters, scallops, conchs, squid, crabs, lobsters, and shrimp. (See Chapter Three, Sections 8.1 and 8.3).
- successional - plant species or vegetative community which will be successively replaced by more stable communities. A sub-climax vegetation type.
- surface water- See runoff (See Chapter Three, Section 6.0).
runoff
- swale - a low-lying or depressed land area commonly wet or moist; an intermittent drainageway.
- tertiary water treatment - a process following secondary treatment involving filtration, activated carbon, and chlorination. In the process, the effluent is subjected to denitrification and phosphorus precipitation.
- tidal flooding - inundation of land caused by an abnormally high tidal water having an average frequency of once in 100 years, although the event may occur in any year.
- tidal influence - waters which measurably rise and fall with twice-daily tides.
- tide - the periodic rise and fall of the water resulting from gravitational interaction between the sun, moon, and earth. The vertical component of the particulate motion of a tidal wave. In each lunar day of 24 hours and 49 minutes there are two high tides and two low tides.

- tidelands - those lands now or formerly flowed by the mean high tide, held in trust by the State unless alienated.
- toxic substance - a poison.
- turbidity - reduced water clarity resulting from presence of suspended matter.
- water disturbance - measurable change in biological, chemical, or physical water quality.
- waterfowl - a group of aquatic birds within the family Anatidae which includes ducks, geese, swans, and mangansers.
- wetlands - inundated areas supporting emergent hydrophytes (See Chapter Three, Section 2.4).
- wildlife - a collective term used for living organisms neither human or domesticated (See Chapter Three, Section 9.0).
- zooplankton - the animal component of the plankton.

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NEW JERSEY COASTAL MANAGEMENT PROGRAM BAY AND OCEAN SHORE SEGMENT Public Hearings

Tuesday, June 13, 1978
7:30 p.m.

Cumberland County Court House
Freeholders' Meeting Room
Second Floor, Rear
Broad Street, (Route 49)
Bridgeton, New Jersey

Wednesday, June 14, 1978
7:30 p.m.

Ocean County Administration Bldg.
Freeholders' Meeting Room
Hooper Avenue & Washington Street
Toms River, New Jersey

Thursday, June 15, 1978
10:00 a.m.

State Museum Auditorium
205 West State Street
Trenton, New Jersey

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION



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OPTIONS FOR NEW JERSEY'S DEVELOPED COAST

A PREVIEW OF A STATE COASTAL
MANAGEMENT PROGRAM FOR
PARTS OF:

SALEM, GLOUCESTER,
CAMDEN, BURLINGTON,
MERCER, MIDDLESEX,
SOMERSET, UNION,
HUDSON, ESSEX,
PASSAIC, AND BERGEN
COUNTIES

MARCH 1979



APPENDICES A-G

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Brendan Byrne
Governor

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Commissioner

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APPENDICES
TO
OPTIONS FOR NEW JERSEY'S
DEVELOPED COAST

March 1979

New Jersey Department of Environmental Protection
Division of Marine Services
Office of Coastal Zone Management
P.O. Box 1889
Trenton, New Jersey 08625

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This volume contains eight appendixes to Options for New Jersey's Developed Coast. The Appendixes are briefly summarized below.

A. THE COASTAL PLANNING PROCESS - This appendix is a summary of DEP's coastal planning activities from 1973 to the present which laid the groundwork for Options for New Jersey's Developed Coast report and for New Jersey's approved Coastal Management Program for the Bay and Ocean Shore Segment. Sections of the Appendix address Major Planning Documents, Public Shorefront Access and Erosion, Energy, Legal Framework, Economics and Land Use, Information Systems, Nominated Areas of Public Concern, Coastal Awareness, Mapping and Public Participation.

B. THE COASTAL ZONE BOUNDARY - This appendix explores the selection of a boundary for the Developed Coast. Included are 40 maps indicating the proposed boundary and a list of the municipalities with land within this part of the proposed coastal zone. The appendix also includes a description of the criteria DEP used to select this proposal.

C. EXCLUDED FEDERAL LANDS - The federal Coastal Zone Management Act requires that states exclude lands owned, leased, or held in trust by the Federal Government. This appendix lists the 20 federal land holdings of greater than 100 acres which are within the proposed boundary of the Developed Coast.

D. OTHER PLANS AFFECTING THE COAST - An array of regional authorities, agencies, and commissions, both public and private, have prepared plans or proposed development policies for parts of the developed coastal zone. This appendix summarizes the most important findings and recommendations found in these publications. It is divided into six sections: Statewide reports, the Northern Waterfront, the Hackensack Meadowlands District, the Delaware River Area, counties and municipalities, and programs of other states.

E. HISTORY AND REQUIREMENTS OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT - This appendix summarizes the provisions of the Federal Act passed in 1972 and amended in 1976.

F. THE DELAWARE - NEW JERSEY BOUNDARY - The Delaware Coastal Zone Act of 1971 precludes, or at least impedes, major waterfront industrial development along the shoreline of Salem County, New Jersey, as a result of the peculiar interstate boundary between the State of New Jersey and the State of Delaware along the Delaware River. This appendix describes the background of this issue and the requirements and policies of Delaware's Coastal Zone Act and Underwater Lands Act.

G. DRAFT CRITERIA FOR NOMINATION OF RIVER AREAS UNDER THE STATE WILD AND SCENIC RIVERS ACT - DEP-OCZM has developed the draft set of criteria included in this Appendix to aid itself and other interested parties in nominating river segments which would benefit from inclusion within the State's wild and scenic river system. Interested readers are invited to comment on the individual criteria, rank their importance (high, medium, or low), suggest additional criteria, and use the criteria in evaluating river segments.

H. DRAFT PROPOSED AMENDMENTS TO RULES ON COASTAL RESOURCE AND DEVELOPMENT POLICIES - This last appendix reprints the entire set of Coastal Resource and Development Policies which DEP adopted for the Bay and Ocean Shore Segment of the Coastal Zone. Included are revisions DEP proposes to include so that the policies will appropriately address resources and development throughout the entire proposed coastal zone. The proposed changes are highlighted in the text.

APPENDIX A: THE COASTAL PLANNING PROCESS: 1973-1979

The New Jersey Coastal Management Program is based on DEP-OCZM staff research, contractual studies by private consultants, university research teams, and state and local government agencies, and considerable public debate, suggestions, questions, and comments over the past six years. The most tangible evidence of the coastal planning process are the federally-approved Coastal Management Program - Bay and Ocean Shore Segment, together with numerous studies and Options for New Jersey's Developed Coast and other reports published by DEP-OCZM. Many of the planning reports produced and widely distributed by DEP-OCZM are available upon request, while others, intended as in-house working documents, are available for review by interested people. Other evidence of the coastal planning process may be less visible, but just as significant as printed documents. This appendix sketches some of the highlights of the coastal planning process to date, both the clearly tangible reports and the public participation efforts.

The coastal program has been prepared in two segments. The first, addressing the Bay and Ocean Shore Segment, received approval from the National Oceanic and Atmospheric Administration in September 1978. The second segment, the Developed Coast, is based on studies prepared for the entire coast during the past six years. Some previous documents which focused on the Bay and Ocean Shore Segment also provided a basic framework for the planning of the Developed Coast, while others specifically addressed issues more prevalent in the Developed Coast.

In addition, DEP-OCZM has held numerous public meetings in the Developed Coast, throughout the planning process. Meetings were held in Trenton to discuss the proposed coastal zone boundary (January 1977), and major planning documents including the Coastal Management Strategy (November 1977) and the Coastal Management Program - Bay and Ocean Shore Segment (May 1978). In the Delaware River Area of the Developed Coast, DEP-OCZM has held public meetings in Camden, in 1976, 1977, and 1978, and in Gloucester in 1978. Speakers from OCZM have attended additional meetings in Gloucester County and Burlington County. DEP-OCZM has shared drafts of documents with the Delaware River Port Authority throughout the planning process and has a contract for joint coastal planning with the Delaware River Basin Commission.

In the Northern Waterfront Area of the Developed Coast, DEP-OCZM held public meetings in Hoboken in 1976, New Brunswick in 1976 and 1978, Jersey City in 1977 and 1978, and Hackensack, Edison and Elizabeth in 1978. In 1977, DEP-OCZM met with municipal officials in Hudson and Bergen counties. DEP-OCZM staff have also spoken to environmental, civic and business groups in the area. Drafts of documents have been shared with the New York and New Jersey Port Authority, and DEP-OCZM has a working arrangement with the Hackensack Meadowlands Development Commission to exchange views on planning efforts.

As an additional method of adding local input and perspectives to planning for the Developed Coast, DEP-OCZM passed through two small grants of federal funds available under the Coastal Zone Management Act to coastal counties to conduct studies on energy facility siting, and to provide county suggestions and comments on the direction and content of the State Coastal Management Program. The participating counties in the Developed Coast were Salem, Gloucester, Camden, Burlington (for one year), Middlesex, Union and Hudson.

Major Planning Documents

Since 1975, DEP-OCZM has prepared seven major coastal planning reports which were widely shared with public groups, individuals, and agencies. These reports and the reaction to them have shaped the direction and policies of the Coastal Program.

In September 1975, DEP published an Inventory of the New Jersey Coastal Area which defines and discusses the diverse resources, problems and opportunities of New Jersey's coast in order to indicate the range of issues that constitute the agenda for coastal zone management.

In July 1976, DEP released Interim Land Use and Density Guidelines for the Coastal Area of New Jersey, prepared with the assistance of Rivkin Associates of Washington, D.C. This document classifies land and water features in the coastal area in terms of relative suitability for development. The Interim Guidelines and the companion publication, Guiding the Coastal Area of New Jersey -- The Basis and Background for Interim Land Use and Density Guidelines, provided an advance indication to developers, municipal officials, and others, of the likely decision on CAFRA permit applications, and have also served as a focal point for discussion and debate in the development of the Coastal Management Strategy (September 1977) and the Coastal Management Program - Bay and Ocean Shore Segment.

In October 1976, Alternatives for the Coast - 1976 was published to indicate the scope of policy alternatives DEP-OCZM was evaluating for the coastal zone, their implications and the principles that helped shape them. DEP-OCZM expanded upon the policy alternatives in twenty-two issue papers published between November 1976 and early 1977. The topics covered were: Agriculture and the Coast, Air Resources, Cultural Resources, Flooding, Groundwater Quantity and Quality in the New Jersey Coastal Zone, Housing, Ocean Resources (Living, Mineral, and Physical Resources), Sand Movement and the Shoreline, Solid Waste and the Coast, Surface and Coastal Water Resources of New Jersey, Upland Living Resources (Endangered, Threatened and Rare Animals, Endangered and Rare Vegetation, and Upland Wildlife Habitats), and Upland Mineral Resources and the Coast. A separate paper on the value of Atlantic White-Cedar Stands was completed in May 1976.

In December 1976, DEP-OCZM released Alternative Boundaries for New Jersey's Coastal Zone. This report presented ten possible coastal zone boundaries and served as a basis for debate on the issue.

DEP submitted the Coastal Management Strategy, for New Jersey-CAFRA Area to the Governor, Legislature, and public in the fall of 1977. The Strategy introduced the Coastal Location Acceptability Method (CLAM), a method of coastal resource management developed by DEP-OCZM in 1976-1977 using a pilot study area in lower Cape May County. Prepared in part to satisfy the statutory mandate of the Coastal Area Facility Review Act of 1973 that called for the selection of an environmental management strategy for the coastal area in four years, the document also served as a discussion draft of the Coastal Management Program for the Bay and Ocean Shore Segment. DEP distributed 3,000 copies of the Coastal Management Strategy, conducted eight public meetings throughout the state to discuss and debate the coastal program, held twenty additional informal meetings with public agencies and received nearly one hundred written statements with comments on the Strategy. DEP then revised the Strategy substantially in the course of preparing the Draft EIS for the Bay and Ocean Shore Segment document.

The formal federal approval process for New Jersey's coastal program began in May 1978 with the publication of the Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement. DEP distributed more than 3,000 copies of the draft document, and held numerous meetings with various interest groups to discuss and debate the coastal program. In addition, DEP with NOAA-OCZM convened three public hearings to receive testimony on the DEIS. The final Environmental Impact Statement was the result of revisions made to the May 1978 document, based on public comment gathered at the hearings, in informal meetings, and in written statements, and was approved by NOAA in September 1978.

Public Shorefront Access and Erosion

DEP's Office of Coastal Zone Management served as staff to the Commissioner of DEP in his capacity as an active ex-officio member of the New Jersey Beach Access Study Commission. In 1976-1977, DEP-OCZM staff helped prepare the Commission's report to the Governor and Legislature on beach access in April 1977. This report, entitled Public Access to the Oceanfront Beaches, examined beach use, budgets, and fees and ownership.

A study on shoreline erosion was prepared under contract to DEP-OCZM by Rutgers University - Center for Coastal and Environmental Studies. The Coastal Geomorphology of New Jersey, in two volumes printed in December 1977, deals with the management techniques, strategies, and the technical basis and background for shoreline erosion management strategies. The study was a large step forward in understanding how to make decisions regarding development along the shoreline. Its influence is seen in many of the policies (high risk erosion, shore protection, dune protection) of the Coastal Resource and Development Policies (See Appendix H).

Energy

In December 1975, the Department of Environmental Protection invited energy industry representatives to provide basic information on coastal energy siting to be used in preparing the energy facility element of New Jersey's coastal zone management program. The results of this "Call for Information" were published by DEP-OCZM in March 1977. The state's three major electric utilities responded in considerable depth to the "Call".

DEP-OCZM's concern with the development of energy facilities is further reflected in two contractual studies undertaken by research groups at Princeton and Rutgers Universities. The study by Princeton's Center for Environmental Studies, entitled Who's in Charge? - Governmental Capabilities to Make Energy Siting Decisions in New Jersey, received financial support from the Federal Energy Administration, which sponsored a similar effort in each of the states associated with the Mid-Atlantic Governors Coastal Resources Council (New York, New Jersey, Delaware, Maryland and Virginia). It was published in September 1977. The Rutgers study, prepared by the Center for Coastal and Environmental Studies and entitled Onshore Support Bases for Offshore Oil and Gas Development: Implications for New Jersey, was released in February 1978. In addition, DEP-OCZM staff completed a report entitled Energy Facility Siting Issues in New Jersey's Coastal Zone, which was released for distribution in December 1977. DEP-OCZM staff also prepared a brief "Fact Sheet on Offshore Drilling in New Jersey" in June 1978.

Legal Framework

In June 1976, DEP-OCZM compiled "An Inventory of Environmental Law in New Jersey", which includes a description of major New Jersey land use, water quality, air pollution, and living resources laws related to coastal zone management. This is an in-house document which is continually updated.

In June 1977, DEP-OCZM completed "Areawide (208) Water Quality Planning and the New Jersey Coastal Zone Management Program: Opportunities for Interagency Coordination," a paper detailing the relationship between coastal zone management planning and water quality planning being conducted in New Jersey under Section 208 of the Federal Water Pollution Control Act.

Economics and Land Use

DEP-OCZM had contracts in 1975 and 1976 with the New Jersey Department of Community Affairs (DCA) and the Department of Labor and Industry (DLI) to prepare background land use and socio-economic studies about the coast. DCA produced information concerning: "Coastal Zone Housing Issues", County Land Use Issues in Atlantic, Cape May, Cumberland, Monmouth, Ocean and Salem Counties (six papers), "Growth Centers and Their Implications", "Sewerage Facilities", "Transportation Systems", and "Water Supply".

The Department of Labor and Industry prepared the following papers: "Background Paper: Economic Perspectives on New Jersey Tourist Industry", "Economic Inventory", "Economic Issues and Problems in Northeastern Region of New Jersey Coastal Zone", "Some Taxes", "Economic Profiles" on Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean, and Salem Counties (nine papers), and "Municipalities in Burlington and Middlesex Counties".

Information Systems

In February, 1975, in cooperation with the American Arbitration Association, DEP began an experiment to validate the environmental data for the Coastal Program. This experiment involved two large public meetings and several subsequent workshops. By January 1976, agreement was reached on data in nine natural resource categories. The categories are: bathymetry, flood areas, geology, groundwater, land use, slope, soils, tidal wetlands and vegetation.

DEP-OCZM also tested the development of information packages on an automated basis, in cooperation with the American Arbitration Association, Rockefeller Foundation, Rutgers University, and Princeton University. The 1976-1977 project, called the "Intuitive-Interactive Model", produced draft information packages on air pollution, construction noise, physical impact, industrial energy demand, odor pollution, residential energy demand, solid waste and waste demand, and urban runoff. One distinctive feature of the model is the ability of interested users such as developers or municipal officials to work directly, or "interact", with the computer. The findings of the project are being used by DEP in considering the ultimate design of an information system to assist coastal and perhaps statewide land and water use decision-making.

Nominated Areas of Public Concern

In December 1977, DEP-OCZM completed a report for public release entitled Nominated Areas of Public Concern in the New Jersey Coastal Zone. The report describes 176 areas of the state nominated by 140 interested individuals and organizations in 1976-1977, in response to DEP's invitation that the public suggest sites and areas for preservation, development, historic, recreation, visual, or other purposes.

The enthusiastic public response to this invitation led to detailed and wide ranging nominations, which were used in part to confirm and refine the DEP-OCZM staff recommendations on Special Land Areas and Special Water Areas in preparing the Location Policies in the Coastal Management Program - Bay and Ocean Shore Segment and this document. DEP also distributed its report describing the nominations to other state, county and municipal agencies which can make decisions affecting the sites. Finally, the information DEP-OCZM gained about specific sites through the Nominated Areas of Particular Concern program has been used in the past and will be used in the future as supplemental information to be reviewed in individual coastal permit decisions.

Coastal Awareness

Rutgers University Center for Coastal and Environmental Studies, under contract to DEP-OCZM, produced four booklets on coastal issues for public distribution in 1976-1977. The booklets, which are available from DEP are: "State Government and Coastal Zone Management", "Coastal Zone Legislation", "Oil Spills Reaction and Responsibility in New Jersey", and "New Jersey's Fishing Industry".

Mapping

During 1976-1978 DEP-OCZM published several map series, which are available to the public. The Inventory of the New Jersey Coastal Area - 1975 describes where these maps are located and how to use them. The Third Year Coastal Zone Management Program Development Grant Application provides a detailed list of the mapping in the first two years of the program. During the third year (1976-1977), extensive mapping was also done as part of DEP-OCZM's pilot study in lower Cape May County. Samples can be found in Appendix Four of the Coastal Management Strategy (September 1977).

The Interim Land Use and Density Guidelines also includes maps of developed and selected environmentally sensitive areas in the Bay and Ocean Shore Segment. Wetlands maps are on file with each county recording officer and are also available for public inspection or purchase in DEP's Office of Wetlands Management. Flood hazard area maps, as delineated by DEP's Division of Water Resources, are available for public inspection.

In addition, DEP-OCZM funded a study by Rutgers University - Center for Coastal and Environmental Studies to develop an underwater aerial photographic methodology suitable for surveying submerged vegetation in the coastal estuaries of New Jersey. The study culminated in the report, entitled Analysis and Delineation of the Submerged Vegetation of Coastal New Jersey: A Case Study of Little Egg Harbor (January 1978), which describes the aerial underwater photographic method, identifies and maps distributions of species, and discusses the ecological functions and associated problems of each of the dominant species.

In July 1978, DEP-OCZM released a staff working paper entitled Definition of the Preliminary Coastal Zone Boundary for the Delaware River and Northern Waterfront Regions of New Jersey's Coastal Zone. This paper identifies the process used by DEP-OCZM to prepare an initial boundary for the coastal zone outside of the Bay and Ocean Shore Segment.

In September 1978, DEP-OCZM held an all day mapping workshop to begin planning a coordinated effort by state agencies and other interested groups to identify mapping and other data needs, and to devise a system for obtaining, storing, and using the information.

Public Participation

DEP's Office of Coastal Zone Management is committed to wide public participation by law, by practicality, and by principle. DEP-OCZM's involvement efforts have two objectives, to raise the level of public awareness regarding both threats to, and attributes of the coast, and to identify and meet with individuals and groups who can contribute knowledge and opinions to coastal planning efforts.

DEP-OCZM works to involve people early in the planning process and continues to encourage such involvement. Draft documents are made available. Possible policies are discussed in public long before they are even formally proposed, much less adopted. The objective is for the DEP-OCZM staff to be exposed to as much information as possible, and for initial staff ideas and work products to receive a wide and critical reading. The reason is simple: a coastal zone management program cannot be prepared just from Trenton. The state's coastal zone is too large and too diverse. Public input and feedback is critical. Ideas which appear attractive on a planner's desk may be impossible to apply.

DEP-OCZM uses varied forums and publications to hear and explore varied information and viewpoints. To attract coastal residents, DEP-OCZM convened several series of public meetings in coastal counties during 1975-1978. The first meetings, held in Toms River and Trenton in February and May 1975, were focused on introducing the program and DEP's Data Validation Project. A second series of meetings were held in the summer of 1976 following publication of the Interim Land Use and Density Guidelines for the Coastal Area. A third series of seven meetings were held in the early winter of 1976 after release of Alternatives for the Coast. A fourth series of eight public meetings took place around the state in November-December 1977, following public release of the Coastal Management Strategy. These public meetings often began with a slide presentation and talk by a DEP-OCZM staff member and then turned to the specific concerns of the assembled. Discussion at these meetings flows from the questions, and many topics are each discussed relatively briefly. In addition, DEP-OCZM holds periodic workshops focused on specific, pre-announced subjects. Workshops on Agriculture, for example, were held in October 1976 in two locations (Bridgeton and New Brunswick). Additional workshops were held in February 1977 in Trenton and Toms River on Biological Resources, Physical Resources, Housing, Air Resources and Transportation, and Recreation and Boating.

Upon publication and distribution of the Draft Environmental Impact Statement on the Bay and Ocean Shore Segment in May 1978, DEP-OCZM held numerous workshops throughout the state with municipal officials, environmentalists, and industry and trade representatives prior to the document's more formal review at public hearings in June. The workshops were held primarily to further acquaint participants with

the Coastal Location Acceptability Method (CLAM). DEP staff used a step-by-step process with illustrations to work through a CLAM case study. The workshops also provided a forum for additional comments about the document, so that interested parties could receive clarification on specific points within the document, or suggest and discuss particular issues in greater detail than is possible at hearings. DEP-OCZM, in conjunction with NOAA-OCZM, then held three public hearings on the Coastal Management Program in June 1978 in Bridgeton, Toms River, and Trenton. Approximately 180 people attended the hearings at which a total of 35 persons offered testimony. DEP presented a slide show at the start of each hearing to serve as an introduction to the coastal program.

DEP also meets regularly with representatives of builders and environmental groups. DEP-OCZM has shared and discussed with these groups early drafts of several coastal reports including the Interim Land Use and Density Guidelines, CAFRA Procedural Rules and Regulations and the Coastal Management Strategy. Prior to the May 1978 publication of the Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement, DEP-OCZM distributed 150 copies of a pre-publication version of the document for quick review and comment by other state agencies, coastal county planning boards, builders, and energy, industry and environmental group representatives who had been active in the coastal planning process. Recipients of the pre-publication draft were also invited to a special Saturday review working session.

Since November 1976, DEP-OCZM has held monthly meetings with an Environmental Advisory Group composed of leaders of statewide civic and environmental groups. These meetings have been regularly attended by representatives of the American Littoral Society, American Association of University Women, League for Conservation Legislation, Sierra Club, Association of New Jersey Environmental Commissions, Natural Resources Defense Council, and the League of Women Voters, and occasionally by the Citizens Association to Protect the Environment, New Jersey Audubon Society, New Jersey Conservation Foundation, New Jersey Public Interest Research Group, and the Youth Environmental Society.

DEP-OCZM also convened a series of workshops on energy involving oil and gas industry representatives from Louisiana and Texas, as well as from the New Jersey Petroleum Council and the American Petroleum Institute in Washington, D.C., county energy planning representatives, researchers from Rutgers and Princeton, fishing groups, representatives from several state agencies and representatives from environmental groups. As the Newark Star Ledger noted on April 24, 1977, "It comes as somewhat of a surprise to find many of the combatants meeting across tables to discuss the issue informally, almost casually, in New Jersey."

The hearings held by DEP-OCZM on each CAFRA permit application provide another forum for public input in the Bay and Ocean Shore Segment. The hearings are held near the site proposed for development, and range, depending on the interest aroused by the application, from five minute meetings attended only by the applicant to four hour sessions with up to 300 people.

The coastal meetings and workshops are announced primarily through The Jersey Coast, the DEP-OCZM newsletter. This periodical is mailed to all interested persons and organizations known to DEP-OCZM. The mailing list currently includes more than 5,000 names. Meetings are also announced through press releases and the DEP Weekly Bulletin.

DEP-OCZM recognizes that reliance on a mailing list may neglect many potentially interested persons. To expand interest and knowledge of coastal management issues, the DEP-OCZM staff have spoken before a wide variety of municipal, county, state, and regional agencies, and civic, interest and professional groups in New Jersey and in other states. This provides an opportunity to talk with many people who may be well aware of some of the problems, but unaware of the coastal zone management program and possible solutions. Through these meetings, proposed policies are debated, interested individuals identified, and new people added to the mailing list who may later contribute to an element of the program.

DEP-OCZM also participates in other events to raise public awareness of coastal issues and again to identify more people who are interested in participating in the coastal management process. In June, 1976, for example, the DEP Commissioner led federal, state and local officials, interested citizens, and reporters on a six day walk along New Jersey's 125 mile ocean shoreline. This innovative event sparked considerable publicity and interest in the coast both in New Jersey and nationally. The Beach Shuttle experiment operated by DEP in the summer of 1977, and the return of the service in 1978, have provided another vehicle for probing public views on selected coastal management issues. In addition, DEP-OCZM has had exhibits at boat shows and county fairs. In May 1978, DEP developed a portable display describing New Jersey's coastal management program. This display can be easily updated as DEP progresses through the Federal approval process and begins to emphasize different areas of the State's coastal zone. The exhibit has been placed at several environmental and ecological fairs around the state, in libraries, and in the rotunda of the State House.

APPENDIX B: THE COASTAL ZONE BOUNDARY

Introduction

This appendix explores the selection of a boundary for the Developed Coast. The area eventually recommended by DEP, combined with the previously defined Bay and Ocean Shore Segment, will constitute New Jersey's Coastal Zone. A "metes and bounds" description of the proposed boundary indicating the roads followed by the boundary line is available from DEP.

It must be stated at the outset that DEP does not propose to regulate all, or even most activities within the selected coastal zone boundary. Rather, the coastal management program will regulate those activities described in the Management System Chapter.

The federal Coastal Zone Management Act provides general standards which states must meet in selecting a coastal zone boundary.

"Coastal Zone" means the coastal waters (including lands therein and thereunder) and the adjacent shorelands influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends ... seaward to the outer limit of the United States territorial sea. The zone extends inland from the shoreline only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents." (Section 304 (1))

In addition to meeting these standards, DEP seeks a coastal zone boundary which will include all areas in which proximity to the waterfront presents special problems or opportunities, and which is easily recognizable.

DEP is proposing a coastal zone boundary for the Developed Coast which includes all tidal waters and their adjacent shorelands inland to the first road or cultural feature. The effect of this boundary will depend upon the management system chosen to administer New Jersey's coastal management program (See Chapter III).

This Appendix provides a definition of the proposed boundary, lists the specific areas within the boundary, presents maps of the proposed coastal zone, and describes the criteria DEP used to delineate the boundary. Using this information, readers can easily determine whether or not areas about which they are concerned are within the proposed coastal zone.

DEP first publicly analyzed the selection of the coastal zone boundary in December 1976 in a staff working paper entitled "Alternative Boundaries for New Jersey's Coastal Zone". This 55 page paper, which was widely circulated and discussed, described possible boundaries and included a preliminary recommendation.

The coastal zone boundary DEP proposes in this Chapter is a detailed refinement of the preliminary recommendation. Comments by interested individuals and groups, particularly County Planning Boards, suggested specific modifications, some of which have been incorporated into the proposal. The most major change has

been the proposed division of the coastal zone into two tiers in the Existing Authority management system option (See Chapter III). In addition, the inland boundary has been adjusted to avoid cutting through pieces of property. Other suggestions, which have been incorporated, are noted as alternatives throughout the Appendix.

The next section describes the criteria DEP used in determining the proposed boundary and notes alternative suggestions.

Criteria of Delineating the Proposed Boundary

The proposed "coastal zone" is based on a definition of coastal waters, an inland boundary drawn along easily-recognized public roads and railroads immediately landward of the defined coastal waters, and the jurisdiction of the Hackensack Meadowlands Development.

Coastal Waters include tidal portions of the Hudson River, Passaic River, Hackensack River, Raritan River, Delaware River, Newark Bay, Upper New York Bay, Raritan Bay, Arthur Kill, Kill Van Kull and their tidal tributaries, and other tidal streams of the Coastal Plain.

The landward extent of coastal waters can be defined either by the limit of waters containing a specified percentage of salinity, the extent of the salt wedge, or tidal influence. DEP has chosen the landward penetration of tidal influence in a watercourse because this provides a readily measurable dividing line for coastal and non-coastal waters. (The tidal limit also coincides with the extent of State-owned tidelands and permit regulation under the riparian lands management program). Salinity levels are highly variable geographically throughout the seasons and from year-to-year, and therefore not appropriate for fixed boundaries, given the complexity and diversity of New Jersey's estuaries.

Two methods have been used to define the upstream limit of tidal activity. First, the approximate tidal limits specified in the annual Compendium of New Jersey Fish Laws, published by DEP's Division of Fish, Game and Shellfisheries have been used where available. These limits are typically defined as bridges or dams. Second, the point where the 20 foot contour interval crosses the water course is used to define the approximate limit of tidal influence along other tidal water courses. The 20 foot contour line criterion was suggested by DEP's Office of Environmental Analysis, since most of tidal influence is within the first 20 foot elevation.

The Office of Environmental Analysis is currently working to precisely and legally define New Jersey's tidal limits. When this work is completed, DEP will consider amendments to the coastal zone boundary.

The inland boundary was drawn along easily recognized public roads and railroads immediately landward of the defined coastal waters. Possible cultural features to be used were identified on the United States Geological Survey (U.S.G.S.) Topographic Quadrangle Maps. These cultural features were cross-checked with recent aerial photographs to eliminate "paper" streets and false information. If no recent aeriels were available for the area, the coincidence of data between the quadrangle maps, tax maps, and street maps warranted the assumption that the cultural features in question did exist. At no point, were set distances or

natural land features used to better approximate the tidal water. The boundary only follows the path of those cultural features which intersect or cross over another.

This "chain" of cultural features was mapped on overlays using the U.S.G.S. quadrangle maps (1:24,000) as base maps. All points where the boundary meets political boundaries were encircled and coded to enable easier identification of the boundary in specific counties or municipalities.

A narrative was prepared detailing the exact location of the boundary. The text was organized by major water bodies and their tributaries (i.e. Hudson River, Newark Bay, Arthur Kill). The coded points on the maps, indicating points where the coastal zone boundary crossed political boundaries, were included in the text to locate more readily the boundary description for specific municipalities and to create reference between the text and the maps.

This proposed coastal zone includes at least a small part of a total of 237 municipalities in seventeen of New Jersey's twenty-one counties, including municipalities in the Bay and Ocean Shore Segment. The next section of this appendix lists the municipalities in the proposed Developed Coast. Only Hunterdon, Morris, Sussex, and Warren counties have no coastal waters and are entirely excluded from the coastal zone. This relatively large zone, united by the presence of coastal waters, is quite diverse, stretching from the port at Camden to the vast wetlands along Delaware Bay, to the beaches of the barrier islands along the ocean, to the industrialized waterfront of northern New Jersey.

Tidal influence makes the Delaware River region immediately adjacent to these waters "coastal" in the sense intended by the federal Coastal Zone Management Act. Although the Coastal Area Facility Review Act (CAFRA) boundary stops south of the Delaware Memorial Bridge, the tidal influence on the Delaware River extends 60 miles further north to Trenton. Because of the flat topography of the Coastal Plain, tidal tributaries from the Delaware River extend up to 10 miles inland. NOAA-OCZM does not require inclusion of the Delaware River within New Jersey's coastal zone as the quantity of seawater is less than five parts per thousand. However, the State of New Jersey does today manage the wetlands and riparian lands along this part of the coast and DEP recommends inclusion of these areas within the proposed coastal zone for the second phase of New Jersey's coastal management program under federal law.

As part of their contract with DEP-OCZM, several coastal county planning boards suggested a coastal zone boundary for their county. The Hudson County Office of Planning recommended a preliminary coastal zone boundary which closely matches the boundary recommended by DEP. The county used the following six indicators: 1) existing local and county land use maps, 2) land ownership tax records, 3) USGS topographic maps, 4) existing local, county and state transportation maps, 5) land use and transportation surveys, and 6) susceptibility to coastal development or coastal development potential. Other areas were included in the coastal boundary as areas susceptible to coastal development. Several areas of this type exist along the Hudson River where large areas of underutilized railroad land dominate the waterfront.

The Salem County Planning Staff suggested that the Delaware River Area of the coastal zone be limited to the Delaware River shoreline and adjacent portions of its tributaries and their wetlands. The land buffer areas suggested were of minimal width, rather than what they consider the large area included within the current proposed boundaries. Gloucester County's recommendations, presented in the form of a resolution from the County Planning Board, is similar except that they do not recommend any buffer areas, believing the boundary should be confined to wetlands and riparian lands now regulated by DEP.

The Camden County Environmental Agency found OCZM's criteria used to designate the upstream limits of tidal influence on the tributaries to the Delaware River acceptable and, consequently, did not recommend any alternative. Two specific suggestions regarding the boundary in Pennsauken Township were accepted by DEP-OCZM:

1. At the northwestern end of the Township, instead of following the Industrial Highway Remington Avenue out to Route 73, the boundary now follows Hylton Road until it intersects with Route 73. The boundary then continues southeast along Route 73.
2. In the vicinity of the Pennsauken-Cherry Hill municipal line (Maple Avenue), the boundary follows from Maryland Avenue (or an extension of Maryland) to the Penn Central tracks west of Sorrell Horse Road.

One other comment on the boundary is worthy of note. That is the boundary modification suggested by the Wave Hill Center for Environmental Studies and others, to include the Palisades area in the coastal zone. This area extends from the New York-New Jersey boundary on the north to Palisade Avenue in Englewood Cliffs on the South, and from the Hudson River shoreline on the east to the 250' contour line on the west. DEP-OCZM has not included this area under the Existing Authority Option, because it lacks authority to regulate or manage development affecting the view presented by the Palisades. This area is, however, included as part of the recommended coastal zone under the New Legislation Option (See Chapter III).

DEP intends to review and consider additional revisions to the boundary which may be suggested as a result of public review of this document. In addition, several agencies including the Delaware River Basin Commission and the Hackensack Meadowlands Development Commission are currently reviewing the section of the boundary of concern to them and plan to provide DEP with detailed comments for use in preparation of the draft EIS of the coastal program.

Municipalities Within the Preliminary Boundary of the Coastal Zone of the Entire State

All or part of 238 of New Jersey's 567 municipalities are included in the preliminary state-wide coastal zone. The municipalities in the Developed Coast are listed below, by county, by regions, either Delaware River Area or Northern Waterfront Area (which includes the Hackensack Meadowlands District). It is important to note that this is only a proposal at this stage.

DELAWARE RIVER AREA

Burlington County

Beverly City
Bordentown City
Bordentown Township
Burlington City
Burlington Township
Chesterfield Township
Cinnaminson Township
Delanco Township
Delran Township
Edgewater Park Township
Fieldsboro Borough
Florence Township
Hainesport Township

Lumberton Township
Mansfield Township
Maple Shade Township
Medford Township
Moorestown Township
Mount Holly Township
Mount Laurel Township
Palmyra Borough
Riverside Township
Riverton Borough
Southampton Township
Westhampton Township
Willingboro Township

Camden County

Audubon Borough
Barrington Borough
Bellmawr Borough
Brooklawn Borough
Camden City
Cherry Hill Township
Gloucester City
Gloucester Township
Haddon Township
Hi-Nella Borough

Hi-Nella Borough
Laurel Springs Borough
Lindenwold Borough
Magnolia Borough
Mount Ephraim Borough
Pennsauken Township
Runnemede Borough
Somerdale Borough
Stratford Borough

Gloucester County

Deptford Township
East Greenwich Township
Greenwich Township
Mantua Township
National Park Borough
Paulsboro Borough

Swedesboro Borough
Wenonah Borough
West Deptford Township
Westville Borough
Woodbury City
Woolwich Township

Mercer County

Hamilton Township

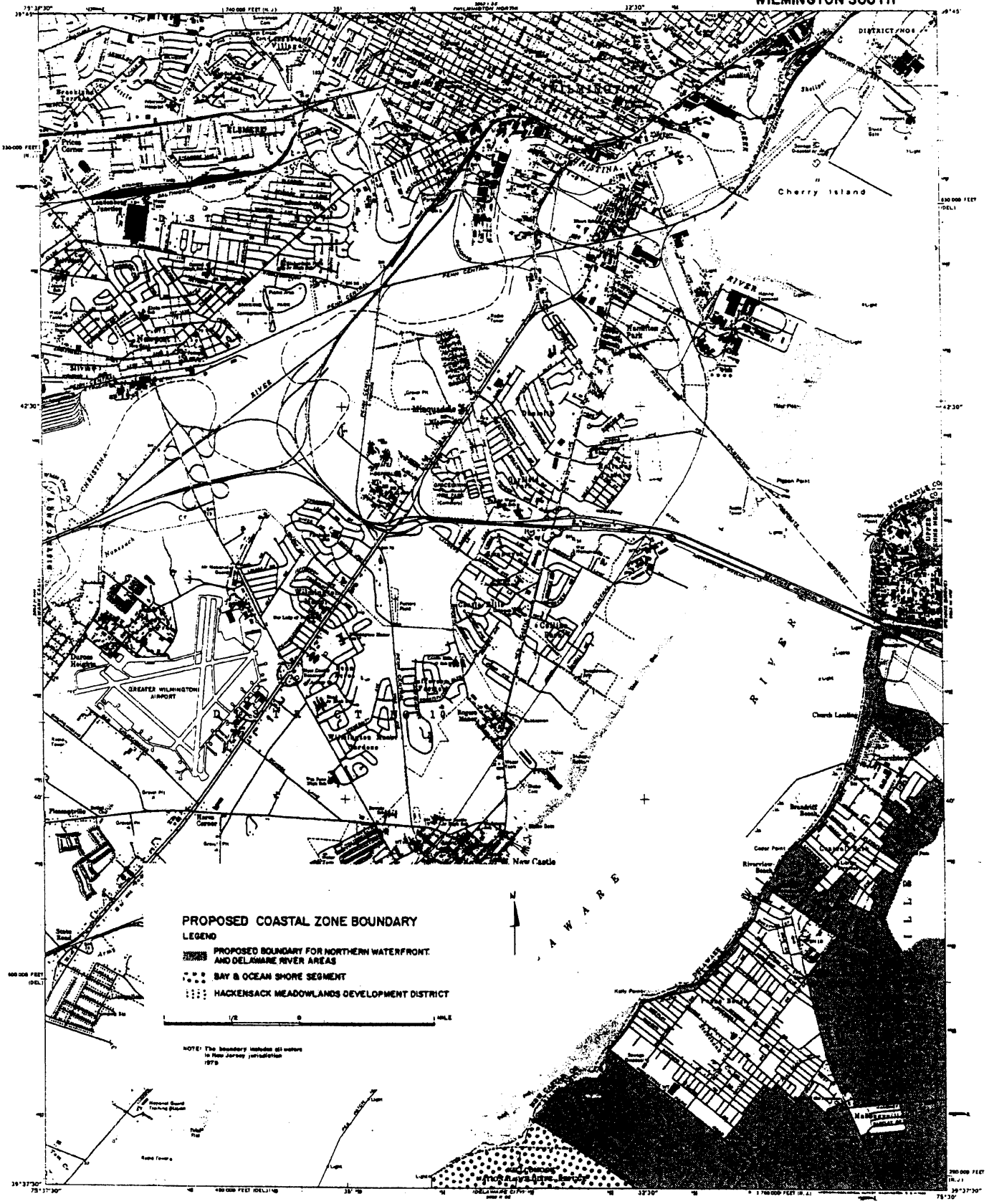
Trenton City

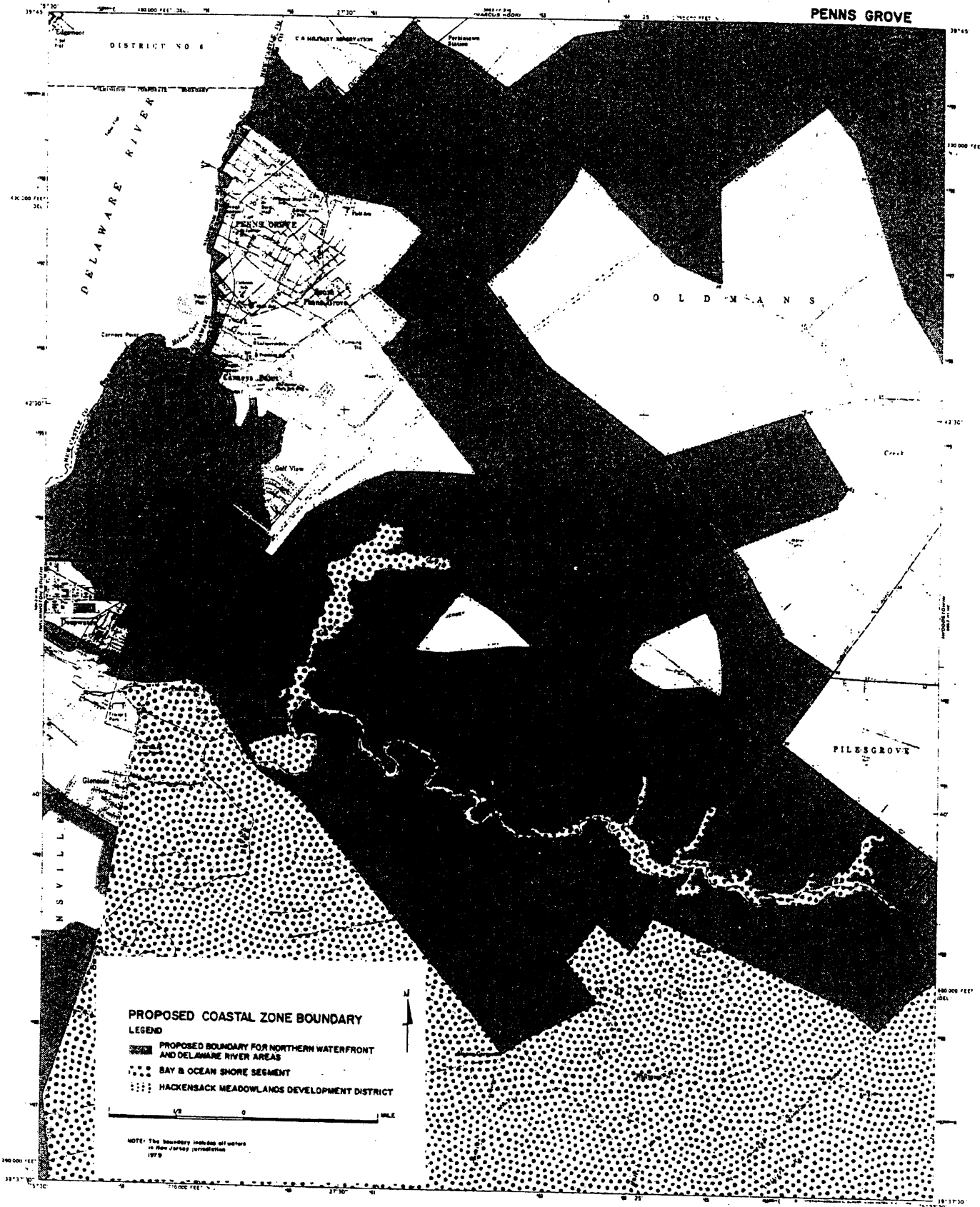
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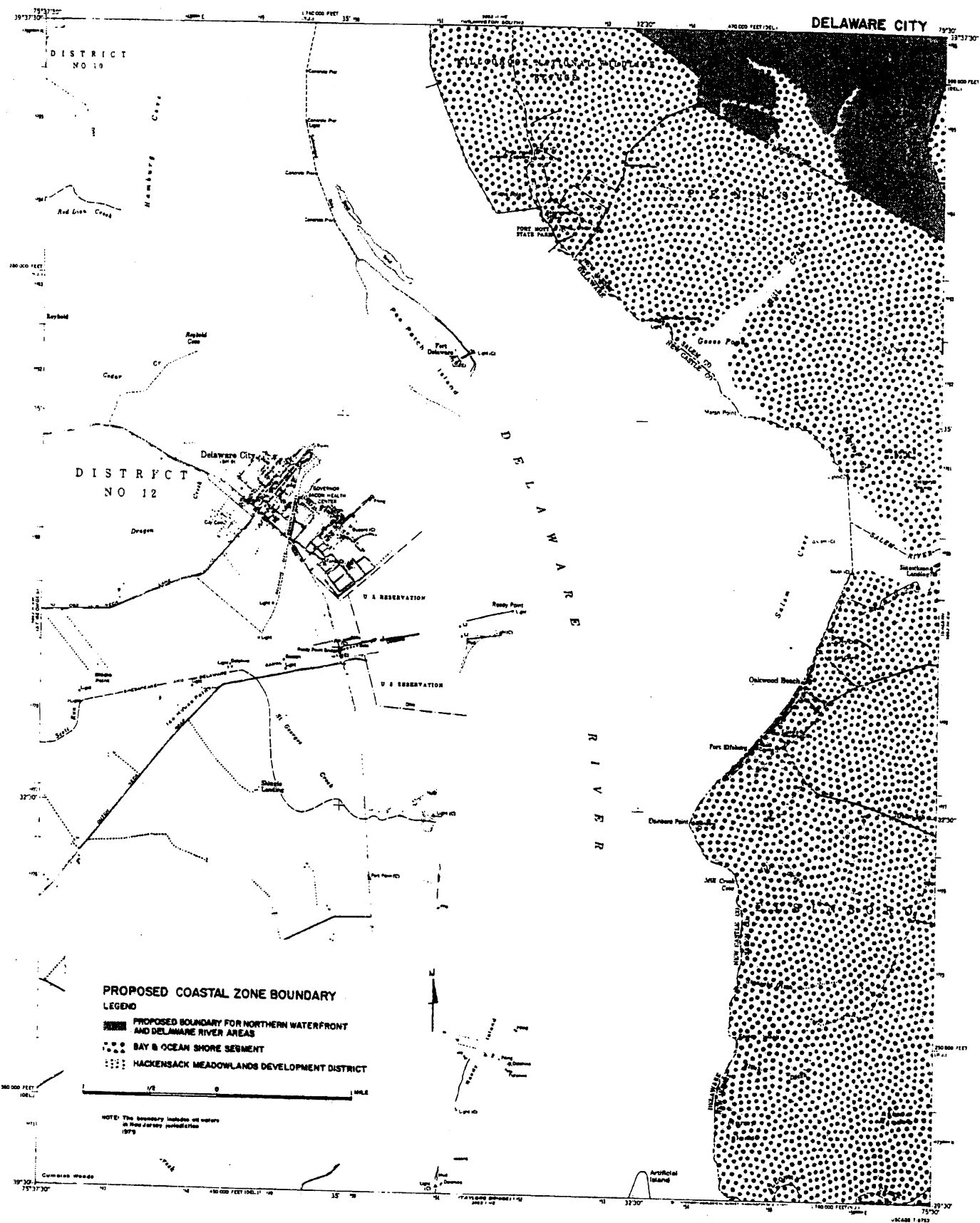
Oldmans Township
Penns Grove Borough

Pennsville Township
Pilesgrove Township

WILMINGTON SOUTH

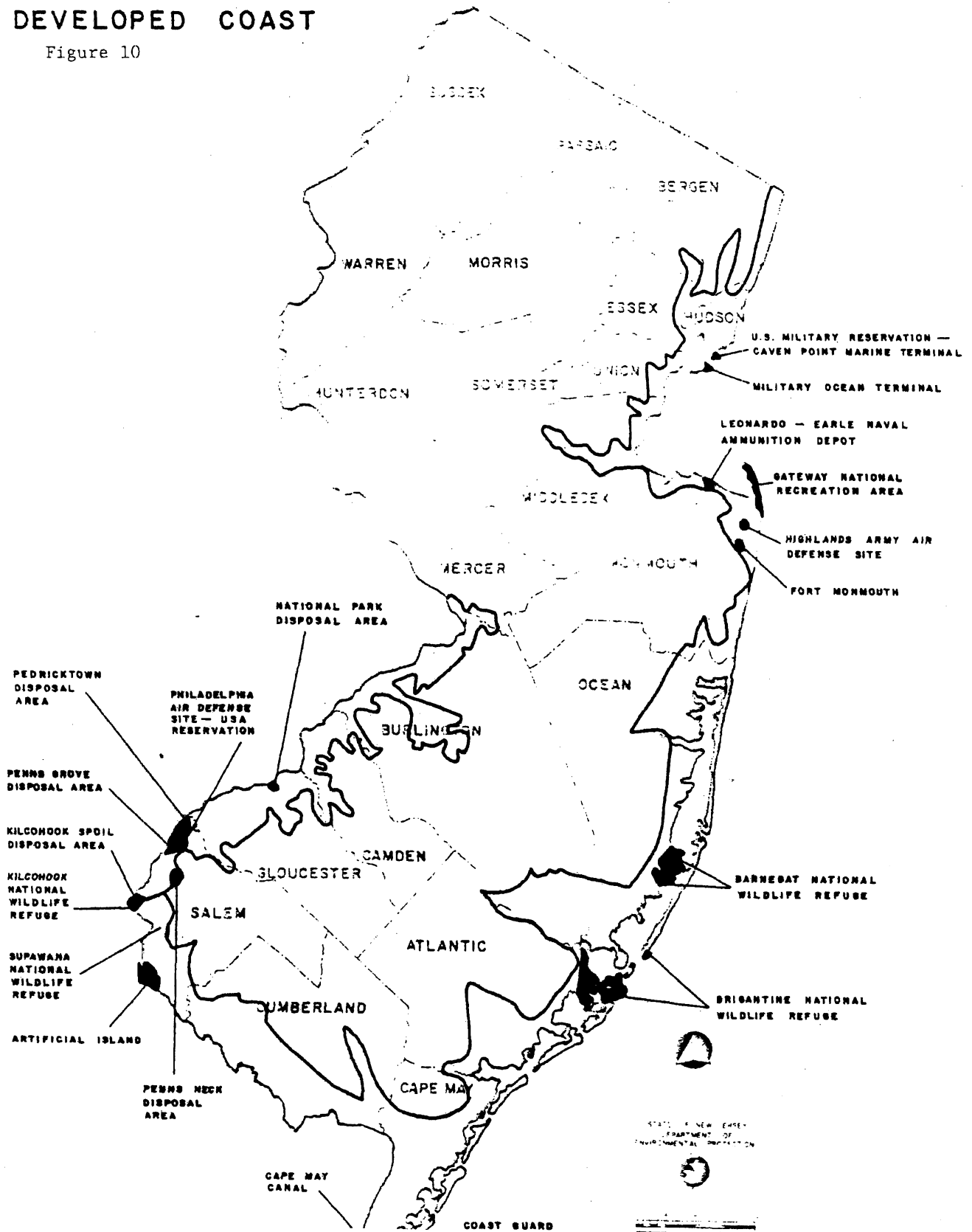






MAJOR FEDERAL LANDS EXCLUDED FROM THE DEVELOPED COAST

Figure 10



twelve specially planned areas that will combine several land uses including open space and wetlands preservation. The Commission's policy on combining development with on-site wetlands preservation is spelled out in "Environmental/Socio-Economic Impact Guidelines for Specially Planned Areas". The first of these specially planned areas, the Harmon Cove Island Residential Area, has already been developed and includes clustered housing, offices, open space and a major hotel. DEP proposes to use this plan as the Hackensack Meadowlands element of the State Coastal Program.

4. Delaware River Area

The Delaware Valley Regional Planning Commission (DVRPC) is the recognized A-95 planning agency for the Delaware River Area, except for Salem County, which is within the planning jurisdiction of the Wilmington Metropolitan Area Planning and Coordinating Council (WILMAPCO). The Delaware River Basin Commission is an interstate agency with authority to manage the water resources of the entire Delaware River Basin. The goals and plans of these agencies appear consistent with the proposed Coastal Management Program. DEP has provided a small grant to DRBC to jointly develop consistent policies and a management system for the Delaware River Area. In addition, DEP is coordinating its planning with DVRPC and WILMAPCO.

Proposed Regional Land Use Plan Maps for the Year 2000; DVRPC; April, 1978: DVRPC has proposed draft land use plans for the year 2000 for Mercer, Burlington, Camden and Ocean Counties. These plans indicate "proposed open space preservation and conservation areas", "proposed agricultural preservation areas", and growth areas. They encourage development to concentrate around regional and subregional centers. Regional centers identified in or adjacent to the proposed coastal zone are Trenton, Mount Holly, Camden, and Woodbury-Westville; sub-regional centers are Burlington City, Moorestown, Cherry Hill and Deptford. Along the immediate waterfront of the Delaware River, the plans call for most undeveloped land to be preserved as open space or to remain as privately owned undeveloped land. Some development is encouraged along the waterfront adjacent to existing developed areas.

Proposed Goals and Objectives for Regional Development By the Year 2000; DVRPC; April, 1978: DVRPC has established twenty proposed goals for the development of the Philadelphia metropolitan region. Goals with coastal relevance include: Fully develop the designated regional and subregional centers and minimize development of new centers; a compact pattern of regional development; no significant increases in population for the areas of the region designated as rural; retain the prime and special agricultural soils of the region for agricultural purposes; permanently protect the 21,000 acres of wetland facing development pressure by the year 2000, at a rate of 1,000 acres per year (includes wetlands in Pennsylvania); preservation of flood plains which are in developed areas or growth areas; identify, preserve and manage rare and/or unique natural areas in the region; protect the scenic corridors along 47 miles of scenic rivers and streams facing development pressures by the year 2000; recover one degraded area in the region each year and restore it to use as an open space area; acquire additional parkland and provide additional facilities which have been identified as most needed by the region's residents; preservation of the region's historic

sites; reduction in the rate of expanding energy needs; stem declining groundwater levels and restore natural levels in the area of ecological importance; and achieve air quality such that no pollutant or combination of pollutants result in an unsatisfactory rating on any day during the year.

Regional Land Use Plan; WILMAPCO: The Wilmington Metropolitan Area Planning Coordinating Council's (WILMAPCO's) development scenario for the Salem County waterfront encourages concentrated growth near the Delaware Memorial Bridge and is generally compatible with evolving coastal policies.

Delaware River Basin Commission Comprehensive Plan; DRBC: The DRBC Comprehensive Plan is, in reality, the accumulation of policies for water resource preservation and development adopted by the Commission since its inception in 1961. Elements of the Plan include an annual Water Resources Program and a Water Code (July, 1978), which state commission policies, including a policy on preservation and protection of wetlands.

The DRBC is currently undertaking a basinwide (Level B) study of water resource management in the Delaware Basin. The study is examining alternative plans for addressing land and water resource problems in the Basin. It may lead to significant revisions of the Commission's Comprehensive Plan. In October 1978, the Commission released a "preliminary draft final" report of the study, which listed several alternative resource management policies. Among the management policies not previously emphasized by DRBC, which have been suggested in preliminary Level B reports, are conservation of water rather than meeting all needs at all times, compatibility of plans with the hydrologic cycle, emphasis on ground water preservation and on non-point sources of pollution, non-structural methods of flood damage control, and involvement in land use issues.

5. County and Municipal Plans

In developing the coastal program, DEP has, where possible, reviewed county and local reports, plans and guidelines which make recommendations or set priorities for land and water uses. Below is a brief summary of those plans.

Northern Waterfront Area Plans: Recognizing a shortage of recreational or open space land in the county, the Hudson County land use plan suggests areas which should be acquired for that purpose. Part of the area recommended in the plan for county acquisition extends along the face of the Palisades and is included in the proposed coastal zone. The County plan also includes large recreation areas for Jersey City's western shoreline along the Hackensack River. The Hudson Meadows Park System along the Hackensack River is another area recommended for open space and recreation use.

The Hudson County Plan suggests that much of the Hudson River waterfront, particularly the areas in Bayonne, Jersey City, Union City and West New York remain in, or be redeveloped for, industrial use. Some parts of Jersey City and Hoboken are suggested for a residential, commercial and industrial mix. For the most part, the county plan and the coastal policies are consistent in their efforts to shape a healthy, vital waterfront in Hudson County.

Many of the municipal plans in Hudson County reflect a desire to revitalize the waterfront; however, while DEP suggests the need for a mix of industrial, residential and recreational uses, many of the municipalities have designated their waterfronts solely for industrial use.

Bayonne's waterfront is dominated by three uses, residential, commercial, and industrial. It is the only community in Hudson County to permit tank farms or chemical storage facilities.

Plans for Jersey City's waterfront include industrial, recreational and residential use. The plans indicate that bulkheading and dredging would be necessary for a proposed marina and tug facility. Like Jersey City, Hoboken has recognized its waterfront's potential to accommodate industrial, residential and recreational uses. Hoboken's plans would allow a shopping mall, marina, garden apartment complex and high rise condominiums along the waterfront.

Weehawken's land use plan calls for preservation of the Palisades Cliff. The plan designates the northern part of the waterfront for industrial and office use, while the southern part would be used for parks and outdoor recreation, including access for walking and bicycling.

Plans for northern Hudson County in North Bergen and West New York would accept a development mix of residential and light industry.

In Bergen County, the Palisades Interstate Parkway follows the Hudson River shoreline north of the George Washington Bridge. A small area south of the bridge, along the river is proposed by the County for recreation and open space use. However, most of the area south of the bridge is in industrial or commercial use. The County has also proposed that a large area along the Hackensack River, south of the Oradell Reservoir to Hackensack, be used for recreation and open space. Further south along the Hackensack River, much of the area is in heavy industrial use.

According to Union County plans, the waterfront which is for the most part, in industrial use, will continue to be used for industrial facilities. The City of Linden, however, is proposing to acquire waterfront property for future development of a marina and related recreational facilities. This project is part of the City's efforts to enhance park land and recreational opportunities in the City of Linden.

The Middlesex County Plan calls for a mix of uses along the County's waterfront. Heavy and light industrial uses blanket most of the shoreline along the Arthur Kill. Along the Raritan River and Bay, open space areas are interspersed with industrial uses. In the southern part of the waterfront along Raritan Bay, the plan calls for a mix of residential and open space uses.

A review of some municipal master plans in Middlesex County reveals that much of the area is planned for industrial use. Carteret has reserved its waterfront along the Rahway River and Arthur Kill for industrial use. South Amboy's plans for the waterfront are similar to those of Carteret. However, South Amboy proposes that its southern bayfront property be occupied by a mix of residential and recreational uses. Woodbridge's plans for intense industrial use of the waterfront are consistent with those of Carteret and South Amboy.

Delaware River Area Plans: Salem County's master plan provides its perspective on future county growth. Concerning the area of the county included in the Developed Coast, the county plan considers the northwestern section of the County, including Pennsville, to be a developable area. An area in the southern part of Pennsville Township and a strip on either side of Mannington Meadow in Pennsville and Mannington Township are designated conservation areas.

Municipal plans in the County, for the most part, encourage development along the Delaware River Waterfront. The Pennsville Township plan tries to concentrate new development in already developed areas. The plan designates three areas for industrial use in the township; an area in the northern part of the township, an industrial zone in the middle of the township and an industrially planned area in the southern part of the township. The remaining part of the township's Delaware River shoreline is planned for parks, and wetland conservation areas.

The Carneys Point Township plan designates the area along the Delaware River for the most intense development in the township. The plan includes two large industrially zoned areas in the northern and southern ends of the township along the River.

The Oldmans Township plan is being revised; however, the present plan encourages growth along the Delaware River and would permit heavy industry to locate in the township.

Although Gloucester County does not have a master plan, reports and studies from the County Planning Board indicate the county's perception of future trends. Because industry holds large tracts of vacant land along the Delaware waterfront, some industrial waterfront development is expected. In particular, additional industrial development is anticipated at the Mid-Atlantic Industrial Park in West Deptford Township and the Pureland Industrial Park in Logan Township. Residential development associated with Beckett New Town is planned for Logan and Woolwich Townships.

A review of Gloucester County municipal plans indicates that a mix of uses are allowed within the proposed coastal zone. For example, Greenwich Township has zoned all of its waterfront to allow heavy manufacturing uses. However, the Greenwich Township land use plan designates almost all undeveloped areas along the River for "conservation and public and semi-public use". Logan Township has zoned its Delaware waterfront area "Riverfront Industrial" permitting such facilities as chemical manufacturing plants and oil refineries to locate in the township. A few areas within the riverfront industrial zone, including state delineated wetlands, are designated recreation and environmental protection areas.

Zoning in West Deptford Township reflects the industrial uses which occupy much of the township's waterfront. The land use plan also designates large tracts of vacant land along the Delaware River and Mantua Creek for heavy industrial use. However, the plan allows some areas, including state mapped wetlands, to be used for conservation, recreation and open space.

The Camden County Comprehensive Plan proposes recreation and open space uses for the Camden City waterfront north of the Benjamin Franklin Bridge to the Pennsauken-Camden boundary. Much of the Pennsauken waterfront, except for the areas in industrial use, are recommended for recreation and space. The plans suggests, however, that the lower half of Petty's Island be placed in commercial use and a large area south of Fisherman's Cove be allowed for industrial use. The County plan for the Camden City and Gloucester City waterfronts includes a mix of industrial, commercial and medium and high density residential uses. Much of the land in the county along each of the Delaware River tributaries is recommended for recreation and open space.

Camden City completed a new comprehensive plan in 1977. Since much of the area along the Delaware River is developed or had been developed at one time, it is expected the City's riverfront will continue as a developed area. Large vacant tracts of land are designated for industrial use. The North Camden Waterfront Area, which is an area in transition, is suggested for a residential-industrial mix. Recommendations for major recreation areas include a waterfront park along the Delaware River in the City Center Urban Renewal Area, an open space area along the north Branch of the Newton Creek and an additional open space area along the eastern bank of the Cooper River. The City has recently received a Green Acres grant to begin work on the waterfront park.

Burlington County does not have a master plan. Rather, county planning efforts follow recommendations of state and regional plans for the area. For the most part, the Burlington County waterfront is developed either in residential or industrial use. Large areas along the Rancocas Creek and a small area along the Delaware in the extreme northern part of the county are proposed open space preservation and conservation areas.

The Mercer County Recreation and Open Space Plan proposes that a large undeveloped area along the Delaware River next to Crosswicks Creek be used for recreation and open space.

Areawide Water Quality Management Plans (208 Plans) - Areawide water quality planning seeks to develop institutional and technical strategies to control and abate water pollution. Some key policies of the program are to protect the sources of potable water supply, control toxic and hazardous substances, control pollution from areawide sources, and protect environmentally sensitive areas.

Middlesex County has produced a 208 Plan which has been approved by DEP and certified by the Governor. A Tri-County Plan for Burlington, Camden and Gloucester Counties is currently being reviewed by DEP, as is a plan for Mercer County. A draft plan for northeastern New Jersey, including the counties of Bergen, Passaic, Hudson, Essex and Union should be forthcoming shortly. The policies produced by these plans to date have been consistent with the proposed coastal policies. This program is also discussed in the Management System chapter of the Options for New Jersey's Developed Coast.

6. Neighboring States

Areas of New Jersey's Developed Coast lie adjacent to portions of New York, Pennsylvania and Delaware, which each have their own coastal management programs. The Delaware River Area shares its coastal waters with Pennsylvania and Delaware, and the Northern Waterfront is adjacent to New York City's Hudson River jurisdiction. Therefore, not only will New Jersey's own coastal policies have an effect on the neighboring states, but the policies of the adjacent states can be expected to have some impact on New Jersey.

New York's Hudson River Coastal Zone Policies are under the supervision of New York City's Department of City Planning which, in June 1978, published a discussion draft, Coastal Zone Management; Draft New York City Regional Element of the New York State Coastal Management Program. In Delaware, the Office of Management, Budget and Planning has the responsibility for implementing State coastal policy along the Delaware River. Like New York, Delaware recently (September 1978)

submitted a discussion draft for review; Discussion Draft: Delaware Coastal Management Program. Policies for Pennsylvania's Delaware River coast are being developed by the Delaware Valley Regional Planning Commission. Most recently, the Commission presented for review and revision a Policy Framework in which it poses problems and issues to be addressed, formulates responsive goals, and outlines policies within their legal frameworks.

New York

New York has defined a two-tiered coastal boundary along the Hudson River portion of its coast. The Waterfront Zone lies between the New Jersey/New York border in the Hudson River and 300 feet landward of the mean High Tide line where developed, or, where undeveloped, either the extent of remaining natural resources or the first major physical man-made barrier. A second zone, the Coastal Upland Zone lies between the landward boundary of the waterfront zone and the upland limit of Waterfront Community Planning Districts.

In order to aid the process of determining management policies, all of the coastal zone has been divided into four types of Optimum Carrying Capacity Areas (OCCA) used to delineate the ability of each area's natural resources and physical infrastructure to absorb development. For each area type, characteristics have been discussed and suggestions have been made to mitigate impacts of development upon the environment. Type I areas, for example, void of natural resources, have been and will continue to be developed according to zoning resolution. At the other extreme, Type IV areas, which contain vital natural features as well as virgin ecosystem features (tidal and freshwater wetlands, unique flora and fauna) will be assured protection through the discouragement of development, through the establishment of buffer zones, and through the superseding of existing zoning by specially designed management features.

Besides protecting and enhancing the natural resources in the Hudson River area and promoting shorefront access and opportunities for recreation, the New York program also has the priorities of promoting and strengthening economic development of the waterfront areas. The City of New York shares jurisdiction over its waterfront with the Port Authority of New York and New Jersey. New York City has found that it is not in as strong a position to compete for harbor-related business opportunities since interstate shipping taxation systems and the permit burdens imposed on port developers by Federal, State and City agencies have made New Jersey more desirable as a shipping center. Also New Jersey was quick to accommodate containerization giving it the lead in such a currently busy form of shipping. Policies to promote economic development include the development of container facilities and the encouragement of expansion and renovation of other waterfront facilities rather than the construction of new areas. New York also favors the continuation and development of Outer Continental Shelf activities to help provide employment opportunity and supply necessary energy sources for the City's needs. While the state prohibits liquid natural gas processing facilities in the N.Y.C. coastal zone, it does encourage the siting and operation of energy facilities which can demonstrate immediate and long range public need and environmental compatibility, and which fulfill the requirements of the Coastal Management Program.

Delaware

All lands of the State of Delaware lie within only eight miles of coastal waters. The Office of Management, Budget and Planning, therefore, has included all of the state except Federal Lands within its Coastal Management Policy (CMP). Delaware has also designated a "coastal strip", varying in width from a few hundred yards to 12 miles, and delimited landward by a series of roads and highways. Delaware's Seaward Boundary extends to the 3 mile outer limit of the U.S. territorial sea, and in the area of the Delaware River and Bay, to the interstate New Jersey/ Delaware boundary. Still unsettled is the determination of the lateral seaward boundaries between New Jersey and Delaware, and Maryland and Delaware. (See Appendix F)

In the Discussion Draft, policies are presented and discussed for the use of natural features and resources, the location and allowable types of development, the siting of energy facilities, and the expansion or development of transportation facilities. Various aspects of these policies could have an effect on New Jersey. The plan favors revitalization and reuse of existing structures, sites and urban centers, and discourages sprawl-type development. New industry is encouraged when services can be provided economically and conveniently, and when the State's resources can be better "optimized". A strong policy for underwater lands and the coastal strip is mandated by the State's Coastal Zone Act, which prohibits new heavy industry involving, for example, more than 20 acres, and characteristically employing tanks, smokestacks, chemical processing equipment and distillation or reaction columns. The policy applies to oil refineries, steel manufacturing plants, pulp/paper and chemical plants, and any other industry with the potential to pollute in the event of human error or equipment failure. The siting of new manufacturing facilities or the expansion of existing ones requires a permit, and is subject to performance standards.

Issues and policies related to energy facilities have also been presented in the Discussion Draft. Liquified Natural Gas facilities, refineries, and gas plants are all prohibited in the coastal strip, but permitted inland when federal and state performance standards can be met. Power plants, however, are permitted in the coastal strip as well as inland, provided that State and local standards are met. While no interest in siting nuclear fuel processing facilities in Delaware has been expressed to date, there is a potential demand for them and any proposals will be handled on a case-by-case basis.

The proximity of Delaware to Outer Continental Shelf (OCS) resource development activities has necessitated specially related policy development. Deepwater ports are opposed in Delaware Bay, but sanctioned, elsewhere as long as they are located far enough offshore to minimize threats to the coast from oil spills and dredging, employ stringent environmental safeguards, and demonstrate a reduction of tanker traffic and lightering in Delaware Bay. No OCS-related facilities which require onshore locations -- tank farms, pipelines, crew/supply bases, and platform fabrication yards -- are prohibited; they are, however, subject to State and local environmental and zoning regulations. Proposals for ports which require continual dredging and spoil disposal in order to keep them usable are opposed. Any alternatives to lightering activity within the Bay are sanctioned. Finally, expansion of the Port of Wilmington is encouraged.

Delaware's Coastal Management Policy will regulate wetlands of 400 or more contiguous acres. Only activities which require water access and for which there exists no reasonable alternative on adjoining land will be permitted within wetlands, and most of these are further subject to State approval. Dredging shall be carefully regulated and prohibited if steep slopes or unstable sides are produced or interference with normal tidal flow results. Dredging of channels with only one outlet to navigable water is prohibited unless some means of maintaining State water quality standards is provided. The disposal of spoils in wetlands will not be encouraged unless the wetland is included in a State plan for restoration, or creation of wetlands.

Pennsylvania

Pennsylvania's coastal zone includes a Lake Erie segment and the Delaware Estuary Coastal Zone, which is adjacent to New Jersey's Delaware River Area. NOAA-OCZM has tentatively concluded that Pennsylvania is not making satisfactory progress toward completion of its coastal program. While DVRPC disputes this judgement, the Program's status is unclear. The major elements of the proposed plans for the Delaware Estuary Coastal Zone are, nevertheless, of interest to New Jersey, and are described below.

In determining the coastal zone boundary, the Delaware Valley Regional Planning Commission was concerned with the predominantly urban and developed character of most of the 136 mile long coast. Major attention was directed to the effects of the proximity of water on particular land uses. The actual boundary was determined based on, and including, five features: all shoreline properties which extend to the first right-of-way, direct users including withdrawers and dischargers of the River or tidal tributary waters, flood plains of the Delaware and Schuylkill Rivers and tidal tributaries, vacant parcels at the water's edge and large parcels nearby, and principal highways, railroads and right of ways.

The Coastal Zone extends north along the Delaware River as far as Trenton, varying in width from 1/4 to 2 1/2 miles. The area in the southernmost portion, in Delaware County, is developed with industries, tank farms, refineries, power and sewage treatment plants, and the Philadelphia International Airport. Upstream is the Philadelphia segment including redevelopment areas, commercial facilities, historical districts, and refineries and industries. The northernmost portion, which runs along Bucks County, is less industrial in nature.

Pennsylvania, in its draft chapters of the Coastal Zone Management Program has identified Geographic Areas of Particular Concern (GAPC) consisting of 4 categories: areas of significant natural value, development opportunity areas, areas of significant recreational or cultural value, and overlap areas - areas which may be subject to intense but competing pressures, such as development and recreation. GAPC's will be given special attention in formulating and implementing coastal policies.

Floodplains and wetlands are the subject of several policies proposed in DVRPC's Coastal Zone Policy Framework. Floodplain management and planning is encouraged in all coastal municipalities. The State proposes to require all floodprone municipalities to qualify for the National Flood Insurance Program, which prohibits encroachments which would result in any increase in flood levels. At the same time, the framework recommends protection of non-urban wetlands by safeguarding against dredging and filling, preventing the addition of salts, toxics

APPENDIX F: THE DELAWARE-NEW JERSEY BOUNDARY AND INTERSTATE COASTAL MANAGEMENT
ALONG THE SALEM COUNTY SHORELINE

Issue

The Delaware Coastal Zone Act of 1971 precludes, or at least impedes, major waterfront industrial development along the shoreline of Salem County, New Jersey, as a result of the peculiar interstate boundary between the State of New Jersey and the State of Delaware along the Delaware River. As a result of a U.S. Supreme Court decision in New Jersey v. Delaware (291 U.S. 361) in 1933, the interstate boundary between New Jersey and Delaware extends north at the mean low water line on the New Jersey shoreline, from a point near the northern tip of Artificial Island, in Lower Alloways Creek Township, Salem County, until the Delaware-Pennsylvania boundary, almost at the Salem County-Gloucester County boundary. Consequently, major development extending into the Delaware River could require approval from the State of Delaware, in addition to approvals from the State of New Jersey.

Background

In 1933, the United States Supreme Court held that the interstate boundary between the State of Delaware and the State of New Jersey, through Delaware Bay and the Delaware River, generally followed the ship channel in the middle of Delaware Bay. However, at the point near the northern tip of Artificial Island, in Lower Alloways Creek Township, Salem County, the U.S. Supreme Court held that the interstate boundary between New Jersey and Delaware extended north along the mean low water line on the New Jersey side of the River to the Delaware-Pennsylvania border. (See Figure 11 for a sketch showing the New Jersey-Delaware border along the shoreline.)

In 1971, the State of Delaware enacted a stringent Coastal Zone Act, which prohibited heavy industrial development in a defined coastal zone. Since the boundary between New Jersey and Delaware extends to the New Jersey shoreline, the restrictive provisions of this coastal management law applied to development that would be proposed for sites involving land and water along the Salem County Waterfront. In particular, the Delaware law prohibits heavy industry such as oil refineries, steel manufacturing plants and chemical plants. The law also prohibits offshore "bulk product transfer facilities" which include port or dock facilities for the transfer of bulk quantities of any substance, such as oil. However, the law has two exemptions to the bulk product transfer prohibition. New offshore bulk product transfer facilities used solely by the industrial or manufacturing facility to which it is connected, and any bulk product transfer facility within the Port of Wilmington are exempt from the Act.

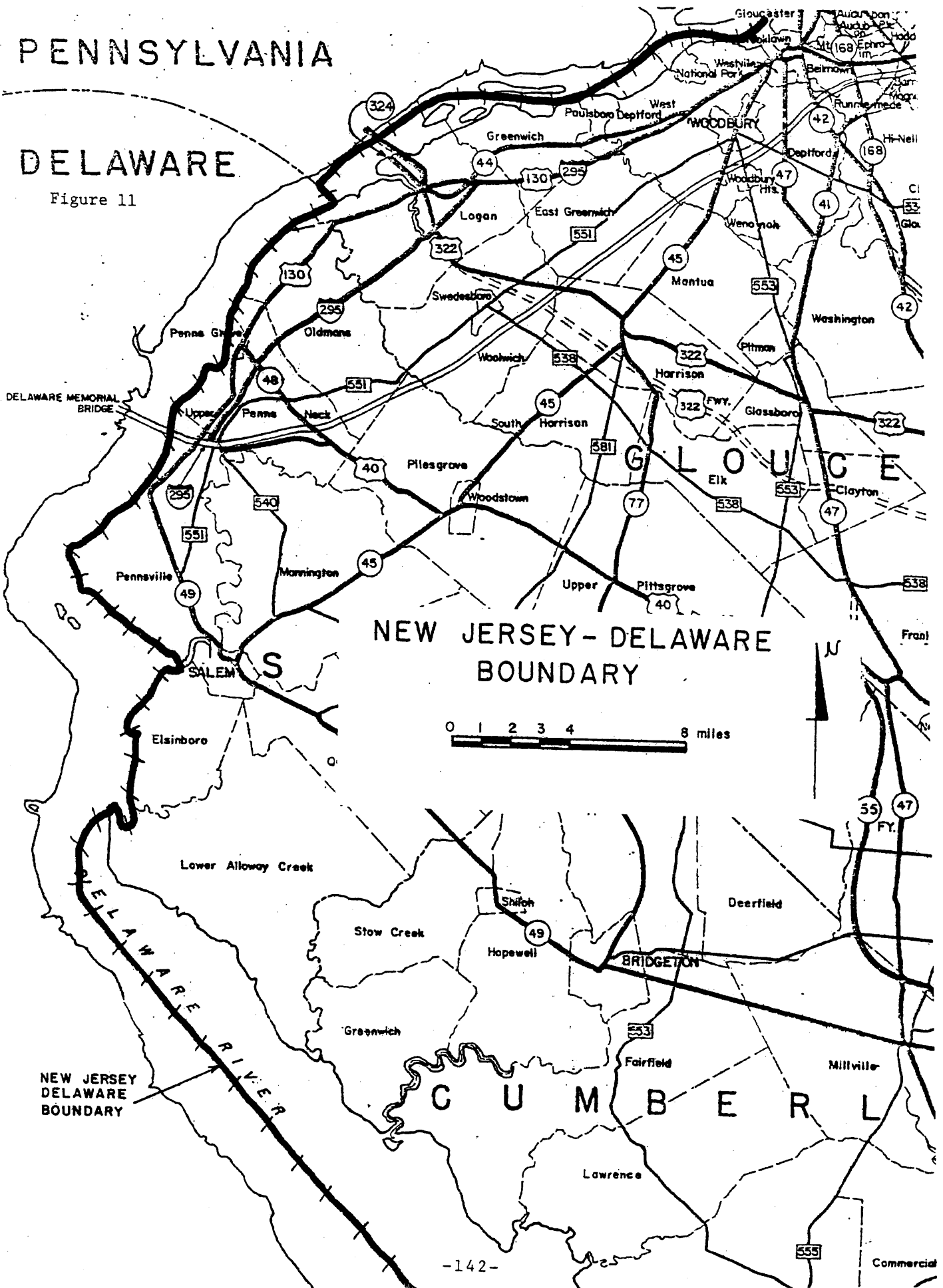
Manufacturing activities are permitted in Delaware's coastal zone by permit only. Examples of manufacturing uses include automobile assembly plants. For more detailed definitions, refer to the Coastal Zone Act, 7 Del. C. Chapter 70.

Consequently, under Delaware law, some types of activities would be prohibited from locating along the Delaware River in Salem County, while other facilities desiring to locate along the river would need to obtain permit approval from the State of Delaware.

PENNSYLVANIA

DELAWARE

Figure 11



Because the State of Delaware exercises jurisdiction along the Salem County shoreline from the mean low water line waterward, projects involving the use of public submerged lands would require approval under Delaware's Underwater Lands Act. This Act authorizes Delaware to exercise authority over state lands lying below Delaware's mean high waterline. Projects requiring approval include: (1) erection of any structure on such lands, (2) dredging or filling of such land, (3) the excavation of any channel, lagoon, turning basin, or ditch on public or private lands which will make connection with public submerged lands, (4) the filling of lands adjacent to public submerged lands and (5) laying of any pipeline, transmission line or telephone line in, on, over or under the beds of public submerged lands.

In addition, New Jersey maintains jurisdiction over a narrow strip of tide-lands between the mean high water line and the mean low water line in Salem County. Under the waterfront development permit law enacted in 1919, the New Jersey Department of Environmental Protection, Division of Marine Services, requires a construction permit for any construction along the waterfront of navigable waterways. Therefore, certain development along the Delaware River in Salem County could require approval from both the State of Delaware and the State of New Jersey.

Delaware Jurisdiction in Salem County

Delaware Coastal Zone Act - Since the Delaware Coastal Zone Act took effect in 1971, no activity has taken place along the Salem County shoreline which would come under the jurisdiction of the Act.

While the regulatory experience under the Delaware Coastal Zone Act has been non-existent, the Delaware Coastal Management Program - Discussion Draft, September 1978 suggests that experience under the Act involving a facility in Pennsylvania extending into Delaware waters was handled to the satisfaction of all parties.

Successful interstate cooperation between New Jersey and Delaware can be achieved by sharing information concerning any proposed development in Salem County which could fall under the jurisdiction of Delaware's Coastal Zone Act. Delaware has agreed to notify Salem County of any proposed activity along the Delaware or Salem County shoreline which is subject to the provisions of Delaware's Coastal Zone Act. In return, Delaware has asked Salem County to notify Delaware of any proposed development in Salem County which would fall under the Delaware Coastal Zone Act jurisdiction. Activities along the Delaware Shoreline and the Salem County shoreline within the Port of Wilmington, will be coordinated through the Wilmington Metropolitan Area Planning Coordinating Council (WILMAPCO).

Delaware Underwater Lands Act - The extent of Delaware's jurisdiction along the Salem County shoreline under the Delaware Underwater Lands Act and the mechanisms to create interstate coordination under the Act are not well defined. Lack of experience with development along Salem County's shoreline which could be subject to the provisions of the Underwater Lands Act, is partially responsible for the uncertainty as to how Delaware would exercise its authority along the Salem County shoreline. The only experience with the Delaware Underwater Lands Act and development in New Jersey was in 1971 when Delaware granted a lease to the Dupont Chambers Works in Deepwater to use subaqueous lands in the Delaware River. Dupont

received the lease to dredge, fill and bulkhead the area to locate an oil tank. Experience at Dupont indicates that Delaware chooses to exercise its authority under the Underwater Lands Act on a case-by-case basis. Right now, Delaware and Salem County have not arranged any coordinative mechanisms or means to notify each other of proposed activities along the river which would come under the jurisdiction of the Delaware Underwater Lands Act.

Applicable Delaware Coastal Policies

The Delaware Coastal Management Program - Discussion Draft (September 1978) presents 14 policies that would be particularly relevant to development proposals along the Salem County shoreline. These policies address the use of underwater lands on the coastal strip. In general, new heavy industries, including refineries, are prohibited. New major manufacturing proposals are, however, permissible subject to permit approval. For the specific policies, see Appendix D and also consult the Delaware Coastal Management Program - Discussion Draft; September 1978; pages 5.A.4-1 through 5.A.4.12).

Potential Development Proposals and Regulatory Problems

The Delaware Coastal Management Program - Discussion Draft (September 1978) suggests that the most likely proposal in Salem County would be for a single or multi-purpose pier extending into the Delaware River. The Delaware Attorney General issued an advisory opinion concerning the effect of the provisions of Delaware's Coastal Zone Act on industrial development activities in Salem County, which attempted to clarify questions regarding permissible uses. According to an interpretation of the opinion, a new offshore bulk product transfer facility used solely by the manufacturing use to which it is physically connected and not to be used as a common facility by more than the manufacturing use, would not be regulated by the Delaware Coastal Zone Act. However, a new offshore bulk product transfer facility used as a common facility or a bulk transfer facility used by more than the manufacturing use to which it is physically connected would be prohibited under the Act. Manufacturing uses are permitted by permit and would be subject to the policies of Delaware's coastal program.

NEW JERSEY COASTAL MANAGEMENT PROGRAM

AUGUST 1980

FINAL ENVIRONMENTAL IMPACT STATEMENT

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

U.S. National Oceanic and Atmospheric Administration



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Brendan Byrne
Governor

Jerry Fitzgerald English
Commissioner

NEW JERSEY COASTAL MANAGEMENT PROGRAM

AND

FINAL ENVIRONMENTAL IMPACT STATEMENT

August 1980

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NEW JERSEY COASTAL MANAGEMENT PROGRAM

AND

FINAL ENVIRONMENTAL IMPACT STATEMENT

Commissioner's Letter
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CHAPTER TWO - BOUNDARY

Summary
Inland Boundary
Seaward and Interstate Boundaries

Summary

New Jersey's coastal zone extends from the New York border south to Cape May Point and then north to Trenton. It encompasses the waters and waterfronts of the Hudson River and related water bodies south to the Raritan Bay, the Atlantic Ocean and some inland areas from Sandy Hook to Cape May, the Delaware Bay and some inland areas, and the waterfront of the Delaware River and related tributaries.

The coastal zone encompasses areas in which the State, through the Department of Environmental Protection and the Hackensack Meadows Development Commission, has the authority to regulate land and water uses that have a significant impact on coastal waters. These authorities include the Coastal Area Facility Review Act (CAFRA), the Wetlands Act, the Waterfront Development Law, Tidelands statutes, and the Hackensack Meadows Reclamation and Development Act.

Inland Boundary

The inland boundary for the portion of the coast from Raritan Bay south to Cape May Point and then north along the Delaware Bay (consisting of parts of Middlesex, Monmouth, Ocean, Burlington, Atlantic, Cape May, Cumberland and Salem Counties), is defined as:

the landward boundary of the Coastal Area as defined in the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-4), or the upper boundary of coastal wetlands located landward of the CAFRA boundary along tidal water courses flowing through the CAFRA area, whichever is more landward, including State-owned tidelands.

In the more developed portions of the State (including portions of Salem, Gloucester, Camden, Burlington, Mercer, Middlesex, Somerset, Union, Hudson, Essex, Passaic and Bergen Counties), the coastal zone boundary is defined as:

the landward boundary of the State's jurisdiction under the Waterfront Development Act (N.J.S.A 12:5-3)* or Wetlands Act (N.J.S.A. 13:9A-1), or the landward boundary of State-owned tidelands, whichever extends farthest inland.

* The definition of the inland jurisdictional boundary of the Waterfront Development Law is: the first public road, railroad right-of-way, or property line generally parallel to any navigable waterway, but in no case more than 500 feet or less than 100 feet inland from mean high water.

This boundary (discussed below in "Principal Program Authorities") ensures that the State will regulate at least the first 100 feet inland from all tidal waters. The State will consider all land within 500 feet of tidal water to be within this boundary unless demonstrated otherwise. This represents a substantial reduction from the coastal zone boundary DEP proposed in several publications between December 1976 and March 1979, which would have extended the coastal zone inland to the first road or railroad, regardless of its distance from the water (See Appendix B).

The boundary of the Hackensack Meadowlands region is defined as:

the boundary of the area defined as the Hackensack Meadowlands District by the Hackensack Meadowlands Reclamation and Development Act. (N.J.S.A. 13:17-4)

A generalized map of the Statewide Coastal Zone Boundary is shown in Figure 1 in Part I of this document, and Figure 2 is a sketch of the boundary in different parts of the State.

The boundary encompasses approximately 1,792 miles of tidal coastline, including 126 miles along the Atlantic Oceanfront from Sandy Hook to Cape May. It ranges in width from one hundred feet to twenty-four miles (near Batsto and the Mullica River, in Burlington County). The total land area of the Bay and Shore region is approximately 1,376 square miles or 17 percent of New Jersey's land area.

Research indicates that there has been a rising trend in the level of the ocean, relative to coastal land, along the northern East Coast of the United States. Hicks' data places the rise at about 8 inches between the 1890s and 1970. If this trend continues, tidal waters will penetrate further up the State's coastal rivers. Should this change become significant, the coastal zone boundary and the area under the jurisdiction of the Waterfront Development Law, will be redelineated accordingly.

Seaward and Interstate Boundaries

The seaward boundary of the coastal zone is the three nautical mile limit of the United States Territorial Sea, and the interstate boundaries of the States of New York and Delaware and the Commonwealth of Pennsylvania.

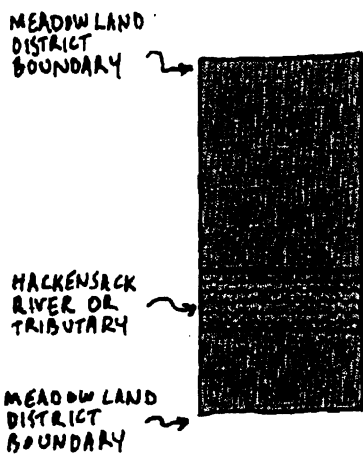
In most of Salem County, the Delaware-New Jersey State boundary is the mean low water line on the eastern (New Jersey) shore of the Delaware River. The New Jersey and Delaware Coastal Management agencies have discussed this issue and have concluded that any New Jersey project extending beyond mean low water must obtain coastal permits from both states. New Jersey and Delaware, therefore, will coordinate reviews of any proposed development that would span the interstate boundary to ensure that no development is constructed unless it would be consistent with both state coastal management programs.

* S.D. Hicks, "As the Oceans Rise", National Ocean Survey, NOAA, Vol. 2, No. 2, pp. 22-24, 1972.

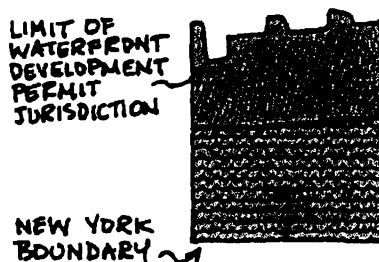
Figure 2

NEW JERSEY
COASTAL ZONE
BOUNDARY
SKETCH

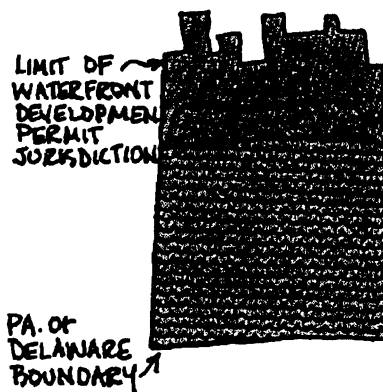
1 HACKENSACK MEADOWLANDS
GENERALIZED CZ BOUNDARY



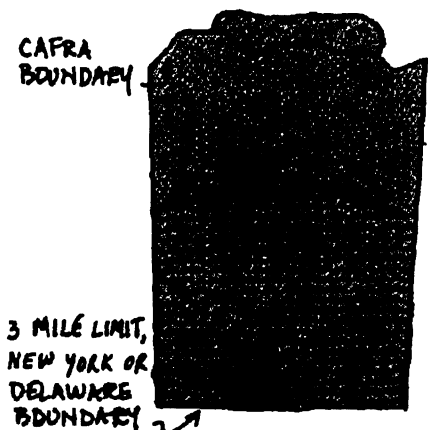
2 NORTHERN WATERFRONT
GENERALIZED CZ BOUNDARY






4 DELAWARE RIVER AREA
GENERALIZED CZ BOUNDARY



3 BAY & OCEAN SHORE SEGMENT
GENERALIZED CZ BOUNDARY



-  REGULATED WETLANDS
-  TIDAL WATERS
-  PROPOSED COASTAL ZONE



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
TRENTON

Division of Coastal Resources

March 14, 1991

Please address reply to:
CN 401
Trenton, N.J. 08625-0401

Anthony P. Pratt - (302) 739-4411
Division of Soil and Water Conservation
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, Delaware 19903

RE: Joint Review of Project within the States of Delaware and New Jersey
Keystone Cogeneration Systems

Dear Tony:

The Division of Coastal Resources recently received an application for several coastal permits for a coal fired cogeneration facility with a coal handling pier. This mooring and offloading pier is shown in the application to be located in the State of Delaware.

Considering our federal Coastal Zone Management Grant task to produce a better coordination effort for development of this kind, I am forwarding to you this application for your review. This application might be a good prototype for us to scope out some the details we will need to address.

The Division project reviewer is Dave Fanz. He can be reached at the above address or (609) 984-0266. He can provide you with details of this particular application. Any matters related to coordination should be addressed through me for the time being while we proceed with the CZM grant task.

*Delaware Contact
Dennis Brown: Coastal Zone Coordinator
(302) 739-5409*

Sincerely,

Steven

Steven Whitney
Assistant Director

C: Dave Fanz

**Memorandum of Agreement
Between
New Jersey Department of Environmental Protection
and Energy
and
Delaware Department of Natural Resources and
Environmental Control**

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control establishes a framework for coordinating the policies and activities of each state's Coastal Management Program in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline. This memorandum applies to all portions of the Delaware River shared by New Jersey and Delaware. **(Need to decide on specific area and be consistent)**

The New Jersey Department of Environmental Protection and Energy and the Delaware Department of Natural Resources and Environmental Control agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, limit, or bind their existing statutory powers in any way.

Points of Agreement

Regulatory Consistency/Inconsistency

1. The New Jersey Department of Environmental Protection and Energy (DEPE) and the Delaware Department of Natural Resources and Environmental Control (DNREC) agree that the New Jersey and Delaware Coastal Management Programs are generally consistent with respect to the area of the Delaware River and Delaware Bay transected by the common state boundary.

A comparison of New Jersey's and Delaware's Coastal Zone Management Program policies and water quality criteria is contained in Attachment A.

Agreed upon methods of resolving current and future inconsistencies ^{with SWQS & CMPS} ~~between the above referenced policies and criteria include the following:~~

- Del & NJ agree to share applications under the following program activities:*
- a. Sharing of permit applications for regulated activities

Applicable New Jersey Laws and Programs

NJDEP:

Waterfront Development Law Permit

Coastal Area Facility Review Act Permit

Wetlands Act Permit

Tidelands Management *Conveyance Application*

Green Acres Funding ✓

~~Shore Protection~~

~~(Energy?)~~

Coastal Program Funding

NJPDES Permits

~~Areawide Water Quality Management Plans~~

Wastewater Treatment Facilities: Regulation & Funding

Stream Encroachment and Flood Hazards

~~Wild and Scenic Rivers~~

~~Regulation of State Owned Lands~~

Air Quality Regulation *permits*

~~Solid Waste~~

- ~~b. Sharing of proposed rules~~
- ~~c. Sharing of data~~
- ~~d. Sharing of other Coastal Zone Management activities
(public access, water quality, wetlands mitigation)~~

~~DNREC~~

Sharing of Development Applications

2. Within the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, both DEPE and DNREC shall administer their respective statutorily mandated permit and review functions. DEPE shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the mainstem of the Delaware River in the area at which the common state boundary is defined by the mean low water line of the New Jersey shoreline, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the mainstem of the Delaware River in the water area at which the common state

boundary is defined by the mean low water line of the New Jersey shoreline, notify DEPE of the application for development by sending a copy of the application to DEPE for comment. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations.

Sharing of Rulemaking Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will share the proposed amendment(s) with the other agency to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

4. Where inconsistencies are identified between those portions of the New Jersey and Delaware Coastal Zone Programs which apply to the area at which the common state boundary is defined, DEPE and DNREC shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and comment procedures, designated representatives of the DEPE and DNREC staffs shall meet periodically at a time and location to be mutually agreed upon, to discuss permit review

coordination and specific policies and their interpretation. A report of each meeting shall be prepared for review by the appropriate administrators of DEPE and DNREC.

Sharing of Data

5. DEPE and DNREC recognize similarity in their data bases and needs, and agree to share data whenever possible.

Sharing of Other Coastal Zone Management Activities

6.
 6. The appropriate administrators of DEPE and DNREC may jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.
 7. This MOA shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

Acting Commissioner
New Jersey Department of
Environmental Protection and Energy

Date

XXXXXXXXXXXXXXXXXX

Delaware Department of Natural
Resources and Environmental Control

Date

Approved as to form only by:

Deputy Attorney General
State of New Jersey

Date

Deputy Attorney General
State of Delaware

Date



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF SOIL AND WATER CONSERVATION
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE
DIRECTOR

TELEPHONE: (302) 739 - 4411

May 9, 1994

Ms. Terri Fowler, Planner NJDEP
Office of Land and Water Protection
CN 423
Trenton, NJ 08628

Re: MOA NJ/DE Permit Coordination

Dear Ms. Fowler:

As we discussed earlier on the phone, I have read the Draft MOA and have comments. Once these comments have been incorporated into another draft, I will circulate that draft to other members of DNREC for comments.

My comments are as follows:

1. Was this MOA meant to affect all activities along the state boundary or just the section of the Delaware River next to New Jersey's land? I think we should have the MOA affect activities along the entire state boundary. Although there may not be as many state decisions concerning activities in the Delaware River, they may be important and we may want/need to coordinate.
2. Whatever the answer is to the above, perhaps we should reference a legal description of this boundary.
3. Would you consider setting up the MOA in this fashion:
 - a. Keep the Purpose and Applicability section.
 - b. Include section that starts off with -- It is mutually agreed by the parties that:

Delaware's good nature depends on you!

Ms. Terri Fowler
May 9, 1994
Page 2

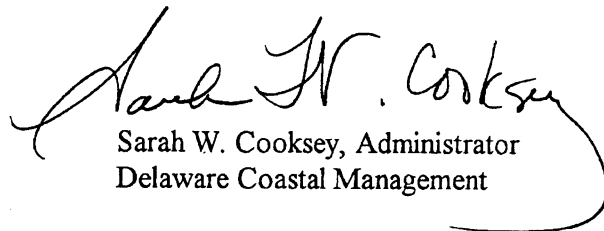
Followed by the specific things Delaware will do and the specific things New Jersey will do. This could include the comparison on water quality standards/criteria and CMP policies (this is work that needs to be done right)?

4. I think that we should list the permits we know we want to be involved with (i.e., NPDES). Then we can flag these somehow.
5. New Jersey is probably interested in reviewing the following types of Delaware permits/activities:
 - a. NPDES Permits
 - b. Delaware Coastal Zone Permits
 - c. Air Permits
 - d. Wetland Mitigation
 - e. Hazard Mitigation Plans
 - f. Solid Waste/Hazardous Waste Plans
 - g. DCMP Federal Consistency Reviews
6. Please put "Secretary" below the signature line, and above the Delaware Department of Natural line.
7. I hate to say this, but do we have to have the AG's sign this? I am afraid it will never be signed if they have to sign it too.

Please make any changes you see fit, and send me another copy when you have finished. I will return it quickly back to you, and then send it out for others to review.

I apologize for the time it took me to respond. We finally finished our Threshold Review Document so now I can return to my normally busy schedule/workload.

Sincerely,


Sarah W. Cooksey, Administrator
Delaware Coastal Management

**Memorandum of Agreement
Between
New Jersey Department of Environmental Protection
and
Delaware Department of Natural Resources and
Environmental Control**

Purpose and Applicability

This Memorandum of Agreement between the New Jersey Department of Environmental Protection (DEP) and the Delaware Department of Natural Resources and Environmental Control (DNREC) establishes a framework for coordinating the policies and activities of each state's Coastal Management Program in the area of the Delaware River and Delaware Bay transected by the common state boundary [as defined in *State of New Jersey v State of Delaware* 295 US 694(1934)].

DEP and DNREC agree to the principles, procedures, and responsibilities that follow, recognize the statutory limitations of both agencies, and do not intend this memorandum of agreement to expand, limit, or bind their existing statutory powers in any way.

Points of Agreement

It is mutually agreed by the above parties that:

Regulatory Consistency/Inconsistency

1. The New Jersey and Delaware Coastal Management Programs

are generally consistent with respect to the area of the Delaware River and Delaware Bay transected by the common state boundary.

New Jersey and Delaware will mutually compare their coastal zone management policies and water quality standards on a biannual basis.

Sharing of Development Applications

2. DEP and DNREC shall administer their respective statutorily mandated permit and review functions. DEP shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the area of the Delaware River and Delaware Bay transected by the common state boundary, notify DNREC of the application for development by sending a copy of the application to DNREC for comment. DNREC shall, within five working days of receipt of a completed application proposing a regulated activity which would extend into or discharge into the area of the Delaware River and Delaware Bay transected by the common state boundary, notify DEP of the application for development by sending a copy of the application to DEP for comment. Both agencies recognize that each agency has the independent authority to approve or deny applications pursuant to its own regulations. DEP and DNREC will share applications under the following authorities:

New Jersey Department of Environmental Protection

Waterfront Development Permits
Coastal Area Facility Review Act Permits
Wetlands Permits
Tidelands Conveyances
Green Acres Funding
NJPDES Permits
Treatment Works Approvals
Stream Encroachment Permits
Air Quality Permits

Delaware Department of Natural Resources and Environmental
Control

NPDES Permits
Delaware Coastal Zone Permits
Air Permits
Wetland Mitigation
DCMP Federal Consistency Reviews

Sharing of Rulemaking Process

3. In the event that one or both agencies propose to amend their adopted coastal regulations or policies, they will share the proposed amendment(s) with the other agency to determine how the amendments will affect the administration of their respective programs, and will attempt to resolve any differences prior to taking action.

4. Where inconsistencies are identified between those

portions of the New Jersey and Delaware Coastal Zone Programs which apply to the area at which the common state boundary is defined, DEP and DNREC shall work together to make the two sets of policies more complementary, including, if necessary, eliminating inconsistencies through amendments to either or both sets of policies. In order to identify, discuss, and resolve policy and interpretation inconsistencies, and to ensure success of the cooperative application review and comment procedures, designated representatives of the DEP and DNREC staffs shall meet periodically at a time and location to be mutually agreed upon, to discuss permit review coordination and specific policies and their interpretation. A report of each meeting shall be prepared for review by the appropriate administrators of DEP and DNREC.

Sharing of Data

5. DEP and DNREC recognize similarity in their data bases and needs, and will share data whenever possible.

Sharing of Other Coastal Zone Management Activities

6. DEP and DNREC will share, when requested, information relevant to each state's Coastal Nonpoint Pollution Program authorized by the federal Coastal Zone Act Reauthorization Amendments.
7. The appropriate administrators of DEP and DNREC may

jointly propose revisions to the terms and procedures of this Memorandum of Agreement from time to time.

8. This Memorandum of Agreement shall take effect upon signing by both parties and subsequent to the Governors' review for a period of ten business days. This agreement may be terminated by either party by providing notice of termination on the other party sixty (60) days prior to termination.

Commissioner
New Jersey Department of
Environmental Protection

Secretary
Delaware Department of
Natural Resources and
Environmental Control

Date

Date

Steve,

6/16/94

changes made as per S. Cooksey's
letter & my conversation of 5/26 w/you.
OK to send to JRW + S. Cooksey?

Terry F

Terry

This is fine. I believe 2
memo outlining next steps should
accompany this memo. Let's discuss.
Steve 6/21

#10, 3/10/1905, p4, col 1

Boundary Question

The boundary of Mr. Attorney General's claim to the boundary between Delaware and New Jersey was printed in yesterday's issue of the House of Representatives. It was the necessity of obtaining from approving the proposed compromise of our boundary litigation, which is now before the House in the form of a bill providing for a compact between the two States in relation to the vested question. If the House feels that the compact should be entered into, it should at least be entered into in the manner suggested by Mr. Cooper, which would continue the pending litigation, now almost at its end, to the point of the much-delayed judgment of the Supreme Court of the United States.

Recognizing and admitting all that Mr. Attorney General Ward urges with respect to an amicable arrangement of our vexatious fishing in the Delaware, there still remains overwhelming force in Mr. Cooper's argument in favor of continuing the proceedings in the Supreme Court to their legitimate conclusion. Even with the compact favored by Mr. Ward in force and effect, there would still be open ground for serious dispute over the question of territorial jurisdiction within the Twelve-mile Circle. It is of the utmost importance, therefore, that this contention between the two States, which has been in progress for nearly thirty years, should be finally settled by the only authority competent to do so.

Were the Supreme Court proceedings in the initiative stage, instead of progressing towards a conclusion, it would still be the part of wisdom to continue them to the end. But when so much has been done, and so much time and money expended, it would seem like a criminal waste of both these important elements to abandon the contention at the present time, when it has been advanced almost to a conclusion.

So far as the compact supported by Mr. Ward is concerned, it is very pertinently pointed out that it can be entered into with just as much propriety after a determination has been reached in the litigation, or pending such determination, provided that the proceedings are not stopped. Admissible, indeed, is Mr. Cooper's suggestion that an article of the pending compact be so amended as to include as additional to the part of New Jersey of our jurisdiction within the Twelve-mile Circle, and a covenant not to call in this question again. It, as Mr. Ward claims, the compact "leaves the title of Delaware to the waters and the soil of the river within the Twelve-mile Circle wholly unaffected," surely the State of New Jersey, which has opposed the pending compact in its present shape, will not refuse to accept the amendment suggested by Mr. Cooper. At least let our Legislature honor the amendment in the compact, and see how it will be taken by our friends on the other side of the river.

It is announced that President Roosevelt is to appoint former Representative Frank Charles Tate of Georgia, a Democrat, to the office of United States attorney for the Northern district of that State. Tate was one of the Democrats members of the House who supported the President's insistent demand for a large appropriation for the navy, in order to permit of the construction of new battleships. He is now to spend his reward for abandoning the policy of his party and supporting the President. And thus the issue before the support of Congressmen of the opposite party, as any sensible politician buys the services of

When Jefferson Took the Oath.

The National Intelligencer, a newspaper which was published for many years in Washington, in its issue of March 4th, 1806, printed this interesting bit of information:

After Thomas Jefferson had taken the oath of office as President of the United States the oath of office was likewise administered to George Clinton as Vice President of the United States. After the delivery of the speech the President was waited on by a large assemblage of members of the Legislature, citizens and strangers of distinction, and a procession was formed at the navy yard composed of the several mechanics engaged, which marched to military music, displaying with considerable taste the various insignia of the professions.

Now, this was all very well for Jefferson's day, but it was vastly different from the inauguration ceremonies that were witnessed just a hundred years later. The modern inauguration eclipses the simple ceremony of Jefferson's day tremendously. Whether the modern inauguration is a real improvement, and a benefit to the country, is another matter.

The War Situation.

The situation around Mukden continued most serious for the Russian army under Kuropatkin. Fighting is continuous north and east of the city. Nowhang reports that the Japanese have invested Te Pasa, the point to which the Russians necessarily would direct their retreat. Should this prove true, the ring of steel around Kuropatkin is complete.

Fighting is incessant at Fushun, twelve miles east of Mukden, and there is a fear that the whole Russian left under Rennenkampf may be forced over into the mountainous region to the eastward and isolated. The Russian troops are thoroughly exhausted.

Nogi and Kuroki are known to be pressing northward on each side of the railroad toward Te Pasa. The railroad has been cut and telegraph communication severed. The Russians say the lines have been repaired, but that danger of further cutting is constant.

There will probably be little opposition to the enactment of the bill to abolish the pillory as a form of punishment for crime in this State, which has passed the Senate and is now pending in the House of Representatives. The pillory is an ancient and awkward form of punishment, which largely approaches the ridiculous, to say the least. It is in no sense a deterrent of crime, as the whipping-post undoubtedly is, and its usefulness, admitting that it ever was useful, has long since departed.

Gov. Pennypacker of Pennsylvania vetoed the Pure Food bill passed by the Legislature of that State and the Legislature sustained his veto. It is said that the Pure Food bill pending in the Delaware Legislature

Women's Garments.

Every garment shown is new this season and correct in style. The assortment cannot be excelled anywhere.

- Suits, \$12.00, \$15.00, \$18.00, \$20.00, \$25.00 and upwards to \$60.00.
- Silk Suits, \$15.00, \$18.00, \$20.00, \$25.00, \$30.00, \$35.00, \$40.00, \$45.00.
- Mohair Suits, \$15.00 and upwards.

Women's Covert Jackets, \$5.00, \$8.00, \$10.00, \$12.00, \$15.00 and upwards.

Women's Jackets in black materials, \$5.00, \$8.00, \$10.00, \$12.00, \$15.00 and upwards. Extra large sizes at same prices as regular sizes.

Walking Skirts of Mohair, Panama, Broadcloth and Chevilot, \$5.00, \$6.50, \$7.50, \$8.50, \$10.00, \$12.00, \$15.00.

Silk Waists, \$4.00, \$5.00, \$6.50, \$7.50, \$8.50, \$10.00, \$12.00, \$15.00.

Muslin Underwear.

You will discover at a glance the many evidences of superiority of these garments over the usual kinds. The materials, workmanship, fit and finish are of the highest order.

Gowns, \$1.00, \$1.25, \$1.50, \$2.00 and upwards to \$6.50.

Skirts, \$1.00, \$1.25, \$1.50, \$2.00 and upwards to \$8.50.

Short Skirts, 50c, 75c, \$1.00 and upwards to \$2.50.

Drawers, 38c, 50c, 75c, \$1.00 and upwards.

Chemise, 75c, \$1.00, \$1.25, \$1.50, \$2.00.

Corset Covers, 25c, 38c, 50c, 75c, \$1.00 and upwards.

621-623 Market St.

T. C. Bradford

Remember, March 23th, we will move to

711 Market Street.

"The Bradford" and "The Virginia" Bicycles and Tricycles lead in quality and workmanship. Prices to suit all. Special bargains before we move. Now is your time to save money. WATCH OUR

Special Bargains:

- Second-hand Bicycles, \$5.00; other splendid high-grade bicycles for \$6.00 and \$8.00; some with C. & B.
- Foot Pumps, 25c, 50c, 60c, 75c, \$1.00, \$1.50 and \$2.00.
- Bells, 10c to \$1.00.
- Tires, new, \$1.00 to \$3.50.
- C. & B., new Departure and Morrow, \$1.00; Opulent, 5c to 15c, for auto and bicycles.
- Chains, 75c and \$1.00. Roller Chain, \$1.50.

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#9, 3/10/1905, p6, col 3

NJ 00696

MURPHY'S
DAILY-DAW
BILLS

House of Representatives
Dover, March 8.—House met at 10 o'clock, with Speaker DeBary presiding. J. B. Meredith and Messrs. Bennett, Hays, Lingo, and Hoover and Messrs. Smith and Lingo, Alfred Smith, H. D. Conrad, presider.

House bill concerning the office of attorney-general.
Reconsidered and passed.—House bill amending and taxing dogs in Kent and Sussex counties.
Passed.—House bill increasing the tax rate for road improvements in the First Election district of Representative district No. 3, Kent county, appropriating \$250 to pay the claims of Andrew S. Ellison, Elias N. Moore and Benjamin A. Groves for superintending the erection and repair of schoolhouses for colored children in New Castle county, authorizing the attachment of wages at Kenton for the payment of taxes; enabling the road commissioners of Brandywine hundred to collect road taxes.

Reported favorably.—House bill prohibiting the erection of buildings, houses, houseboats or boats of any kind whatsoever upon the banks or waters of the Delaware Bay or River, or any of the waters tributary thereto, for the purpose of occupying the same to engage in fishing in said waters as a business.
Recs.

AFTERNOON.
House reassembled at 2:30 o'clock.
Action thereon indefinitely postponed.—House bill regulating fraternal beneficiary associations.
Passed.—House bills establishing the State Live Stock Sanitary Board of Delaware, relating to the control and suppression of dangerous contagious or infectious diseases of domestic animals (gives the State Board of Agriculture a new name, creates the office of State veterinarian, who shall be appointed by the governor for the term of three years, at an annual salary of \$1,500, and appropriates \$7,500 a year for the purpose of defraying the expenses incurred in carrying out the provisions of the act); (26 yeas and 2 nays); (Hart and Prentiss voting in the negative); authorizing the road commissioners of New Castle county to fund their floating debt; relating to the records of the New Castle county, authorizing the Superior Court to order new indices, the resident judge to appoint commissioners and the Levy Court to fix the compensation; relieving the special commissioners of Brandywine hundred from liability on their bonds; fixing the salary of the secretary of State at \$4,000 per annum and prescribing that the fees collected by him shall be paid into the treasury.
(Given third reading, vote taken and decision reserved (Mr. Murray, who presided, not being prepared to decide whether a majority of a two-thirds vote was necessary).—House bill enlarging jurisdiction of justice of the peace (19 yeas and 13 nays); D. W. Ellis, E. P. Ellis, W. S. Marvill and Messrs. Cooper, Hanby, Hart, Maloney, Turner, Prentiss, Smith, Stevenson and Wright voting in the negative).

Legislative Proceedings
The Governor's Salary.
The Governor's salary is \$10,000 a year, payable in advance. Under the provisions of a bill now pending, Gov. Lee would receive \$8,000 a year, with \$2,000 to be paid at the end of the year. The bill also provides that the salary shall be paid in advance, and that the Governor shall be allowed to draw his salary in advance of the date on which it is due. The bill also provides that the Governor shall be allowed to draw his salary in advance of the date on which it is due. The bill also provides that the Governor shall be allowed to draw his salary in advance of the date on which it is due.

Mr. Ward's appeal for an appropriation of \$10,000 to carry on the cod-trovery, and an additional \$5,000 to pay the expense of special counsel. The Legislature was not at all favorable to the proposition, and for a long time refused to pass the proposed bill, but in his official and professional capacity Mr. Ward appeared in person and appealed to the members on the floor of both houses that it would be a shame for the State to refuse to grant the appropriation, and by so doing abandon the case, which was now on the very threshold of a final and, in all probability, successful adjudication of the dispute. The \$10,000 asked for by Mr. Ward was then given him, and an additional \$1,000 to pay for special counsel in the case.

Going back to the previous Legislature, 1901, we find in Vol. XXII, page 531, a joint resolution which was undoubtedly prepared and its passage urged by the then attorney-general, Mr. Ward. It is as follows:
Whereas, The governor has communicated to the General Assembly a report of the attorney-general respecting the present condition of the litigation pending in the Supreme Court of the United States between this State and the State of Jersey concerning the boundary between said States, and has thereon recommended action by this General Assembly in that behalf; and
Whereas, This General Assembly is desirous to maintain the claims of this State set forth in the joint resolution passed January 20th, 1877, to exclusive jurisdiction over that portion of the Delaware River which is included within the circle of twelve miles radius, taking the city of New Castle as a central point; therefore, be it

Resolved by the Senate and House of Representatives of the State of Delaware in General Assembly met, That the attorney-general and such of the special counsel heretofore appointed to assist him as are now free to act in said behalf, be and they are hereby authorized to take such steps therefor as may be necessary;
That we vote that it was clearly the intention of the Legislature and the assurance of the attorney-general, that the one thing desired to be done in this controversy was to "maintain the claims of this State to exclusive jurisdiction over that portion of the Delaware River which is included within the circle of twelve miles radius, taking the city of New Castle as a central point; therefore, be it

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It will gladly permit the use of my name in recommendation of Father John's Medicine. Nothing equals it for coughs and colds." (Signed) Mrs. W. L. Jackson, 33 Westminster St., Boston, Mass.
"Mrs. Flora Clark of Connersville, Pa., says: 'After a severe cough which lingered a year, no other medicine helping me, I have been cured by Father John's Medicine.'
"Father John's Medicine is a sure preventive for Pneumonia and Consumption, and will positively cure Colds, Coughs, Catarrh, Asthma and all throat and bronchial troubles. It is without equal as a body builder and health food.

over that portion of the Delaware River which is included within the circle of twelve miles radius, taking the Court House in the city of New Castle as a central point." There is no matter before the General Assembly in which the honor and rights of our State are more at stake, and whether or not they are in safe hands will be determined by the action of the House of Representatives when the final vote is taken on Senate Bill No. 85.
Delawarean.
Wilmington, March 10th, 1905.

CITY COURT.
In the City Court this morning Oscar Fredericksen and Fred Wilson were charged with vagrancy, but they were dismissed.
Leonard Guthrie, charged with acting in a disorderly manner, was held under bail for a hearing tomorrow evening.
Six men charged with drunkenness were each fined \$1.

They act like E
Coca-Cola
-for the Bowels
Ten Cents
W.L. DOUGLASS
UNION \$3.60 697
MADE
You don't need to pay High Prices for Shoes
W. L. Douglas makes an

Frank Gardner, the Messenger, I Nathan are again risk next week.

The Younger a three days ago yesterday, to get melonheads of W. denta in the live fish of marine animals, with throughout the of Herbert, Coleman respectively, after the characters of other members of The President's Q appearance in W received, their re freely and appreciate. The come in good hands at third act, which some time, the railroad station, I dicated train rob of the Younger's nick of time of great speed, pass up is frustrated, balance of the an

"On the Sunday colored dramatic appearance at 11 14th and 16th. It picturesque scene utilized to the fulger, with the possessing all the popular, but last
"When Womans scenic melodram Lyceum March large and compel production is was the best attract price houses.
Said to b
Following the White of this comes a report working in tl Philadelphia, investigated by

GOVERNOR'S SALARY.

Under the proposed bill, the salary of the Governor is to be \$20,000 annually. It is a question whether the present salary of \$15,000 is being held in abeyance.

LEGISLATIVE PROCEEDINGS.

House Session at 10:05 a.m. Prayer presiding. The roll was called. Prayer.

Message from Governor. The bill for the relief of the State of Delaware was read and approved.

House bills enlarging the powers of the assessor of taxes and the assessment of public and vacant lands; appropriating money out of the State treasury for the construction of certain public highways in the State of Delaware.

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They act like
Cascan
-for the Bowel
The Courts

W.L. DOUGLAS
UNION MADE \$3.50
W. L. Douglas makes
shoes more Men's \$3.50
than any other
manufacturer in
the world.



The reason W. L. Douglas's shoes are the greatest sellers in the world is because of their excellent style, easy fitting and superior wear qualities. If I could let you the difference between the shoes made in Italy and those of others; and the high grade leather used, you would stand why W. L. Douglas shoes cost more. Why they hold their shape, fit better, wear longer, and are any other \$3.50 shoe on the market to-day. W. L. Douglas guarantees their value by starting his name and price on the bottom. Look for it. Take no substitute. Sold by all shoe dealers.

BETTER SATISFACTION.
"I have been wearing W.L. Douglas \$3.50 shoes for the past four years, and have received great deal better satisfaction from them than from any shoe I have ever worn."
S. C. FREDERICK, M. D.

W. L. Douglas \$2.50 and \$3.75 Shoes for Boys and Children, no Douglas \$3.50 shoes for Boys. Save more \$1 on every pair than any other make.

W. L. Douglas uses Corona Colletts in his \$3.50 shoes. Corona Coll is considered to be the finest Patent Leather yet produced.

Write for New Illustrated Catalog. Shoes by mail, 25 cents extra.

W. L. DOUGLAS,
Brockton, Mass.

W.L. Douglas \$3.50 & \$2.50 Shoe Store in Wilm

My! My! You are growing old fast!
See how they, too. It's those gray hairs! Don't you see how Ayer's Hair Vigor restores color to gray hair? Well, it does. And it never fails, either. It stops falling hair also, and keeps the scalp clean. Sold for sixty years.

MONY
Quick Loans on FUR SAL
If you have either you can obtain a loan in hours.
Our charges are reasonable and just.
We do business in a fair and open way as we take up to suit you.
For further particulars phone or write.

Delaware Loan
THIRD FLOOR. FORD
R. O. A. 1704 10th and Market St

#8, 3/11/1905, p4, col4

NJ 00699

The Business Situation... The business situation in this section of the country has been... The retail trade shows little expansion...

Business failures in the United States for the week ending March 9th number 190, against 205 last week, 260 in the same week in 1904, 176 in 1903, 224 in 1902 and 207 in 1901.

FRIENDS AND EARLY WILMINGTON.

The early history of Wilmington with reference to the part which Friends took in it was the subject of a paper read at the Young Friends Association last evening, by Edna K. Taylor, who, as Quakers, a society took no part in the affairs of the town or borough, but individual Friends were much in evidence in all prominent movements.

STATEMENT OF MR. H. H. WARD.

Mr. H. H. Ward, of Delaware, in a statement made at the meeting of the House of Representatives, March 11th, 1908, stated that he had been a member of the committee on the bill for the relief of the Delaware and Delaware Bay Navigation Company...

It is an entirely new bill, and it is not a bill for the relief of the Delaware and Delaware Bay Navigation Company, but a bill for the relief of the Delaware and Delaware Bay Navigation Company...

Don't Snuffle!

You make people sick—you keep yourself sick. Secure relief in 10 minutes from Colds, Catarrh, Head-ache or Influenza.

Kennard & Co.



Dress Goods.

The prime favorites for this spring in dress fabrics seem to be Mohairs, Batiste, Panama, Crepes and Eoliennes. Our assortment of these goods can not be excelled anywhere.

Excellent values at 50c, 75c, \$1.00, \$1.25, \$1.50, \$2.00.

Silks.

We have spent several days in looking over the Silk market for new styles. We have just opened in the very popular suiting styles comprising neat checks and mixtures, about two dozen new and exclusive designs at \$1.00 a yard.

Special.

A small, but well selected, lot of Silk Waists at half price. New line of choice silk slips for wear under thin waists, white, pink and blue. \$3.00 each.

Complete showing of Spring garments of all kinds for Women, Misses and Girls. 621-623 Market St.

Hardanger Embroidery.

The Hardanger which is so popular in this section of the country owes its origin to the same name where it first originated.

We have on our sale 50 different pieces of this work, partly the material in the range from \$1.50 to \$3.00.

Every kind of found at our A Counter. Intri given free by our or we can last hooks, expising is done.

English Eyelet new needle work the stamped collars and cuffs. Gittery! Emb this season. It is heavy cotton or scrim and has the

228-230 I

Public Sale - Will be sold at public sale on SATURDAY, MARCH 14, 1908, at 10 o'clock, A. M. at the residence of Mrs. J. H. Taylor, 1212 West street, Wilmington, Delaware. The property consists of a lot of land and buildings, situated in the city of Wilmington, Delaware.

Executors

Public Notice - The undersigned, Executors of the estate of J. H. Taylor, deceased, do hereby give notice that the property of said estate, consisting of a lot of land and buildings, situated in the city of Wilmington, Delaware, will be sold at public sale on SATURDAY, MARCH 14, 1908, at 10 o'clock, A. M. at the residence of Mrs. J. H. Taylor, 1212 West street, Wilmington, Delaware.

School All Summer. The success of the summer session at the Wilmington Business School. 1087a

#7 3/15/1905, p4, col 1

NJ 00701

#6 - 3/15/1905, p 6, col 4

Streets.

... (concurred in under supervision in the afternoon); providing establishment of a free public school districts Nos. 67, 7, Sussex county; providing tax for the purchase and paratus for the town of Harrington in under suspension of (afternoon); amending the town of Harrington, by in-moupt. allowed to be raised occurred in under suspension (the afternoon).
 favorably—House bill abolishing fee of the sheriff of New

referred)—By D. O. Moore, on to the destruction of trees companies; an act in relation graph and telephone poles. on, an act fixing the time for annual school election in Nos. 8, 12, 93, 153 and 166.
 By Mr. Rose, an act fixing certain officers in New Castle providing that all fees received into the county treasury. an, an act proscribing regu- ing and furnishing all print- in the legislative and other f government, and for the ng and distribution of the official reports, and all other binding authorized and re- departments of government g and binding to be awarded county board commission. e governor—Senate bill in- Newark Trust and Safe De-

... executive session)—Nomi- in Wood of Dover as justice and for Kent county.
 rred—House bills appropri- be erection of a monument s commemorative of Dela- llers; authorizing the Arti- ank of Wilmington to in- a fund; providing that in- surance companies shall pay ce commissioner the license nts; relating to the refund- Castle County Workhouse o the practice of veterinary ury.

AFTERNOON.

abled at 2.30 o'clock.
 al order for 3 o'clock to- on—Senate bill providing tent of county coal all to

... plan, belonging to the town of Newark; amending the charter of the town of Newark, by regulating the amount to be paid by location; reincorporating the town of Odessa; Senate amendments to House bill incorporating the town of Ellen- dale; Senate bills amending chapter 4 of the Revised Code, Laws of Delaware, in relation to the publication of laws; amend- ing section 10, chapter 12, Revised Code, in relation to collectors.

Reported unfavorably—Senate bill en- larging the term of imprisonment for con- viction of assault with intent to commit rape.

Reported on its merits—Senate bill to abolish standing in the pillory as a punish- ment for crime.

Recess.

AFTERNOON.

House reassembled at 2.15 o'clock, with Mr. Wilson presiding.

Reported favorably—House bills authoriz- ing the road commissioners of White Clay Creek hundred to fund a debt (\$2,000) due James H. Smalley for overpaid road orders; incorporating the Dollar Savings Institu- tion of Wilmington; Senate bill incorpo- rating the People's Bank of Harrington.

Introduced (referred)—By Mr. Vanden- burg, an act reimbursing the National Guard for certain moneys (\$825.85) paid to the State treasurer. By W. S. Meredith, an act providing for a regulator of weights and measures for the city of Wilmington.

Concurred in—Senate amendments to House bill incorporating the Middletown Trust and Safe Deposit Co.

Alexander B. Cooper, Joseph Anderson, former Attorney-General Herbert H. Ward, Chauncey P. Holcomb, George H. Bates and Attorney-General Robert H. Richards were given the privilege of the floor and discussed the Senate bill ratifying and con- firming a compact or agreement between the States of New Jersey and Delaware re- specting the Delaware River and Bay and authorizing the execution thereof.

Adjournment to 10.30 o'clock tomorrow morning.

AMUSEMENTS.

For real downright strenuousness in the world of pleasure, there is nothing so ex- hilarating as a sanely strung together series of laughable incidents, and a welcome number of the best selected song creations. Doubtless that is why Hoyt's ingenious con- ceit, "A Bunch of Keys," bears such close relations to the gay and happy side of amusement life. At any rate a visit from this evergreen musical comedy, always seems to leave so much pleasantness behind that all is sunshine while the memory of its delightful entertainment remains. "A Bunch of Keys" comes to the Grand Opera House next Saturday afternoon and night.

"Business is Business," in which William H. Crane appears at the Grand Opera House next Monday night, made a most impressive hit in France. In fact, it was so much talked about and created so much discussion that it was translated into several tongues and quickly produced in other countries. In selecting the play, Mr. Crane

... not disagree which contain digestion, in the stomach always dried, establishes the unstrung gives an app selves with a
 It acts n and is absolu tated people the blood, wi for toning up experiment, endorsed by **TONIOS.** I point, that tl S. S. S. has 1 of Spring the the season w

#4: 3/15/1905, p 8, col 1 (entire page)

THE BOUNDARY BATTLE

Opposition to the Bill
The Assembly Looking to a
Compromise.

HEARING IN THE LEGISLATURE

Arguments in Favor of Fight-
ing Case to the End

BY MR. COOPER AND MR. BATES

Both Urge the Unwisdom of
Abandonment.

The Paramount Question is One of Terri-
torial Jurisdiction, and It Should be De-
termined by the Supreme Court—More
Questions of Expense Should Not Have
Any Influence Upon This Important
Matter.

Staff Correspondence of Every Evening.

Dover, March 15.—The House of
Representatives, yesterday afternoon,
gave audience to Alexander H. Cooper,
Joseph Anderson, former Attorney-
General Herbert H. Ward, Chauncey
P. Holcomb, George H. Bates and At-
torney-General Robert H. Richards on
the Senate bill ratifying and confirm-
ing a compact or agreement between
the States of New Jersey and Dela-
ware respecting the Delaware River
and Bay and authorizing the execu-
tion thereof.

MR. COOPER'S ARGUMENT.

After giving a historical citation of
Delaware's claims, and making plain
that the pending controversy involves
territorial jurisdiction and not merely
the regulation of fishing in the Dela-
ware River and Bay, Mr. Cooper said:

We have presented to us two questions,
which are the only ones now being urged
in favor of the passage of this bill. Its
advocates say this matter of boundary and
territorial dispute is simply a matter of
sentiment, and besides, even if were real
and substantial, the expense is too great to
have them determined by the court.

A little saving of expense in other
directions of minor and much less im-
portance than this, would make the ex-
penditure a very trifling affair.

Let us first, however, consider the matter
of sentiment. Is it sentiment alone?

1. It involves the legal validity of all the
lands in New Castle county within the
bay.

2. It involves the certainty or uncer-
tainty of the boundary line of a sovereign
State. How is the State of Delaware
bounded on the East? With the circle?
No one knows. We cannot tell our children.
Delaware says to low water mark on the
New Jersey shore. New Jersey replies in
no pleasant way; it is not so. You only own
the banks of river; and brings a suit against
us to determine it. Are we to say, well, it
is only a matter of sentiment, have your
land say, Shame! Shame! We would be
worse than the boy who knows not his own



Vinol contains ALL the scientific
genuine, fresh cod's livers and their
organic iron, and other body builders
in a deliciously palatable and
form. It is everywhere recognized

BODY BUILDER STRENGTH CRE

known to medicine — Vinol is the
preparation which contains no oil, an
agreeable feature, and sold on a plan
of "money back if it fails to give you

For Old People — Young Mothers — Weak
Stomachs, All These Get Vinol — Wonderful
— To Gain Flesh — To Get Strong — All
the world's health — Vinol is the

00706

Liver Preparation

Not a Patent
Medicine.

Vinol

BEST BODY BUILDER

CONTAINS ALL THE
ESSENTIAL ELEMENTS ACTUALLY
IN FRESH COD'S LIVERS.
WITHOUT OIL

Like the medicinal elements of
livers and their oil; with or-
der body building ingredients,
palatable and easily digested
were recognized as the greatest

**BUILDER AND
STRENGTH CREATOR**

— Vinol is the only cod liver
preparation that contains
no oil, grease, or any dis-
agreeable taste, and is
sold on a positive guarantee
that it will give satisfaction.

**Children — Weak Women — Debili-
tated — Nursing and Weak Mothers —
Get Strong — All Weak People —
Coughs — Bronchitis — Lung
Weakness — Vinol.**

— Like it, we return your money.

**WORTH, Druggist,
100 and Market Streets.**

not down until the Supreme Court settles
it, and then any agreement, proper and
necessary, may be entered into relative to
the fisheries, or anything else. But first let
the main question be judicially determined.
Mr. B. Shields, an able and experienced
lawyer, is of the same opinion, and told
me he would be here to oppose the bill.

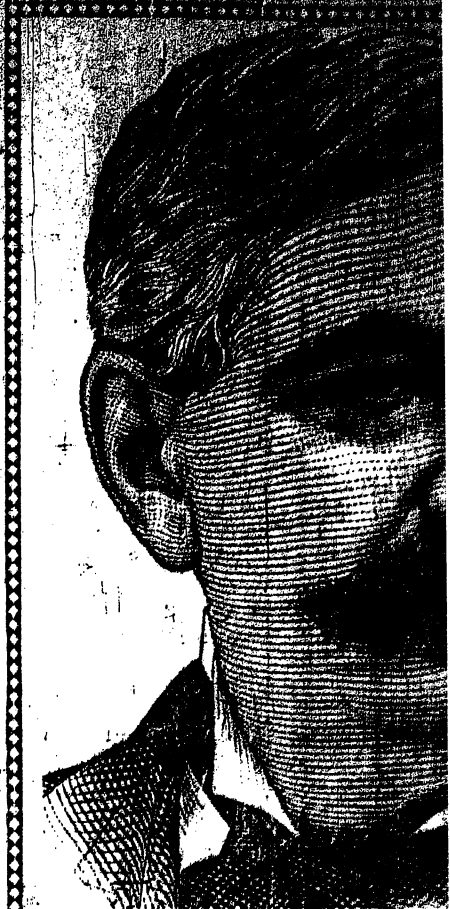
...of the bill into the Senate with-
out any report from the commission-
ers, and its passage by that body
without discussion and apparently
without consideration. He then said:
The bill is now before the House for the
first time to be considered seriously and
with that care and attention which its
gravity demands. In order to avoid any
misconception of my position and views
with respect to this subject, I am hap-
pily obliged to express, through the committee to the
members of the House, the reasons why I
consider the proposed legislation unwise
and prejudicial to the interests of the State.
It is true that two years ago I concurred
in the recommendation of the commis-
sioners appointed on the same subject for
the passage of legislation similar to that
now pending. I did so reluctantly and the
 lapse of time and much reflection has
strengthened the doubt which I then had of
the propriety of any termination of the
controversy which failed to include the
acknowledgment of New Jersey of the Dela-
ware title and jurisdiction as claimed by
this State. The compact of two years ago
was submitted to the Legislature not as
what was desired by Delaware, but as in-
dicating the best that would be that they
received the assent of New Jersey. The litiga-
tion had then proceeded no further than the
filing of the answer of this State. No con-
siderable amount of expense had then been
incurred, and I thought at that time that
the preservation of the question of jurisdic-
tion included in the proposed compact
would be effectual to save the question for
the future. I am now satisfied, however,
that the effect of the passage of the pending
bill and its approval by the governor,
would operate as a practical surrender of
the rights claimed by Delaware since she
became a State and by the colony prior to
that time from the year 1682. I believe
that if the subject is fairly presented to
any judge or lawyer unconnected with the
present litigation it would be difficult to
find any who would dissent from the view
which I take of the effect of this compact.

ARGUMENT BY GEORGE S. DATES.
Mr. Dates criticized the introduc-
tion of the bill into the Senate with-
out any report from the commission-
ers, and its passage by that body
without discussion and apparently
without consideration. He then said:
The bill is now before the House for the
first time to be considered seriously and
with that care and attention which its
gravity demands. In order to avoid any
misconception of my position and views
with respect to this subject, I am hap-
pily obliged to express, through the committee to the
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strengthened the doubt which I then had of
the propriety of any termination of the
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acknowledgment of New Jersey of the Dela-
ware title and jurisdiction as claimed by
this State. The compact of two years ago
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what was desired by Delaware, but as in-
dicating the best that would be that they
received the assent of New Jersey. The litiga-
tion had then proceeded no further than the
filing of the answer of this State. No con-
siderable amount of expense had then been
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the preservation of the question of jurisdic-
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the future. I am now satisfied, however,
that the effect of the passage of the pending
bill and its approval by the governor,
would operate as a practical surrender of
the rights claimed by Delaware since she
became a State and by the colony prior to
that time from the year 1682. I believe
that if the subject is fairly presented to
any judge or lawyer unconnected with the
present litigation it would be difficult to
find any who would dissent from the view
which I take of the effect of this compact.

The question in dispute in the bill now
pending is practically the existence of the
jurisdiction claimed by Delaware over the
river from this memorial and, up to the
period of the acquisition about the Pen Patch
Island, practically admitted by the legisla-
tion of New Jersey. This jurisdiction over
the waters of the Delaware River within
the Twelve Mile Circle to the low water
mark on the New Jersey shore is asserted
in section 2, chapter 1 of our Revised Code.
It has not only been claimed, but exercised,
and by no court, official or lawyer of Dela-
ware has it ever been disputed or ques-
tioned. This was recently shown officially
in the hearing at Wilmington before the
master by the testimony of Judas Gray and
Bradford and Messrs. Benjamin Neilsen,
John H. Rodney, Alexander B. Cooper, J.
Harry Rogers, for 70 years familiar with the
river, and also by the testimony as to the
actual exercise in the Admiralty Courts of
the United States for this district of every
living marshall and deputy marshall of the
United States for Delaware and the clerk of
the United States Courts for that district.

The controversy in the United States
Supreme Court originally involved the
validity of certain fish-

DAVID
MECKISON
Congressman



EX-CONGRESSMAN MECKISON

Hon. David Meckison, Napoleon, Ohio, ex-
District, writes:

"I have used several bottles of Peruna
thereby from my catarrh of the head. I feel
I use it a short time longer I will be fully old
thirty years' standing."

Hon. David Meckison began his politi-
cal career by serving four consecutive
terms as Mayor of the town in which
he lives.
He was elected to the Fifty-fifth Con-
gress by a very large majority, and is
the acknowledged leader of his party
in his section of the State.
Only one flaw marred the otherwise
complete success of this rising statesman.
Catarrh with its insidious approach
and tenacious grasp, was his only
unconquered foe.
For thirty years he waged unsuccess-

ful war
At 16
and he
Martin
Hon.
Place,
Canton
for Wa
of the
State of
Ohio
"I have
used several
bottles of
Peruna
thereby from
my catarrh
of the head.
I feel I use
it a short
time longer
I will be
fully old
thirty years'
standing."

that although we have stated the purpose of
the compact to be to settle the controversy,
we do not; then to have it settled at all.
Unless the jurisdiction of Delaware is un-
derstood, how is it possible to justify
articles 1 and 2, in which the eastern half
of the river is assigned to being in New
Jersey and the western half only to Dela-
ware, although the testimony already taken
and that in the Pen Patch case show that

Your money.

Druggist.

lets

Supreme Court will... (text continues)

instanced cases of... (text continues)

K TWICE

deuts of Wilmington to... (text continues)

16th, 1904. Mrs. ... (text continues)

Mr. Barker then gave a resume of the Delaware bill, with evidence to support it, and continued:

If the representatives of Delaware desire to abandon her claims and give away territory over which she has exercised jurisdiction for more than two centuries, her rights having only been disputed by New Jersey for about 75 years, let it be done openly and above board and not by innuendo and inference.

The resolution appointing commissioners in each State is couched in identical terms and it is expressly stated that the appointment is for a conference "for the purpose of framing a compact or agreement between the said States and legislation thereon, to be submitted to the Legislatures of the said two States for action thereon, looking to the amicable termination of the suit between said two States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay."

If as it is now contended, the expressed reservation of the boundary question is sufficient to control the necessary implication from that which precedes it then the commissioners have not acted under the resolution but have acted upon something which the resolution, under which alone they derive their power, neither directed nor contemplated.

How can it be contended that this compact does not effect the boundary question, when in the first recital it is set forth: "Whereas, A controversy hath heretofore existed between the States of New Jersey and Delaware, relative to the jurisdiction of such portion of the Delaware River as is included within the circle of 12 miles radius an arc of which constitutes the northern boundary of the State of Delaware, and it is the mutual desire of said States to so settle and determine such controversy as to prevent future complications arising therefrom;" and in the third recital it is expressly stated that the commissioners were appointed "for the purpose of adjusting the differences between the said two States arising out of said conflict of jurisdiction," and also "to frame a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the amicable termination of said suit between said States now pending in the Supreme Court of the United States, and the final adjustment of all controversies relating to the boundary between said States, and to their respective rights in the river and bay."

The commissioners, or least, or both, with which the compact was prepared is well shown by the fact that in the second recital the intention is referred to as restraining the operation of Delaware statutes, although, in the first recital stated, the statute against which the objection was directed was long since repealed. It is submitted that in view of the language of the resolution the duty imposed upon the commissioners was the settlement of the controversy, that was the purpose of their appointment, they themselves well knew that for the purpose of the compact and then after a series of provisions which are manifestly inconsistent with the title and intention as claimed by Delaware, they have proposed to settle themselves

the Delaware River... (text continues)

I am perfectly aware that these criticisms are equally applicable to the proposed compact of two years ago, to which I did assent, although as already stated, reluctantly. And I only say in explanation that, although it is not a valid excuse, I did not at that time study the matter as carefully as I have done since.

The General Assembly has session after session insisted upon the jurisdiction, the executive department has been equally insistent from time to time, no amount of concurrent legislation will bring peace on the river or security to our fishermen until the question is settled. If it is ever to be determined now is the accepted time and the forward condition of the pending case makes it the most favorable time.

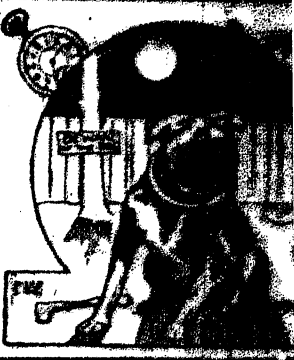
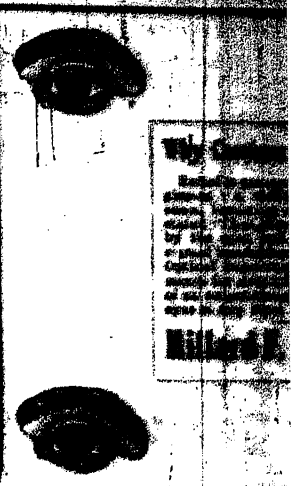
If our title is confirmed it will be time enough to make a compact about fishing, though Delaware would have the right to legislate alone if it were desired to do so.

The contention that "a navy" would be required for this State seems too trifling to need any discussion. The river is amply policed during the fishing season under existing legislation and the only complaint made by Delaware fishermen is that they are constantly illegally harassed by the New Jersey fish warden. What would be their plight if his powers were confirmed by our legislature?

It is thought not unworthy of consideration the moral duty which the State owes to the United States in connection with the Pelee Island, ceded by the State for a fort. The title of Delaware was confirmed by arbitration, and hence the United States cannot be dispossessed, but it would accept that now, since the title has been seriously questioned, ordinary good faith would prompt us to remove the cloud on that title arising from such controversy.

As to the expense of the litigation, I think I know the spirit of the Delawareans much better than some of those who urge the adoption of this compact. The probable expense has been greatly exaggerated and the litigation has been thus far man-

CASTORIA For Infants and Children. Bears the Signature of The Kind You Have Always Bought In Use For Over 30 Years.



ATTENTION PLEASE



...with a constant dripping in my throat. My general health was miserable. I felt that at the time...

...about two years ago I began to cough and feel like a different person. I can breathe through my nose without any trouble, and the sore is no longer in my throat to all this.

"Peruna has done so many wonders for me that I gave it to my little daughter who had bronchitis and it helped her. I cannot praise Peruna enough for what it has done for me!"

We have on file thousands of testimonials like those given above. We can give our readers only a slight glimpse of the vast array of unspotted endorsements Dr. Hartman is constantly receiving for Peruna.

...of great advantage. I am...
 ...generation, which, perhaps, may have more State pride and public spirit.
 Attorney-General Richards criticized Mr. Bates' change of front. He knew nothing irregular or improper about the presentation of the compact to the Legislature. The compact was introduced at Gov. Lee's suggestion. If the compact were rejected, he would fight the case with all his energy. He claimed that it is for the best interests of the State to ratify the compact. In doing so no rights would be surrendered. If the case goes on, the State will have to appropriate \$10,000 for the next two years. The compact settles all questions in controversy between the two States.

Why Continue Suffering With Your Eyes?

...is generally obtained by the use of suitable glasses. A well-known authority on nervous diseases, speaking recently before a medical society, stated: "That 75 per cent of all headaches were caused by the eyes, that 75 per cent of frontal aches occurred because of defective eyes, and that 75 per cent of all cases of nervousness could be relieved by glasses." Our optical department is equipped with the best instruments for examining eyes and is in charge of all ophthalmological operations. Consult us about your eyes at any time.

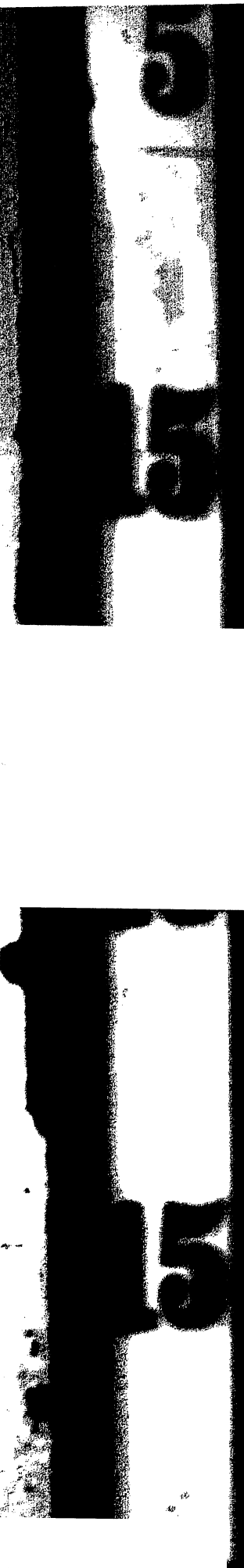
Richard F. Davis, Jeweler, Inc.,
 624 11th E. Second St.
 Established 1879.

An Open Paced Watch

...is now the popular fad. Of course we have the leading case-kind, too, but we invite special attention to the first mentioned kind.

You Will Find

...most convenient in size, handsome, in appearance accurate to a second and very reasonable in price. You should have one and you will when you once see them.



"GROWLER" LAW KNOCKED OUT BY THE SENATE

Saloons to be Prohibited From Selling Less Than a Quart to be Drunk Off the Premises.

AFFECTS THE DISTILLERIES

Local Option Bill for Kent County Will Come Up for Final Action To-day. House Passes Bill Prohibiting Corporal Punishment of Children by School Teachers—No Recommendation in the House on the Hattery Bill.

DOVER, Del., March 14.—Liquor legisla- tion as present is overshadowing every- thing else in the Legislature. De- spite the fact that a powerful lobby is here for the liquor interests, the Senate this afternoon after sharp debate passed the Senate bill to prohibit distilleries selling liquor in bottles in quantities less than one quart, and also the Senate bill repealing the law which permits saloons to sell liquor in quantities less than one quart to be drunk off the premises. This knocks out the present "growler" law. Both bills now go to the House for action, but there is no doubt about them passing that body.

There was a spirited discussion over the repeal of the "growler" law. Senator Rose contended that it would be futile, and at the same time deprive the State of about \$800 in revenue annually. Senator Conner led the fight for the passage of the bill. The vote was as follows:

Ayes—Barnard, Boyce, Lamb, Mendin- hall, Moore (D. O.), Moore (T. C.), Pen- newill, Reed, Sparks, President Conner—19.

Nays—Jefferson, Monaghan, Rose, Smith, Stirling—5.

Not voting—Lingo.

Absent—Houston.

There was also a running fire dis- cussion on the bill to prohibit distilleries from selling liquor in quantities less than one quart. This will especially af- fect Levy's distillery of Dover, which

Continued in third page.

NEW BRIDGE AT FLEMING'S LANDING

BOUNDARY DISPUTE MAY VOTE FOR RICHARDSON

Opposition to Settlement With New Jersey According to Com- pact Advocated by Ex-At- torney-General Ward.

TAKE FINAL ACTION TO-DAY

DOVER, Del., March 14.—Settlement of the Delaware-New Jersey boundary dispute and discussion of Senator Sparks' bill to adjust amicably the controversy with New Jersey occupied the attention of the House the entire afternoon, when a hearing was given on the subject. Alexander B. Cooper, of New Castle, and George H. Bates, associated with counsel for Delaware in the pending boundary litigation, urged the House to reject the compact to settle the dispute, while At- torney-General Robert H. Richards and former Attorney-General Herbert H. Ward counseled the Assemblymen that the compact furnished an amicable solu- tion of the problem without surrender- ing Delaware's rights or title to territory within the famous twelve-mile circle. It was agreed by the lawyers that it will require at least \$15,000 to \$20,000 to pro- secute the famous boundary case to final determination by the Supreme Court of the United States, in which it is the first case on the docket. The House will pass upon the compact to-morrow morning.

The hearing developed the fact that Mr. Bates is entirely at variance with his colleagues, Mr. Richards and Mr. Ward, over the proposal to settle the boundary dispute by having the compact ratified, although Mr. Bates two years ago drew and advocated the ratification of such a compact. To-day he explained to members of the House that he favored the compact two years ago, but since then had given the utmost consideration to the subject and had changed his mind entirely, he now being favorable to press- ing the boundary litigation to the high- est judicial determination.

Alexander B. Cooper was the first speaker. After giving much historical data to show Delaware's title to the Delaware river within the twelve-mile circle, Mr. Cooper said:

"We have title to the Delaware river and are in honor bound to defend it under all circumstances. New Jersey has the suit. If we are to go down let us throw down the gauntlet by bringing the suit. If we are to go down let us go down in honor. New Jersey not only claims title to the Delaware river but arrogantly claims exclusive jurisdiction over all the Delaware river east of the center line.

"This compact seems to me and I speak respectfully, perfectly ridiculous. Gentlemen, do not accept this report un- til the main question of boundary is ac- cepted, for if you do you put in the

Report That Anti-Addicks Repub- licans Will Cast a Solid Ballot for the Dover Man To-day.

CONFERENCE IN THIS CITY

As a result of an important conference last night of Republican leaders and Union Republican members of the Legis- lature who have abandoned J. Edward Addicks, important changes in the sena- torial situation will probably take place in Dover to-day.

Not only is it proposed now to place the supporters of J. Edward Addicks in a minority, but a political stroke is plan- ned that will put it right up to the Ad- dicks men whether or not a senator will be elected.

The maneuver is expected to be all the more significant because of the fact that the sixteen anti-Addicks Republicans in the Legislature are expected to throw their votes solidly to Harry A. Richard- son, a Republican who lives in Dover and not much further than a stone's throw from the residence of United States Sen- ator J. Frank Allee.

The Regular Republican leaders make no secret of their belief that Senator Allee is responsible for a continuance of the senatorial deadlock in the hope that he may improve his chances of being re- elected senator two years hence. If a vacancy is created this year.

With a view of trying to shatter the deadlock the Regular and conciliatory Union Republicans to-day expect to unite upon Mr. Richardson as their candidate for senator. Mr. Richardson is exceed- ingly popular down the state and was an important factor in the Republican situation there in the last campaign.

This will cause considerable anxiety among the Union Republican leaders, who will have to tighten their lines to pre- vent a break to Mr. Richardson, should he be voted for.

The lining up of the sixteen anti-Ad- dicks Republicans for one candidate also will place Mr. Addicks in a minority as a senatorial candidate for the first time in ten years. Addicks has fifteen sup- porters.

The Assemblymen who came to this city last night to confer with Colonel Henry A. duPont, former Senator J. Heister Ball and other Republican lead- ers were Senators Fennell and Lingo and Representatives Vandenberg, Bes- son, Lyons and R. D. Lingo. The only absentee was Speaker Denney, who it is accord with his colleagues.

The conference lasted until late to- night. The Regular Republican members are loath to concede anything to Colonel du Pont, but it is understood that Colonel

News—Jefferson, Monaghan, Rose, Smith, Stirling, 5. Not voting—Lingo. Absent—Houston. There was also a running fire discussion on the bill to prohibit distilleries from selling liquor in quantities less than one quart. This will especially affect Levy's distillery of Dover, which is mentioned in third page.

NEW BRIDGE AT FLEMING'S LANDING

Government Intends to Straighten the Bend in the Creek at That Point—Levy Court's Session.

By the construction of a cut-off near Fleming's Landing, the government intends to straighten the bend in the Appoquinimink river, and this will necessitate the erection of a new bridge by New Castle county.

Messrs. Watson and Miller of the United States Engineer's office in this city yesterday afternoon appeared before the Levy Court and informed the commissioners that the work would begin before long and they called attention to the fact that a new bridge would be necessary to replace the Penimore bridge which is directly in the bend.

A bill approving of this project was passed March 7, 1901, and the government already has spent about \$40,000 in improving the river.

The object of the assistant engineers in appearing before the court was to give the commissioners notice of the work which is to begin. The cut-off will be about 1200 feet in length.

The court ordered a bill paid amounting to \$940 and drawn in favor of John Davis and Son for repairs to Third street bridge.

At the morning session an encouraging report was received concerning the good roads which have been constructed in this county.

The balance in the county treasury was reported to be \$152,310.00. The court will sit on Tuesdays, Wednesdays, Thursdays and Fridays during the remainder of the month as a court of appeals from assessment.

STEAMBOATS TO BE IMPROVED

Local Company Beautifying the City of Chester and Brandywine, the River Favorites.

If the present weather continues the Wilmington Steamboat Company will place the steamer City of Chester on the line between this city and Philadelphia next week to replace the steamer Brandywine, which has been in commission all winter. The City of Chester has been at the shipyards of the Marlow and Hollingsworth Company being overhauled and having the interior remodeled. It has been painted and generally beautified. The old electric lighting plant has been taken out and an entirely new one

We have title to the Delaware river and are in honor bound to defend it under all circumstances. New Jersey has the suit. If we are to go down, let us throw down the gauntlet by bringing the suit. If we are to go down, let us go down in honor. New Jersey not only claims title to the Delaware river, but arrogantly claims exclusive jurisdiction over all the Delaware river east of the center line.

This compact seems to me and I speak respectfully, perfectly ridiculous. Gentlemen, do not accept this report until the main question of boundary is accepted, for if you do you put in the hands of New Jersey a large weapon that can be used against us. If we do we might as well surrender at once and annex ourselves to New Jersey.

This involves the legal validity of all the lands in New Castle county within the twelve mile circle. If William Penn's title was defective, our title is defective. I do not say that anything serious will affect this property, however.

What state in the Union is there without a well-fixed and defined boundary on all sides. We cannot fix ours except in the courts, and why not do so now when the case is about ready for a decision. The question of fisheries is but incidental.

What we want, what we should have what we deserve is to have our general title, and jurisdiction established. If we are owners and our rights are clearly established, we could make any compact we might please. Then our fined fishermen would have redress.

Are these matters of sentiment, or are they real, vital, substantial questions? If they are sentiment they are precious sentiment, involving our rights, our title, our honor, state pride.

It makes my heart burn with shame for anybody to talk of dollars and cents in this matter. I, for one, and thank God there are many others with me, who would drain the treasury of every cent to prosecute this suit, and then would try to levy a special tax to carry it on. Let us maintain our right and honors, wherever, whenever they are at stake. I ask this for the poor fisherman.

Continued on Second Page.

MARSHALLTON SCHOOL

Senator Smith Instructed to Present Evidence to Substantiate His Charges.

Staff Correspondent. DOVER, Del., March 12.—The Senate committee on education this afternoon held a meeting to consider the Marshallton school district matter, which was brought to the attention of the Senate through a resolution offered by Senator Smith asking for an investigating committee to inquire into alleged irregularities in the Marshallton district.

Daniel O. Hastings appeared before the committee in behalf of the Marshallton school board.

Will place Mr. Addicks in a minor senatorial candidate for the first in ten years. Addicks has fifteen votes.

The Assemblymen who came to city last night to confer with C. Henry A. duPont, former Senator Heister Ball and other Republicans were Senators Fennell and and Representatives Vandenburg, son, Lyons and R. D. Lingo. The absentee was Speaker Denney, who accord with his colleagues.

The conference lasted until last night. The Regular Republican men are loath to cease voting for Colonel Fout, but it is understood that C. duPont assumes the attitude that willing for anything honorable to be that will result in a Republican being elected without discredit to party.

Because of this it was decided to go voting to-day for Mr. Richard Addicks, who has been the nominee of the conciliatory Republicans for several years.

It will be unusual for the Republic to offer Kent county both senators will deprive New Castle county, with preponderance of population of any representation in Congress, should Mr. Ardson be elected.

At any rate it will place the responsibility for a deadlock upon the Union publican leaders, and the result will awaited with interest.

If this stroke fails to bring about election it will leave the possibility a successor to Senator Ball being elected at this session exceedingly remote.

Meanwhile it is said pressure is brought upon Senator Allen at Washington, to try to have him use his influence to break the deadlock.

THE PENNSYLVANIA WANTS LOCOMOTIVES

More Motive Power Needed to Handle the Immense Freight Traffic.

Because the motive power of the Pennsylvania Railroad Company is not sufficient at present to handle the immense bulk of freight that is daily consigned to the road, it has been decided to purchase several locomotives for use on the main divisions. An order for 71 new engines has recently been placed with Juniata shops at Altoona. The order is to be filled by next fall so the engines will be ready for service next winter. Forty-six of the new engines will be shifters. In constructing these the road company has decided on a new type.

On the left or fireman's side of cab there will be stored a quantity of fire hose that will be connected with water tank. The hose will be used fires which break out in wrecks or any other fires where they will be useful.

STOLEN MARCH 12

\$100,000 Through Pinkerton

If necessary to prosecute unreliable dealers and manufacturers who are offering spurious goods as genuine Duffy's Pure Malt Whiskey, we will spend \$100,000, and to this end we have employed this Agency to run down these fraudulent dealers and bring them to justice. Duffy Malt Whiskey Co.

For sale by N. B. Danforth, Market and Second streets.

BOUNDARY DISPUTE

Continued from First page.

men involved for the people of Delaware who live in the circle, for the residents of the state. I know of nothing more injurious to our state than the passage of this bill. If we do pass this bill we give to New Jersey more than she ever has claimed before."

Joseph B. Anderson of Delaware City, told of having two boats with fishing tackle confiscated by New Jersey and of the fishermen being fined and imprisoned. He urged the legislature not to pass the compact bill.

Herbert H. Ward, in the course of his remarks, said:

"This cannot be a question of money if title of the state is involved. I agree with Mr. Cooper along that line, but he was discussing a question not before the House in the pending compact."

The suit was brought by New Jersey, and if New Jersey abandons the suit now can it be said that Delaware has surrendered her rights. It is not the case of our abandoning a suit we have brought.

"I have no doubt, myself, of the title of Delaware to the river. The question is wide and involves many more questions. Out of this suit we have seen since in the past two years questions that may be conclusive against Delaware. We have our answers filed and hope and believe we will win."

"We bring here a compact which is

predicated upon the abandonment by New Jersey in open court of her suit against Delaware.

"I say to you now that if it is the desire of yourself and the General Assembly that the case shall be prosecuted and you furnish the money we will fight the case to the end."

The question of title, we submit, is taken out of the controversy by the present compact. There is nothing in the compact which affects the boundary limits, or title to the river or the subaqueous soil.

"We did not attempt by this agreement to fix the boundaries of the two states, but left the title precisely where it was."

"No question would arise over the acceptance of the compact, with the express provision that it should not affect boundaries or title. I submit that the compact excepts all questions of title to land within the twelve-mile circle."

"We have as a basis for our title the judgment of one of the greatest chancellors in England, even if not based upon a paper title."

"We claim that our title is to all within the twelve-mile circle to low-water mark on the New Jersey shore."

"If the question of ownership and title is involved, I thoroughly agree with Mr. Cooper, but I submit to you that his argument was not on the main question."

"So long as Delaware makes her own fishery laws and New Jersey makes her own fishery laws there will be conflicts between the two states, which will continue until uniform fishing laws are enacted. This compact provides that never again would there be any more arrests of Delawareans by New Jersey

for fishing. New fishermen and residents of Delaware. It is no General Assembly future. This case anyone who has his case on."

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George H. Bates and assumed a urged by his ex Mr. Richards.

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"If this com close the contr of title will be sense in this, I much Delaware City?"

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BIG FALL IN PIANOS

Large Number Selected During First Days of Sale at 13 East Third Street.

UNDER ODD FELLOWS' HALL

Save \$150 to \$200 by Selecting a Fine Piano at Our Introductory Sale--Prices Below Cost of Manufacture--Easy Terms of Payment.

NJ 02095

spend \$100,000, and to this end we have employed the Flanagan Detective Agency and bring them to justice. Duffy Malt Whiskey Co.
 B. Danforth, Market and Second streets.

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for fishing. New Jersey will arrest her fishermen and Delaware will arrest her residents. If this compact is ratified by Delaware it becomes a contract which no General Assembly can alter in the future. This compact will not prevent anyone who has suffered from prosecuting his case in New Jersey.

Mr. Ward submitted that it is not worth while to spend \$15,000 or \$20,000 to prosecute the case, when no question of boundary or title is involved in the compact. Mr. Ward said in response to questions from Chancellor Holcomb that Delaware would have jurisdiction in criminal matters over the entire river to the New Jersey shore.

George H. Bates was the next speaker and assumed a position contrary to that urged by his colleagues, Mr. Ward and Mr. Richards.

Mr. Bates said he regarded the pending compact as "unwise and a needless and serious blow to the dignity of Delaware." The completed bill was never submitted to me, and I was not consulted about its introduction. It was passed by the Senate without apparently any consideration.

"It seems to me that the question of boundary should be further left open. I think if this case is properly understood, there will be no hesitancy on your part to prosecute it to a final judgment."

"I am impressed, too, that the governor for New Jersey now realize the weakness of their case, which accounts for the haste of that state to settle the pending controversy."

"If this compact is ratified it will close the controversy, and the question of title will be left open. Is there any sense in this, I ask. How can it be as much Delaware property as is Delaware City?"

Judge George Gray and Chancellor Nicholson have both authorized me to say the proposed legislation is untimely and unwise. Mr. Bates read a letter in a similar strain from Anthony Higgins, who designated the compact as "improvident and unwise."

"I do not see anything that can be gained by Delaware under the compact except the saving of the costs of the case," Mr. Higgins' letter said.

Attorney-General Richards replied to the remarks of Mr. Bates.

"I yield to no man in State pride," said Mr. Richards. "I knew of nothing irregular or improper in the presentation of this compact to the State Senate."

Mr. Richards pointed out that Mr. Bates two years ago framed a compact to decide amicably the boundary dispute, and of Mr. Bates' decided change of view and opinion since then.

"The only way I can account for Mr. Bates' change of mind is that he was suffering with some mental scruples then, but did not devote attention to the subject."

know nothing of the condition of children in Wilmington in the morning, when you can see hundreds of little boys and girls going to the markets of trade, degrading themselves and unmaking themselves for fatherhood and motherhood and as good citizens.

"I don't come to you pleading my own cause, but come to you as an American citizen demanding of you to recognize that there is in this state a great iniquity being performed daily. I am proud to say that this committee of the House has reported this bill favorably. My friends, it is with a feeling of duty I present this bill and it is one of the proudest moments of my life as I stand before you and ask you to do something not only for our state and country but also for humanity."

"There is no place, except miserable sweatshop dens that have not established a nine-hour day in Delaware. There are some places in Wilmington that I shall not call by name that are not run by decent men, who are using little children in order to make themselves wealthy. There are hundreds of children, age ten and ten years of age in Wilmington, who are doing out a miserable existence and their cry comes to you for relief through me."

"It is only a matter of time with the advent of modern machinery and its improvements, when the men in Wilmington who now earn their living by the sweat of their brows will be driven into the streets, and the greed of wealth will go into the homes and take the little children and put them into the shops of degradation, which means only crime."

"Gentlemen, this bill provides for a salary of \$1,000 a year for the factory inspector, and he is to pay his own expenses out of it. It hangs between your duty to God and to your conscience and a miserable \$1,000 whether we shall leave these children to the cupidity of greedy and unscrupulous men who are squeezing out the life blood of the little ones. I am supported by the Philosophical Quakers' Society, by 12,000 working men in Wilmington and by the Central Labor Union, which comprises 3,000 Union men. This is the only bill organized labor has asked you to enact."

To Prevent the Grip

Laxative Bromo Quinine, the world-wide Cold and Grip remedy, restores the cause. Call for the full name and look for signature of E. W. Grove, etc.

STEAMER ETHELWOLD DAMAGE

Had Wheel House and Upper Deck Smashed Off Batteries.

PHILADELPHIA, March 14.—The freight steamer Ethelwold arrived in port this morning from Port Antonio with a cargo of bananas and coconuts. She passed through a terrific hurricane while here. The vessel was encountered near Cape Haitien.

IN PIANOS

During First Days of Third Street.

FELLOWS' HALL

Selecting a Fine Piano at Prices Below Cost of Terms of Payment.

free country where every man has a right to sell his own property as he sees fit. It is also the privilege of everyone

... attempt by this agree...
... the boundaries of the two...
... left the title precisely where

... question would arise over the ac...
... of the compact, with the ex...
... provision that it should not affect...
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free country, where every man has a...
... right to sell his own property as he sees...
... fit, it is also the privilege of everyone...
... to purchase where they can do it to the...
... best advantage. It will cost you nothing...
... to inspect our beautiful stock and ascer...
... tain for yourself what our piano propo...
... sitions are.

If you want the finest instrument in...
... the land you will find it here and about...
... \$2000 chopped off its retail price, if you...
... want one of the better medium grade...
... pianos such as you would usually pay...
... \$250 or \$300 for, you can save \$150 of...
... your money and still have the piano of...
... your choice, or if you wish to be more...
... modest in your piano purchase, and...
... would like to have a piano that you or...
... dinary pay \$200 to \$300 for, here you...
... will find plenty of them marked down...
... to \$117, \$142, \$175.

It is not necessary that you should

... have jurisdiction...
... over the entire river...
... to the New Jersey shore.

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... Bates' change is that he was suffering...
... with some mental strabismus then, or...
... did not devote attention to the subject...
... then that should have been given such...
... an important subject." Mr. Richards...
... added: "If you reject this compact, we...
... will fight the case to the end with all...
... our vigor and determination. We do...
... advise you that we consider it is for...
... the best interests of the state to adopt...
... this compact without yielding a foot of...
... property or title."

Mr. Richards laid stress upon the fact...
... that if the case is to be prosecuted fur...
... then it will be necessary to appropriate...
... an additional \$10,000 to meet unavoid...
... able expenses.

Guaranteed Cure for Piles.
Healing, Bleeding or Protruding
Piles. Your Druggist will refund money
if FAZO OINTMENT fails to cure you.

... do something not only for my...
... state and country but also for my...
... fellow-citizens.

There is no more exciting...
... sweat-shop den that has ever...
... lished a nine-hour day in...
... There are some places in Wilmington...
... that I shall not call by name, but...
... not run by decent men, who are...
... little children in order to make them...
... selves weakly. There are hundreds of...
... children, age tols nine and ten years...
... of age in Wilmington, who are being...
... out a miserable existence and their cry...
... comes to you for relief through me.

"It is only a matter of time, with the...
... advent of modern machinery and its im...
... provements, when the men in Wilming...
... ton who now earn their living by the...
... sweat of their brows will be driven...
... into the streets, and the greed of...
... wealth will go into the homes and take...
... the little children and put them into...
... the shops of degradation, which means...
... only crime.

"Gentlemen, this bill provides for a...
... salary of \$1,000 a year for the factory...
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... 12,000 working men in Wilmington and...
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... comprises 3,000 Union men. This is...
... the only bill organized labor has asked...
... you to enact."

To Prevent the Grip
Laxative Bromo Quinine, the world-wide
Cold and Grip remedy, removes the cause
Call for the full name and look for signa...
... ture of E. W. Grove, 25c.

STEAMER ETHELWOLD DAMAGED

Had Wheel House and Upper Deck
Smashed Off Hatteras.

PHILADELPHIA, March 14.—The iron...
... steamer Ethelwold arrived in port this...
... morning from Port Antonio with a cargo...
... of bananas and coconuts. She passed...
... through a terrific hurricane while bound...
... here. The storm was encountered at...
... Cape Hatteras, and the Ethelwold was...
... unfortunately caught in the teeth of...
... and had her wheel house and upper deck...
... badly damaged.

Captain Haines, in command, says the...
... storm was one of the worst he has...
... ever experienced. He considers that...
... was fortunate in not being crippled...
... however, he was compelled to use of...
... hand steering gear to get to port. If...
... Ethelwold carried no passengers.

Why We Recommend Orin To Cure Drunkenness.

In taking the agency for Orin...
... liquor habit cure we thoroughly...
... had ourselves tested and...
... genuine medicine. The...
... which is located in Washington, D. C.

The House Confers in Senate
Demands It Will Be Delegated
and Lobbyists Prevent the 'Bottle'
Brewer Bills From Going
Through the House.

Demarch to 'The Morning News'
WEEK DEL. MARCH 21.—The liquor
captured the House and this after-
noon the rural New Castle county local
option bill, the Senate "Bottle" and
other repealer and Senate bill pre-
venting distilleries from selling liquor
drank on the premises were sent
to graveyard.

A rural New Castle bill was made an
order to-morrow which kills it. Af-
ter a sensational fight in which Speaker
Denney's decision was sustained on ap-
peal the House passed House local op-
tion bill for Sussex which is now in the
committee.

Such a bad feeling was engendered over
liquor fight in which the members
placed on record to-day. The Kent
option bill hangs fire in the Senate.
As assurances are received that the
bill will occur in the proposed Senate
amendments it will be killed.

The principal amendment is for sep-
arate polling places and officers for local
election so as not to interfere
with the general election.

About twenty minutes later the most
sensational clash of the session occurred
in House. Representatives Stafford
Benson asked to have their votes re-
corded "yes" in favor of the Sussex
local option bill on which Speaker Den-
ney had reserved his decision earlier. Or-
der the vote recorded, Speaker Den-
ney then declared the bill had passed
House. Immediately Messrs. Van-
derburg, Revier, W. S. Meredith and
other opponents of the bill were on their
feet protesting vigorously against the
Speaker's ruling.

The gentleman will take their seats,
said Speaker Denney, calmly. He re-
served his order and when quiet was re-
stated. "It has been customary
session to allow a member to change
vote until the speaker has announced
decision. This was done in the present
case and the gentleman should have
done so the other day," shouted Mr.
Benson.

Mr. Vandenburg, a Republican from
Sussex, appealed from the decision of
Speaker Denney, but Speaker Denney was sus-
tained by a vote of 12 to 13, several
members being absent at the time.

Mr. Baggs at 3:15 o'clock under special
order called on the Senate bill to pro-
hibit distilleries selling liquor to be
drank on the premises.
Representative Manney moved to lay
bill on the table, after making a few
remarks, and his motion prevailed, 18 to
8 follows.

As—Abbott, Bennum, Cooper, D. W.

WHAT A CHRISTIAN IS.

Subject of the Discourse of the
Rev. L. N. Caley at the Noonday
Lenten Services.

"What a Christian is" was the sub-
ject of the address by the Rev. Dwellan
N. Caley at the noonday Lenten service
in St. Andrew's Church yesterday. He
discussed the lives of the people of
Antioch where the disciples were first
called Christians, and of Agrippa, who
was much impressed by the defense of
Paul by St. Paul at his trial.

With these and the words of St. Peter
in mind he said that a Christian is one
who seeks to be like Christ, who seeks
to win souls, and seeks above all, the
glory of God. The speaker to-day will
be the Rev. Norman V. E. Lewis of Phil-
adelphia.

BOUNDARY SETTLEMENT COMPACT IS SIGNED

Officials of the Two States Met in
Philadelphia—Agreement to Go
Into Effect at Once.

The boundary settlement compact was
formally signed yesterday on behalf of
Delaware and New Jersey at a confer-
ence held in the law library of the pub-
lic building in Philadelphia.

It was signed for Delaware by Govern-
or Lea, Attorney General Richards,
Herbert H. Ward and George H. Bates,
special counsel. On behalf of New Jersey
the signers were Governor Stokes, At-
torney General McCarter, Ex-Governor
Franklin Murphy and Chauncey C.
Barker, special counsel. The agreement
will go into effect at once.

ACCUSED OF ATTEMPTED MURDER

James Smallwood Charged in City
Court With Shooting
Lillie Riley

Charged with attempting to murder
Lillie Riley, colored, on Saturday night,
James Smallwood, also colored, was ar-
rested in City Court yesterday morn-
ing, but his case was continued until to-
morrow morning.

It is alleged that during a quarrel re-
sulting from a dispute over a piece of
property Smallwood shot Riley.

RECEPTION TO L. F. CORKRAN.

Members of Epworth M. E. Church Will
Cordially Meet Their New Pastor.

While the members of Epworth M. E.
Church were surprised that the Rev. A.
W. Lightbourne was sent to Middletown
instead of being returned to Epworth,
they are pleased that the Rev. L. F.
Corkran was sent to take his place. The
members of Epworth are sorry to lose
Dr. Lightbourne but they are glad that
if a change was made, Mr. Corkran is to
be sent to them.

the evening and will probably be
although there was an unfavorable
opinion that the vacancy must be
before the Legislature adjourns.

In this talk the names of T. C. Du-
Pont and former Senator L. M. Allen
were considered. It would not be
some of the members one of the
of these two was finally chosen.

Conferences of the leaders were held
during the afternoon and evening
the hope that a way could be found
break the deadlock. No decided action
was reached.

During the evening Representative
Townsend who said he represented more
than a majority of the Union Republi-
cans, informally submitted a resolution
to Senator Sparks and Representative
Steffens. It was in effect that Col-
onel duPont or some other regular
publican be chosen senator for the six
years term and that Mr. Addicks be
elected to fill the unexpired term of Sen-
ator Allen, providing the latter should
resign. Ex-Senator Bell and U. Conrad
duPont were made acquainted with the
informal proposition. It was decided
that the Regulars would accept so long
that involved the election of Mr. Ad-
dicks as a senator under any conditions.
Then, among themselves, the Union Re-
publicans revived the talk of electing
Allen senator for six years and a
Regular for two years. Nothing definite,
however, came of this plan. The Regulars
have not yet abandoned the idea that a
senator can be chosen. An effort will be
made to have a majority
of all the Republicans line up for Col-
onel duPont in the following to-morrow.

The Union Republicans seemed last
night to be worried considerably over the
situation. Late to night they sent
Senator Allen to town around for a con-
ference. Something, however, prevented
the arrival of the senator.

Colonel Henry A. duPont to-day re-
ceived fifteen Republican votes for Sen-
ator, sixteen for Mr. Addicks, and
eight by J. Edward Addicks. It was the
first time that column that Colonel
duPont's strength of nine votes had
increased. It was a disappointment
by Republicans here that the
in the present session. The
duPont received fifteen votes
and would have a majority
if J. Edward Addicks were
holding the seat.

Colonel duPont was
Watson is the dual role of
president of the Senate. Colonel
duPont failed to receive
constitutional majority of all the votes
for senator.

Union Republican Assemblymen
are supporting Mr. Addicks, to-day
donated their names to call upon
J. Frank Allen to resign contingent
the Regular Republican Assemblymen
entirely to re-elect Senator Allen for the
six-year term and Colonel duPont
for some other Regular Republican for the
two-year term.



State of New Jersey
OFFICE OF THE GOVERNOR
PO Box 001
TRENTON NJ 08625-0001

RECEIVED

APR 18 2005

GOVERNOR'S OFFICE
WILMINGTON

PAUL T. FADER
Chief Counsel

RICHARD J. CODDY
Acting Governor

April 11, 2005

Joseph Schoell, Esq.
Legal Counsel to the Governor
Office of the Governor
820 North French Street, 12th Floor
Wilmington, Delaware 19801

Dear Mr. Schoell:

I am writing as a follow up to our meeting on March 29, 2005 in which we discussed the application of Crown Landing LLC ("Crown Landing") before the Delaware Department of Natural Resource and Environmental Control ("DNREC"). As I explained to you in our meeting and in a prior telephone call in early March, it is the position of the State of New Jersey that pursuant to the 1905 Compact between New Jersey and Delaware, Delaware does not have jurisdiction over the construction of this project or any project appurtenant to New Jersey's shoreline.

On February 3, 2005 DNREC rendered a decision denying the application of Crown Landing to build a 2,000-foot pier on the Delaware River in Logan Township, Gloucester County, New Jersey. The pier is a key component of a proposed Liquefied Natural Gas ("LNG") import facility and regasification plant in Logan Township. This project will bring significant energy, environmental and economic benefits to the New Jersey-Delaware Region.

In rendering its decision, DNREC relied on the provisions of the Delaware Coastal Zone Act. However, I am told that DNREC never addressed the New Jersey jurisdictional issue. Subsequent to the date of our meeting, the Delaware Coastal Zone Industrial Control Board rejected an appeal by Crown Landing to overturn the DNREC decision and once again the New Jersey jurisdictional issue was not addressed.

It is evident that Delaware does not have jurisdiction over the construction of the pier or any other part of this project. Under the Interstate Compact of 1905 between New Jersey and Delaware "each State may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature." This includes each state's right to exert regulatory control over structures built on its own side of the river as well as tidelands ownership rights. New Jersey's riparian jurisdiction clearly applies to the pier, that is a part of the Crown Landing project.

Article VII of the 1905 Compact grants New Jersey, as a State, a riparian right to use the Delaware River and to regulate use of the River from the New Jersey shore within the 12-mile circle. That right was not affected by the 1934 boundary award, as the Supreme Court specifically stated that the boundary line determination within the 12-mile circle was "subject to the Compact of 1905." New Jersey v. Delaware, 291 U.S. 361, 384 (1934).

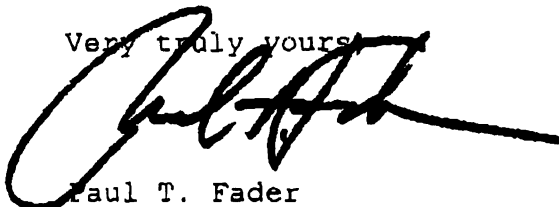
Most recently, in the 2003 U.S. Supreme Court decision, Virginia v. Maryland, 124 S.Ct. 598, the court affirmed Virginia's rights in a similar situation. In Virginia v. Maryland, the Supreme Court held that the Compact of 1785 between Virginia and Maryland prohibits Maryland from attempting to regulate the use of the Potomac River by Virginia or her citizens. Even though the Virginia-Maryland boundary is on the Virginia shore of the Potomac River, the Court held that Virginia has the right to withdraw water from the Potomac and to build improvements in the river extending beyond the boundary line. The ruling was based on Article VII of the Compact of 1785. Based on this language the Supreme Court held that "Virginia, its governmental subdivisions, and its citizens may withdraw water from the Potomac River and construct improvements appurtenant to the Virginia shore of the Potomac River free of regulation by Maryland."

Our two states have always recognized the need to work together for regional solutions to common issues facing the area. Economic growth, environmental quality, and energy sufficiency are among the most important of these issues. Delaware should not think this history of cooperation may in any way be perceived as New Jersey relinquishing any of its jurisdictional rights.

Please review the New Jersey - Delaware Compact of 1905, and particularly Article VII, under which New Jersey clearly has the right to exercise riparian jurisdiction over the proposed Crown Landing project. In addition, a review of the Maryland - Virginia compact and the U.S. Supreme Court opinion of 2003 will make it abundantly clear that Delaware is patently wrong in attempting to exert control over this project. I would hope that in view of

these rights in addition to the common regional needs of New Jersey and Delaware in the important areas of economic growth, energy sufficiency, and enhanced environmental quality, Delaware would acknowledge New Jersey's proper jurisdiction. If not, New Jersey will be forced to take all appropriate action to enforce its rights. I await your prompt reply.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul T. Fader", written over the typed name below.

Paul T. Fader
Chief Counsel

cc: Governor Richard J. Codey
Attorney General Peter Harvey
Pete Cammarano, Chief of Staff



STATE OF DELAWARE
OFFICE OF THE GOVERNOR

RUTH ANN MINNER
GOVERNOR

RECEIVED

MAY 12 2005

C.J.S., JR.

May 9, 2005

Paul T. Fader, Esquire
Chief Counsel
Office of the Governor
P.O. Box 001
Trenton, NJ 08625-0001

Dear Paul:

Thank you for your April 11, 2005 letter regarding the State of Delaware's authority to regulate uses within its borders and Coastal Zone. We respectfully disagree with your conclusion that Delaware lacks regulatory authority over the proposed Crown Landing project, as well as "any project appurtenant to New Jersey's shoreline."

Delaware's right to regulate structures appurtenant to the shore that extend into Delaware waters and riverbed was explicitly recognized by the United States Supreme Court in *New Jersey v. Delaware*, 291 U.S. 361, 375-76 (1934). The Supreme Court considered the issue of piers built by New Jersey "riparian proprietors" that extended onto Delaware's portion of the riverbed. It ruled that Delaware's "acquiescence" in allowing such piers comprised a "privilege or license accorded [by Delaware] to the individual owners... bounded by the lines of their possession." By recognizing Delaware's grant of "privilege or license" to those specific New Jersey pier-owners, the Court settled any question as to Delaware's regulatory authority or ownership of the subaqueous soil.

While Article VII of the 1905 Compact preserved for both states "riparian jurisdiction," that term does not cover structures that cross state lines. Rather, the "riparian jurisdiction" addressed in the Compact pertains only to the river banks within each state's borders. This is obvious from the language of Article VII:

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

Paul T. Fader, Esquire
May 9, 2005
Page 2

As the reference to “grants, leases, and conveyances” shows, the jurisdiction addressed by this provision is that over “riparian lands” — i.e., shoreline within the state’s boundaries — not riverbed territory. This is confirmed by the very next provision, Article VIII:

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

Reading these provisions together, the Compact preserved each state’s jurisdiction over its own “riparian lands,” but *carved out* regulatory rights “of, in, or over” the river or the ownership of subaqueous soil. Thus the Compact plainly cannot support New Jersey’s claim of regulatory control over structures that cross into Delaware. Even if the Compact was ambiguous on this point, which it is not, such ambiguity was extinguished by the Supreme Court’s later recognition of Delaware’s authority over New Jersey piers and appurtenances in *New Jersey v. Delaware*.

In *Virginia v. Maryland*, 540 U.S. 56 (2003), the relevant documents — a 1785 Compact and an 1874 arbitration verdict — explicitly addressed the issue of cross-border improvements. Both documents expressly preserved full wharf and improvement rights for each state. The Court’s ruling was founded upon a strict analysis of the “plain language” of the documents. *See id.*, 540 U.S. at 66, 69-71, 73-74. In contrast, the 1905 Compact explicitly preserved each state’s right to regulate its own territory “of, in, or over the Delaware River.”

We appreciate New Jersey’s interest in this issue, and hope that you understand that jurisdictional issues are important to the citizens of the State of Delaware. It certainly is our hope that we will continue the spirit of cooperation that has been the hallmark of relations between our two states.

Very truly yours,



Joseph C. Schoell
Legal Counsel to the Governor

cc: Collins J. Seitz, Jr., Esquire
Kevin Maloney, Esquire

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY RESOLUTION No. 260
STATE OF NEW JERSEY
211th LEGISLATURE**

ADOPTED MAY 2, 2005

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblyman DOUGLAS H. FISHER

District 3 (Salem, Cumberland and Gloucester)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

**Assemblyman Mayer, Assemblywoman Quigley, Assemblymen Stack, Prieto,
Hackett, Payne, Johnson, McKeon and Scalera**

SYNOPSIS

Urges State of Delaware to amend the Delaware Coastal Zone Act to conform it to the Compact of 1905.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Commerce and Economic Development Committee.

AN ASSEMBLY RESOLUTION requesting the Governor of the State of Delaware and the Delaware General Assembly to amend the Delaware Coastal Zone Act to conform it to the Compact of 1905 between New Jersey and Delaware, approved by Congress, 34 Stat. 858 (1907), to make clear that the Coastal Zone Act does not apply to facilities over which New Jersey retains riparian jurisdiction pursuant to Article VII of the Compact, R.S.52:28-41.

WHEREAS, Along the section of the Delaware River that falls within a 12 mile radius of New Castle, Delaware, the eastern boundary of the State of Delaware is the mean low-tide line on the New Jersey side of the Delaware River, a boundary originating in the original royal grants to William Penn of land which would later become the States of Delaware and Pennsylvania; and

WHEREAS, The State of Delaware exercises its authority over its land bordering and extending into the Delaware River pursuant to the Delaware Coastal Zone Act, 7 Del.C. s.7001 et seq., which subjects to state regulation industrial facilities and bulk product transfer facilities proposed for construction in the Delaware coastal zone; and

WHEREAS, New Jersey and Delaware entered into the Compact of 1905 to determine the jurisdiction of each State over the Twelve Mile Circle portion of the Delaware River, codified at R.S.52:28-34 through R.S.52:28-46; ratified by the Laws of Delaware 1905, p.121; and approved by Congress on January 24, 1907, 34 Stat. 858 (1907), and this Compact was interpreted by the United States Supreme Court in *New Jersey v. Delaware*, 291 U.S. 361 (1935); and

WHEREAS, Under the Compact of 1905 each State retained its riparian rights; Article VII provides in full: "Each state may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective states." R.S.52:28-41; and

WHEREAS, On February 5, 2005, the Delaware Department of Natural Resources and Environmental Control declared that the siting of a

liquefied natural gas import facility and regasification plant in Logan Township, Gloucester County, New Jersey was prohibited under the Delaware Coastal Zone Act; and

WHEREAS, Each State's rights under the Compact of 1905 are a matter of settled law; the State of Delaware's implementation of its Coastal Zone Act in its present form infringes on the State of New Jersey's regulation of facilities within its jurisdiction under the Compact and serves only to undermine the amicable relations that usually prevail between the two States; and

WHEREAS, Because of the long standing regional cooperation shared by New Jersey and its bordering states, it is in the best interests of the State of Delaware, the State of New Jersey, and all states in the region, for the State of Delaware to amend its Coastal Zone Act to conform it to the Compact of 1905 between New Jersey and Delaware, to make clear that it does not apply to facilities over which New Jersey retains riparian jurisdiction pursuant to Article VII of the Compact, R.S.52:28-41; now, therefore,

BE IT RESOLVED *by the General Assembly of the State of New Jersey:*

1. This House urges the Governor of the State of Delaware and the Delaware General Assembly to amend the Delaware Coastal Zone Act to conform it to the Compact of 1905 between New Jersey and Delaware, R.S.52:28-34 through R.S.52:28-46; ratified by the Laws of Delaware 1905, p.121; approved by Congress, 34 Stat. 858 (1907), to make clear that the Delaware Coastal Zone Act does not apply to facilities over which New Jersey retains riparian jurisdiction pursuant to Article VII of the Compact, R.S.52:28-41.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk of the General Assembly, shall be transmitted to the Governor of the State of Delaware, the Lieutenant Governor of the State of Delaware, the Speaker of the Delaware House of Representatives, the President Pro-Tempore of the Delaware State Senate, and the Secretary of the Delaware Department of Natural Resources and Environment Control.

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

STATE OF NEW JERSEY,
Plaintiff,

v.

STATE OF DELAWARE,
Defendant.

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

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

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In the
Supreme Court of the United States

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

**DELAWARE'S RESPONSES TO NEW JERSEY'S FIRST
REQUESTS FOR ADMISSIONS**

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September 8, 2006

The State of Delaware (“Delaware”), pursuant to the Case Management Plan and Case Management Order No. 10, provides the following responses to the First Requests for Admissions propounded by the State of New Jersey (“New Jersey”).

General Objections

The following General Objections apply to each and every Request for Admission and form an integral part of Plaintiffs’ response to each:

1. Delaware objects to New Jersey’s Requests to the extent they seek information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege that would make the information or documents immune from discovery in whole or in part.
2. Delaware objects to New Jersey’s Requests to the extent that they seek to impose obligations upon Delaware beyond those permitted under the Federal Rules of Civil Procedure.
3. Delaware objects to the use of “Twelve Mile Circle” in these requests without defining that term. Delaware’s answers below in all cases assume that “Twelve Mile Circle” means Delaware’s submerged lands and waters within the Twelve Mile Circle.
4. Delaware objects to the fact that New Jersey has based numerous of its 307 requests to admit on grants, permits, licenses, or similar documents that New Jersey has not Bates stamped and produced to Delaware as required by the Special Master's Case Management Plan governing discovery in this case. Where Delaware is otherwise in possession of a referenced document (either because it was found in the record in *New Jersey v. Delaware II* or Delaware had it copied when inspecting files that New Jersey made available in Fall 2005, before the Special Master was appointed and formal discovery commenced), Delaware has responded below in good faith based on the copy of the cited document in Delaware’s possession. Delaware, however, reserves and will exercise its rights under the Case Management Plan and the Federal Rules of Civil Procedure to object if New Jersey attempts to rely on any document that it has not Bates stamped and timely produced in accordance with the Case Management Plan. Moreover, with respect to documents on which New Jersey does not intend to rely, New Jersey is nevertheless obligated under the Case Management Plan to Bates stamp and timely produce all documents responsive to any and all of Delaware’s discovery requests, regardless of whether the files containing them were made available to Delaware last Fall.
5. Delaware objects to request numbers 1-171, which all concern riparian grants that New Jersey purported to issue, to the extent they could be read to suggest that a structure was ever built on the Delaware lands at issue. In fact, Delaware is aware of no evidence that a structure was ever built on the lands purported to be covered by many of those grants, and none of Delaware’s responses shall be taken to admit anything to the contrary.
6. Delaware reserves the right to amend or revise these responses as discovery is ongoing.

Specific Objections and Responses

1. 1854 N.J. Laws ch. 143, p. 375 provided that Thomas D. Broadway, et al., could build and maintain docks, piers or wharves in front of their lands at Pennsville in the Township of Lower Penns Neck, Salem County.

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

2. 1854 N.J. Laws ch. 143, p. 375 provided that Broadway could extend docks, piers or wharves into the Delaware River "a sufficient distance for the accommodation of vessels navigating" the River, but not "so far into the said river as to injure or impede the navigation of the same."

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

3. The pier referred to in 1854 N.J. Laws ch. 143, p.375 was at the foot of Main Street in what is now Pennsville Township.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1854 law in question purported to authorize Thomas D. Broadway, et al., to build, "docks, wharves, piers and other appliances," in front of their lands in Pennsville, but did not describe a specific pier or its location. Without waiving its objection, Delaware denies this request. Delaware is unaware of any evidence suggesting that any structure was ever built on the lands in question under this particular grant. Indeed, New Jersey's witness in *New Jersey v. Delaware II*, Henry J. Sherman, a Consulting Engineer for the New Jersey Board of Commerce and Navigation, testified in 1931 that he could not determine whether any structure was ever built pursuant to the Broadway grant.

4. The pier referred to in 1854 N.J. Laws ch. 143, p. 375 was within the Twelve Mile Circle.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1854 law in question purported to authorize Thomas D. Broadway, et al., to build, "docks, wharves, piers and other appliances," in front of their lands in Pennsville, but did not describe a specific pier or its

location. Without waiving its objection, Delaware denies this request. Delaware is unaware of any evidence suggesting that any structure was ever built on the lands in question under this particular grant. Indeed, New Jersey's witness in *New Jersey v. Delaware II*, Henry J. Sherman, a Consulting Engineer for the New Jersey Board of Commerce and Navigation, testified in 1931 that he could not determine whether any structure was ever built pursuant to the Broadway grant.

5. Henry J. Sherman testified during the 1931 proceedings in *New Jersey v. Delaware* that at that time a wharf owned by the Wilson Line existed at the location referred to in 1854 N.J. Laws ch. 143, p. 375.

Response:

Denied that New Jersey's witness Sherman testified that any wharf was ever built pursuant to this particular grant. To the contrary, Mr. Sherman testified in 1931 that he could not determine whether any structure was ever built pursuant to the Broadway grant and that, "whether there was a wharf there originally, no one could tell."

6. 1855 N.J. Laws ch. 109, p. 274 incorporated the Pennsgrove Pier Company and authorized it to build and maintain "a wharf or pier extending from the mainland into the river Delaware at the Village of Pennsgrove," Salem County.

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

7. 1855 N.J. Laws ch. 109, p. 274 authorized the Pennsgrove Pier Company to enlarge, extend and rebuild a pier and to "purchase, lease and hold such and so much land as is necessary for that purpose."

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

8. The pier referred to in 1855 N.J. Laws ch. 109, p.274 was at the foot of Main Street in Penns Grove.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1855 law in question "referred to" no actual pier, but purported to grant the right to build one. The grant also did not specify a location beyond "at the village of Pennsgrove, in the county of Salem."

Without waiving its objections, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey's witness, Henry Sherman, testified in 1931 that a pier was constructed at the foot of Main Street, Pennsgrove (he did not say when it was built or pursuant to which grant), Delaware is unable to confirm the veracity of that statement.

9. The pier referred to in 1855 N.J. Laws ch. 109, p. 274 was within the Twelve Mile Circle.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1855 law in question "referred to" no actual pier, but purported to grant the right to build one. The grant also did not specify a location beyond "at the village of Pennsgrove, in the county of Salem."

Without waiving its objections, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey's witness, Henry Sherman, testified in 1931 that a pier was constructed at the foot of Main Street, Pennsgrove (he did not say when it was built), Delaware is unable to confirm the veracity of that statement.

10. The pier referred to in 1855 N.J. Laws ch. 109, p.274 was included within the 1916 New Jersey State tidelands grant to the Pennsgrove Pier Company.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1855 law in question "referred to" no actual pier, but purported to grant the right to build one. The grant also did not specify a location beyond "at the village of Pennsgrove, in the county of Salem."

Without waiving its objections, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey's witness, Henry Sherman, testified in 1931 that a pier was constructed at the foot of Main Street, Pennsgrove (he did not say when it was built), Delaware is unable to confirm the veracity of that statement.

11. The pier referred to in 1855 N.J. Laws ch. 109, p.274 was the site of the gambling offense adjudicated in *New Jersey v. Federanko*, 29 N.J. 119, 139 A.2d. 30 (1958).

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1855 law in question "referred to" no actual pier, but purported to grant the right to build one. The grant also did not specify a location beyond "at the village of Pennsgrove, in the county of Salem."

Without waiving its objections, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey's witness, Henry Sherman, testified in 1931 that a pier was constructed at the foot of Main Street, Pennsgrove (he did not say when it was built), Delaware is unable to confirm the veracity of that statement.

Admitted that the opinion in *New Jersey v. Federanko* describes a gambling offense that occurred, "on premises known as 'Pennsgrove Pier', extending from the end of west Main Street, in the Borough of Pennsgrove, County of Salem, and State of New Jersey."

12. The location of the pier referred to in 1855 N.J. Laws ch. 109, p.274 is now within Block 57, Lot 6 on the tax map of the Borough of Penns Grove.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1855 law in question "referred to" no actual pier, but purported to grant the right to build one. The grant also did not specify a location beyond "at the village of Pennsgrove, in the county of Salem."

Without waiving its objections, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey's witness, Henry Sherman, testified in 1931 that a pier was constructed at the foot of Main Street, Pennsgrove (he did not say when it was built), Delaware is unable to confirm the veracity of that statement. Admitted that the tax map produced in discovery by New Jersey (NJ 000875), dated 1993, shows a pier labeled as Block 57, Lot 6.

13. The pier referred to in 1855 N.J. Laws ch. 109, p. 274 when built extended beyond the mean low water line.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1855 law in question "referred to" no actual pier, but purported to grant the right to build one. The grant also did not specify a location beyond "at the village of Pennsgrove, in the county of Salem."

Without waiving its objections, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey's witness, Henry Sherman, testified in 1931 that a pier was constructed at the foot of Main Street, Pennsgrove (he did not say when it was built), Delaware is unable to confirm the veracity of that statement.

14. The pier authorized by 1855 N.J. Laws ch. 109, p.274 is taxed by the Borough of Penns Grove.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

15. 1870 N.J. Laws ch. 131, p. 346 provided that Robert Walker, et. al., could build wharves, piers and bulkheads in front of their lands in the Township of Upper Penns Neck.

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

16. 1870 N.J. Laws ch. 131, p.346 permitted the pier to extend up to 400 feet from the high water mark into the River, but not in the front of the land of any other person.

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

17. The pier referred to in 1870 N.J. Laws ch 131, p.346 was within the Twelve Mile Circle.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1870 law in question "referred to" no actual pier, but purported to grant the right to build one.

Without waiving those objections, Delaware denies this request. Indeed, when New Jersey's witness, Mr. Sherman, was asked in 1931, "Is there any evidence of any structure below low water mark?", he replied "No." Stip. Rec. 284.

18. 1870 N.J. Laws ch. 344, p. 726 provided that Joseph Guest could build and maintain a dock or wharf in front of his lands in the Township of Upper Penns Neck.

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

19. 1870 N.J. Laws ch. 344, p.726 stated that Guest may extend the dock or wharf "a sufficient distance into the Delaware River for the accommodation of vessels navigating the same, and from time to time to rebuild and repair the same."

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

20. The wharf referred to in 1870 N.J. Laws ch. 344, p.726 once extended 100 feet outshore of the high water line.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1870 law in question "referred to" no actual pier, but purported to grant the right to build one.

Without waiving those objections, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey witness Henry Sherman testified in 1931 that at that time he saw the remnants of a wharf that had once extended 100 feet outshore of the high water line, Delaware is unable to confirm the veracity of that testimony. In any event Mr. Sherman made clear that he did not know when the wharf was built but that the wharf did not extend beyond the low-water mark.

21. The wharf referred to in 1870 N.J. Laws ch. 344, p. 726 was within the Twelve Mile Circle.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1870 law in question "referred to" no actual pier, but purported to grant the right to build one.

Without waiving those objections, Delaware denies this request. Indeed, New Jersey's witness, Mr. Sherman, testified in 1931 that this wharf did not extend below low-water mark.

22. 1870¹ N.J. Laws ch. 307, p. 758 stated that Henry Barber may build wharves, piers and bulkheads in front of his lands in the Township of Upper Penns Neck.

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

¹ Delaware assumes that New Jersey means to refer to 1871 N.J. Laws ch. 307, p. 758 in request nos. 22-26.

23. 1870 N.J. Laws ch. 307, p.758 stated that Barber may extend his wharf up to 100 feet below the low water mark into the River.

Response:

Admitted that the law so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

24. The wharf referred to in 1870 N.J. Laws ch. 307, p. 758 was within the Twelve Mile Circle.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1871 law in question "referred to" no actual wharf, but purported to grant the right to build one.

Without waiving those objections, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey's witness, Henry Sherman, testified in 1931 that there was then a wharf "in a very decadent condition" (he did not know when it was built), Delaware is unable to confirm the veracity of that statement.

25. The wharf referred to in 1870 N.J. Laws ch. 307, p.758 was located at the foot of West Harmony Street, Township of Upper Penns Neck, and was known as Barber's Wharf.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1871 law in question "referred to" no actual wharf, but purported to grant the right to build one.

Without waiving those objections, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey's witness, Henry Sherman, testified in 1931 that there was then a wharf "in a very decadent condition" (he did not know when it was built), which was located at the foot of West Harmony Street, Township of Upper Penns Neck, and was known as Barber's Wharf, Delaware is unable to confirm the veracity of that statement.

26. A sketch in 1931 showed that the wharf referred to in 1870 N.J. Laws ch. 307, p.758 extended 430 feet outshore of the low water line, not the 100 feet called for in the statute.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question; and because the 1871 law in question “referred to” no actual wharf, but purported to grant the right to build one.

Without waiving those objections, Delaware denies this request. The 1931 sketch (Pl. Exh. 133) shows a wharf extending 400 feet offshore of the low water line, and states that the wharf was then “in a very decadent condition.”

27. Henry J. Sherman testified in the 1931 proceedings in *New Jersey v. Delaware* that the Barber Wharf once extended 400 feet offshore of the low water line.

Response:

Admitted that New Jersey’s witness so testified.

28. On November 3, 1877, the Board of Riparian Commissioners of the State of New Jersey (Riparian Commissioners) adopted pierhead and bulkhead lines for a portion of the Delaware River within the Twelve Mile Circle offshore of the County of Gloucester and the County of Salem.

Response:

Admitted that the law so states (but has a date of December 3, 1877). Denied that New Jersey had authority to regulate Delaware’s waters or submerged lands, or that “riparian jurisdiction” in any event precludes Delaware’s exercise of its police power over those waters and lands.

29. There exists a New Jersey State tidelands grant to Daniel H. Kent of Wilmington, Delaware by the State of New Jersey, dated February 17, 1883, including submerged lands within the Twelve Mile Circle, offshore of what is now known as Block 2, Lot 1, Elsinboro Township (the February 17, 1883 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware’s waters or submerged lands, or that “riparian jurisdiction” in any event precludes Delaware’s exercise of its police power over those waters and lands.

30. Tract 1 of the February 17, 1883 grant extends 300 feet on one side and 400 feet on the other to the exterior line established by the Riparian Commissioners in the Delaware River and Salem Cove.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

31. When a mortgage on the upland to the February 17, 1883 grant was foreclosed, the February 17, 1883 grant was held to be included in the area foreclosed upon. Boon v. Kent, 42 N.J.Eq. 131, 7 A. 344 (Ch. 1886.)

Response:

Admitted that the case so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

32. There exists a New Jersey State tidelands grant to Annie E. Brown dated August 28, 1891, including submerged lands within the Twelve Mile Circle that are offshore of what is now known as Block 2801, Lot 4, Pennsville Township (the August 28, 1891 grant).

Response:

Admitted that there is a grant to Annie E. Brown. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

33. The August 28, 1891 grant extended 850 feet on one side into the Delaware River and 850 feet on the other to the Exterior Line of the New Jersey Board of Riparian Commissioners.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

34. Henry J. Sherman testified in the 1931 proceedings in New Jersey v. Delaware that the low water line was 50 to 75 feet below the high water line at the location of the August 28, 1891 grant.

Response:

Admitted that Mr. Sherman so testified.

35. There exists a New Jersey State tidelands grant [*sic*] to Eugene DuPont, et. al., all of New Castle County, Delaware, trading as E.I. DuPont de Nemours and Company, dated November 27, 1891 (the November 27, 1891 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

36. The property covered by the November 27, 1891 grant is now in the Township of Carneys Point, just south of Carneys Point and within the Twelve Mile Circle.

Response:

Denied. To the extent the grant extends into Delaware territory it is in Delaware and cannot be within a New Jersey township.

37. The property covered by the November 27, 1891 grant extends from high water into the Delaware River 550 feet to the New Jersey Board of Riparian Commissioners' Exterior Line.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

38. There exists a New Jersey State tidelands grant to James A. Denny, et. al., dated April 26, 1906 (the April 26, 1906 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

39. The property covered by the April 26, 1906 grant is offshore of what is now known as Block 1, Lot 4, Penns Grove Borough, and within the Twelve Mile Circle.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

40. The property covered by the April 26, 1906 grant extends 500 feet waterward of high water into the Delaware River.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

41. In 1931, Henry J. Sherman testified concerning the April 26, 1906 grant that the "low water line at this location is 50 feet beyond the high water line, so that 450 feet of the area conveyed by the Riparian Commissioners [of New Jersey] to Denny would be beyond the low water line."

Response:

Admitted that Mr. Sherman so testified.

42. There was a structure built within the property covered by the April 26, 1906 grant that was identified as Denny's Wharf.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey submitted a sketch of the wharf in 1931 (Pl. Ex. 59), Delaware is unable to confirm the accuracy of that survey. In any case, the 1931 sketch states that the wharf was "now abandoned" and that there was "[n]o valuation carried on the books of the Horn Assessor."

43. There exists a New Jersey State tidelands grant to Penns Grove Pier Co. dated March 21, 1916 (the March 21, 1916 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. In addition, New Jersey's witness has stated that, "[o]n July 13, 2004 Fenwick Commons, LLC, applied to the Delaware Department of Natural Resources and Environmental Control for a Subaqueous Lands Lease and Water Quality Certification to refurbish a 750 foot long pier and other structures and to fill 1,882 square feet of tidal lands at Penns Grove, Salem County, New Jersey. The pier involved was originally called the Penns Grove Pier." Castagna Aff. ¶ 8(12).

44. The property covered by the March 21, 1916 grant is offshore of what is now known as Block 57, Lot 1, Penns Grove Borough, within the Twelve Mile Circle.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. In addition, New Jersey's witness has stated that, "[o]n July 13, 2004 Fenwick Commons, LLC, applied to the Delaware Department of Natural Resources and Environmental Control for a Subaqueous Lands Lease and Water Quality Certification to refurbish a 750 foot long pier and other structures and to fill 1,882 square feet of tidal lands at Penns Grove, Salem County, New Jersey. The pier involved was originally called the Penns Grove Pier." Castagna Aff. ¶ 8(12).

45. The March 21, 1916 grant extends 885 feet offshore of high water on one side and 975 feet on the other to the New Jersey Pierhead and Bulkhead line.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. In addition, New Jersey's witness has stated that, "[o]n July 13, 2004 Fenwick Commons, LLC, applied to the Delaware Department of Natural Resources and Environmental Control for a Subaqueous Lands Lease and Water Quality Certification to refurbish a 750 foot long pier and other structures and to fill 1,882 square feet of tidal lands at Penns Grove, Salem County, New Jersey. The pier involved was originally called the Penns Grove Pier." Castagna Aff. ¶ 8(12).

46. The March 21, 1916 grant is recorded in the records of deeds of Salem County, New Jersey, in Deed Book 130, page 383.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named records of deeds but apparently has not produced them in discovery to Delaware. In addition, New Jersey's witness has stated that, "[o]n July 13, 2004 Fenwick Commons, LLC, applied to the Delaware Department of Natural Resources and Environmental Control for a Subaqueous Lands Lease and Water Quality Certification to refurbish a 750 foot long pier and other structures and to fill 1,882 square feet of tidal lands at Penns Grove, Salem County, New Jersey. The pier involved was originally called the Penns Grove Pier." Castagna Aff. ¶ 8(12).

47. The March 21, 1916 grant is now identified on the tax map of the Borough of Penns Grove as Block 57, Lot 6.

Response:

Admitted that the tax map so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. In addition, New Jersey's witness has stated that, "[o]n July 13, 2004 Fenwick Commons, LLC, applied to the Delaware Department of Natural Resources and Environmental Control for a Subaqueous Lands Lease and Water Quality Certification to refurbish a 750 foot long pier and other structures and to fill 1,882 square feet of tidal lands at Penns Grove, Salem County, New Jersey. The pier involved was originally called the Penns Grove Pier." Castagna Aff. ¶ 8(12).

48. The property covered by the March 21, 1916 grant is outshore of mean low water.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

49. The property covered by the March 21, 1916 grant is subject to real property taxation by the Borough of Penns Grove.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

50. The property covered by the March 21, 1916 grant has been assessed for New Jersey municipal taxes since at least 1915.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

51. The pier within the property contained in the March 21, 1916 grant was known as the Wilson Line Pier.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey submitted a 1931 sketch of a pier identified as used by the "Wilson Line," Delaware is unable to confirm the accuracy of that statement. In addition, New Jersey's witness has stated that, "[o]n July 13, 2004 Fenwick Commons, LLC, applied to the Delaware Department of Natural Resources and Environmental Control for a Subaqueous Lands Lease and Water Quality Certification to refurbish a 750 foot long pier and other structures and to fill 1,882 square feet of tidal lands at Penns Grove, Salem County, New

Jersey. The pier involved was originally called the Penns Grove Pier.” Castagna Aff. ¶ 8(12).

52. The taxability by Penns Grove of the property contained in the March 21, 1916 grant was the subject of the court’s decision in Main Associates, Inc. v. B. & R. Enterprises, Inc., 74 N.J. Super. 483, 181 A.2d 541 (Ch. Div. 1962.)

Response:

Admitted.

53. Between March 21, 1916 and November 2, 1926, there existed a New Jersey State tidelands lease to Harry S. Barber by the State of New Jersey, dated March 21, 1916 (the March 21, 1916 lease).

Response:

Admitted that there is such a 1916 lease (but that date on the lease is March 27, 1916). Denied that New Jersey had authority to regulate Delaware’s waters or submerged lands, or that “riparian jurisdiction” in any event precludes Delaware’s exercise of its police power over those waters and lands. Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny whether the lease was terminated in 1926.

54. The property covered by the March 21, 1916 lease is now outshore of Block 54, Lots 1 and 2, Penns Grove Borough, and within the Twelve Mile Circle.

Response:

Admitted that the lease so states (but that date on the lease is March 27, 1916). Denied that New Jersey had authority to regulate Delaware’s waters or submerged lands, or that “riparian jurisdiction” in any event precludes Delaware’s exercise of its police power over those waters and lands.

55. The property leased pursuant to the March 21, 1916 lease extended 575 feet from the high water line into the Delaware River.

Response:

Admitted that the lease so states (but that date on the lease is March 27, 1916). Denied that New Jersey had authority to regulate Delaware’s waters or submerged lands, or that “riparian jurisdiction” in any event precludes Delaware’s exercise of its police power over those waters and lands.

56. The March 21, 1916 lease was by its terms convertible into a New Jersey State tidelands grant.

Response:

Admitted that the lease so states (but that date on the lease is March 27, 1916). Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

57. A fifteen year New Jersey State tidelands lease, dated July 17, 1916 (the July 17, 1916 lease), covered the same site as the March 21, 1916 lease.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of this lease but apparently has not produced it in discovery to Delaware.

58. The July 17, 1916 lease was foreclosed upon on November 2, 1926.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the foreclosure documents but apparently has not produced it in discovery to Delaware.

59. On August 21, 1916, the New Jersey Board of Commerce and Navigation adopted pierhead and bulkhead lines on portions of the eastern side of the Delaware River (the New Jersey Pierhead and Bulkhead Lines (1916)).

Response:

Admitted that a map so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

60. The New Jersey Pierhead and Bulkhead Lines (1916) were offshore of mean low water within the Twelve Mile Circle.

Response:

Admitted that a map so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

61. The distances between low water and the exterior line as depicted on the map of these exterior lines covered by the August 21, 1916 action range from approximately 375 feet at

Deep Water Point to approximately 3,550 feet waterward of low water at Helm's Cove, New Jersey.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

62. There exists a New Jersey State tidelands grant to E. I. DuPont de Nemours & Co. ("DuPont") dated August 21, 1916 (the August 21, 1916 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

63. There are nine tracts in the August 21, 1916 grant, all within the Twelve Mile Circle in either Pennsville Township, Carneys Point Township or Penns Grove Township.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

64. The tracts included in the August 21, 1916 DuPont grant extend from the high water mark into the Delaware River various distances, from 202 feet on one side of Tract One to 4,222.1 feet on one side of Tract Seven.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

65. There exists a New Jersey State tidelands grant to DuPont dated November 20, 1916, covering property offshore of what is now known as Block 301, Lot 1, Pennsville Township, at Deep Water Point, and within the Twelve Mile Circle (the November 20, 1916 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

66. By its terms, the November 20, 1916 grant extends 661.3 feet from high water on one side and 650 feet on the other, into the Delaware River, both to the New Jersey Pierhead and Bulkhead line (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

67. There exists a New Jersey State tidelands grant to DuPont dated July 16, 1917, consisting of two tracts that are offshore of what is now known as Block 1 or 301, Lot 1, Pennsville Township, and within the Twelve Mile Circle (the July 16, 1917 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

68. By its terms the July 16, 1917 grant extends 668 feet on one side of tract 1, and 648 feet on both sides of tract 2, offshore of the high water line and into the Delaware River, all to the New Jersey Pierhead and Bulkhead lines (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

69. Between 1918 and 1939 there existed a New Jersey State tidelands lease to DuPont dated May 20, 1918, covering property that is offshore of what is now known as Block 301, Lot 1, Pennsville Township, and within the Twelve Mile Circle.(the May 20, 1918 lease)

Response:

Admitted that there is such a 1918 lease. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny whether the lease terminated in 1939.

70. The property covered by the May 20, 1918 lease extended 736.21 feet offshore of the high water line of the Delaware River on one side and 718 feet on the other, both to the New Jersey Pierhead and Bulkhead lines (1916).

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

71. The May 20, 1918 lease was cancelled on February 6, 1939.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the cancellation documents but apparently has not produced them in discovery to Delaware.

72. There exists a New Jersey State tidelands grant to French's Hotel Company dated October 17, 1921, covering property offshore of what is now known as Block 57, Lot 1, Penns Grove Borough, and within the Twelve Mile Circle.(the October 17, 1921 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

73. The property covered by the October 17, 1921 grant extends offshore from the high water mark 1,135.38 feet on one side and 1,283.86 feet on the other, and into the Delaware River.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

74. The October 17, 1921 grant is recorded in the records of deeds of Salem County, New Jersey, in Deed Book 166 page 330.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named records of deeds but apparently has not produced them in discovery to Delaware.

75. The area of the October 17, 1921 grant is now identified on the tax map of the Borough of Penns Grove as Block 57, Lot 6.01.

Response:

Admitted that the tax map so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

76. Block 57, Lot 6.01 is all or nearly all outshore of mean low water.

Response:

Delaware objects to this request on the ground that "all or nearly all" is highly ambiguous. Without waiving that objection, Delaware admits that the tax map produced by New Jersey (NJ 000875) suggests that part of the grant is outshore of low water. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

77. Block 57, Lot 6.01 is subject to real property taxation by the Borough of Penns Grove.

Response:

Delaware objects to this request as vague and ambiguous because it does not identify a date or time period in question. Without waiving that objection, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

78. There exists a New Jersey State tidelands grant to William D. Acton by the State of New Jersey dated February 19, 1923, covering property now offshore of Pennsville Township, within the Twelve Mile Circle (the February 19, 1923 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

79. By its terms the property covered by the February 19, 1923 grant extends 333.52 feet from the high water line to the corner of a pre-existing pier, and another 580 feet further waterward to the 1916 pierhead and bulkhead line on one side, and 360.75 feet from the original high water line to a corner of the pre-existing pier, and another 572.66 feet further waterward to the New Jersey Pierhead and Bulkhead line (1916), on the other side.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

80. The pre-existing pier referenced in the February 19, 1923 grant was at the foot of Main Street in what was then Lower Penns Neck.

Response:

Denied that the February 19, 1923 grant references a pre-existing pier.

81. The pier referenced in the February 19, 1923 grant was used for the operation of the Delaware and New Jersey Ferry Company's ferry between Pennsville, New Jersey and New Castle, Delaware.

Response:

Denied that the February 19, 1923 grant references a pre-existing pier.

82. Henry J. Sherman testified in the 1931 proceedings in New Jersey v. Delaware that the February 19, 1923 grant extended a "substantial distance" below the low water mark.

Response:

Admitted that New Jersey's witness, Mr. Sherman, so testified.

83. There exists a New Jersey State tidelands grant to William D. Acton dated November 19, 1923, covering property now offshore of Block 1091, Lot 2, Pennsville Township, and within the Twelve Mile Circle (the November 19, 1923 grant).

Response:

Admitted that there is a grant to William D. Acton dated November 19, 1923. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. As to whether the grant covers property now offshore of Block 1091, Lot 2, Pennsville Township, and within the Twelve Mile Circle, Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this part of the request.

84. The property covered by the November 19, 1923 grant is within Block 1091, Lot 2.01 on the tax records of Pennsville Township.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. *See also* Response 83.

85. By its terms, the property covered by the November 19, 1923 grant extends 970 feet on one side from the high water mark into the River, and 964 feet from the high water line on the other side to the 1916 pierhead and bulkhead line.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

86. Henry J. Sherman testified in the 1931 proceedings in *New Jersey v. Delaware* that there was a pier on the tract covered by the November 19, 1923 grant, which was used for landing boats to carry people to and from a park adjoining the pier.

Response:

Admitted that New Jersey's witness, Mr. Sherman, so testified, but he did not say when the structure was built.

87. The pier within the property covered by the November 19, 1923 grant extended 494 feet below the low water mark.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey submitted a sketch in 1931 (Pl. Ex. 87), Delaware is unable to confirm its veracity.

88. The pier within the property covered by the November 19, 1923 grant was used by the Riverview Beach Company.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. Although New Jersey's witness, Mr. Sherman, so testified, Delaware is unable to confirm the veracity of that statement.

89. There existed a New Jersey State tidelands lease to Fogg and Hires Company for 15 years, dated August 18, 1924, for property offshore of what is now known as Block 2801, Lot 6, Pennsville Township, at the foot of Ferry Road, and within the Twelve Mile Circle (the Fogg and Hires lease).

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

90. By its terms the property covered by the Fogg and Hires Co. lease extended 985.44 feet offshore from the high water line of the Delaware River on one side and an

approximately equal distance offshore on the other side to the New Jersey Pierhead and Bulkhead line (1916).

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

91. The Fogg and Hires Co. lease was cancelled May 18, 1930 and replaced with a State of New Jersey grant to the Delaware - New Jersey Ferry Company dated May 19, 1930, which grant encompassed a property with the same dimensions and location as the Fogg and Hires lease.

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

92. There exists a State of New Jersey tidelands grant to William D. Acton dated August 17, 1925 (the August 17, 1925 grant), covering property that is offshore of what is now known as Block 1091, Lot 2, Pennsville Township, and within the Twelve Mile Circle.

Response:

Admitted that there is a grant to William D. Acton dated August 17, 1925. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. As to whether the grant covers property now offshore of Block 1091, Lot 2, Pennsville Township, and within the Twelve Mile Circle, Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this part of the request.

93. The property covered by the August 17, 1925 grant is within a tax lot in the records of Pennsville Township: Block 1091, Lot 2.01.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. *See also* Response 92.

94. By its terms, the property covered by the August 17, 1925 grant extends 863.21 feet from the high water line into the Delaware River on one side, and 853.87 feet on the other, both to the New Jersey Pierhead and Bulkhead line (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

95. Henry J. Sherman testified during the 1931 proceedings in *New Jersey v. Delaware* that the property contained in the August 17, 1925 grant extended approximately 800 feet below the low water line.

Response:

Admitted that New Jersey's witness, Mr. Sherman, so testified.

96. There is a second State of New Jersey tidelands grant to William D. Acton also dated August 17, 1925 (the second August 17, 1925 Acton grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

97. The property covered by the second August 17, 1925 Acton grant is located offshore of what is now Block 2801, Lot 1, Pennsville Township, and within the Twelve Mile Circle.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

98. The property covered by the second August 17, 1925 Acton grant extends 965.40 feet on one side and 966.63 feet on the other beyond the former high water line of the Delaware River to the New Jersey Pierhead and Bulkhead line (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

99. The property covered by the second August 17, 1925 Acton grant is situated just south of the foot of Pittsfield Street, in what was then Lower Penns Neck Township.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

100. W.D. Acton applied on October 1, 1925 to the Army Corps of Engineers for a permit to construct a Timber Pier to be located offshore of the North side of Pittsfield Street, Pennsville.

Response:

Admitted.

101. On January 4, 1926, the Army Corps of Engineers approved the permit referred to in the previous request, and construction of the pier was completed May 22, 1926.

Response:

Admitted.

102. The records of the Army Corps of Engineers indicate that the pier referred to in the last two requests as constructed was 550 feet long. (mile 66.8 B&P 142/58).

Response:

Admitted.

103. There is a State of New Jersey tidelands grant to the Township of Lower Penns Neck dated September 21, 1925, covering property that is now offshore of Pennsville Township, within the Twelve Mile Circle (the September 21, 1925 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

104. By its terms, the property covered by the September 21, 1925 grant extends 966.83 feet on one side and 969.91 feet on the other, outshore of the former high water line of the Delaware River.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

105. The property covered by the September 21, 1925 grant is at the foot of Pittsfield Street, in what was then Lower Penns Neck.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

106. There is a State of New Jersey tidelands grant to William D. Acton, dated October 19, 1925, covering property that is now outshore of Pennsville Township, within the Twelve Mile Circle (the October 19, 1925 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

107. By its terms the property covered by the October 19, 1925 grant extends waterward from the former high water line 360.75 feet to a point on an adjoining pier, and then another 572.68 feet into the Delaware River on one side to the New Jersey Pierhead and Bulkhead Lines (1916), and 375.41 feet to a point waterward and then another 565.67 feet further waterward into the Delaware River to the New Jersey Pierhead and Bulkhead line (1916) on the other side.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

108. There is a State of New Jersey tidelands grant to The Franklin Real Estate Company dated June 18, 1928, covering property that is now offshore of Block 301, Lot 13, Pennsville Township, within the Twelve Mile Circle (the June 18, 1928 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

109. By its terms, the property covered by the June 18, 1928 grant extends 991.46 feet from high water into the Delaware River on one side and 827.70 feet on the other, both to the New Jersey Pierhead and Bulkhead line (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

110. The June 18, 1928 grant is adjacent to the Delaware Memorial Bridge.

Response:

Admitted.

111. There is a State of New Jersey tidelands grant to Anna C.B. Locuson dated April 15, 1929 (the Anna Locusen grant), covering property located offshore of what is now known as Block 301, Lot 6, Pennsville Township, and within the Twelve Mile Circle.

Response:

Admitted that the grant so states, with the exception that, as to the stated Block and Lot numbers, Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny that part of the request. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

112. By its terms, the property covered by the Anna Locuson grant extends 813.97 feet into the Delaware River from the high water line on one side and 809.16 feet from the high water line on the other, both to the New Jersey Pierhead and Bulkhead Lines (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

113. There is a State of New Jersey tidelands grant to Josephine Grace Locuson, et. al., dated April 15, 1929 (the Josephine Locuson grant), covering property offshore of what is now known as Block 301, Lot 7, Pennsville Township and within the Twelve Mile Circle.

Response:

Admitted that the grant so states, with the exception that, as to the stated Block and Lot numbers, Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny that part of the request. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

114. By its terms the property covered by the Josephine Locuson grant extends from the high water line of the Delaware River waterward 813.97 feet on one side and approximately 818.78 feet on the other, both to the New Jersey Pierhead and Bulkhead Lines (1916).

Response:

Denied that the distances reflected on this grant are as stated in the request.

115. There is a State of New Jersey tidelands grant to Josephine Grace Locuson, et. al., dated April 15, 1929 (the second Josephine Locuson grant), covering property offshore of what is now known as Block 301, Lot 8, Pennsville Township, and within the Twelve Mile Circle.

Response:

Admitted that the grant so states, with the exception that, as to the stated Block and Lot numbers, Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny that part of the request. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

116. By its terms, the property covered by the second Josephine Locuson grant extends from the high water mark 823.60 feet on one side and 818.78 feet on the other, into the Delaware River, both to the New Jersey Pierhead and Bulkhead line (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

117. Henry J. Sherman testified during the 1931 proceedings in *New Jersey v. Delaware* that the low water line was 75 feet beyond the high water line at the location of the second Josephine Locuson grant.

Response:

Admitted that New Jersey's witness, Mr. Sherman, so testified.

118. The upland owner could develop the waterfront at the location of the April 15, 1929 grant to the maximum extent of 748 feet beyond the mean low water line, as that line existed in 1931.

Response:

Denied.

119. There is a State of New Jersey tidelands grant issued to William G. Locuson dated April 15, 1929, covering property offshore of what is now known as Block 301, Lot 9, Pennsville Township, within the Twelve Mile Circle (the William Locuson grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

120. By its terms the property covered by the William Locuson grant extends 827.70 feet waterward of the high water line on one side and 823.60 feet on the other, both to the New Jersey Pierhead and Bulkhead line (1916.)

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

121. Henry J. Sherman testified during the 1931 proceedings in New Jersey v. Delaware that low water was 75 feet beyond the high water mark at the location of William Locuson grant.

Response:

Admitted that New Jersey's witness, Mr. Sherman, so testified.

122. The upland owner could develop the waterfront at the location of the April 15, 1929 grant to the maximum extent of 752 feet beyond mean low water, as that line existed in 1931.

Response:

Denied.

123. There is a State of New Jersey tidelands grant to Josephine Grace Locuson dated June 17, 1929 (the June 17, 1929 grant), covering property offshore of what is now known as Block 310, Lots 4 and 5, Pennsville Township, within the Twelve Mile Circle.

Response:

Admitted that the grant so states, with the exception that, as to the stated Block and Lot numbers, Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny that part of the request. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

124. By its terms the property covered by the June 17, 1929 grant extends from the high water line 809.16 feet into the Delaware River on one side and 797.42 feet on the other, both to the New Jersey Pierhead and Bulkhead line (1916.)

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

125. Henry J. Sherman testified in the 1931 proceedings of New Jersey v. Delaware that low water was 75 feet beyond the high water mark at the location of the June 17, 1929 grant.

Response:

Admitted that New Jersey's witness, Mr. Sherman, so testified.

126. The upland owner could develop the waterfront at the location of the June 17, 1929 grant to the maximum extent of 734 feet beyond the mean low water line, as that line existed in 1931.

Response:

Denied.

127. There is a State of New Jersey tidelands grant to DuPont dated October 21, 1929 (the October 21, 1929 grant), covering property offshore of what is now known as Block 1 or 301, Lot 1, Pennsville Township, within the Twelve Mile Circle.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

128. By its terms, the property covered by the October 21, 1929 grant extends from the mean high water mark 648 feet into the Delaware River to the New Jersey Pierhead and Bulkhead line (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

129. There is a State of New Jersey tidelands license to the Delaware River Power Company dated October 21, 1929 (the October 21, 1929 license), covering property offshore of Pennsville Township within the Twelve Mile Circle.

Response:

Admitted that the license so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

130. By its terms the October 21, 1929 license allows for eight armored submarine electric cables at Deep Water Point.

Response:

Admitted that the license so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

131. The map attached to the October 21, 1929 license shows both the high water line and the low water line, and shows the cables and the property covered by the license extending offshore of low water, 648 feet from high water to the exterior line.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

132. The distance from high water to low water at the time of the October 21, 1929 license was 75 feet.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

133. Henry J. Sherman testified during the 1931 proceedings in New Jersey v. Delaware that several concrete icebreakers were installed at the location of the October 21, 1929 license "a substantial distance" below the low water mark for the purpose of protecting the cables.

Response:

Admitted that New Jersey's witness, Mr. Sherman, so testified.

134. There exists a State of New Jersey tidelands lease to the Penn Beach Property Owners' Association dated October 21, 1929 (the October 21, 1929 lease), covering property outshore of what is now known as Block 3524, Lot 1, Pennsville Township.

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

135. By its terms the property covered by the October 21, 1929 lease extended 429.49 feet beyond the mean high water line on one side and 430.70 feet on the other to New Jersey Pierhead and Bulkhead Lines (1916).

Response:

Admitted that the license so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

136. A sketch of the property involved in the October 29, 1929 lease was a part of the record in the 1931 proceedings in New Jersey v. Delaware and showed a timber pier extending in this lease area 80 feet beyond the low water mark and 130 feet beyond the high water mark.

Response:

Admitted that the sketch so states.

137. On November 20, 1933 the State of New Jersey converted the October 21, 1929 lease into a grant.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the mentioned lease conversion but apparently has not produced it in discovery to Delaware.

138. There is a State of New Jersey tidelands grant to DuPont dated September 13, 1943 (the September 13, 1943 grant), covering property outshore of what is now known as the Salem Canal, immediately north of Block 301, Lot 13.01, Township of Pennsville, and within the Twelve Mile Circle.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

139. A portion of the lands covered in the September 13, 1943 grant is waterward of mean low water.

Response:

Denied that the grant so states.

140. There is a State of New Jersey tidelands grant to Sun Oil Company dated October 14, 1957 (the October 14, 1957 grant), covering property outshore of what is now known as Block 101, Lots 2 and 5, Logan Township, Gloucester County, and within the Twelve Mile Circle.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

141. By its terms the property covered by the October 14, 1957 grant extends 1,245 feet from the mean high water line on one side and 1,245.82 feet on the other into the Delaware River.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

142. The tax map for Logan Township shows the area covered by the October 14, 1957 grant as Block 101, Lots 2.01 and 2.02.

Response:

Admitted that the tax map so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

143. Block 101, Lot 2.02 of Logan Township extends below mean low water, within the Twelve Mile Circle.

Response:

Admitted that the tax map so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

144. Block 101, Lot 2.02 is depicted on Logan Township tax maps and is assessed for real property taxes by Logan Township.

Response:

Admitted that this block is depicted on the tax maps. As to Logan Township's assessment of real property taxes, Delaware states that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this part of the request.

145. There is a State of New Jersey tidelands grant to DuPont dated March 31, 1960 (the March 31, 1960 grant), covering property outshore of what is now known as Block 1, Lot 1, Pennsville Township, within the Twelve Mile Circle.

Response:

Admitted that the grant so states, with the exception that, as to the stated Block and Lot numbers, Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny that part of the request. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

146. By its terms the property covered by the March 31, 1960 grant extends 1,027.61 feet waterward of the high water line of the Delaware River on one side and 1,096 feet on the other, both sides out to the New Jersey Pierhead and Bulkhead line (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

147. The March 31, 1960 grant includes as a second tract a further area 100 feet waterward of the New Jersey Pierhead and Bulkhead line (1916).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

148. There is a State of New Jersey tidelands grant to DuPont dated September 29, 1967 (the September 29, 1967 grant).

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

149. By its terms the property covered by the September 29, 1967 grant is outshore of what is now known as Block 1, Lot 1, Pennsville Township and abuts to the north the March 31, 1960 grant to DuPont.

Response:

Admitted that the grant so states, with the exception that, as to the stated Block and Lot numbers, Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny that part of the request. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

150. By its terms the property covered by the September 29, 1967 grant extends 1,096 feet waterward of the high water line of the Delaware River on one side and 1,155 feet on the other.

Response:

Admitted that the grant so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

151. The mean low water line is approximately 20 feet waterward of the mean high water line at the location of the September 29, 1967 grant.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

152. The upland owner could develop the waterfront at the location of the September 29, 1967 grant to the maximum extent of 1,135 feet beyond the mean low water line, as that line existed in 1967.

Response:

Denied.

153. There is a lease to Keystone Urban Renewal Limited Partnership by the State of New Jersey dated June 12, 1992 (the June 12, 1992 lease), covering property outshore of what is now known as Block 101, Lots 2 and 5, Logan Township, Gloucester County and outshore of part of the property covered by the October 14, 1957 Grant to the Sun Oil Company.

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event

precludes Delaware's exercise of its police power over those waters and lands. Moreover, Delaware regulated Keystone by granting a permit for that project, which it also taxes.

154. The property covered by the June 12, 1992 lease extends approximately 1,600 feet offshore of the original mean high water line into the Delaware River.

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

155. The property covered by the June 12, 1992 lease is beyond the low water mark within the Twelve Mile Circle.

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

156. The tax map for Logan Township shows the property covered by the October 14, 1957 grant to Sun Oil Company as Block 101, Lots 2.01 and 2.02.

Response:

Admitted that the tax map so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

157. The tax map for Logan Township shows the property covered by the June 12, 1992 lease as Block 101, Lot 2.03.

Response:

Admitted that the tax map so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

158. The property covered by the June 12, 1992 lease is assessed and subject to real property taxation by Logan Township.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

159. There is a lease to William J. Bergmann, et. al., by the State of New Jersey initially dated January 11, 1999, and renewed February 13, 2002 (the January 11, 1999 lease).

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the mentioned initial lease but apparently has not produced it in discovery to Delaware.

160. The property covered by the January 11, 1999 lease extends 35 feet waterward of the high water line.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the mentioned lease but apparently has not produced it in discovery to Delaware.

161. The property covered by the January 11, 1999 lease is located offshore of what is now known as Block 1601, Lot 25, on North River Drive in the Township of Pennsville.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the mentioned lease but apparently has not produced it in discovery to Delaware.

162. At the location of the property subject to the January 11, 1999 lease, mean low water measures approximately 10 feet waterward of mean high water.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the mentioned lease but apparently has not produced it in discovery to Delaware.

163. The upland owner for the property subject to the January 11, 1999 lease could develop the waterfront at this location to the maximum extent of 25 feet beyond the mean low water line, as that line existed in 1999.

Response:

Denied.

164. There is a lease to the Township of Pennsville by the State of New Jersey dated April 25, 2000 (the April 25, 2000 lease).

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

165. The April 25, 2000 lease is outshore of Block 3428, part of Lot 1, Township of Pennsville, at the foot of Dartmouth Road.

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

166. The property covered by the April 25, 2000 lease extends 95 feet offshore of the existing bulkhead and mean high water line (1999).

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

167. At the location of the property subject to the April 25, 2000 lease, the low water line measures not more than 60 feet waterward of the high water line.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

168. The upland owner could develop the waterfront at the property subject to the April 25, 2000 lease to the maximum extent of 35 feet beyond a mean low water line.

Response:

Denied.

169. There is an Assignment of Management Rights (lease) to the New Jersey Division of Parks and Forestry from the State of New Jersey dated January 24, 2001 (the January 24, 2001 lease), covering property offshore of Block 5301, Lot 3, Elsinboro Township, and within the Twelve Mile Circle.

Response:

Admitted that the lease so states with exception that the lease states that the property is in Pennsville Township. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. Moreover, "Delaware's Department of Natural Resources and Environmental Control approved a subaqueous lands lease for this project on February 7, 1996." Castagna Aff. ¶ 8(44). Indeed, "[t]he New Jersey permit required approval by the State of Delaware for the installation of floating ferry mooring associated pilings and removal of riprap against the crib structure below mean low water. New Jersey's DEP application (dated September 19, 1995) indicates that it would apply to the Delaware Department of Natural Resources and Environmental Control." Broderick Aff. ¶ 14.

170. The project subject to the January 24, 2001 lease includes a pier offshore of Block 5301, Lot 3, Elsinboro Township.

Response:

Admitted that the lease so states with the exception that the lease states that the property is in Pennsville Township. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. Moreover, "Delaware's Department of Natural Resources and Environmental Control approved a subaqueous lands lease for this project on February 7, 1996." Castagna Aff. ¶ 8(44). Indeed, "[t]he New Jersey permit required approval by the State of Delaware for the installation of floating ferry mooring associated pilings and removal of riprap against the crib structure below mean low water. New Jersey's DEP application (dated September 19, 1995) indicates that it would apply to the Delaware Department of Natural Resources and Environmental Control." Broderick Aff. ¶ 14.

171. The pier within the property subject to the January 24, 2001 lease extends 350 feet waterward of the high water line into the Delaware River.

Response:

Admitted that the lease so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. Moreover, "Delaware's Department of Natural Resources and Environmental Control approved a subaqueous lands lease for this project on February 7, 1996." Castagna Aff. ¶ 8(44). Indeed, "[t]he New Jersey permit required approval by the State of Delaware for the installation of floating ferry mooring associated pilings and removal of riprap against the crib structure below mean low water. New Jersey's DEP application (dated September 19, 1995) indicates that it would apply to the Delaware Department of Natural Resources and Environmental Control." Broderick Aff. ¶ 14.

172. Before 1905, Delaware had not exercised review authority over the construction of any improvement proposed to extend from the New Jersey shoreline and to terminate in the Delaware River, within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information currently known and readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

173. Delaware has no documentation that it exercised review authority over the construction of any improvement proposed to extend from the New Jersey shoreline and to terminate in the Delaware River, before 1905.

Response:

Admitted that Delaware is currently unaware of any such documentation.

174. Before 1905, Delaware never conveyed any underwater lands within the eastern half of the Delaware River (that half of the River lying adjacent to the New Jersey shoreline), within the Twelve Mile Circle.

Response:

Admitted that Delaware is currently unaware of any such conveyance, with the qualification that Delaware is likewise unaware of conveying before 1905 any underwater lands within the western or eastern half of the Delaware River (that half of the River lying adjacent to the Delaware or New Jersey shoreline), within the Twelve Mile Circle.

175. Delaware has no documentation that it conveyed any underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle, before 1905.

Response:

Admitted that Delaware is currently unaware of any such documentation, with the qualification set forth in response to request 174.

176. Before 1905, Delaware never issued any lease regarding any underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle.

Response:

Admitted that Delaware is currently unaware of any such lease, with the qualification that Delaware is likewise unaware of issuing before 1905 any lease regarding any underwater lands within the western or eastern half of the Delaware River, within the Twelve Mile Circle.

177. Delaware has no documentation that it issued any lease regarding any underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle, before 1905.

Response:

Admitted that Delaware is currently unaware of any such documentation, with the qualification set forth in response to request 176.

178. Before 1905, Delaware never issued any license for the use of underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle.

Response:

Admitted that Delaware is currently unaware of any such license, with the qualification that Delaware is likewise unaware of issuing before 1905 any license for the use of underwater lands within the western or eastern half of the Delaware River, within the Twelve Mile Circle.

179. Delaware has no documentation that it issued any license for the use of underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle, before 1905.

Response:

Admitted that Delaware is currently unaware of any such documentation, with the qualification noted in response to request no. 178.

180. From 1905 through 1971, Delaware never issued any formal authorization for the construction of any improvement proposed to extend from the New Jersey shoreline and to terminate in the Delaware River beyond the mean low water mark, within the Twelve Mile Circle.

Response:

Denied. In 1961, New Jersey and Delaware agreed that any structure associated with the Delaware Memorial Bridge, even if it terminates in the river, must comply with the environmental, coastal zone, and other laws of the State in which the structure, or any part thereof, is located. *See* 17 Del. St. 1701; N.J.S.A. § 32:11E-1. Aside from that: (a) prior to the adoption of the Delaware Coastal Zone Act in 1971, Delaware is unaware of issuing any formal authorization for the construction of any improvement proposed to extend from any shoreline (not just the New Jersey shoreline) and to terminate in the Delaware River beyond the mean low water mark, within the Twelve Mile Circle; and (b) prior to the adoption of the Underwater Lands Act in 1961, Delaware is unaware of issuing any formal authorization for the construction of any underwater improvement proposed to extend from any shoreline (not just the New Jersey shoreline) in the Delaware River beyond the mean low water mark, without regard to whether the improvement terminated in the Delaware River, within the Twelve Mile Circle.

181. Delaware has no documentation that it issued any formal authorization for the construction of any improvement proposed to extend from the New Jersey shoreline and to terminate in the Delaware River beyond the mean low water mark, within the Twelve Mile Circle, from 1905 through 1971.

Response:

Denied, for the reasons set forth in response to request 180.

182. From 1905 to 1971, Delaware never denied approval for the construction of any improvement proposed to extend from the New Jersey shoreline and to terminate in the Delaware River beyond the mean low water mark, within the Twelve Mile Circle.

Response:

Admitted that Delaware is currently unaware of any such approval, with the qualifications that: (a) prior to the adoption of the Delaware Coastal Zone Act in 1971, Delaware is unaware of denying approval for the construction of any improvement proposed to extend from any shoreline (not just the New Jersey shoreline) and to terminate in the Delaware River beyond the mean low water mark, within the Twelve Mile Circle; and (b) prior to the adoption of the Underwater Lands Act in 1961, Delaware is unaware of denying approval for the construction of any underwater improvement proposed to extend from any shoreline (not just the New Jersey shoreline) in the Delaware River beyond the mean low water mark, without regard to whether the improvement terminated in the Delaware River, within the Twelve Mile Circle.

183. Delaware has no documentation that it denied approval for the construction of any improvement proposed to extend from the New Jersey shoreline and to terminate in the Delaware River beyond the mean low water mark, within the Twelve Mile Circle, from 1905 to 1971.

Response:

Admitted that Delaware is currently unaware of any such documentation, with the qualifications noted in response to request 182.

184. From 1905 to 1971, Delaware never reviewed any application for the proposed construction of any improvement proposed to extend from the New Jersey shoreline and to terminate in the Delaware River beyond the mean low water mark, within the Twelve Mile Circle.

Response:

Denied.

185. Delaware has no documentation that it reviewed any application for the proposed construction of any improvement proposed to extend from the New Jersey shoreline and to terminate in the Delaware River beyond the mean low water mark within the Twelve Mile Circle, from 1905 to 1971.

Response:

Denied.

186. On or about September 29, 1971, Delaware issued lease SL-558/1971 to E.I. DuPont de Nemours & Co.

Response:

Admitted.

187. Lease SL-558/1971 named Delaware as Lessor and E.I. DuPont de Nemours & Co. as Lessee.

Response:

Admitted.

188. Lease SL-558/1971 stated that it was “without prejudice to the title claim of either party.”

Response:

Admitted.

189. Lease SL-558/1971 pertained to subaqueous land within the Twelve Mile Circle, on which a dock and fuel oil storage tank were located.

Response:

Admitted.

190. Lease SL-558/1971 stated that: “Lessee agrees to pay Lessor the amounts, with 6% annual interest from the date of this agreement, as scheduled in the preceding paragraph in the event that the disputed title to the subaqueous lands in question is resolved in favor of Lessor at some future date under a final judgment of a federal court of competent authority. Lessor agrees to defer the collection of the fees, herein referred to, until the title question is resolved as herein agreed.”

Response:

Admitted.

191. On October 23, 1981, June MacArtor, Delaware Attorney General, sent a letter to Alan Skinner, Esq., Legal Department, E.I DuPont de Nemours & Co., demanding payment under lease SL-558/1971.

Response:

Admitted.

192. On October 27, 1981, Alan Skinner, Esq. sent a letter to June MacArtor, Delaware Deputy Attorney General.

Response:

Admitted that on or about October 27, 1981, Alan Skinner, Esq. sent the letter described in this request.

193. Mr. Skinner's letter of October 27, 1981, included the statement: "There has been no final judgment of a Federal Court of competent jurisdiction since 1971 determining this matter as required in the lease."

Response:

Admitted that the request accurately quotes a portion of the text of the letter.

194. Mr. Skinner's letter of October 27, 1981, stated: "It is my opinion that New Jersey has jurisdiction over the matters covered by the 1971 lease as previously agreed to by S. Samuel Arsht, Esq., and the Delaware State Highway Department."

Response:

Admitted that the request accurately quotes a portion of the text of the letter.

195. Delaware has no documentation of any lease payment made to Delaware pursuant to Lease SL-558/1971.

Response:

Admitted that Delaware is not currently aware of such documentation, with the qualification that there is no documentation that Delaware ever relinquished its rights under the lease.

196. On February 23, 1972, David Keiffer, Director, State of Delaware Planning Office, sent a letter to Barry Huntsinger, El Paso Eastern Company.

Response:

Admitted that on or about February 23, 1972, Mr. Keiffer sent the letter described in this request.

197. Mr. Keiffer's letter of February 23, 1972 stated that it related to El Paso Eastern Company's "proposed project for a pier within Delaware's jurisdiction in the Delaware River to serve as a tanker berthing facility in connection with a Liquefied natural gas terminal near Penns Grove, New Jersey."

Response:

Admitted that the request accurately quotes a portion of the text of the letter.

198. Mr. Keiffer's letter of February 23, 1972, included the statement that "The status of the pier facility for this El Paso Eastern Company project is that it is an offshore bulk produce [*sic*] transfer facility which is prohibited in the Delaware coastal zone by the terms of Section 7003 of the Coastal Zone Act (Chapter 70, Title 7, Delaware Code)."

Response:

Admitted that the request accurately quotes a portion of the text of the letter, with the exception that it refers to a bulk "product" (not "produce") transfer facility.

199. Before February 23, 1972, Delaware had never exercised review authority over a proposed improvement extending from the New Jersey shoreline and terminating in the Delaware River, within the Twelve Mile Circle.

Response:

Denied.

200. New Jersey did not receive any application from El Paso Eastern Company for its proposed facility referenced in Mr. Keiffer's letter of February 23, 1972.

Response:

Although Delaware is not aware of a formal application, it did inform El Paso in response to El Paso's proposal that "[t]he status of the pier facility for this El Paso Eastern Company project is that it is an offshore bulk product transfer facility which is prohibited in the Delaware coastal zone by the terms of Section 7003 of the Coastal Zone Act (Chapter 70, Title 7, Delaware Code)."

201. Delaware has no documentation that New Jersey received an application from El Paso Eastern Company for its facility referenced in Mr. Keiffer's letter of February 23, 1972.

Response:

Although Delaware is not aware of a formal application, it did inform El Paso in response to El Paso's proposal that "[t]he status of the pier facility for this El Paso Eastern Company project is that it is an offshore bulk product transfer facility which is prohibited in the Delaware coastal zone by the terms of Section 7003 of the Coastal Zone Act (Chapter 70, Title 7, Delaware Code)."

202. In March, 1982, Delaware allowed DuPont in Deepwater, New Jersey, to repair and replace an existing 36 pile cluster sited on underwater land beyond the mean low water line, within the Twelve Mile Circle.

Response:

Admitted.

203. On November 19, 1990, the Secretary of the Delaware Department of Natural Resources and Environmental Control sent a letter to Richard Ciliberti, Vice President, Keystone Cogeneration Systems Inc.

Response:

Admitted that on or about November 19, 1990, the Secretary sent the letter referred to in this request.

204. The Secretary's letter of November 19, 1990 enclosed a Coastal Zone Act status decision, in response to an application from Keystone Cogeneration Systems Inc.

Response:

Admitted.

205. The Keystone application referenced in the Secretary's letter of November 19, 1990 sought a ruling on a pier extending from the shoreline of Logan Township, Gloucester County, New Jersey into the Delaware River beyond the mean low water line; a raw water intake system located on the pier platform; and a wastewater outfall located in the pier area.

Response:

Admitted.

206. The Secretary's letter of November 19, 1990, stated that the proposed pier "is not a prohibited offshore bulk transfer facility provided a Coastal Zone Act permit is granted for the Cogeneration plant (including the intake and outfall)."

Response:

Admitted that the request accurately quotes a portion of the text of the letter.

207. On September 30, 1991, the State of Delaware and Keystone Cogeneration Systems, Inc. entered into a subaqueous land lease related to the project referenced in the Secretary's letter of November 19, 1990.

Response:

Admitted.

208. On February 7, 1996, Delaware and the New Jersey Department of Environmental Protection, Division of Parks and Forestry, entered into a subaqueous land lease.

Response:

Admitted.

209. The February 7, 1996 lease related to the rehabilitation of a pier and construction of a new floating ferry dock beyond the mean low water line of the Delaware River, within the Twelve Mile Circle, near Fort Mott State Park in Salem County, New Jersey.

Response:

Admitted.

210. On May 10, 2005, Delaware entered into a subaqueous lands lease with Fenwick Commons, LLC.

Response:

Admitted.

211. The May 10, 2005 lease referenced to the construction of a 750-foot long pier extending from the New Jersey shoreline into the Delaware River beyond the mean low water line, within the Twelve Mile Circle.

Response:

Admitted.

212. On February 3, 2005, the Secretary of the Delaware Department of Natural Resources and Environmental Control sent a letter to Lauren Segal, Vice President, Crown Landing LLC.

Response:

Admitted.

213. The Secretary's letter of February 3, 2005 included the statement that "your proposed facility represents a prohibited offshore bulk transfer facility."

Response:

Admitted that the letter so states, although Delaware points out that the request quotes only an excerpt from a sentence from the letter.

214. The facility referenced in the Secretary's letter of February 3, 2005 was a 2000 foot pier extending from Logan Township, New Jersey into the Delaware River beyond the mean low water mark, within the Twelve Mile Circle, associated with a proposed liquefied natural gas facility.

Response:

Admitted.

215. Delaware has not reviewed any improvements proposed to extend from the New Jersey shoreline and to termination [*sic*] the Delaware River beyond the mean low water line within the Twelve Mile Circle, besides the improvements proposed by El Paso, DuPont, Keystone, Fort Mott, Fenwick Commons and Crown Landing referenced above at Requests 196 to 214.

Response:

Denied as stated. Assuming that New Jersey intends to refer only to improvements proposed to extend from the New Jersey shoreline and to “terminate in” the Delaware River, so as to exclude from the scope of the request numerous additional projects that extend from the New Jersey shoreline to the Delaware shoreline, which Delaware has reviewed, the request is admitted, with the qualification that, since 1971, Delaware is aware of no improvements proposed to extend from the New Jersey shoreline and to terminate in the Delaware River beyond the mean low water line within the Twelve Mile Circle other than those enumerated in this request and that, as New Jersey’s request acknowledges, Delaware in fact reviewed and regulated.

216. Delaware has no documentation that it reviewed any improvements proposed to extend from the New Jersey shoreline and to terminate in the Delaware River beyond the mean low water line within the Twelve Mile Circle, besides improvements proposed by El Paso, DuPont Keystone [*sic*], Fort Mott, Fenwick Commons and Crown Landing referenced above in Requests 196 to 214.

Response:

Assuming that New Jersey intends to refer to “DuPont Keystone” as two separate improvements, Delaware admits that it is currently aware of no such documentation, with the qualification set forth in response to request 215.

217. From 1905 through 1961, Delaware did not convey any underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle.

Response:

Denied.

218. Delaware has no documentation that it conveyed any underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle, from 1905 through 1961.

Response:

Denied.

219. From 1905 through 1961, Delaware did not lease any underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle.

Response:

Admitted that Delaware is currently unaware of any such lease, with the qualification that Delaware is likewise unaware of leasing from 1905 through 1961 any underwater lands within the western or eastern half of the Delaware River, within the Twelve Mile Circle.

220. Delaware has no documentation that it leased any underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle, from 1905 through 1961.

Response:

Admitted that Delaware is currently unaware of any such documentation, with the qualification set forth in response to request 219.

221. From 1905 through 1961, Delaware did not issue any license for the use of underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle.

Response:

Admitted that Delaware is currently unaware of any such license, with the qualification that Delaware is likewise unaware of issuing from 1905 through 1961 any license for the use of underwater lands within the western or eastern half of the Delaware River, within the Twelve Mile Circle.

222. Delaware has no documentation that it issued any license for the use of underwater lands within the eastern half of the Delaware River, within the Twelve Mile Circle.

Response:

Admitted that Delaware is currently unaware of any such documentation, with the qualification set forth in response to request 221.

223. Delaware has no documentation that the reference in Article VII of the Compact of 1905 to jurisdiction “of every kind and nature” refers only to projects of the scope and nature in existence as of 1905.

Response:

Denied.

224. Before filing its Answer in *New Jersey v. Delaware III*, Delaware never objected to New Jersey’s review of improvements proposed to extend from the New Jersey shoreline and to terminate in the Delaware River within Delaware’s boundary within the Twelve Mile Circle.

Response:

Denied. Delaware objected in the FERC proceeding to New Jersey's assertion of exclusive jurisdiction over the Crown Landing project in a letter dated June 7, 2005 which Delaware produced in discovery, *see* DE 12653-54. Delaware is unaware of any previous instance in which New Jersey publicly asserted exclusive jurisdiction over structures appurtenant to the New Jersey shore and extending into Delaware territory within the twelve-mile circle; indeed, on February 4, 2005, New Jersey had reported to FERC that the Crown Landing project would have to receive approval from Delaware as well as New Jersey. *See* DE 13163.

Moreover, New Jersey's review of improvements proposed to extend from the New Jersey shoreline and to terminate in the Delaware River within the Twelve Mile Circle had never interfered with Delaware's interests and sovereign rights.

225. Delaware has no documentation of any Delaware objection predating the filing of Delaware's Answer in *New Jersey v. Delaware III* to New Jersey's review of improvements proposed to extend from the New Jersey shoreline and to terminate in the Delaware River within Delaware's boundary within the Twelve Mile Circle.

Response:

Denied, for the reasons set forth in Delaware's response to request 224.

226. Before filing its Answer in *New Jersey v. Delaware III*, Delaware never asserted that the reference in Article VII of the Compact of 1905 to jurisdiction "of every kind and nature" refers only to improvements of the scope and nature in existence as of 1905.

Response:

Delaware objects to the request because the language quoted therein refers to "riparian jurisdiction," not improvements.

Delaware further objects to the request as vague, ambiguous, and unduly burdensome with respect to whether Delaware ever "asserted" the matter set forth in the request, in that New Jersey has not articulated what kind of "assertions" it has in mind, and Delaware cannot be expected to certify whether or not any person speaking on behalf of Delaware from 1905 to 2005 ever made the assertion referred to.

Delaware further objects to the request because it fails to identify any time or occasion upon which Delaware previously was called upon to make an assertion as to whether the language in Article VII of the Compact of 1905 that permitted the States to continue to exercise "riparian jurisdiction of every kind and nature" in the absence of a resolution of their boundary dispute referred to improvements of the scope and nature of the Crown Landing proposal.

Without waiving these objections, Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit

or deny this request. Moreover, Delaware never was called upon to address whether the language in Article VII of the 1905 Compact referred to improvements of the scope and nature of the Crown Landing proposal.

227. Delaware has no documentation of any assertion by Delaware predating the filing of Delaware's Answer in *New Jersey v. Delaware III* that jurisdiction "of every kind and nature" refers only to improvements of the scope and nature in existence as of 1905.

Response:

Admitted that Delaware is not currently aware of such documentation, with the qualification that prior to the Crown Landing proposal, Delaware never was called upon to address whether the language in Article VII of the 1905 Compact referred to improvements of the scope and nature of the Crown Landing proposal.

228. Delaware agrees that it has no authority to regulate those portions of a project appurtenant to the New Jersey shoreline that are located within the New Jersey boundary.

Response:

Admitted; although in regulating any project proposed to enter Delaware territory, Delaware has authority to consider the full scope, nature, and impact of such project on Delaware territory or waters.

229. Delaware has no documentation that it has provided police protection on an improvement extending from the New Jersey shoreline and terminating in the Delaware River, within the Twelve Mile Circle.

Response:

Denied.

230. Delaware has no documentation that it has provided fire protection on an improvement extending from the New Jersey shoreline and terminating in the Delaware River, within the Twelve Mile Circle.

Denied.

Response:

231. Delaware has no documentation that any Delaware municipality has provided police protection on any improvement extending from the New Jersey shoreline and terminating in the Delaware River, within the Twelve Mile Circle.

Response:

Admitted that Delaware is not currently aware of such documentation, with the qualification that Delaware has produced in discovery documentation that Delaware

municipalities have provided protection on the eastern half of the river and have jurisdiction to provide police protection relating to any of the three active piers that extend to any appreciable extent into the Delaware River within the Twelve Mile Circle.

232. Delaware has no documentation that any Delaware municipality has provided fire protection on any improvement extending from the New Jersey shoreline and terminating in the Delaware River, within the Twelve Mile Circle.

Response:

Denied.

233. Delaware has no documentation that any Delaware county has provided police protection on any improvement extending from the New Jersey shoreline and terminating in the Delaware River, within the Twelve Mile Circle.

Response:

Admitted that Delaware is not currently aware of such documentation.

234. Delaware has no documentation that any Delaware county has provided fire protection on any improvement extending from the New Jersey shoreline and terminating in the Delaware River, within the Twelve Mile Circle.

Response:

Denied.

235. Delaware has never issued any permits for effluent discharges into the Delaware River within the Twelve Mile Circle, from facilities located in New Jersey.

Response:

Admitted with the following qualifications: under federal regulations adopted under the National Pollutant Discharge Elimination System, no permit for discharge into the Delaware River within the Twelve Mile Circle, from facilities located in New Jersey, may be issued when the imposition of permit conditions cannot ensure compliance with the applicable water quality requirements of all affected states. Therefore, New Jersey may not issue a permit for discharge into the Delaware River within the Twelve Mile Circle unless Delaware water quality requirements are satisfied. In addition, Delaware may assure compliance with its water quality standards as an affected state through the Delaware River Basin Commission permitting process.

236. Delaware has never issued any permits for withdrawals of water from the Delaware River within the Twelve Mile Circle, by facilities located in New Jersey.

Response:

Denied.

237. Before filing its Answer in New Jersey v. Delaware III, Delaware never asserted that the failure to enact uniform fishing laws had negated the Compact of 1905.

Response:

Delaware objects to the request because it incorrectly states that in its Answer Delaware asserted that the failure to enact uniform fishing laws had “negated” the Compact of 1905, when Delaware contended that the Compact was unenforceable.

Delaware further objects to the request as vague, ambiguous, and unduly burdensome with respect to whether Delaware never “asserted” the matter set forth in the request, in that New Jersey has not articulated what kind of “assertions” it has in mind, and Delaware cannot be expected to certify whether or not any person speaking on behalf of Delaware from 1905 to 2005 ever made the assertion referred to.

Delaware further objects to the request because it fails to identify any time or occasion upon which Delaware previously was called upon to make an assertion as to the matter referred to.

Without waiving these objections, the request is denied.

238. Delaware has no documentation predating the filing of Delaware’s Answer in New Jersey v. Delaware III of any assertion by Delaware that Article VII of the Compact of 1905 was negated for failure to enact uniform fishing laws.

Response:

Delaware objects to the request because it incorrectly implies that in its Answer Delaware asserted that the failure to enact uniform fishing laws had “negated” the Compact of 1905, when Delaware contended that the Compact was unenforceable.

Delaware further objects to the request as vague, ambiguous, and unduly burdensome with respect to whether Delaware never “asserted” the matter set forth in the request, in that New Jersey has not articulated what kind of “assertions” it has in mind, and Delaware cannot be expected to certify whether or not any person speaking on behalf of Delaware from 1905 to 2005 ever made the assertion referred to.

Delaware further objects to the request because it fails to identify any time or occasion upon which Delaware previously was called upon to make an assertion as to the matter referred to.

Without waiving these objections, the request is denied.

239. Before filing its Answer in New Jersey v. Delaware III, Delaware never asserted that Article VII of the Compact of 1905 was unenforceable.

Response:

Delaware objects to the request as vague, ambiguous, and unduly burdensome with respect to whether Delaware never “asserted” the matter set forth in the request, in that New Jersey has not articulated what kind of “assertions” it has in mind, and Delaware cannot be expected to certify whether or not any person speaking on behalf of Delaware from 1905 to 2005 ever made the assertion referred to.

Delaware further objects to the request because it fails to identify any time or occasion upon which Delaware previously was called upon to make an assertion as to the matter referred to.

Without waiving these objections, the request is denied.

240. Delaware has no documentation of any assertion by Delaware predating the filing of Delaware’s Answer in New Jersey v. Delaware III that Article VII of the Compact of 1905 was unenforceable.

Response:

Delaware objects to the request as vague, ambiguous, and unduly burdensome with respect to whether Delaware has no documentation of “any assertion” of the matter set forth in the request, in that New Jersey has not articulated what kind of “assertions” it has in mind, and Delaware cannot be expected to certify whether or not any person speaking on behalf of Delaware from 1905 to 2005 ever documented the assertion referred to.

Delaware further objects to the request because it fails to identify any time or occasion upon which Delaware previously was called upon to make an assertion as to the matter referred to.

Without waiving these objections, the request is denied.

241. Before filing its Answer in New Jersey v. Delaware III, Delaware never asserted that New Jersey had waived its right to enforce Article VII of the Compact of 1905.

Response:

Delaware objects to the request as vague, ambiguous, and unduly burdensome with respect to whether Delaware never “asserted” the matter set forth in the request, in that New Jersey has not articulated what kind of “assertions” it has in mind, and Delaware cannot be expected to certify whether or not any person speaking on behalf of Delaware from 1905 to 2005 ever made the assertion referred to.

Delaware further objects to the request because it fails to identify any time or occasion upon which Delaware previously was called upon to make an assertion as to the matter referred to.

Without waiving these objections, the request is denied.

242. Delaware has no documentation of any assertion by Delaware predating the filing of Delaware's Answer in New Jersey v. Delaware III that New Jersey waived its right to enforce Article VII of the Compact of 1905.

Response:

Delaware objects to the request as vague, ambiguous, and unduly burdensome with respect to whether Delaware has no documentation of "any assertion" of the matter set forth in the request, in that New Jersey has not articulated what kind of "assertions" it has in mind, and Delaware cannot be expected to certify whether or not any person speaking on behalf of Delaware from 1905 to 2005 ever documented the assertion referred to.

Delaware further objects to the request because it fails to identify any time or occasion upon which Delaware previously was called upon to make an assertion as to the matter referred to.

Without waiving these objections, the request is denied.

243. Before filing its Answer in New Jersey v. Delaware III, Delaware never asserted that New Jersey was estopped from enforcing the Compact of 1905.

Response:

Delaware objects to the request as vague, ambiguous, and unduly burdensome with respect to whether Delaware never "asserted" the matter set forth in the request, in that New Jersey has not articulated what kind of "assertions" it has in mind, and Delaware cannot be expected to certify whether or not any person speaking on behalf of Delaware from 1905 to 2005 ever made the assertion referred to.

Delaware further objects to the request because it fails to identify any time or occasion upon which Delaware previously was called upon to make an assertion as to the matter referred to.

Without waiving these objections, Delaware responds that it has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

244. Delaware has no documentation of any assertion by Delaware predating the filing of Delaware's Answer in *New Jersey v. Delaware III* that New Jersey was estopped from enforcing the Compact of 1905.

Response:

Delaware objects to the request as vague, ambiguous, and unduly burdensome with respect to whether Delaware has no documentation of "any assertion" of the matter set forth in the request, in that New Jersey has not articulated what kind of "assertions" it has

in mind, and Delaware cannot be expected to certify whether or not any person speaking on behalf of Delaware from 1905 to 2005 ever documented the assertion referred to.

Delaware further objects to the request because it fails to identify any time or occasion upon which Delaware previously was called upon to make an assertion as to the matter referred to.

Without waiving these objections, Delaware responds that it is not currently aware of any such documentation.

245. In 1981, the United States Environmental Protection Agency (Agency) delegated to the New Jersey Department of Environmental Protection (NJDEP) the Agency's authority to issue National Pollutant Discharge Elimination System permits to dischargers located in New Jersey.

Response:

Admitted that the delegation referred to occurred at some point in time, and with the following qualifications. Under federal regulations adopted under the National Pollutant Discharge Elimination System, no permit for discharge may be issued when the imposition of permit conditions cannot ensure compliance with the applicable water quality requires of all affected states. Therefore, New Jersey may not issue a permit for discharge into the Delaware River within the Twelve Mile Circle unless Delaware water quality requirements are satisfied. In addition, Delaware may assure compliance with its water quality standards as an affected state through the Delaware River Basin Commission permitting process.

246. The delegation authority granted to NJDEP by the Environmental Protection Agency in 1981 has been applied by NJDEP to discharges into the Delaware River, within the Twelve Mile Circle.

Admitted with the qualifications noted in response to request 245.

Response:

247. NJDEP issues permits allowing discharges from facilities located on the New Jersey shore of the Delaware River, where the outfall pipe of the facility extends beyond the low water mark of the Delaware River within the Twelve Mile Circle.

Response:

Admitted with the qualifications noted in response to request 245.

248. NJDEP issued Pollutant Discharge Elimination System Permit NJ0076872DSW to the Logan Generating Company, a/k/a Keystone Energy Service Company, L.P., in Logan Township, Gloucester County, New Jersey.

Response:

Admitted with the qualifications noted in response to request 245. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

249. Permit NJ0076872DSW allows the discharge of groundwater into the Delaware River through two outfall structures located beyond the low water mark within the Twelve Mile Circle.

Response:

Admitted with the qualifications noted in response to request 245. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

250. Permit NJ0076872DSW allows the discharge of an average of 1,400 gallons of groundwater per day into the Delaware River beyond the low water mark within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

251. NJDEP issued New Jersey Pollutant Discharge Elimination Permit NJ0024023DSW to the Penns Grove Municipal Sewerage System Authority located in the Borough of Penns Grove, Salem County, New Jersey.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

252. Permit NJ0024023DSW allows the discharge of treated waste water into the Delaware River through an outfall structure located beyond the low water mark within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

253. Permit NJ0024023DSW allows the discharge of up to 0.75 million gallons of water into the Delaware River, beyond the low water mark within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

254. NJDEP issued New Jersey Pollutant Discharge Elimination System Permit NJ0005100DSW to the E.I. DuPont de Nemours & Co., Chambers Work Plant, in Pennsville Township, Salem County, New Jersey.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

255. Permit NJ0005100DSW allows the discharge of non-contact cooling water, storm water and treated industrial wastewater into the Delaware River, through three outfall structures which extend beyond the low water mark within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

256. Permit NJ0005100DSW allows discharges of up to 62.8 million gallons per day into the Delaware River, beyond the low water line within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware..

257. The outfall structures associated with Permit NJ0005100DSW include a structure that DuPont is seeking approval to extend 2,000 feet or more into the Delaware River.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

258. NJDEP issued New Jersey Pollutant Discharge Elimination System Permit NJ0021598DSW to the Pennsville Municipal Sewerage Authority in Pennsville Township, Salem County, New Jersey.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

259. Permit NJ0021598DSW allows the discharge of treated waste water into the Delaware River, through an outfall pipe located beyond the low water mark within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

260. Permit NJ0021598DSW allows the discharge of up to 1.875 million gallons per day of waster water into the Delaware River beyond the low water mark within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

261. NJDEP issued permit no. NJ0005363DSW to the Atlantic City Electric Co., d/b/a Connectiv Power Delivery, Deepwater Generating Station, in Pennsville Township, Salem County, New Jersey.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

262. Permit NJ0005363DSW allows discharges through up to 14 outfall structures of noncontact cooling water, storm water, and intake screen backwash water into the Delaware River through use of an intake crib structure located beyond the low water mark, within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

263. Permit NJ0005363DSW allows discharges of up to 350 million gallons per day into the Delaware River beyond the low water mark, within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named permit but has apparently not produced it in discovery to Delaware.

264. Delaware has never issued any discharge permits for the facilities referenced at Requests 248 through 263.

Response:

Admitted with the qualifications noted in response to request 245.

265. Delaware has never issued any discharge permits to a facility located on the New Jersey shoreline for the discharge of effluent into the Delaware River beyond the low water mark within the Twelve Mile Circle.

Response:

Admitted with the qualifications noted in response to request 245.

266. NJDEP issued a Water Allocation Permit to the Keystone Cogeneration Systems, Inc. facility located in Logan Township, Gloucester County, New Jersey.

Response:

Admitted with the qualifications noted in response to request 267 below. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

267. The Water Allocation Permit issued to Keystone Cogeneration Systems, Inc. by NJDEP allows the withdrawal of water from the Delaware River through an intake structure located beyond the low water line, within the Twelve Mile Circle.

Response:

Admitted with the following qualifications: pursuant to the Delaware River Basin Compact between New Jersey, Delaware, Pennsylvania and New York, each applicant for a Water Allocation Permit to withdraw water from the Delaware River and into New Jersey, including Keystone Cogeneration Systems, Inc., was required to provide notice to the Delaware River Basin Commission. Delaware retains the right to assure compliance with its water withdrawal standards through the Delaware River Basin Commission permitting process. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

268. The Water Allocation Permit issued to Keystone Cogeneration Systems, Inc. By [sic] NJDEP allows the withdrawal from the Delaware River of up to 108.5 million gallons of water per month.

Response:

Admitted that the permit so states, with the qualifications noted in response to request 267.

269. The water intake structure of Keystone Cogeneration Systems, Inc. extends approximately 1,600 feet into the Delaware River.

Response:

Admitted with the qualifications noted in response to request 267.

270. Delaware has never issued any permit for the withdrawal of water from the Delaware River beyond the low water line within the Twelve Mile Circle, by a facility located on the New Jersey shoreline.

Response:

Denied.

271. In 1982, NJDEP issued a Waterfront Development Permit to DuPont for its facility in Carneys Point, New Jersey.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is

presumably in possession of the named Waterfront Development Permit but apparently has not produced it in discovery to Delaware.

272. The Waterfront Development Permit issued by NJDEP to DuPont in 1982 was for dredging of the berth area of an existing pier.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named Waterfront Development Permit but apparently has not produced them in discovery to Delaware.

273. The Waterfront Development Permit issued by NJDEP to DuPont in 1982 allowed dredging at least 200 feet beyond the mean low water line within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named Waterfront Development Permit but apparently has not produced them in discovery to Delaware.

274. In 1991, NJDEP issued to Keystone Cogeneration Systems Inc. in Logan Township stream encroachment, waterfront development and fresh water wetlands permits, and a water quality certificate.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named stream encroachment, waterfront development and fresh water wetlands permits, and water quality certificate but apparently has not produced them in discovery to Delaware.

275. The 1991 permits issued to Keystone Cogeneration Systems, Inc. by NJDEP were for a coal unloading facility and the approach-way pier.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named stream encroachment, waterfront development and fresh water wetlands permits, and water quality certificate but apparently has not produced them in discovery to Delaware.

276. The Keystone facilities referenced in the previous request have a combined length of approximately 1,700 feet.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named stream encroachment, waterfront development and fresh water wetlands permits, and water quality certificate but apparently has not produced them in discovery to Delaware.

277. The Keystone facilities permitted by NJDEP in 1991 extend beyond the low water line within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is presumably in possession of the named stream encroachment, waterfront development and fresh water wetlands permits, and water quality certificate but apparently has not produced them in discovery to Delaware.

278. In 2000, NJDEP issued to Pennsville Township, New Jersey, a waterfront development permit for repairs to and replacement of a municipal boat ramp.

Response:

Admitted that the permit so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands. Admitted that the permit states that it "does not obviate you from obtaining any other necessary federal or local approvals."

279. The boat ramp referenced in the previous request extends at least 30 feet beyond the mean low water line within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

280. In 2001, NJDEP issued a waterfront development permit to Pennsville Township, New Jersey, for installation of storm water force main pipes.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request. New Jersey is

presumably in possession of the named records of deeds but apparently has not produced them in discovery to Delaware.

281. The storm water force main pipes referenced in the previous request extend beyond the low water line within the Twelve Mile Circle.

Response:

Delaware has made reasonable inquiry and the information known or readily obtainable by Delaware is insufficient to enable it to admit or deny this request.

282. On April 3, 2006, NJDEP issued Permits 1713-03-0001.1WFD 050003 and 1713 03- 0001.1 FWW050001 to E. I. DuPont de Nemours & Co., Deepwater, New Jersey.

Response:

Admitted that the permits so state. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

283. On April 3, 2006, NJDEP issued a Water Quality Certificate to E. I DuPont de Nemours & Co., Deepwater, New Jersey

Response:

Admitted that the permits referred to in request 282 state that the type of permit issued includes a Water Quality Certificate. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

284. The Permits and Water Quality Certificate issued by NJDEP to DuPont on April 13, 2006 were for DuPont's Chambers Works facility located in Carney's Point Township, Salem County, New Jersey.

Response:

Admitted that the permits and water quality certificate so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

285. The Permits and Water Quality Certificate issued by NJDEP to DuPont on April 13, 2006 allowed a remedial action within a tidal section of the Delaware River, within the Twelve Mile Circle.

Response:

After reasonable inquiry, including a review of documents produced to Delaware by DuPont and New Jersey, including a review of the document referred to (NJ 1475-1481), the information known or readily obtainable by Delaware is insufficient to enable Delaware to admit or deny the request in that the document referred to does not clearly allow a remedial action within a tidal section of the Delaware River, within the Twelve Mile Circle.

286. The Permits and Water Quality Certificate issued by NJDEP to DuPont on April 13, 2006 allowed dredging of the Delaware River, within the Twelve Mile Circle.

Response:

After reasonable inquiry, including a review of documents produced to Delaware by DuPont and New Jersey, including a review of document referred to (NJ 1475-1481), the information known or readily obtainable by Delaware is insufficient to enable Delaware to admit or deny the request in that the document referred to does not clearly allow dredging within the Twelve Mile Circle

287. On March 1, 1977, NJDEP issued a permit to E.I. DuPont de Nemours & Co., Chambers Works, Deepwater, New Jersey (DUP763).

Response:

Admitted that the permit so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

288. The permit issued by NJDEP to DuPont on March 1, 1977 was for the dismantling and removal of waste water outfall structures located in the Delaware River, within the Twelve Mile Circle.

Response:

Admitted that the permit so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

289. The outfall structures referred to in the previous request were located beyond the mean low water line within the Twelve Mile Circle.

Response:

After reasonable inquiry, including a review of documents produced to Delaware by DuPont and New Jersey, the information known or readily obtainable by Delaware is insufficient to enable Delaware to admit or deny the request, principally because the

document does not clearly indicate that the outfall structures were located within the Twelve Mile Circle.

290. On March 21, 1977, NJDEP issued a permit to E.I. DuPont de Nemours & Co., Chambers Works, Deepwater, New Jersey.

Response:

Admitted that the permit so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

291. The permit issued by NJDEP to DuPont on March 21, 1977 allowed "repairs to support structure and to provide protection against severe ice conditions for low handling crane and approximately 700 feet of pipe lines at the Chambers Works wharf."

Response:

Denied that the permit so states.

292. The permit issued to DuPont by NJDEP on March 21, 1977 allowed work beyond the low water line of the Delaware River, within the Twelve Mile Circle.

Response:

Delaware cannot admit or deny the request because the permit referred to does not specify or otherwise indicate clearly that the repairs and other work to be done would fall outside the mean low water mark on the New Jersey side of the Delaware River.

293. NJDEP issued Water Quality Certificate 77-8-12 to E.I. DuPont de Nemours & Co. for repair of an outfall structure terminating beyond the low water line within the Delaware River and the Twelve Mile Circle (DUP802).

Response:

Delaware cannot admit or deny the request because the conditional water quality certificate referred to does not specify or otherwise indicate clearly that the repairs and other work to be done would fall beyond the mean low water mark on the New Jersey side of the Delaware River and therefore within the Twelve Mile Circle.

294. In 1982, NJDEP issued a Waterfront development permit to E.I. DuPont de Nemours & Co., Chambers Works, Deepwater, New Jersey (DUP1006).

Response:

Admitted that the permit so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

295. The permit issued by NJDEP to DuPont in 1982 allowed the installation of a new steel sheet piling cell to replace an existing 36 timber pile cluster on the Delaware River.

Response:

Admitted that the permit states that it allowed the installation of a twenty foot steel sheet piling cell on the Delaware River; with the qualification that the permit referred to does not specify or otherwise indicate clearly that the repairs and other work to be done would fall outside the mean low water mark on the New Jersey side of the Delaware River. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

296. On September 16, 1977, NJDEP issued a permit to E.I. DuPont de Nemours & Co., Chamber Works for maintenance dredging beyond the low water line of the Delaware River, within the Twelve Mile Circle (DUP1023).

Response:

Admitted that the permit so states. Denied that New Jersey had authority to regulate Delaware's waters or submerged lands, or that "riparian jurisdiction" in any event precludes Delaware's exercise of its police power over those waters and lands.

297. On December 13, 1957, R. A. Haber, Chief Engineer of the Delaware Highway Department, wrote a letter to the United States Army Corps of Engineers.

Response:

Admitted.

298. In the letter referred to in the previous request, Mr. Haber wrote:

At the December 11th meeting of the Delaware States Highway Department it was determined that the Corps of Engineers be requested to continue to supply the Delaware State Highway Department with information regarding proposed work in, on or under the Delaware River in the New Jersey side provided, however, that no permit of the Corps of Engineers be held up or otherwise delayed by failure of the Delaware State Highway Department to act on it.

Response:

Admitted that the request accurately quotes a portion of the text of the letter.

299. On December 2, 1957, the Delaware State Highway Department was advised by S. Samuel Arsht, Esq., that:

Pursuant to the terms of the Treaty of 1905 and the United States Supreme Court decision of 1933, the State of New Jersey is the proper authority with which the DuPont

Company should deal with in connection with any lands lying under the Delaware River within the boundary of the State of Delaware, but on the New Jersey [sic] side of the river and within the Twelve Mile Circle.

Response:

Admitted that the request accurately quotes a portion of the text of the letter written by outside counsel to the Delaware State Highway Department.

301 [sic]. Clarence Southerland, counsel for Delaware in *New Jersey v. Delaware II*, was authorized to represent Delaware at oral argument before the Special Master on September 12, 1932.

Response:

Admitted.

302 [sic]. Prior to *New Jersey v. Delaware III*, counsel for Delaware never attempted to disavow any position stated by Mr. Southerland before the Special Master or Supreme Court.

Response:

Delaware objects to the form of the question, as Delaware does not in *New Jersey v. Delaware III* seek to “disavow any position stated by Mr. Southerland before the Special Master or Supreme Court.” See also Delaware’s Interrogatory Response No. 43.

303 [sic]. The State of Delaware recognized before July 3, 1935 the right of owners of the upland on the New Jersey shore within the Twelve Mile Circle to wharf out to deep water. (NJ00764).

Response:

Denied.

300 [sic]. Deepwater exists offshore of mean low water in the Twelve Mile Circle area of the Delaware River. (NJ00766)

Response:

Delaware objects to this request as incomprehensible. The request does not define what is meant by “Deepwater,” and the cited page does not contain that word. Being thus unable to determine the meaning of this request, Delaware is unable to respond to it.

301 [sic]. Pierhead and bulkhead lines were established by governmental authority off the western shore in the Delaware River in the Twelve Mile Circle area before the approval of the Compact of 1905.

Response:

Denied, except that, in 1855 the Legislature of the State of Delaware passed an Act to regulate the building of wharves in the City of Wilmington.

302 [*sic*]. The pierhead lines established by governmental authority off the western shore of the Delaware River in the Twelve Mile Circle area before the approval of the Compact of 1905 allowed upland owners to build piers extending to deep water. (NJ002113, 002127).

Response:

Denied, except that, in 1855 the Legislature of the State of Delaware passed an Act to regulate the building of wharves in the City of Wilmington.

303 [*sic*]. Some upland owners on the western shore of the Delaware River in the Twelve Mile Circle area built piers out to deep water before the approval of the Compact of 1905. (NJ002113, NJ002127)

Response:

Admitted.

304 [*sic*]. Delaware does not contend that any governmental entity in Delaware has ever taxed piers, docks or wharves on the New Jersey side of the Delaware River within the Twelve Mile Circle, with the one exception stated in its Answers to New Jersey's Interrogatories.

Response:

Denied.

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September 8, 2006

CERTIFICATE OF SERVICE

I certify that on September 8, 2006, a copy of the foregoing Delaware's Responses to New Jersey's First Requests for Admissions was served by electronic mail and U.S. Mail on each of the following:

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THREE COPIES BY FIRST CLASS MAIL**

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September 19, 2006

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**Re: State of New Jersey v. State of Delaware
No. 134, Original
Delaware's Responses to New Jersey's Requests for Admissions**

Dear Rachel:

I am writing in response to your letter dated September 14, 2006, in which you asked that Delaware address certain issues and alleged inconsistencies in its Responses to New Jersey's Request for Admissions, served on September 8, 2006. We respond to the seventeen numbered paragraphs in your letter as follows:

1. Request 184 stated, in pertinent part, that "[f]rom 1905 to 1971, Delaware never reviewed any application for the proposed construction of any improvement proposed to extend from the New Jersey shoreline and to terminate in the Delaware River . . ." Delaware correctly denied this request because, as your letter effectively concedes, Delaware began reviewing El Paso's request in 1971 when El Paso presented it. Your letter erroneously characterizes Request 184 as addressing whether Delaware reviewed any projects "before 1971." The Request did not exclude 1971 from its scope.

2. See the response in paragraph 1 above.

3. See the response in paragraph 1 above. Delaware correctly denied Request 199 because Delaware had in fact exercised review authority in 1971 under the Delaware Coastal Zone Act by reviewing the El Paso application.

4. Delaware correctly denied Request 217 because, *inter alia*, Delaware had conveyed underwater lands to the Federal government in connection with artificial island and Killcohook State Park.

5. Delaware correctly denied Request 223 because, *inter alia*, the pleadings and evidence submitted in *New Jersey v. Delaware II* constitute documentation of the scope and nature of the projects envisioned by the phrase “riparian jurisdiction of every kind and nature” as used in Article VII of the Compact.

6. Delaware correctly objected to Request 226 on several grounds, including that the Request mischaracterizes the language of Article VII of the Compact, which is directed to “riparian jurisdiction” of every kind and nature, not “improvements” of every kind and nature. Delaware stands by its objections and response to this request and no further elaboration is required.

7. Delaware correctly denied Request 229. Delaware has no obligation to specifically identify documents responsive to interrogatory responses when narrative responses to interrogatories are given. However, Delaware police responses have been identified in documents Bates numbered 16974-17001, 21801-21816, and as outlined in category C of exhibits to Delaware’s July 26, 2006 and September 1, 2006 letters.

8. Delaware correctly denied Request 230. Delaware has no obligation to specifically identify documents responsive to interrogatory responses when narrative responses to interrogatories are given. However, Delaware fire responses have been identified in documents Bates numbered 16974-17001, 21801-21816, and as outlined in category C of Delaware’s July 26, 2006 and September 1, 2006 letters.

9. Delaware correctly denied Request 232. Delaware has no obligation to specifically identify documents responsive to interrogatory responses when narrative responses to interrogatories are given. However, Delaware fire responses have been identified in documents Bates numbered 16974-17001, 21801-21816, and as outlined in category C of Delaware’s July 26, 2006 and September 1, 2006 letters.

10. Delaware correctly denied Request 236 because it issued permits for withdrawals of water in connection with the Keystone project. Delaware will produce a copy of the Keystone withdrawal permit.

11. Delaware correctly denied Request 237 because it is founded on the false premise that Delaware, in filing its answer in *New Jersey v. Delaware III*, asserted that the failure to enact uniform fishing laws had “negated” the Compact of 1905. Delaware stands by its objections and response to this request and no further elaboration is required.

12. The response in paragraph 11 above applies as well to Request 238.

13. Delaware correctly denied Request 239 because the Delaware Superior Court has held that “[b]ecause no uniform laws ever existed in 1907, nor since, the Delaware General Assembly has never been bound by any of the provisions of the compact.” *State v. Mick, et al.*, Crim. Nos. 83-05-0092-93 *et al.*, slip op. at 2 (Del. Super. Ct. May 2, 1984). See Delaware’s Reply in Support of Appointment of Special Master, p. 11 (Jan. 17, 2006).

14. The response in paragraph 13 applies as well to Request 239.

15. The response in paragraph 13 applies as well to Request 240.

16. The response in paragraph 13 applies as well to Request 241.

17. Delaware correctly denied Request 304. As an initial matter, the request for admission mischaracterizes Delaware’s response to New Jersey interrogatory number 34. In addition, a “tax” is defined as a pecuniary burden laid upon individuals, business entities, or property to support and carry on the legitimate functions of government. Henry C. Black, *Black’s L. Dictionary*, 758 (5th abridged ed. 1983). Through various subaqueous lands leases, dredging fees, and other payments provided for the use of Delaware land, Delaware has taxed numerous projects beginning in New Jersey and crossing into Delaware territory in the Twelve Mile Circle.

Very truly yours,


Collins J. Seitz, Jr.

CJS,Jr./saj

Rachel Horowitz, Esquire
Deputy Attorney General
Page 4
September 19, 2006

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NEW JERSEY'S EXERCISE OF REGULATORY
AUTHORITY OVER WATERFRONT IMPROVEMENTS
IN THE TWELVE MILE CIRCLE
OUTSHORE OF LOW WATER

Richard Castagna
November 9, 2006

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INTRODUCTION

This report discusses New Jersey's exercise of governmental regulatory authority waterward of the mean low water line (MLWL) within the Twelve Mile Circle in the years preceding and postdating adoption of the Compact of 1905. It is based on a review of historical maps, aerial photography, New Jersey's riparian laws, and the files in the custody of the New Jersey Bureau of Tidelands Management concerning tidally-flowed lands within the Twelve Mile Circle.

This data reveals that after 1869, the New Jersey Board of Riparian Commissioners and its successors exercised jurisdiction over the conveyance of tidally-flowed lands within the Twelve Mile Circle, including underwater lands waterward of the MLWL, and also exercised regulatory authority over proposed activities on such underwater lands. In 1978, regulatory authority over proposed activities on underwater lands was transferred to the Division of Coastal Resources within the Department of Environmental Protection.

LEGISLATION AND PIERHEAD AND BULKHEAD LINES

Before the adoption of the Compact of 1905, New Jersey exercised governmental regulatory authority to protect and promote navigation in its tidal waterways. In 1851, the Legislature barred the construction of piers that would impede navigation in those waterways, when it adopted the Wharf Act of 1851. 1851 Laws of New Jersey, p. 335. The Wharf Act permitted filling and piers outshore of low water only upon approval by the County freeholders, who were authorized to approve such development by the upland owner only if the development would not impair navigation.

In 1864, the Board of Riparian Commissioners was also charged with protecting the navigability of tidally-flowed waterways. *N.J.Stat. Ann.* 12:3-1 (originally 1864 N.J. Law, ch.

391, p. 681). Between 1864 and 1869, the Board determined and adopted pierhead and bulkhead lines in the Hudson River. *N.J.Stat. Ann.* 12:3- 2 (1869 N.J. Law, ch. 383, §1). The Legislature then determined that navigation on the Hudson River could be protected only by prohibiting filing outshore of these bulkhead lines, and prohibiting structures outshore of these pierhead lines. *N.J.Stat. Ann.* 12:3- 3 (1869 N.J. Law, ch. 383, §2).

The first known act by New Jersey to protect and promote navigation in the Delaware River by regulating the filling of underwater lands and construction of piers in the area now known as the Twelve Mile Circle occurred in 1854. In that year, New Jersey adopted legislation that allowed one Thomas D. Broadway, et al, to extend docks, piers or wharves in the River from the New Jersey shoreline of what is now Pennsville Township, but not “so far into the said river as to injure or impede the navigation of same.” 1854 N.J. Laws ch.143, p. 375 (DE19073).

In 1877, the Board of Riparian Commissioners (“the Board”) adopted pierhead and bulkhead lines for a portion of the Delaware River within the Twelve Mile Circle, outshore of Gloucester and Salem Counties, New Jersey. **Figure 1** is Plaintiff’s Exhibit 144, introduced in *New Jersey v. Delaware II*, and illustrates these lines. The figure is a map of the shoreline of Gloucester County, New Jersey, which includes the exterior wharf lines established by the Commissioners in 1877.

Riparian grants issued by the Board to Daniel Kent in 1883 (covering underwater lands outshore of the shoreline of Elsinboro Township)(DE19081) and to E.I. DuPont de Nemours in 1891 (covering underwater lands outshore of the shoreline of Carneys Point Borough) refer to pierhead and bulkhead lines, which at the time of the grants had been adopted through much of the Twelve Mile Circle, as the “Commissioners’ Exterior Line.” (DE19422). Thus, regulatory activity to protect and promote navigation, by regulating the filling of underwater lands and the construction of piers, was ongoing within the Twelve Mile Circle since at least 1854.

To promote navigation, the pierhead and bulkhead lines adopted by the New Jersey Board of Riparian Commissioners within the Twelve Mile Circle (and elsewhere) necessarily were located outshore of the MLWL. Water depths landward of mean low water were deemed insufficient to allow the loading or offloading of cargo, or to allow significant commercial use of the Delaware River by commercial vessels. Consistent with this approach, Delaware also established pierhead and bulkhead lines outshore of mean low water on the westerly side of the Delaware River.

Figure 2 illustrates that, like New Jersey, before 1905 Delaware also deemed water depths at the MLWL insufficient for vessel access to the navigation channel. The Figure is a U.S. Army Corps of Engineers map of the westerly (Delaware) shore of the Delaware River between the Edgemoor Bridge and the Christiana River, dated February 9, 1901 (NJ05146), and a blueprint of bulkhead and pierhead lines for this area, which were approved on November 7, 1902. The map depicts the low water line, and pierhead and bulkhead lines outshore of the low water line. The bulkhead line is located approximately 13.5 feet below the low water line, and the pierhead line is located approximately 20 feet below the low water line. The maximum distance from the mean high water line to the pierhead line is at least 2,800 feet.¹

Similarly, **Figure 3** also illustrates the need for vessel access to deep water outshore of the MLWL on the Delaware River. **Figure 3** is a map of the “Ice Harbor” at New Castle, by the U.S. Army Engineer, Wilmington, Delaware, dated 1894. The map depicts an 1891 Harbor Line outshore of the MLWL of 1805, as well as filled piers that extend beyond the MLWL and up to the Harbor Line. The maximum distance from the MLWL to the Harbor Line is approximately 285 feet. The map also shows that in 1894, the Ice Harbor itself was dredged to a depth of 18 feet for the purpose of facilitating vessel access.²

¹The solid line on this map depicts the mean high water line.² Shalowitz, Shore and Sea Boundaries 226, 247 (Washington DC, 1964).

²According to a report of the Chief of the Army Corps of Engineers, made in 1894, the Ice Harbor provided a refuge for boats traveling up the Delaware River in wintertime, and the

The New Jersey Board of Riparian Commissioners continued to designate pierhead and bulkhead lines outshore of the MLWL within the Twelve Mile Circle even after adoption of the Compact of 1905. **Figure 4** is a map depicting the pierhead and bulkhead line adopted by the Board in 1916, for the easterly shore of the Delaware River between Pennsgrove and Cedar Point, New Jersey, within the Twelve Mile Circle. The map was introduced as Plaintiff's Exhibit 138 in *New Jersey v. Delaware II*, and indicates that it was sent to the United States Army Corps of Engineers for approval on May 11, 1916.

In 1914, the Legislature adopted the Waterfront Development Law, *N.J.S.A. 12:5-3 et seq.* (Originally N.J. Law of 1914, Ch. 123). This legislation provided that no dock, wharf, pier, bulkhead, pipe line, cable, or any other waterfront development could be constructed without approval of the Board of Commerce and Navigation, a successor of the Board of Riparian Commissioners.

ACTIVITIES REQUIRING REGULATORY APPROVAL IN THE TWELVE MILE CIRCLE

New Jersey's exercise of regulatory authority over filling and construction on the easterly side of the Delaware River, outshore of the MLWL within the Twelve Mile Circle, was evidenced by construction and dredging within this area, or by approvals of such activities. Based on the record in *New Jersey v. Delaware II*, aerial photography on file in the New Jersey Bureau of Tidelands Management,³ Riparian Atlas Sheets available at the Bureau of Tidelands

dredging project was undertaken due to an increase in demand for use of the harbor. As part of the project, approximately 32,000 cubic yards of material were removed.

³My review of aerial photography was conducted by using a Bausch & Lomb stereoscope with a 2X attachment lens to examine aerial photographs of the granted areas that are on file in

Management, and the Bureau's riparian grant files, I have concluded that there were, over time, at least 23 structures or other activity waterward of the MLWL within the Twelve Mile Circle which were subject to regulatory approval by the State of New Jersey, as set forth below.

1. 1854 N.J.Laws ch. 143, p. 375. Thomas A. Broadway, et al. [Castagna affidavit ¶8(1)].⁴ This law provided that Broadway could extend docks, piers or wharves into the Delaware River "a sufficient distance for the accommodation of vessels navigating" the River, but not "so far into the said river as to injure or impede the navigation of the same." In 1934, during the proceedings in *New Jersey v. Delaware II*, New Jersey's witness Henry J. Sherman testified that at that time (1934) a wharf existed at this location, owned by the Wilson Line. (Stip. Rec. at 279-80)(DE15089-DE15090).
2. 1855 N.J.Laws ch. 109, p.274. Pennsgrove Pier Company. [Castagna affidavit ¶8(2)]. This law incorporated the Pennsgrove Pier Company and authorized it to build and maintain "a wharf or pier extending from the mainland into the river Delaware at the Village of Pennsgrove," Salem County. In 1934, Mr. Sherman testified about the pier on this property during the proceedings in *New Jersey v. Delaware II*. (Stip. Rec. at 281)(DE15091). In New Jersey v. Federanko, 29 N.J. 119, 139 A.2d 30 (1958), the Court held that New Jersey had jurisdiction over a gambling offense committed on the Pennsgrove Pier, outshore of the MLWL.
3. 1870 N.J. Laws ch. 131, p. 346. This law provided that Robert Walker and others could build wharves, piers and bulkheads in front of their lands in the Township

the Bureau of Tidelands Management. I examined stereo pairs of these photographs, when available.

⁴"Castagna affidavit" refers to the Affidavit of Richard Castagna, dated June 27, 2005, submitted in support of Plaintiff's Motion to Reopen and for a Supplemental Decree (Appendix 5).

of Upper Penns Neck. The law further provided that the pier could extend up to 400 feet from the high water mark into the River, but not in front of the land of any other person.

4. 1870 N.J.Laws ch 344. Joseph Guest. This law provided that Guest could build and maintain a dock or wharf in front of his lands in the Township of Upper Penns Neck, and could extend the dock or wharf “a sufficient distance into the Delaware River for the accommodation of vessels navigating the same, and from time to time to rebuild and repair the same.” **Figure 5** was Plaintiff’s Exhibit 134, in *New Jersey v. Delaware II*. The Figure shows a wharf designated as the “Jos Guest Wharf” that extends 100 feet outshore of the high water line. (NJ Exh. 134)(**Figure 5**). [Castagna affidavit ¶8(4)].

5. 1871 N.J.Laws ch. 307, p.758. Henry Barber. This law provided that Barber could build wharves, piers and bulkheads in front of his lands in the Township of Upper Penns Neck. This wharf once extended 400 feet outshore of the low water line, according to Mr. Sherman’s testimony in the 1934 proceedings in *New Jersey v. Delaware II* (Stip. Rec. at 282)(DE15092). [Castagna affidavit ¶8(5)].

6. Grant to Eugene Dupont, et al. t/a E.I. Dupont de Nemours and Company (later, simply Dupont Company, and here Dupont) November 27, 1891 (Liber G p.386) [Castagna affidavit ¶8(10)]. A pier is evident within the granted area on aerial photography from 1940, 1977, 1979, and 2002 (NJ06796, NJ06797, NJ06798, NJ06799). In addition, correspondence on file in the Bureau’s records shows that an application for a permit was submitted to the New Jersey Board of Riparian Commissioners on or about November 14, 1917 (NJ09800-NJ09803). Dupont’s records also show that during the 1970s, Dupont acknowledged New Jersey’s regulatory authority over proposed improvements within the properties outshore of the MLWL granted to Dupont by New Jersey (DUP754 - DUP 919).

7. Grant to James A. Denny, Liber Q p.721 (April 26, 1906). The structure built within this grant is identified as Denny's Wharf on Riparian Atlas Sheet No. 710, dated September 28, 1959. [Castagna Affidavit ¶8(11)]. The structure is depicted as 500 feet long on this Sheet.

8. Grant to Pennsgrove Pier Company, Liber U p.684 (March 21, 1916). During proceedings in *New Jersey v. Delaware II*, the Court received testimony that this pier had been assessed for New Jersey municipal taxes since at least 1915. (Stip Rec. at 156-157)(DE15020). Riparian Atlas Sheet No. 710 (1959) depicts a pier at this location, identified as owned by the Wilson Pier Line (DE18522). Penns Grove's authority to tax this granted area was upheld in Main Associates, Inc. v. B & R Enterprises, Inc., 74 N.J.Super 483, 181 A2d 541 (Ch Div 1902). [Castagna affidavit ¶8(12)]. This pier is now part of the proposed development of Fenwick Commons, and is evident on 2002 aerial photography (DE28988) and on maps of the Delaware River in the Penns Grove area (DE28986). After the grant was issued, the pier extended 885 feet outshore of the mean high water line on one side, and 975 feet on the other side (DE18522, DE19223-19224).

9. Grants to Dupont, Liber V p.92 (August 21, 1916) and Liber W p.62 (July 16, 1917). [Castagna affidavit ¶8(15) and ¶8(17)]. Mr. Sherman testified in the 1934 proceedings in *New Jersey v. Delaware II* that within the granted area, a water intake pipe extended a "substantial distance" into the Delaware River beyond the low water mark. (Stip Rec. at 138) (DE15018). Aerial photographs show pilings and a dock on the site from 1930 to 1979 (NJ06782-NJ06789). **Figure 6**, introduced into evidence in *New Jersey v. Delaware II* as Plaintiff's Exhibit 67, shows a structure built within the July 15, 1917 grant area, designated as the "Dupont Pier." (**Figure 6**). A pier within this area is evident on 2002 aerial photography, as the first structure visible within the River north of the Delaware

Memorial Bridge (DE28989).

The structure built by Dupont within tract 1 of the August 21, 1916 grant is at Deepwater Point and is a pier. That pier also is evident on 2002 aerial photography, as the second structure visible within the River north of the Delaware Memorial Bridge (DE28989).

10. Grant to William D. Acton, Liber D-1 p.459 (February 19, 1923). Mr. Sherman testified in *New Jersey v. Delaware II* that this grant area was used for a pier for the operation of the Delaware and New Jersey Ferry Company's ferry between Pennsville, New Jersey and New Castle, Delaware. Mr. Sherman further testified that this grant extended a "substantial distance" below the low water mark. (Stip Rec. at 147) (DE15022).[Castagna affidavit ¶8(21)]. The pier is depicted on Riparian Atlas Sheet No. 704, dated August 21, 1959. The Bureau's files include a copy of a permit for a ferry landing, issued to Mr. Acton by the Board of Riparian Commissioners on or about November 13, 1925 (NJ09811-NJ09813).
11. Lease to Fogg and Hires Company, Liber G-1 p.135 (August 18, 1924) and a Grant to Delaware-New Jersey Ferry Company, Liber T-1 p.75 (May 19, 1930). [Castagna affidavit ¶8(22)]. The pier within the granted area is depicted on Riparian Atlas Sheet 704, dated August 21, 1959. A pier at this location also is evident on 2002 aerial photography (DE28990), at the northern or upper edge of that document.
12. Grant to William D. Acton, Liber E-1 p.245. (November 19, 1923). The pier within this granted area was used by the Riverview Beach Company, according to Mr. Sherman's testimony in the 1934 proceedings in *New Jersey v. Delaware II*. (Stip Rec. at 145) (DE15015). **Figure 7** was Plaintiff's Exhibit 87 in those proceedings. It depicts a structure called the "Riverview Beach Pier," which is

shown as extending more than 498 feet offshore of the MLWL. [Castagna affidavit ¶8(21)].

13. Grant to William D. Acton, Liber H-1 p.81 (August 17, 1925). The structure in this granted area was a Y-shaped jetty, according to evidence presented in *New Jersey v. Delaware II*. (New Jersey Exh. 81) (**Figure 8**). The structure was designed to protect the Riverview Beach Park from erosion, according to Mr. Sherman's testimony (Stip. Rec. at 272-273)(DE15086-DE15020). The grant extended more than 800 feet offshore of the low water line. (Stip. Rec. at 142)(DE15020). **Figure 8** (Plaintiff's Exhibit 81 in the 1934 proceedings) depicts the Y-shaped jetty as extending 100 feet from the bulkhead and approximately 47 feet offshore of the low water line (Figure 8). [Castagna affidavit ¶8(23)].
14. Lease to Dupont, Case No. 785A, (May 20, 1918). This lease was cancelled on February 6, 1939. Aerial photography shows a stone jetty at the site from 1940 to 2002 (NJ06783-NJ06790). [Castagna affidavit ¶8(18)].
15. Grant to Franklin Real Estate Company (June 18, 1928). The Bureau's files refer to a permit for dredging of 300,000 cubic yards at the grant location, issued on July 20, 1928 (NJ09814).[Castagna Affidavit 8(27)]. Aerial photography from 1940 to 2002 shows a dock structure at the site (NJ06783-NJ06788, DE28989).
16. License to the Delaware River Power Company, Case 4050 (October 21, 1929). Mr. Sherman testified during the 1934 proceedings in *New Jersey v. Delaware II* that to protect the company's submarine cables, several concrete icebreakers were installed at this location "a substantial distance" below the low water mark.(Stip. Rec. at 151)(DE15025). [Castagna affidavit ¶8(34)]. These jettys appear on aerial photography from 1951 to 1979 (NJ06792-NJ06794).

17. Lease to the Penn Beach Property Owners Association, Liber V-1 p.268 (October 21, 1929) converted to a grant, Liber C-2 p33 (November 20, 1933). **Figure 9** (Plaintiff's Exhibit 96 in *New Jersey v. Delaware II*) depicts a timber pier extending in the lease area 80 feet beyond the low water mark and 130 feet beyond the high water mark. **Figure 9** also shows a rack constructed even further offshore (New Jersey Exh. 96)(**Figure 9**). [Castagna affidavit ¶8(35)].
18. Grant to Dupont, Liber R-2 p.55 (September 13, 1943). [Castagna affidavit ¶8(37)]. A dock at the location of the granted area is evident on aerial photography from 1930 to 2002 (NJ06782-NJ06790).
19. Grant to Sun Oil Company, Liber A-4 p.248 (October 14, 1957) and a lease outshore of the grant to Keystone Urban Renewal Limited Partnership, Liber H-8 p.79 (June 12, 1992). An extensive pier used for the offloading of coal exists at this location, well outshore of mean low water. Delaware also approved a permit and a lease for this structure. [Castagna affidavit ¶8(41)]. The Keystone pier is evident on 2002 photography (DE28987). In addition, the Bureau's files refer to a construction permit sent to Sun Oil by the New Jersey Navigation Bureau, on January 29, 1963 (NJ09815).
20. Grant to Dupont, Case No. 9490 (March 31, 1960). [Castagna affidavit ¶8(39)]. A pier at the location of the granted area is evident on aerial photography dated 1977 and 1979 (NJ06793-NJ06794). The grant prohibited the grantee from filling or improving the granted property, without a permit from the New Jersey Department of Conservation and Economic Development (DE19538).
21. Grant to Dupont, Liber R-5 p.80 (September 29, 1967). [Castagna affidavit ¶8(40)]. A large wharf at the location of the granted area and next to the pier referenced in the previous paragraph is evident on aerial photography from 1977

and 1979 (NJ06793-NJ06794). The grant prohibited the grantee from filling or improving the granted property, without a permit from the New Jersey Department of Conservation and Economic Development (DE19552).

22. Lease to William J. Bergmann, et al., Tidelands Application No. 87-1261 (January 11, 1999, and renewed February 13, 2002). [Castagna affidavit ¶8(42)]. A pier at the location of the granted area is evident on aerial photography from 2002 (NJ06781). The lease prohibited improvement or development within the leased area, without a permit obtained pursuant to N.J.S.A. 12:5-3 (DE19186).
23. Assignment of Management Rights (lease) to the New Jersey Division of Parks and Forestry, Liber M-9 p.74, (January 24, 2001). This renovated pier is part of Fort Mott State Park, and extends 350 feet waterward of the high water line into the Delaware River. This pier received a Delaware lease on February 7, 1996. The pier is evident on an aerial photograph of the leased area from 2002 (DE28990), in the southern quarter of that photograph. In its application to the Bureau of Tidelands Management, the applicant acknowledged the need for a New Jersey waterfront development permit (N.J.S.A. 12:5-3)(DE16732).

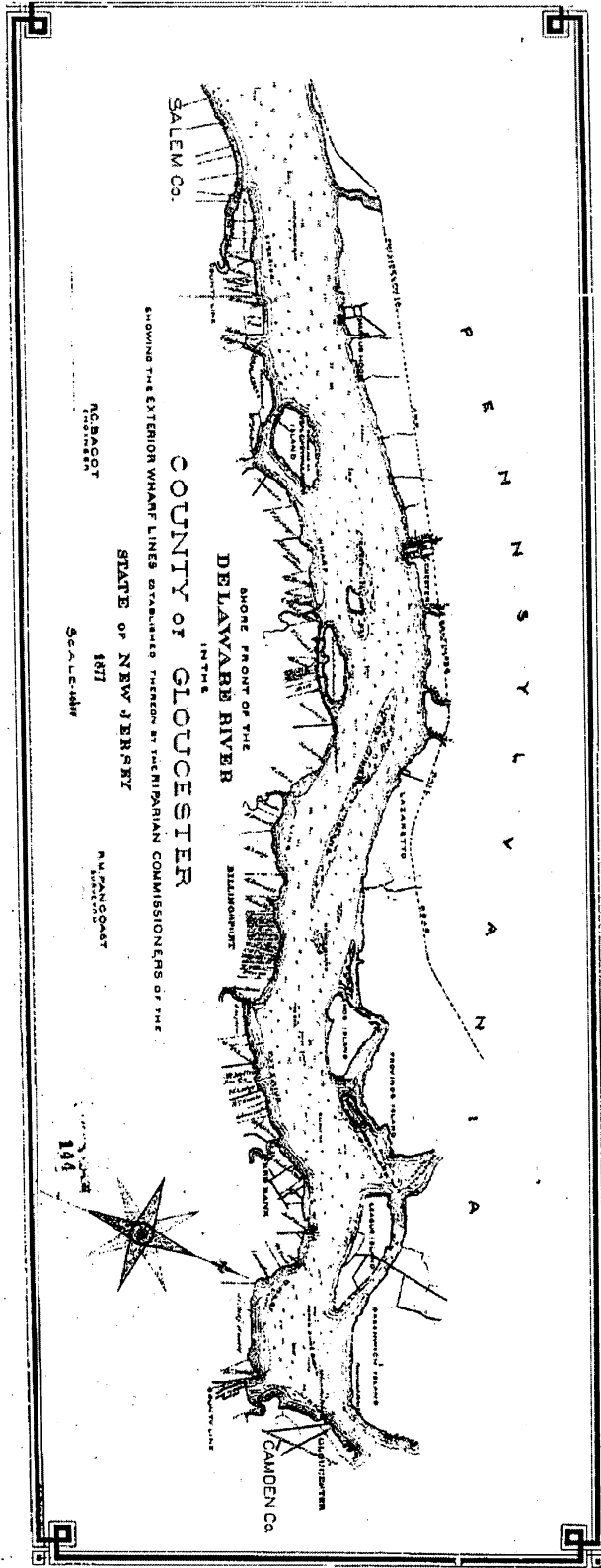
CONCLUSION

Analysis of historical maps, aerial photographs, Board and Bureau files and other materials shows that both before and after adoption of the Compact of 1905, the State of New Jersey and New Jersey's Board of Riparian Commissioners and its successors exercised regulatory authority over construction and other activity proposed to occur on the easterly (New Jersey) side of the Delaware River, within the Twelve Mile Circle waterward of the MLWL. In 1978, this regulatory authority was transferred to the Division of Coastal Resources within the new Jersey Department of Environmental Protection.

FIGURE 1

63-5

3-5



63-5

5-60

1207a

FIGURE 2

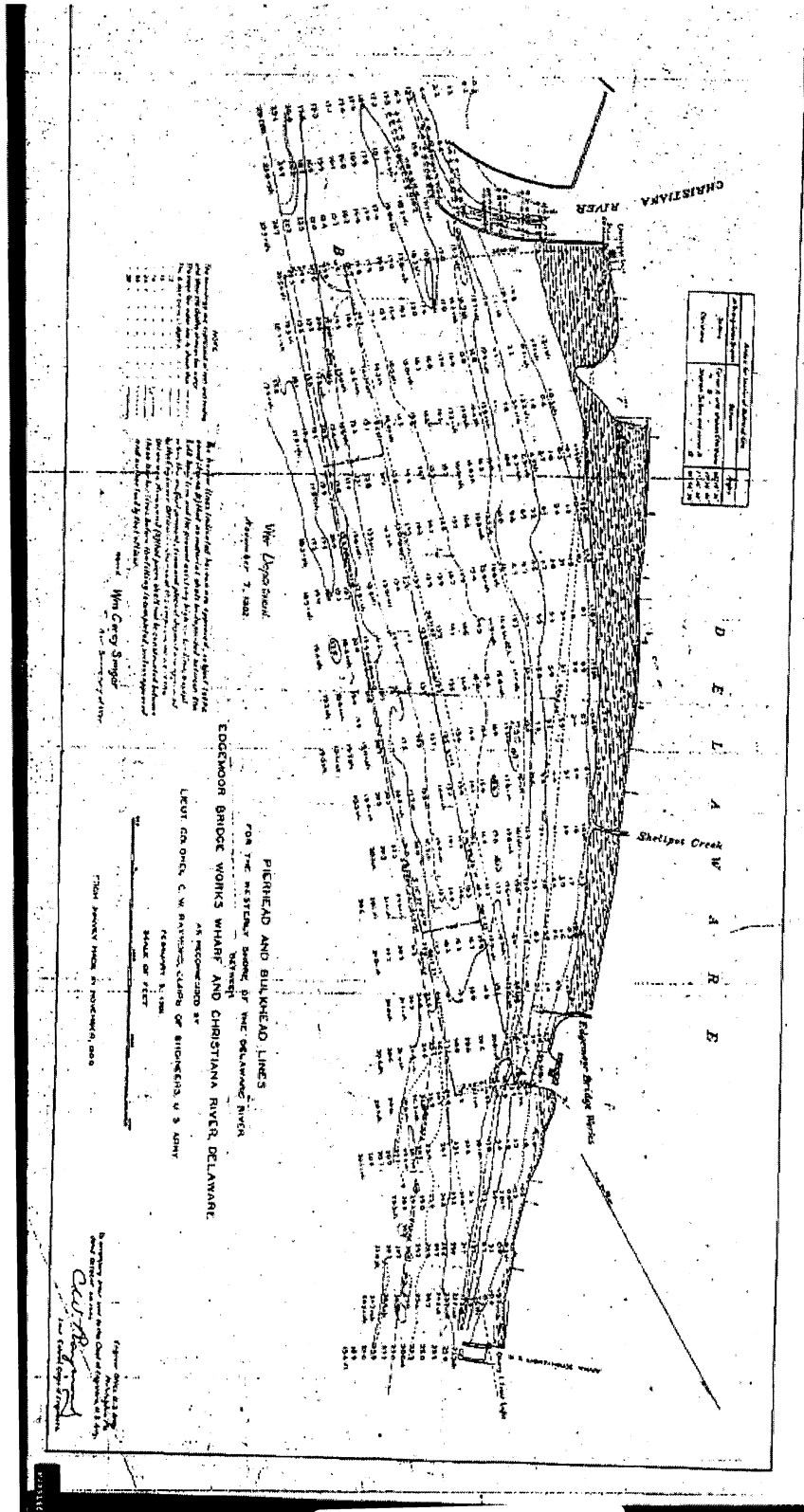
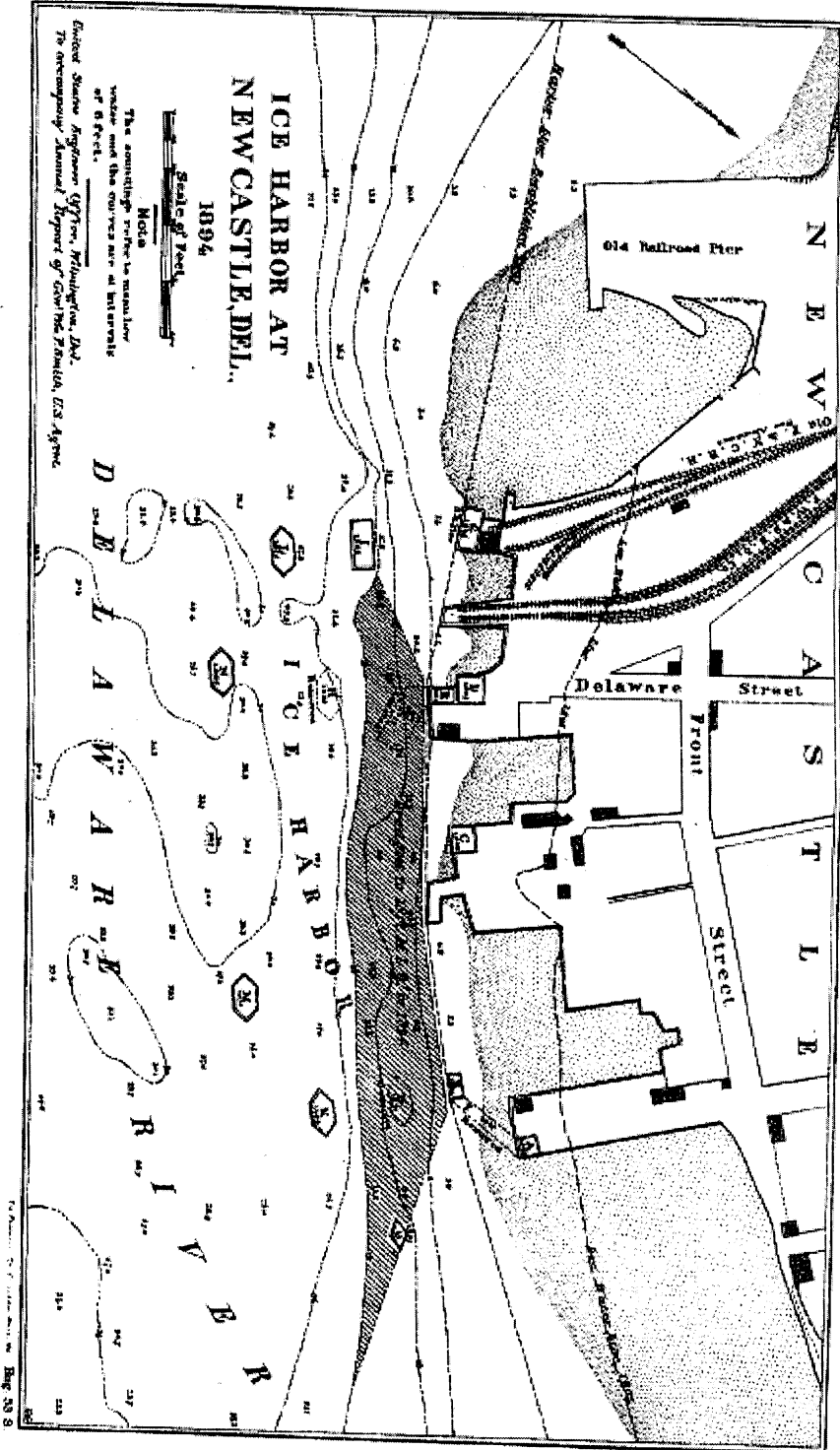
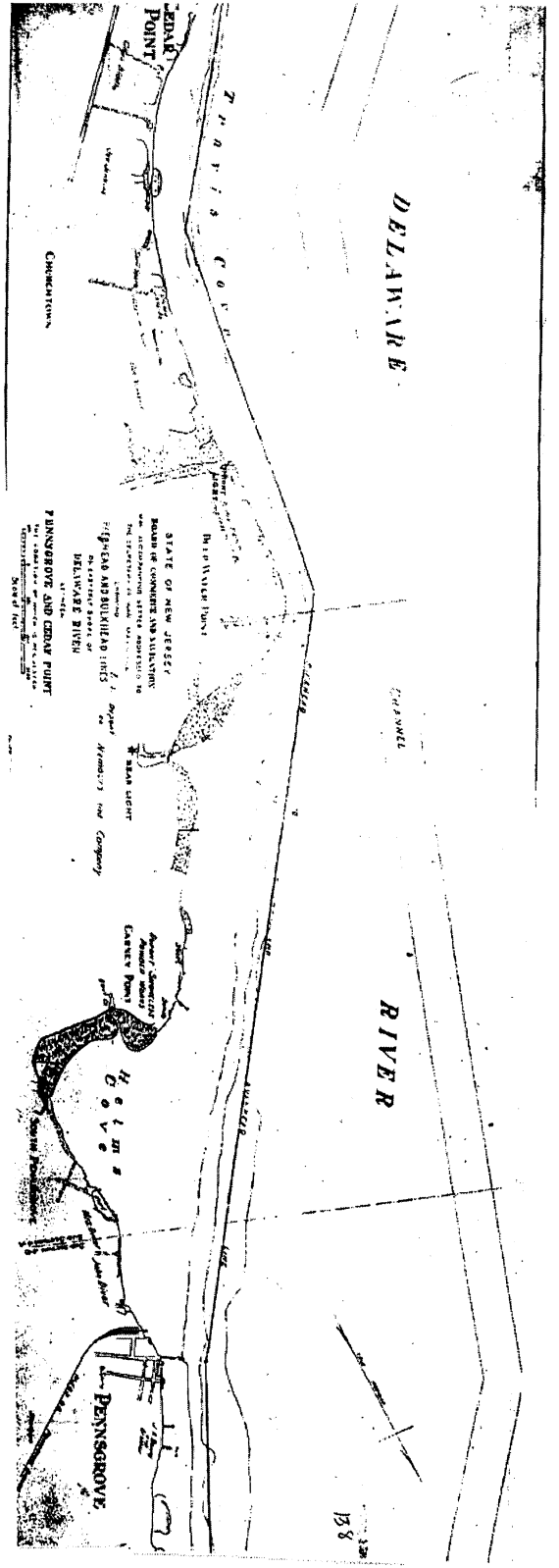


FIGURE 3



NO09897

FIGURE 4



1210a

FIGURE 5

LEGISLATIVE GRANT Lc

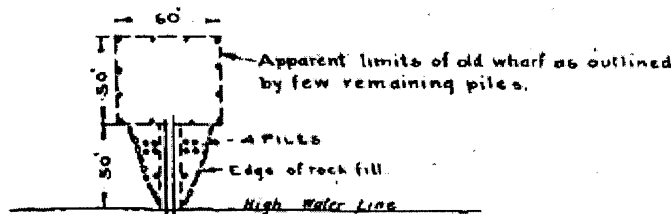
PENNSGROVE

MAP DESIGNATED Lc

Chap. CCCXLIV, Laws of N. J. 1870 - Joseph Guest

Located at foot of Pennsylvania R. R. Station site, Pennsgrove, N. J. This wharf has disappeared excepting rock fill at inner end and stumps of piling visible at low water only. Piling were located and shown on sketch to indicate outline of former wharf. Rock fill extends from high water riverward 40 feet. (See sketch)

JOS. GUEST'S WHARF
PENNSGROVE
(Abandoned)



Sherman & Sleeper, C. E.,

June 10, 1931

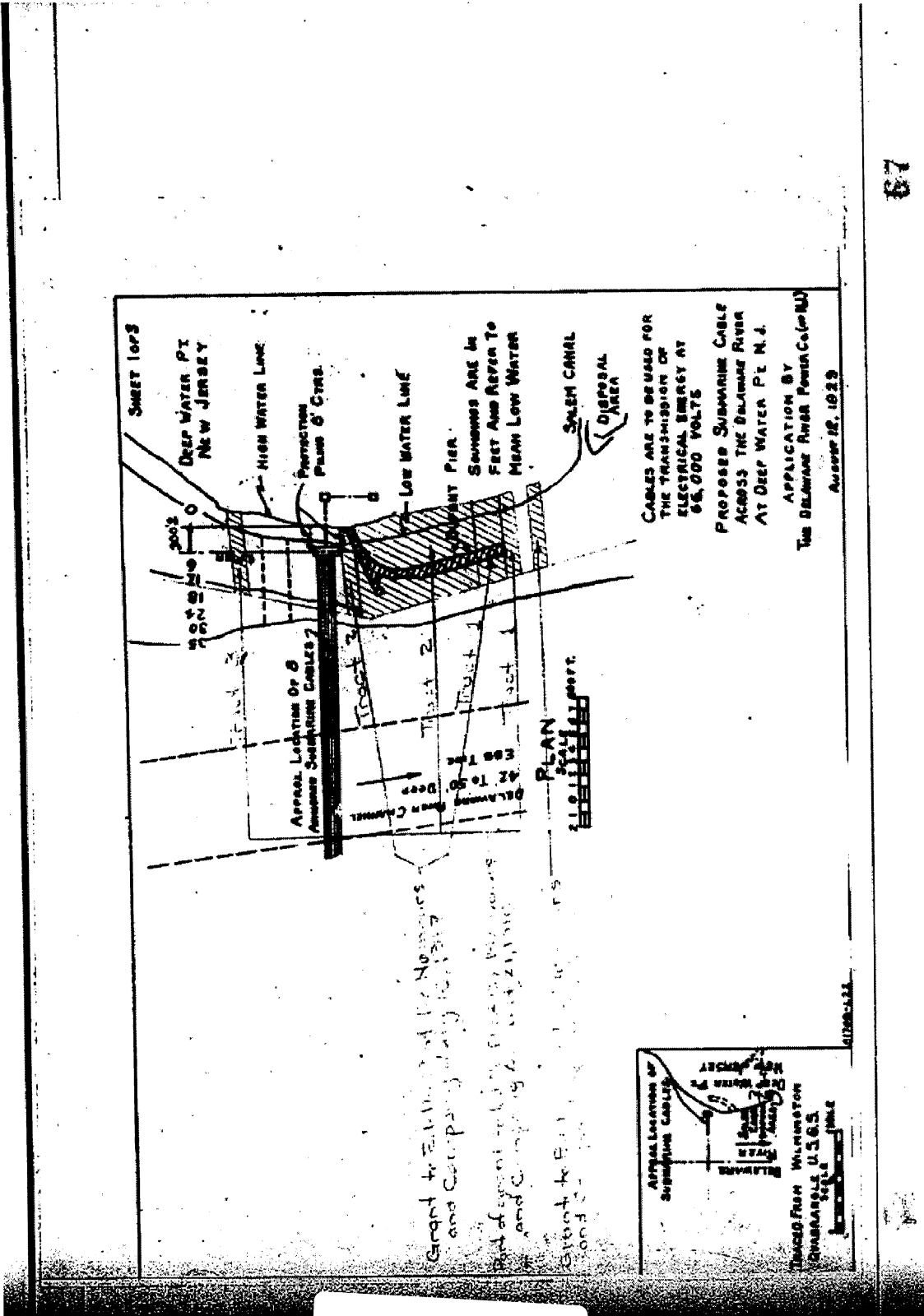
PENNSGROVE
R.R. STATION

Lc

PLAINTIFF'S EXHIBIT No. 44

1211a

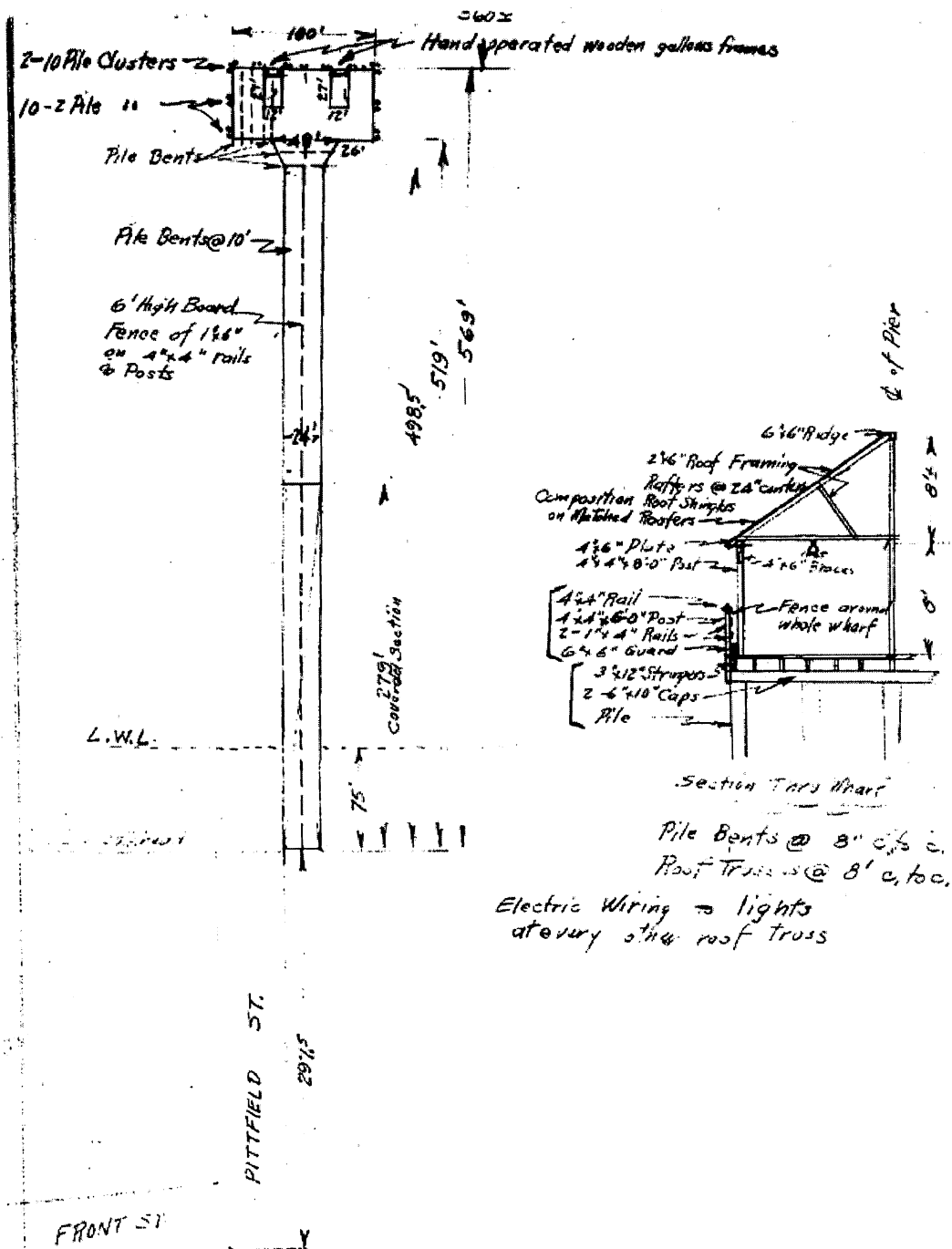
FIGURE 6



67

1212a

FIGURE 7



Electric Wiring to lights
at every other roof truss

Sherman & Sleeper, C. E.,

June 10, 1931

Grant L
Pennsville
Riverview Beach Pier

Sheet 2 of 2
PLAINTIFF EXHIBIT No. 87

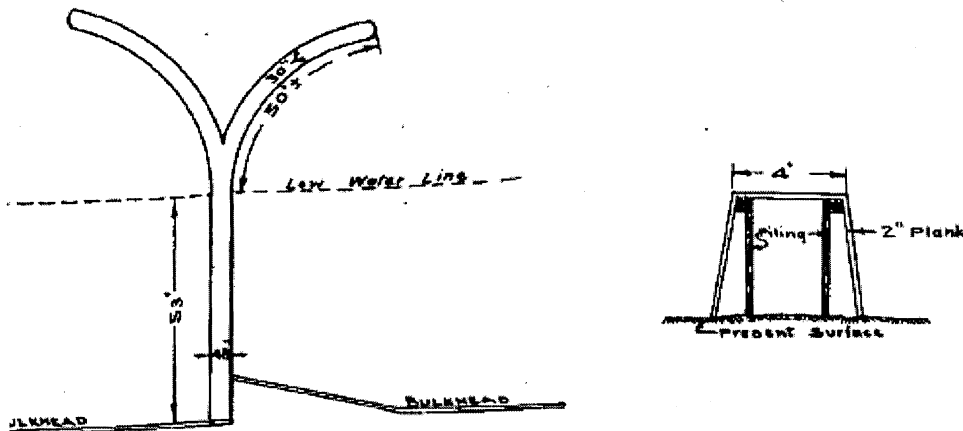
FIGURE 8

Grant J: William D. Acton.

Location: Lower Penns Neck Twp. 1500' North of Pittsfield St., Pennsville, also at the northern section of Riverview Beach Park.

Description: The only construction shown is a Y shaped timber jetty of the protection of the beach. There is a straight section of 50' length extending from the bulkhead to Low Water with two curved sections of about 50 ft. length on either side. The jetty is built box shaped to an average width of 4 ft. on the straight section and 30" on the curved sections, from 2" Planking.

Valuation: Estimated value of the whole structure - \$2000.



Sherman & Sleeper, C^o E.,
June 10, 1931.

Grant J
Timber Jetty - Pennsville -J

PLAINTIFF EXHIBIT No.81

FIGURE 9

RIPARIAN GRANT V

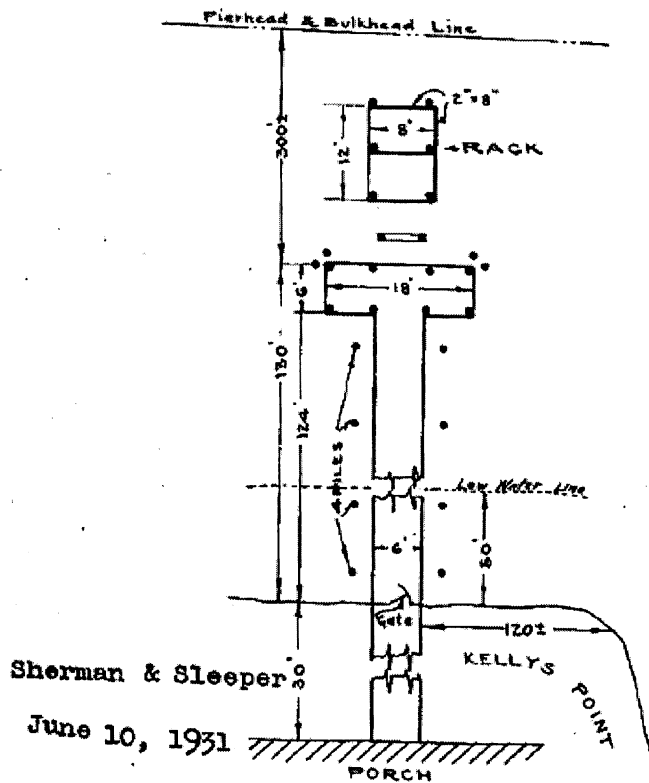
Kelly's Point

Grant V - Penn Beach Property Owners Assoc. Inc.

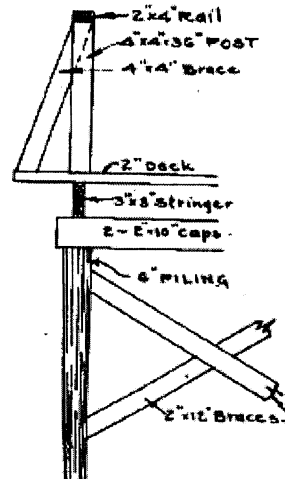
Location: Twp. Lower Penns Neck, at Kelly's Point,
Penn Beach, about one mile below Pennsville.

Description: Timber Pier attached to Club House, width
of 6 ft; extending 36' from porch of building to H.W.L.
and 130' to head of T, 18' x 6' with about 50' of structure
between H. W. L. & L. W. L.

Valuation: Approximate Value - \$300.



SKETCH SHOWING
PIER CONSTRUCTION



Grant V
Kelly's Point
Penn Beach
Property Owners
Assn. Pier

PLAINTIFF EXHIBIT No.96

Richard G. Castagna
3950 Sherwood Lane
Doylestown PA 18902
Richard.Castagna@dep.state.nj.us

EDUCATION:

Eastern Michigan University, Department of Geography and Geology, Ypsilanti, Michigan

- **Master of Science in Geography, December 1975:** Course work in Coastal Geography, Geomorphology, Air Photo Interpretation. Master's thesis focused on conflicts in coastal resource utilization from a historical perspective.

State University of New York, Department of Geography, New Paltz, New York

- **Bachelor of Science in Geography, June 1973:** Minor study area - Geology; Recipient of 1972 Geography Scholarship Award. Courses in Air Photo Interpretation, Cartography, Oceanography, Physical Geology, Physical Geography.

EXPERIENCE:

NJ Department of Environmental Protection

Division of Land Use Regulation, Bureau of Tidelands Management
Trenton, NJ

October 2005 to Present

Acting Manager Bureau of Tidelands Management

1. Manage, organize and direct the operation of the Bureau of Tidelands Management (staff of 35) which consists of two application review sections, one engineering section and one appraisal section. Responsibilities including program planning, application processing, aerial photography library operations, GIS analysis, and personnel management.
2. Act as Chief of Staff to the Tidelands Resource Council, including overseeing all operations associated with the Council and presenting all applications and recommendations for the Council's review.
3. Assist the Office of the Attorney General in defending tidelands ownership claims, including testimony.

1216a

July 1993 to October 2005

Supervising Environmental Specialist – Southern Region Manager

Manage a staff of eight (8) professionals includes prioritizing staff work assignments, goal setting, application processing, special projects, and evaluation of staff performance and conduct.

1. Southern Region Manager - Bureau of Tidelands Management (comprising 8 counties)
 - Manage the processing of all tidelands applications in 8 southern counties of NJ:
 - Includes tidelands grants, licenses, leases, and statements of no interest
 - Make recommendations to the Tidelands Resource Council for the sale or lease of State owned tidelands.
 - Direct staff in researching and responding to inquiries from property owners and private consultants. Assist property owners, attorneys, state officials and consultants in understanding tidelands issues. This includes meetings, telephone conferences and correspondence.

2. Technical Analysis and Interpretation: Aerial Photography & Historical Maps
 - Since 1987, serving as the New Jersey's tidelands expert in aerial photography interpretation, historic map interpretation, and the delineation and identification of tidal wetlands.
 - Frequently asked to analyze aerial photography to assist the Office of Attorney General in beach access and land use litigation.
 - Train all new hired staff in aerial photography and historic map interpretation.
 - Advise the Tidelands Resource Council and the Office of Attorney General as to the strength and validity of New Jersey's tidelands claims.

3. Manager, NJDEP Aerial Photography & Historical Map Library
 - Manage the Aerial Photography & Historical Map Library.
 - Manage the overall work operations of this research facility including:
 - Staffing, regulations, and policies for use of this library by consultants and government employees.
 - Assuring upgrades of equipment, software and related materials as needed.
 - Oversee Project Manager responsible for the "*Historical Map Inventory Project*".

March 1990 to July 1993

Supervising Environmental Specialist

Supervise a staff of three (3) professionals – includes prioritizing staff work assignments, activities, special projects, and evaluation of staff performance and conduct.

- Technical Analysis and Interpretation: Aerial Photography & Historical Maps
See details listed in previous section.
- Supervisor NJDEP Aerial Photography & Historical Map Library
See details listed in previous section

August 1987 to March 1990

Principal Environmental Specialist

- Served as the State's tidelands expert in aerial photographic interpretation and the delineation of tidal wetlands. Advised the NJ Tidelands Resource Council and the NJ Attorney General's Office about strength and validity of tidelands claims.
- Reviewed construction plans in State owned tidelands.
- Responded to inquiries as to the status of tidelands claims.
- Provided tidal datum and head-of-tide data upon request.

NJ Department of Environmental Protection

Office of Environmental Analysis

Trenton, NJ

April 1980 to July 1987

Principal Environmental Specialist

- Interpreted aerial photography, historic maps and surveys to map all areas in New Jersey flowed now or formerly by the mean high tide.
- Trained staff mapping the NJ's tidelands. Training involved aerial photographic interpretation, interpretation of historical maps, coastal processes, identification of tide-flowed species of vegetation, delineation of maps and documentation of maps.
- Supervised two (2) Senior Environmental Specialists.
- Conducted field inspections of tidal areas.
- Served as an expert witness and gave court testimony. Qualified as an expert in aerial photographic interpretation and delineation of tidelands maps by Superior Court, Atlantic City, New Jersey, March 1986.
- Prepared historical reports for NJ Attorney General's Office concerning artificial modifications of tidelands.
- Compiled forest cover maps from aerial photographs for the NJ Office of Natural Lands Management.

1218a

May 1977 to April 1980

Senior Environmental Specialist

- Interpreted aerial photography, historic maps and surveys to map tidelands in New Jersey.
- Participated in formulation of guidelines and rules to map New Jersey's tidelands.
- Prepared detailed logbooks for each map; graphic displays and oral presentations in support of mapping.
- Participated in field investigations to identify species of tidal vegetation. Conducted extrapolated water elevation studies and verified the key for the use of color infrared aerial photography in delineating tidelands claims.
- Trained to use stereoscope, zoom transfer scope and digital planimeter.

American Telephone & Telegraph

Long Lines Headquarters
Advertising Department
Bedminster, New Jersey

May 1976 to May 1977

Member of AT&T advertising staff

Department of Geography and Geology

Eastern Michigan University
Ypsilanti, Michigan

August 1973 to August 1975

Teaching Assistant & Tutor

- Instructed earth science laboratory classes. Subject areas included aerial photographic interpretation, topographic map analysis, coastal processes, tides, sun-moon relationships, structural and ground water geology, and meteorology.
- Developed earth sciences course curriculum, prepared exams and issued grades to students.
- Tutored university students in coastal processes, physical geography, geology and meteorology.

Continuing Education:

- Effective Management in State Government, NJDEP Leadership Training Academy, October 6, 2005 – November 17, 2005. - Total of 18 hours.
- ArcGIS: Understanding Coordinates, New Jersey DEP, May 17, 2004
- ArcGIS: Intermediate Applications, Rutgers University, April 9, 2003 – May 7, 2003
- ArcGIS: ARCVIEW 8.1 New Jersey DEP, February 4 & 11, 2003
- Fundamentals of Remote Sensing, Rutgers University, June 7, 2002 – June 28, 2002
- ArcGIS: Introduction to ArcView 8, Rutgers University, February 28, 2002- March 21, 2002
- ARCVIEW Spatial Analysis & Network Analysis, Rutgers University, September 21, 22, 2000
- Image Interpretation and Analysis, Rutgers University, March 13, 2000
- Geodetic Control, New Jersey DOT, May 3, 1995
- Global Positioning Systems (GPS), New Jersey DEP, 1992
- Geographic Information Systems (GIS), NJDEP, numerous courses 1988-2000
- Remote Sensing: An Overview, Rutgers University, January 13 -16, 1987
- Management – Level 1, NJDEP, October, 1983, Level II, April, 1984
- Supervision and Management, NJ Dept. of Civil Service, 30 hours, August, 1981
- Marsh and Dune Vegetation, Trenton State College, Seaville, NJ, August 2 -18, 1977

LECTURES AND PRESENTATIONS:

- “Building, Buying and Selling Coastal and Waterfront Properties” New Jersey Institute for Continuing Legal Education, Atlantic City, New Jersey, June 22, 2004.
- “An American Place: Ellis Island” Guest Speaker – American Studies Department, Princeton University, Princeton, New Jersey, October 14, 2003
- “Changes to Ellis Island: 1766 to 1995” at GIS Day, New Jersey Department of Environmental Protection, Trenton, New Jersey, November 19, 1999
- “GIS and Coastal Boundary Disputes: Where is Ellis Island?” San Diego Convention Center, 1999 ESRI International User Conference, July 28, 1999.
- “The Battle Over Ellis Island” at the Annual URISA/SMAC convention Rutgers University, New Brunswick, New Jersey, March 11, 1999
- “Ellis Island: A Geographer’s Study of Maps and Mud” at the State University of New York at New Paltz, November 18, 1998.

PUBLICATIONS:

- “GIS Technology Reigns Supreme in Ellis Island Case”, Professional Surveyor, July /August 1999, pp. 6-14. Also published by Dushkin/McGraw Hill in ANNUAL EDITIONS: Geography 00/01, Fifteenth Edition.
- “GIS and Coastal Boundary Disputes: Where is Ellis Island” 1999 19th Annual ESRI International User Conference Proceedings. Also published in ArcUser Magazine, October-December 1999, pp.67-69.

Richard G. Castagna

TESTIMONY IN JUDICIAL ACTIONS:

1. **New Jersey v. Delaware**
Supreme Court of the United States
Original No. 134
Affidavit – 2005, Deposition – October 2006
2. **Avalon v. Raab v. NJDEP**
Superior Court of New Jersey, Cape May County
Docket No: CPM-L-257-02
GIS Map and Aerial Photo Interpretation –2005
3. **Raleigh Avenue Beach Association v. Atlantis Beach Club and The State of New Jersey**
Supreme Court of New Jersey
Docket No 56,585
Certification and GIS Map –2003
4. **Howard Meyers and Cynthia Meyers v. State of New Jersey, Tidelands Resource Council**
Superior Court of New Jersey, Chancery Division, Atlantic May County
Docket No ATL-C-191.02
Report, Interrogatories, and GIS Map –2003
5. **Waterford Wedgewood v. State of New Jersey, Department of Environmental Protection**
New Jersey Office of Administrative Law
Docket No ESA 04655
Certification and GIS Map –2003
6. **East Cape May Associates v. State of New Jersey, Department of Environmental Protection**
Superior Court of New Jersey, Law Division, Cape May County
Docket No CMP-L-1217-92
Certification and GIS Map –2000
7. **Jacqueline Hatch v. Stephen J. Andolora and NJDEP**
Superior Court of New Jersey, Chancery Division, Ocean County
Docket No C-95-97
Affidavit–April 1998
8. **New Jersey v. New York**
Supreme Court of the United States
Original No. 120
Deposition - November 1995
Trial - July 1996
9. **New Jersey Department of Environment Protection v. Norman S. Myles**
New Jersey Office of Administrative Law
Trial - May 1995

TESTIMONY IN JUDICIAL ACTIONS: (Continued)

10. **77 Moonachie Owners Corporation v. Tidelands Resource Council**
Superior Court of New Jersey, Chancery Division, Bergen County
Docket No. C-330-93
Deposition - 09/01/94
11. **Ole Hansen & Sons, Inc. v. Tidelands Resource Council**
Superior Court of New Jersey, Law Division, Atlantic County
Docket No. ATL-L-003335-93
Deposition - 07/26/94
12. **JMB Income Properties, Ltd. v. State of New Jersey**
Superior Court of New Jersey, Law Division, Bergen County
Docket No. L-005900-94
Deposition - 07/15/94
13. **Mazzeo v. Tidelands Resource Council**
Superior Court of New Jersey, Chancery Division, Ocean County
Docket No. L-121-93
Deposition - 01/25/94
14. **City of Union City v. M. & C. Franco**
Superior Court of New Jersey, Hudson County
Docket No. W-22513-89
Deposition – 1994
15. **New Jersey Department of Environmental Protection & Energy v. Ruffu Ford**
Superior Court of New Jersey, Chancery Division, Atlantic County
Docket No. ATL-C-112-91
Deposition – 1992
16. **Beal v. Hill**
Superior Court of New Jersey, Law Division, Burlington County
Docket No. W-012124-88
Deposition – 1989
17. **New Jersey Department of Transportation v. Blades**
Superior Court of New Jersey, Atlantic County
Trial – 1986

**TRENDS IN SHIPPING, DREDGING TECHNOLOGY AND IN WHARF
AND PIER CONSTRUCTION IN THE YEARS SURROUNDING 1905
WITH EMPHASIS ON THE DELAWARE RIVER AND BAY**

prepared for the
State of New Jersey
Office of the Attorney General
Division of Law
25 Market Street
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by

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INTRODUCTION

This study has been made at the request of the State of New Jersey. It provides an overview of commerce on the Delaware Bay and River from the mid-1800's into the early 1900's, and describes changes in the design and construction of ships, navigation channels, and wharves and piers during that period.

The states of New Jersey and Delaware are currently in litigation concerning a provision within the "Compact of 1905" between the two states that was ratified by the U.S. Congress in 1907. Article VII of that compact states that,

"Each state may, on its own side of the River, continue to exercise riparian jurisdiction of every kind and nature, and to make grants leases and conveyances of riparian lands and rights under the laws of the respective states."

I regard navigation channels, wharves, piers and the loading and unloading of vessels at these structures as riparian structures, uses or activities. However, it is not my purpose here to prove that my understanding of these terms was shared by the persons who drafted or signed the Compact of 1905. Rather, I have attempted to describe the trends in water-borne commerce and changes in the design of ships, navigation channels, and wharves and piers in the years leading up to and following 1905, both on the Delaware Bay and River and elsewhere. These trends would have been familiar to or ascertainable by individuals interested in riparian uses or structures at the time the Compact was signed or ratified.

I have concluded that the trend for data in the years leading up to and following 1905 was not for continuation of the *status quo*, but instead for construction and use of increasingly larger, faster ships with deeper drafts using deeper navigation channels, and longer piers extending out to water deep enough to load and unload articles of commerce necessary to sustain a growing population¹.

Trends in Shipping and Waterborne Commerce

The century before 1905 saw great progress in technology. Advances in naval architecture, the construction of navigation works and harbor facilities including wharfs and piers were a part of that progress. The first industrial revolution, beginning in the late 18th century and ending in about 1850, brought about the use of machinery to replace much manual labor. The second industrial revolution, starting in about 1850, brought about steam-powered ships, railways, automobiles and electrical

¹ The United States population grew from 23,191,876 in 1850 to 75,994,975 in 1900 and to 91,972,226 in 1910. The population of New Jersey effectively doubled between 1800 (1,131,116) and 1905 (2,144,143). [www.1911.encyclopedia.org].

power generation. This progress is reflected, in part, by the number of patents issued by the U.S. Patent Office. Patents for new or useful processes, machines or manufacture increased from an annual average of 2,313 for the period between 1850 and 1860 to 22,000 for the period between 1895 and 1900 and to 27,733 for the period between 1905 and 1910. Design patents for new original and ornamental articles of manufacture or design increased from an annual average of 92 for the years between 1850 and 1860 to 1,335 for the years between 1895 and 1905 (U.S. Patent & Trademark Office, 2002). While all these patents were certainly not related to ship design, the data reflect that articles of commerce and their process of manufacture were increasing and changing rapidly in the years leading up to 1905.

Steam-powered ships made their debut in the U.S. in 1807 with Robert Fulton's *Clermont*. During the mid-1800s swift, sail-powered clipper ships reigned briefly over American shipping (Dean, 1989); however, steam propulsion continued to advance during these years to be capped by the invention of the steam turbine first used to propel the 100-foot-long ship *Turbina* in 1897. During this period many hybrid vessels were built with both sail and steam propulsion. See Figure 1. In the early years of the 20th century, internal combustion engines including the diesel engine came into common use for ship propulsion. With advances in propulsion systems came larger and larger ships to carry passengers and cargo more economically. For example, by 1874 the 475-foot long passenger vessel *Scythia* was commissioned; by 1917 the *Aquitania*, more than 900 feet long, had a draft of 35 feet. Larger ships generally displace more water and need deeper water at the terminals where passengers embark and disembark and where cargo is loaded and unloaded. Thus, larger ships require deeper water. This, in turn, requires advances in providing the harbor facilities that serve these larger ships.



Figure 1 Hybrid Sail and Steam Vessel on the Delaware River, circa 1870.

Another indication of the trend of increasing cargo vessel draft during this period is the depth of the Suez Canal, a sea-level canal without locks. Prior to 1890 the canal was 24' 7" deep; between 1890 and 1902 it was 25' 7" deep; between 1902 and 1906 it was 26' 3", by 1906 it was 27' 0" and by 1908 it was 28' 0" deep (Greene, 1917). See Figure 2. The fleet of American flag vessels was also increasing. In 1830 the total tonnage of American flag ships was 1.2 million tons. Ships drawing more than 400 tons were among the largest at that time. Thirty years later tonnage had increased more than 4 times, to 5.4 million tons, and ships drawing more than 1,500 tons were common. To accommodate these larger ships, the navigation channel in the Delaware River and Bay went from a depth of 17 feet in 1885 to 35 feet in 1910. (Surveys to provide a 30-foot depth were authorized by the Rivers and Harbors Act of 1896.)

NAVIGATION DEPTHS IN THE SUEZ CANAL (1890 - 1908)

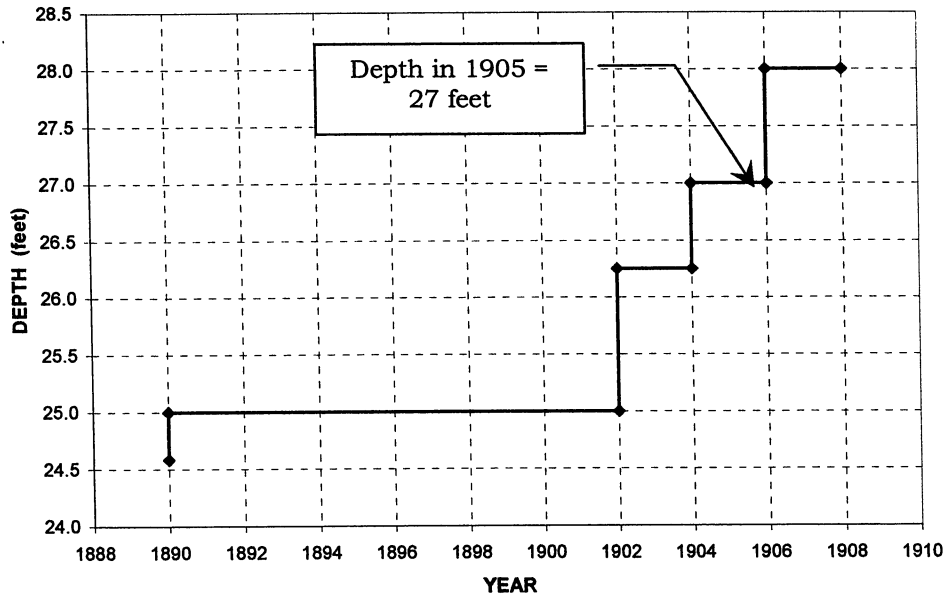


Figure 2 Navigation Channel Depths in the Suez Canal, 1890 to 1908 (data from Greene, 1917)

In fact, the Delaware Bay Area had a significant economic stake in the continued vitality and growth of the ship building industry, since it was the nation's leading ship building area, with ship yards in Philadelphia, Chester and Marcus Hook, PA, in Camden, NJ and Wilmington, DE. Of the approximately 1,940 iron and steel hull U.S. merchant vessels in service in 1905, 688, or 35% of them, were built in the Delaware Bay area (Department of Commerce & Labor, 1905).

In 1905 there were 2 U.S. flag merchant vessels with displacements exceeding 20,000 tons (Department of Commerce & Labor, 1905). There were 12 exceeding 10,000 tons. Of those, 6 were built in the Delaware Bay area. Table 1 presents a list of those vessels along with their draft, date of commissioning and where they were built.

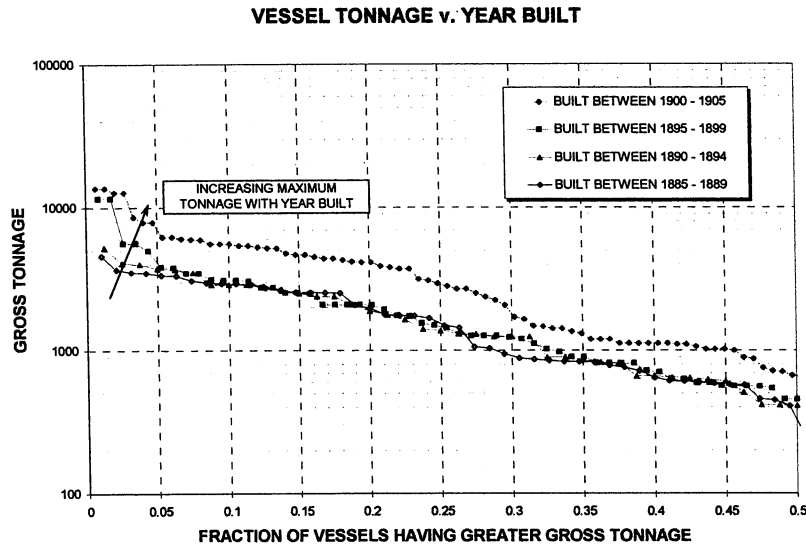


Figure 3a Fraction of U.S. Merchant Vessels with Tonnage Greater than Given Tonnage Showing the Increase in Tonnage with Year of Vessel Construction.

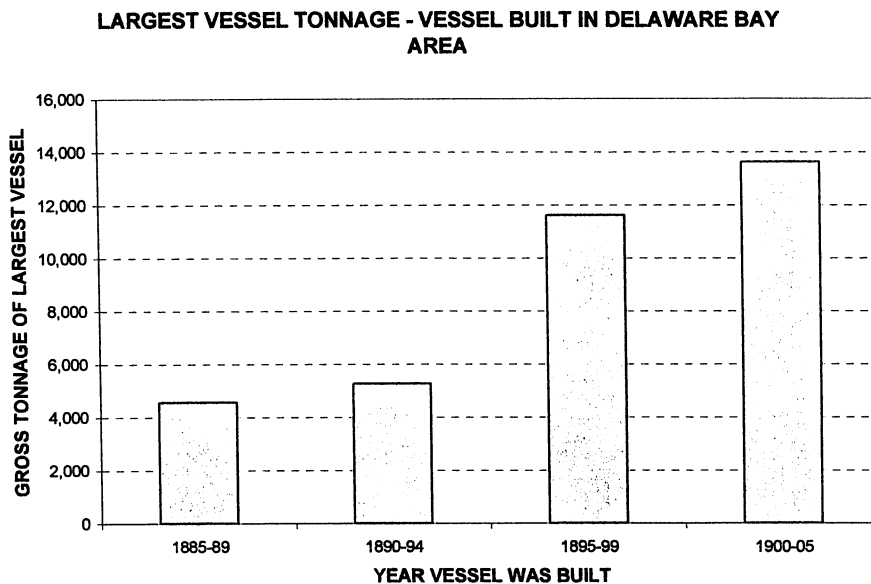


Figure 3b Tonnage of Largest Vessel built in the Delaware Bay Area during Given Years.

Figures 3a and 3b depict how merchant vessel tonnage increased over time for vessels built in the Delaware Bay area. The top line in Figure 3a shows the tonnage of ships built in the Delaware Bay between 1900 and 1905. The large gap between that line and the lines underneath it shows that a greater proportion of the 1900-1905 "class" ships were of greater tonnage and, on average, larger than ships built between 1885 and 1899. Ships built during the earlier timeframe were smaller, on average, and the proportion of "large tonnage" vessels was smaller. Of those vessels built from 1885 to 1899, only two exceeded 10,000 tons displacement. In comparison, four such vessels were built between 1900 and 1905, and each was heavier than those built in the preceding years. For merchant vessels built between 1890 and 1894 the largest was only slightly over 5,000 tons, up from a maximum of only about 4,500 tons for those built in the preceding 5 year period. The figure also shows that the upper end of the vessel size distribution increased significantly from the 1895-99 construction period to the 1900-05 construction period. While these data pertain to merchant vessels only, it indicates that reasonable future expectations for the ship building industry around 1905 would have been for increasing vessel size. Figure 3b shows the tonnage of the largest vessel built in the Delaware Bay area in the given time period.

Table 1 Twelve Largest U.S. Merchant Vessels in 1905 (iron and steel hulled vessels)

Vessel	Gross Tons	Draft	Year Commissioned	Where Constructed
<i>Minnesota</i>	20,718	19.0	1904	New London, CT
<i>Dakota</i>	20,714	19.0	1905	New London, CT
<i>Manchuria</i>	13,638	23.1	1903	Camden, NJ
<i>Mongolia</i>	13,638	23.1	1903	Camden, NJ
<i>Pinland</i>	12,760	21.2	1902	Philadelphia, PA
<i>Kroonland</i>	12,760	21.2	1902	Philadelphia, PA
<i>St. Louis</i>	11,629	26.8	1895	Philadelphia, PA
<i>St. Paul</i>	11,629	26.8	1895	Philadelphia, PA
<i>Siberia</i>	11,284	21.8	1902	Nwprt News, VA
<i>Korea</i>	11,276	21.8	1902	Nwprt News, VA
<i>New York</i>	10,798	22.0	1888	Scotland
<i>Philadelphia</i>	10,786	22.0	1889	Scotland

Figures 4a and 4b show the increase in draft with time for U.S. flag merchant vessels built in the Delaware Bay area. The data show that a greater percentage of ships built in 1900-1905 had deeper drafts, as compared to those built between 1885 -1899. For vessels built between 1900 and 1905, there were five with drafts exceeding 30 feet. Of the vessels built between 1895 and 1900 none drew more than about 27 feet of water. The upper end of the distribution shows a steady increase in the maximum vessel draft with date of construction.

VESSEL DRAFT v. YEAR BUILT

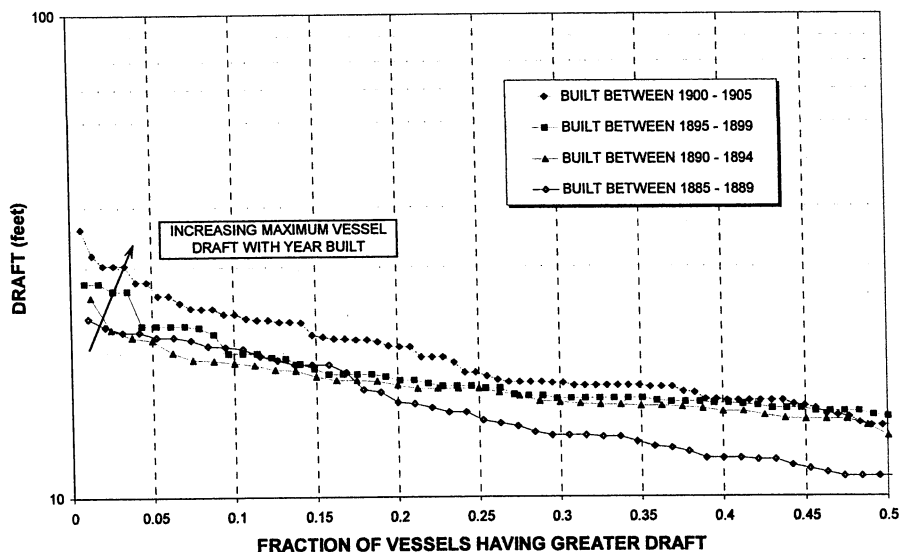


Figure 4a Fraction of U.S. Merchant Vessels with Draft Greater than Given Draft Showing the Increase of Maximum Draft with Year of Vessel Construction.

LARGEST DRAFT VESSEL - VESSEL BUILT IN DELAWARE BAY AREA

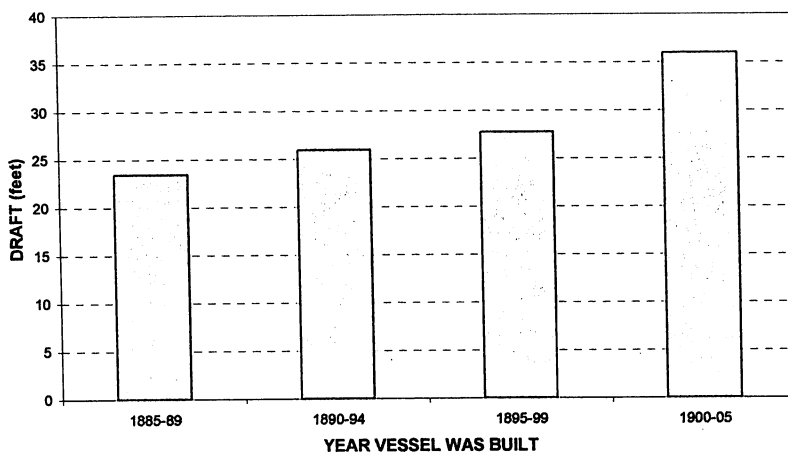


Figure 4b Maximum Draft of Vessel Built in the Delaware Bay Area during the Given Years.

The Delaware Bay area also produced many U.S. Navy ships including many of the largest in service (Department of Commerce & Labor, 1910). By 1910, the two largest U.S. Navy ships, the *Delaware* and the *North Dakota*, each displaced 20,000 tons. Both were steel hull, twin screw vessels, 510 feet long and drew 26 feet, 11 inches of water. Naval vessels of 16,000 tons were common. The *Kansas*, *New Hampshire* and

Michigan were built in Camden, NJ and the *South Carolina* was built in Philadelphia. These ships were 450 feet long and drew 24 feet, 6 inches of water. Table 2 gives the largest naval vessels in service in 1910.

Table 2 Largest U.S. Navy Ships in Service in 1910.

Vessel	Gross Tons	Draft	Under Construction	Where Constructed
<i>North Dakota</i>	20,000	26' 11"	1907-09	Quincy, MA
<i>Delaware</i>	20,000	26' 11"	1907-09	Nwprt News, VA
<i>Louisiana</i>	16,000	24' 6"	1902-06	Nwprt News, VA
<i>Vermont</i>	16,000	24' 6"	1903-07	Quincy, MA
<i>Kansas</i>	16,000	24' 6"	1903-07	Camden, NJ
<i>Minnesota</i>	16,000	24' 6"	1903-07	Nwprt News, VA
<i>Connecticut</i>	16,000	24' 6"	1902-06	New York, PA
<i>Michigan</i>	16,000	24' 6"	1906-09	Camden, NJ
<i>South Carolina</i>	16,000	24' 6"	1906-09	Philadelphia, PA

By 2001 waterborne commerce using the ports in the Delaware Bay and River totaled almost 107 million tons or about 4.5% of the total US waterborne commerce (all domestic and foreign shipping using U.S. ports). This total is more than twice the waterborne commerce forty years earlier in 1962. (USACE, 2001)

Trends in Dredging Technology

Dredging technology also made significant advances in the years before 1905. Dredging is simply sub-aqueous digging to deepen water in a navigation channel or next to a wharf or pier. (Dredges are also used for mining.) The early 19th Century saw the development of the steam-powered dredge. Figure 5 shows a ladder dredge, circa 1830. During this period, dipper and grab dredges were preferred in the U.S., not unlike the clamshell dredges of today. American Dredging Company, active in the Delaware River and Bay, was founded in 1867. The company contributed to the development of dredging technology including the development of upland disposal areas for material dredged from the bay and river. In 1871 the Corps of Engineers converted a steamer into a suction dredge, the *Henry Burden*, one of the first hydraulic dredges in the U.S. Also around this time hydraulic cutter head dredges were developed that use rotating cutter heads to break up packed or consolidated bottom sediment so it can be drawn into the suction end of a centrifugal pump and discharged through a pipeline. The U.S. Government built its first hopper dredge in 1890. Hopper dredges are self-propelled and have suction arms that collect unconsolidated sediment from the bottom and place it in a hopper bin. The dredge then carries the material offshore to dispose of it. Three more hopper dredges were built before 1900 and by 1904 fourteen hopper dredges were in service or under construction (Snyder & Guss, 1974).

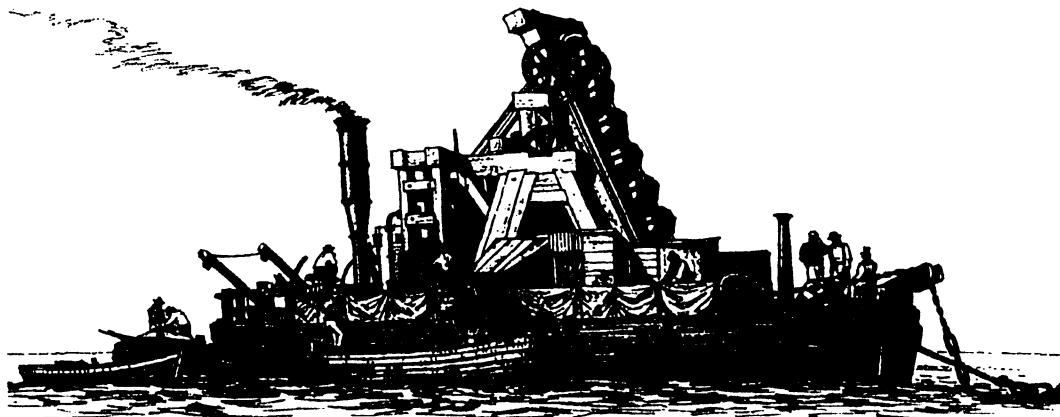
In June 1907 the Cape May Real Estate Company undertook the dredging of 400 acres in Cold Spring Harbor, New Jersey (now known as Cape May Harbor) to a depth of 30 feet (Schroth v. United States, 1928). The company actually dredged only about 250 acres to the required 30-foot depth and removed about 19.7 million cubic yards of sediment, an amount that far exceeded the original estimate of 1.36 million cubic yards. An additional 2.7 million cubic yards were dredged from the harbor channel by Cape May Real Estate to provide a depth of 30 feet.

Delaware River dredging was controversial even in the late 1800s. In 1879, Schooner Ledge, a dangerous submerged reef that extended into the Delaware River from the Pennsylvania shoreline near Marcus Hook was excavated. It was the costliest navigational improvement in the Delaware River up to that time. The project involved the removal of rock to a depth of 24 feet (USACE, 2006). In 1896 the Rivers and Harbors Act authorized surveys to create a 30-foot-deep Delaware River Channel at an estimated cost of \$5.8 million. The project was to remove 35 million cubic yards of sediment and 24,000 cubic yards of rock to a mean low water depth of 24 feet (USACE, 2006). The *Evening Journal* (1896) reported on discussions regarding disposal of the dredged material either into the river or behind diked disposal areas. The paper went on to report that the dredging of Cherry Island Flats near Edgemoor, DE was progressing satisfactorily with 150,000 to 200,000 cubic yards removed before the onset of winter with work to continue in the spring. Bulkheads were subsequently constructed around Baker and Stony Point Shoals on the New Jersey side of the bay across from Port Penn, DE to create an artificial island on which the dredged material was placed (USACE, 2006).

Trends in Pier Construction

Pier construction technology was also advancing in the years before 1905. The construction of piers, wharfs and harbor works to serve shipping began in antiquity. Wharfs are structures usually extending only short distances from shore into a waterway adjacent to which ships can moor to load and offload cargo. They are usually short, solid fill extensions of the land into the water. Piers are longer structures that provide access to relatively deep water where ships can moor to load and offload their cargoes. Like wharfs, early piers were often waterward extensions of the land built by filling in a portion of the water. They might be considered causeways extending from land into deep water. Prior to the early 19th century many piers were timber crib structures – timber “boxes” floated into position and filled with rock to sink them. Crib structures sunk atop one another were used in deeper water and multiple cribs were used to extend the pier waterward. In theory, crib structures can extend waterward to significant depths; however, there are practical limitations imposed by the volume of material, usually stone, needed to

fill the cribs. Another obvious limitation is the effect the solid pier has on the flow of water to cause changes in current patterns. Pile supported piers do not suffer from these shortcomings, although they are limited by the length of available timber, the most common pile material. However, as discussed below, timber of sufficient length was available to build piers out to the navigable channel of the Delaware River, which in 1910 was approximately 35 feet deep.



The mud dredger of the 1830's was best exemplified by the steam-driven endless chain bucket or ladder dredge. This type retained the favor of the Europeans, but was replaced in American waters by grapple and dipper dredges.

Figure 5 Steam-Powered Ladder Dredge of the Type Favored by Europeans, circa 1830 (Snyder & Guss, 1974)

The most common pile material is timber. Early piles were driven with drop hammers lifted by man or draught animals such as horses or oxen. With the advent of steam pile driving equipment, timber piles could be driven to greater penetration and thus could support greater loads. Figure 6 shows a steam-powered pile driver used to place piles for the foundation of Fort Delaware on Pea Patch Island during its reconstruction before the Civil War. Such technology ensured that timber piles could be driven deep enough to support piers out into deeper water, such as that in the Delaware River. Greene (1917) summarized the availability of timber piles prior to 1917:

“Piles up to 60 feet in length are easily obtained on the Atlantic Coast, of spruce, white pine, oak, Norway pine, or short-leaf pine, the latter material supplying the bulk of the demand. Piles of 60 to 85 feet in length are usually long-leaf pine; they are somewhat difficult to obtain and are rapidly increasing in price; piles over 85 feet in length are not generally on the market, and where longer piles are required, splicing is usually resorted to.” “Piles of Douglas fir up to

120 feet long, of perfect form, are readily obtained on the Pacific Coast and the promise of delivery on the Atlantic Coast by way of the Panama Canal of fir piles up to 110 feet long, which is the limit that can be carried on the decks of vessels engaged in the lumber trade at reasonable prices, will probably soon be fulfilled.”

The water depth to which timber pile-supported piers could extend was somewhat limited by the natural lengths available. Although wood piles could be spliced to reach deep bearing layers, splices above the bottom mud line did not provide great strength against the lateral forces that arise due to waves and currents. Other materials were also used. Wrought iron was available in the late 18th Century and piles of wrought iron were used prior to 1905. Alexander Mitchell, an English brick maker, developed the wrought iron screw pile in 1833. Figure 7 shows iron screw piles being driven in 1877 to construct the Iron Pier in lower Delaware Bay at Lewes, DE near Cape Henlopen. Construction of the pier began in 1871. The pier would extend 1,700 feet offshore into water 22 feet deep. While originally designed to support railroad freight cars, the increase in weight of railroad equipment in the years between its design and completion precluded its use for that purpose. Wrought iron screw piles were also used to support lighthouses in the Delaware and Chesapeake Bays in the late 19th Century (Figure 8). Reinforced concrete was also in use to construct piers in the period around 1905.

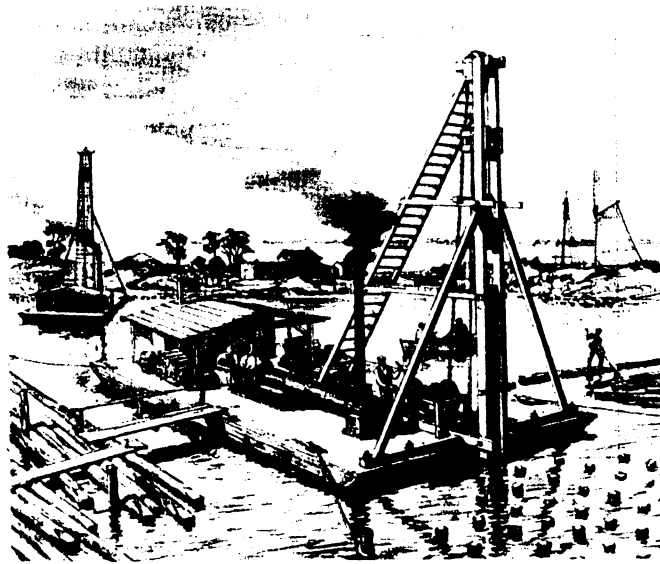
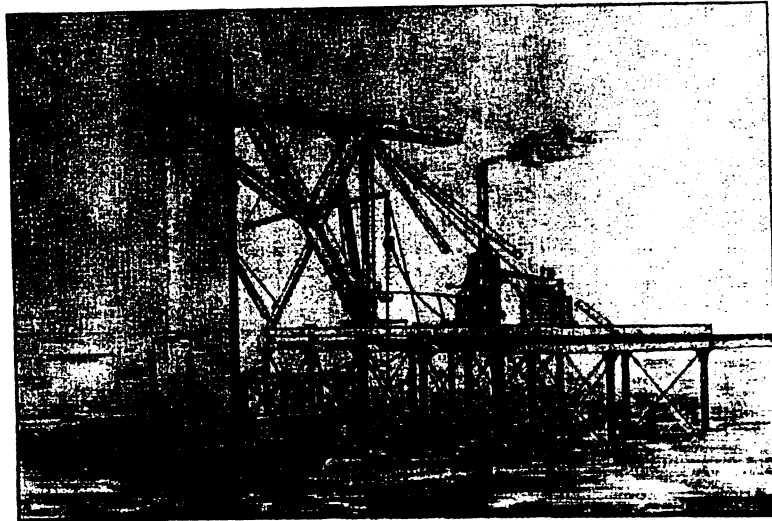


Figure 6 A Steam-Powered Pile Driver Placing Foundation Piles for Pea Patch Island, circa 1838 (Snyder & Guss, 1974).



The method of driving screw piles for the Iron Pier in 1877 and 1878 was illustrated for the Annual Report by Mr. A. Sterle, Captain Ludlow's Assistant Engineer.

Figure 7 Wrought Iron Screw Piles being Driven by Steam for the Iron Pier, circa 1877 (Snyder & Guss, 1974).



Figure 8 Windmill Point Lighthouse at the Mouth of the Rappahannock Supported on Wrought Iron Screw Piles (similar to lighthouses in the Delaware Bay) (Snyder & Guss, 1974).

Long piers extending into deep water were planned and built in the period preceding and following 1905. In 1896 Henry Flagler undertook the construction of a 128-mile-long pier-supported railroad causeway from Homestead Florida to Key West, fifty miles of which were over water. The route included 6 miles of deep-water bridge spans (Heppenheimer, 2004). Also, the City of Chicago undertook the construction of Pier #2 in 1914. Planned in 1909, the 292-foot wide pier was one of two piers extending 3,000 feet into Lake Michigan for "shipping and entertainment." The pier was renamed "Navy Pier" in 1927 to honor veterans of World War I. It still stands today. The Abbott Kinney Pier in

Venice, California was built in 1904 as a recreation pier extending into the Pacific Ocean. It was 900 feet long and 30 feet wide and was supported by 600 timber piles driven by 4 pile drivers. In 1886 the "Iron Pier" amusement pier extending into the Atlantic Ocean was built in Atlantic City, NJ. It was later sold to the H.J. Heinz Company and became known as the "Heinz Pier." In 1898 the "Steel Pier" amusement pier opened in Atlantic City at a cost of \$200,000. This steel girder structure extended 1,500 feet from the boardwalk into the Atlantic Ocean and remained virtually unchanged until a fire damaged the entrance structure in 1924.

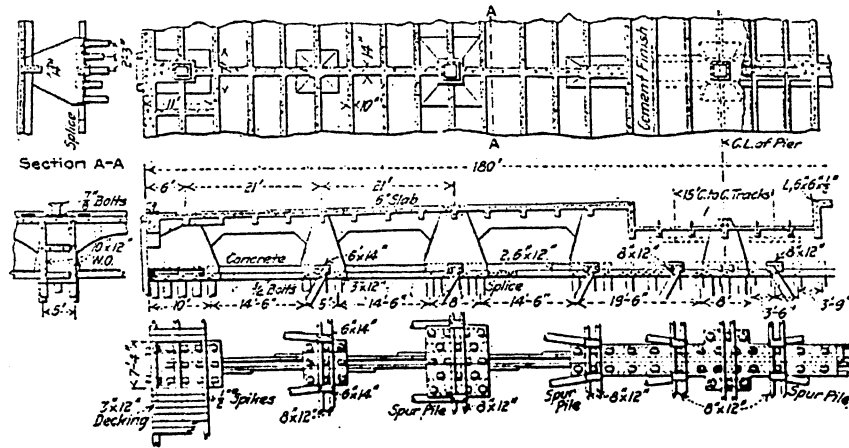


Fig. 76. Details of Pier 40 Philadelphia.

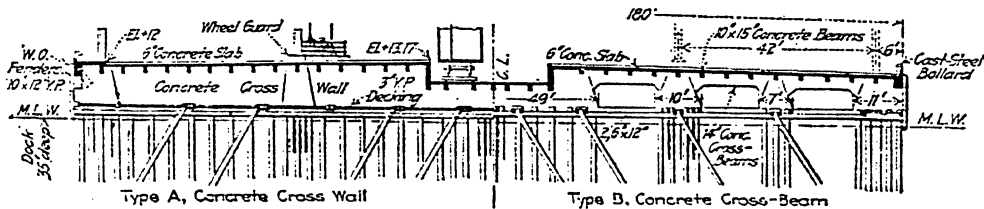


Fig. 75. Piers 38 & 40 with Reinforced Concrete Decks, Cross Walls and Posts on Wooden Piles, Philadelphia, Pa.

Figure 9 Reinforced Concrete Details of Piers 38 & 40 in Philadelphia (Greene, 1917).

Following 1905 pile driving technology advanced primarily by using new and improved materials for piles and by the development of faster, more powerful hammers. Reinforced concrete piles were in use prior to 1905, but came into more common use later in the early 20th Century. More commonly, in the years before 1905, reinforced concrete was used for pier decks, cross walls and posts while the pier itself was supported on timber piles. See Figure 9. Prestressed concrete piles, steel pipe piles and steel H-piles are of more recent vintage. Steel piles are strong and can be easily spliced so that they can be used to economically build piers into much deeper water. (Many offshore oil exploration and production platforms founded in depths of hundreds of feet are supported on steel

piles.) Corrosion is a problem with steel in the marine environment within the tidal zone where it is alternatively exposed to water and air. Encasing steel piles in concrete is common practice to combat this corrosion.

CONCLUSION

The technology to provide harbor facilities for ships of increasing tonnage and draft existed before 1905. In the century before 1905 dredging technology advanced to the point where depths of 30 feet could routinely be achieved. Piers extending several thousand feet into the water were being built using timber piles as well as piles of wrought iron. Some of these piers were in severe environments such as the Atlantic and Pacific Oceans and Lake Michigan. New materials for pier construction were also being investigated. Engineers in 1905 looking back at the preceding century could easily see that ships would get larger, require deeper water and thus require deeper channels, longer and stronger piers and new harbor facilities to serve them. These trends were anticipated by port and harbor engineers of the day. In 1917 Greene summarized the trend in the construction of harbor works as follows:

“While there will always be many ships of small size and draught, built to go into the more remote and less important harbors, it is usually the rule that the larger the ship the lower is the cost of transportation and in consequence channels are artificially deepened, canal locks enlarged and a demand created for increase in the length and width of wharves and piers and in the depth of water alongside them.” (Greene, 1917)

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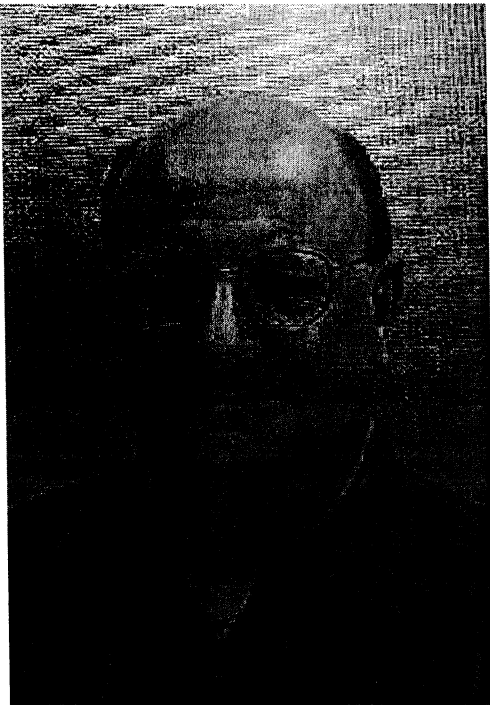
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Philadelphia, Pennsylvania 19104**

J. Richard Weggel was born in Philadelphia, Pennsylvania. He attended the Philadelphia Public Schools, graduating from Frankford High School in June 1959. In June 1964, he graduated from the Drexel Institute of Technology with a Bachelor of Science degree in civil engineering. While a student at Drexel, he conducted research sponsored by the National Science Foundation on epoxy resins for structural connections and taught an undergraduate laboratory course in strength of materials. Between June 1964 and September 1964, he taught static mechanics at Drexel. In September 1964, he enrolled as a graduate student in civil engineering (hydraulics) at the University of Illinois at Urbana-Champaign. While a research assistant at Illinois, he conducted research on long wave propagation in open channels, the effect of surface tension on the results of hydraulic model studies and served as Technical Assistant to the Director of the Illinois Water Resources Center. He received a Master of Science degree in September 1966; in 1968, he was awarded the Boris A. Bakhmeteff Research Fellowship in the Mechanics of Fluids to conduct his dissertation research on the impact pressures of breaking water waves. After obtaining a Doctor of Philosophy degree in civil engineering (hydraulics) in October, 1968, he remained at Illinois as an Assistant Professor of Civil Engineering teaching undergraduate courses in hydraulics and hydrology, and graduate courses in hydrology, ground water hydraulics, water resources engineering and ocean engineering. During the summer of 1969, he was a Research Assistant Professor of Soil Physics in Agronomy conducting research on the uptake of water by plant root systems. During the summer of 1970 he was a hydraulic engineer at the Coastal Engineering Research Center primarily involved in developing design criteria for coastal structures. In February 1971, he joined the permanent staff of the Coastal Engineering Research Center as a hydraulic engineer in the Design Branch preparing the internationally recognized "Shore Protection Manual." In March, 1973 he was promoted to Special Assistant to the Commander and Director, CERC, in which capacity he served as a consultant to various Corps of Engineers District and Division offices on complex coastal engineering problems. He served as a member of the Steering Committee of the North Atlantic Division's Deep Port Study Group and as the US Representative to the Second Intentional Waves Commission of the Permanent International Association of Navigation Congresses (PIANC). In January, 1977, he became Technical Assistant

to the Chief, Engineering Development Division, CERC, and developed a research program to investigate the functional performance of weir-jetty sand bypassing systems. Other research included development of a method for generating finite amplitude, shallow water waves that propagate without change in form in a laboratory wave tank.

In July, 1977, he became Chief, Evaluation Branch, Engineering Development Division, CERC, responsible for the \$600,000 research program of that Branch. Research areas included: weir-jetty research; field investigations of an experimental coastal groin at Point Mugu, California; a study of sand accumulation behind an offshore breakwater at Channel Islands Harbor, California; mathematical simulation of shoreline changes induced by man-made structures; evaluation of the functional and structural performance of coastal works; littoral environment data collection and analysis techniques; and the monitoring of existing coastal projects to determine their performance characteristics. He continued his service as consultant to various Corps of Engineer Districts and Divisions on coastal engineering problems.

During his tenure at the Coastal Engineering Research Center, he also held the rank of Professorial Lecturer at the George Washington University teaching courses in coastal and harbor engineering, sediment transport, coastal processes, and coastal structures.

In his present position as Professor of Civil Engineering in the Department of Civil and Architectural Engineering at Drexel University, Dr. Weggel teaches and conducts research in the areas of hydraulics, hydrology, water resources engineering and coastal and port engineering.

EDUCATION:

1. Bachelor of Science in Civil Engineering, June 1964, Drexel Institute of Technology.
2. Master of Science (civil engineering, hydraulics), June 1966, University of Illinois at Urbana-Champaign.
3. Doctor of Philosophy (civil engineering, hydraulics, water resources), October 1968, University of Illinois at Urbana-Champaign.

LICENSES & OTHER TRAINING:

1. Registered Professional Engineer
Illinois (by examination)
New Jersey
Pennsylvania

2. "Tidal Inlet Hydraulics", Short Course, US Army Coastal Engineering Research Center, May 10-20, 1971, Washington, DC
3. "Streamfunction Wave Theory", Short Course, University of Florida, June 18-July 2, 1971, Gainesville, Florida.
4. "Hurricane Storm Surge Prediction and Frequency Analysis", Short Course, US Army Coastal Engineering Research Center, June 25-30, 1972, Washington, DC
5. "Planning for Offshore Ports", Marine Technology Society, September 10-14, 1973, Washington, DC
6. "Executive Leadership Seminar", US Civil Service Commission, May 11-14, 1975, Fredericksburg, Virginia
7. "Managing Management Time", US Department of Agriculture Graduate School, September 11-12, 1975, Washington, DC
8. "Management of Research and Development", The George Washington University, Spring, 1976.
9. "Project Health, Practical Guide to Executive Fitness and Well Being", Civilian Personnel Office, November 1977, Fort Belvoir, Virginia.
10. "Supervisor Development, Phase I", Civilian Personnel Office, September, 1977, Fort Belvoir, Virginia.
11. "Supervisor Development, Phase II", Civilian Personnel Office, June, 1978, Fort Belvoir, Virginia.
12. "Theory Z (Management Science)", Institute for Professional Development, December 10-13, 1978, Arlington, Virginia.
13. "HP 9845 Operation and Programming", Hewlett-Packard Computer Systems, January, 1981, Rockville, Maryland.
14. "Effective Engineering Management", University of California at Los Angeles, June 22-27, 1981, Washington, DC
15. "Numerical Calculation of Fluid Flow and Heat Transfer", Drexel University, Continuing Professional Education, February - April, 1984, Philadelphia, PA.

16. "Introduction to Geophysics," G228, Department of Civil & Architectural Engineering, Drexel University - spring 1988

17. "Finite Element Method in Groundwater Flow Modeling" Drexel University - spring 1991

HONORS & AWARDS:

1. William Penn Troth Award, Drexel Institute of Technology, 1964
2. Class of 1916 Award, Drexel Institute of Technology, 1964
3. Institute Day Award, Drexel Institute of Technology, 1963
4. Boris A. Bakhmeteff Fellowship in the Mechanics of Fluids, Humanities Fund, Inc., 1967
5. Outstanding Performance Rating, US Army Corps of Engineers, 1973, 1974, 1975, 1976, 1981, 1982
6. Commanders Award for Engineering Excellence ("Engineer of the Year Award"), US Army Coastal Engineering Research Center, 1982
7. American Society of Civil Engineers, Moffatt & Nichol Harbor and Coastal Engineering Award, 1993
8. Robert G. Quinn Medal for Outstanding Leadership, Drexel University, 20 February 2002

MEMBERSHIP IN PROFESSIONAL & HONORARY SOCIETIES:

1. American Society of Civil Engineers, Fellow, Life Member

* Research Committee, Waterway, Port, Coastal & Ocean Division, ASCE.

- Member, 1975-1978
- Chairman, 1978

* Executive Committee, Waterway, Port, Coastal & Ocean Division, ASCE.

- Member, 1979-1983
- Chairman, 1981-82

* Management Group D,
- Member, 1983-1988

* Chairman, Organizing Committee, Coastal Structures '79, Specialty Conference.

* Program Chairman, Coastal Structures '83, Specialty Conference.

* Co-chairman, Organizing Committee, Coastal Engineering Practice '97 Specialty Conference

* National Offshore Policy Committee
- Member, 1981-1988

* Committee on TAC Interface with Sections and Branches
- Member, 1988-1992

* Rubble-Mound Structures Committee
- Member, 1990 - present

* Philadelphia Section, ASCE
- Member 1983-present
- Member, Board of Directors, 1984-1993
- Vice President, 1987-88
- President elect, 1988-89
- President, 1989-1990

* Water and Environmental Group, Philadelphia Section
- Member, 1983-present
- Chairman, 1984-85

* Member, Infrastructure Committee, Philadelphia Section, 1984.

2. American Geophysical Union, Member

3. Permanent International Association of Navigation Congresses,
- Member.

* Second International Waves Commission, PIANC, US Representative

* US Representative - Working Group on Sand Bypassing at Inlets on Sandy Coasts (1992 - 1995)

4. American Shore and Beach Preservation Association, Member
* Member of Board of Directors, ASBPA

5. Northeast Shore & Beach Preservation Association, Vice President
* Co-chair, Technical Program Committee, Annual Meeting

6. International Erosion Control Association, member
7. International Association for Hydraulic Research (IAHR), member
Faculty Advisor, Drexel University Student Chapter
8. Accreditation Board for Engineering & Technology
* Accreditation visitor for civil engineering programs (1988 - 1998)
9. Marine Board, National Research Council, Committee on Beach
Nourishment and Protection (1992 - 1995)
10. Educational Testing Service, Committee to Investigate the
Development of a Graduate Record Examination in Engineering (1992 -
1994)
11. Chi Epsilon
Faculty Advisor, Drexel University Chapter
12. Tau Beta Pi
13. Phi Kappa Phi
* Vice President, Drexel Chapter (1992 - 1997)
14. Sigma Xi

EMPLOYMENT RECORD:

* **Samuel S. Baxter Professor of Civil Engineering**, Drexel University,
June 1998 - present

* **Professor** – Department of Civil, Architectural & Environmental
Engineering, Drexel University, 32nd & Chestnut Streets, Philadelphia,
PA 19104 – September 1988 to present

* **Associate Dean for Undergraduate Affairs** – College of Engineering,
Drexel University - August 2000 to December 2003

* **Interim Head, Department of Civil, Architectural & Environmental
Engineering**, Drexel University – October 2002 to October 2003

* **Head, Department of Civil & Architectural Engineering** – July 1988
to July 1991

* **Associate Professor** – Department of Civil Engineering, Drexel
University, 32nd & Chestnut Streets, Philadelphia, PA 19104 – July 1983
to September 1988

*** Chief, Coastal Structures and Evaluation Branch** - US Army Coastal Engineering Research Center - July 1977 to July 1983.

As Chief of the Coastal Structures and Evaluation Branch, managed the manpower and financial resources to conduct the research and technology transfer program of the branch. Research efforts included studies of weir jetty performance and design, numerical modeling of shore response to coastal structures, coastal data collection methods and interpretation, and evaluation of the performance of existing coastal projects to establish improved design techniques. In addition, the Corps' Monitoring Completed Coastal Projects (MCCP) Program was managed and carried out in the Evaluation Branch. During tenure as Branch Chief, the Evaluation Branch developed into one of the most productive groups in CERC. The branch produced more than 13 Technical Reports, Coastal Engineering Technical Aids, and other publications during 1981. Most reports prepared in the branch were aimed directly at assisting practicing coastal engineers perform their work. In addition, served as a high level consultant to Corps Districts and Divisions; the office of the Chief of Engineers (OCE), the Board of Engineers for Rivers and Harbors (BERH), and other agencies on complex coastal engineering problems. Consulting efforts included project reviews for OCE and BERH; assistance to the Corps' Savannah District on the design of a weir groin; review of an appeal to the Federal Insurance Administration (FIA) by the State of Alabama; proposed boat basin modifications for the Coast Guard at their Shark River Station, New Jersey; consultation on an erosion problem for the Corps' Middle East Division at the King Abdulaziz Naval Base, Jubail, Saudi Arabia, and preparation of a sediment budget for the Oceanside, California area.

*** Professorial Lecturer** - Department of Civil, Mechanical and Environmental Engineering. The George Washington University - September 1974 to June 1983.

As an adjunct faculty member, taught graduate courses in coastal and harbor engineering, sediment transport, coastal structures, and coastal processes.

*** Technical Assistant to Chief, Engineering Development Division** - US Army Coastal Engineering Research Center - January 1977 to July 1977.

As Technical Assistant to the Chief of the Engineering Development Division, developed a research program for weir jetty research in the Division and initiated its execution; served as a consultant to Corps Districts and Divisions, Office of the Chief of Engineers, the Board of

Engineers for Rivers and Harbors, and other agencies. Consulting efforts included work on determining the coastal processes at Ocean Beach, San Francisco, California for the National Park Service and evaluating the potential of using excavation material from the Upper Great Highway as beach nourishment.

*** Special Assistant to the Commander and Director - US Army Coastal Engineering Research Center - March 1973 to January 1977.**

As a staff member of CERC's Executive Office, reviewed reports submitted to CERC by OCE, BERH and Corps Districts and Divisions for technical adequacy and for compliance with Corps policies; served as a consultant to Corps Districts and Divisions including a study resulting in development of computer simulations of wave action on the Savannah River Tide Gates, served as the US Representative to the Second International Waves Commission of the Permanent International Association of Navigation Congresses (PIANC) and was a contributor to the final report of that Commission.

In addition to technical activities, provided staff support to the Commander and Director on the management of CERC including advising him on the Chief of Engineers' Coastal Engineering Research Board's (CERB) activities; arranged meetings, prepared the minutes of CERB meetings, and prepared staff studies for submission to the Director of Civil Works and the Chief of Engineers recommending membership of the CERB; insured that the CERB complied with the newly instituted Federal Advisory Committee Act's provisions; prepared the first 5 year plan for CERC under the newly established Research and Development Office. This plan resulted in restructuring CERC's research program into new technical categories; arranged and conducted the early meetings of the Chief of Engineers' Shoreline Erosion Advisory Panel (SEAP) initiating work under Section 54, the Shoreline Erosion Control Demonstration Act.

*** Hydraulic Engineer - US Army Coastal Engineering Research Center - February 1971 to March 1973.**

As an engineer in the Design Branch, reviewed recent research developments to determine their applicability to the solution of Corps of Engineers problems related to coastal engineering design; performed work leading to the development of design criteria for coastal and marine structures to be included in the Shore Protection Manual (SPM) and served as a technical editor for this internationally recognized coastal design manual; developed design criteria for determining the maximum breaking wave that a given coastal structure can experience. These

criteria have been adopted by the Nuclear Regulatory Commission for the design of coastal nuclear power plant facilities; reviewed research proposals for possible funding by the Corps and served as a consultant to Corps Districts and Divisions on coastal engineering problems and as a member of the Steering Committee of the Corps' North Atlantic Division Deep Draft Port Study.

*** Assistant Professor - Department of Civil Engineering, University of Illinois** - September 1968 to February 1971.

Taught undergraduate courses in hydrology and hydraulic engineering, and graduate courses in hydrology, groundwater hydraulics, water waves and ocean engineering; research activities included studies of wave forces on coastal structures, hydraulic modeling techniques and water waves. Other activities included various faculty committees.

*** Assistant Professor of Soil Physics in Agronomy - Department of Agronomy, University of Illinois** - June 1969 to September 1969.

Conducted research on the uptake of water by plant root systems including the development of gamma radiation techniques for measuring soil water content.

*** Research Assistant - Department of Civil Engineering, University of Illinois** - September 1964 to September 1968.

Conducted research on computer solutions of the one dimensional equations for flow in river channels (long waves in shallow water); effect of viscosity and surface tension on the results of hydraulic model studies, and the study of wave impact pressures on coastal structures.

*** Instructor - Department of Civil Engineering, Drexel Institute of Technology** - June 1964 to September 1964.

Taught undergraduate static mechanics and strength of materials laboratory courses; conducted research on the use of epoxy resin adhesives for structural connections.

COURSES TAUGHT:

Undergraduate:

E224 Nearshore Oceanography & Coastal Engineering

E254 Introduction to Hydrology

E255 Groundwater Hydrology

E256 Water Resources Engineering

CIVE330 Hydraulics I

CIVE430 Introduction to Hydrology

ENGR100 University Seminar (Freshmen)
UNIV101 The Drexel Experience (Freshmen)
UNIV241 Great Works Symposium – The Mississippi River
E⁴ (Enhanced Engineering Education Experience Program)
Mathematical & Scientific Fundamentals of
Engineering I (Statics & Dynamics)
ENGR131 Freshman Design
CIVE240 Engineering Economic Analysis/Decision Making

Graduate:

CIVE561 Introduction to Hydrology
CIVE660 Hydrology - Streamflow
CIVE661 Hydrology - Groundwater
CIVE560 Introduction to Coastal & Port Engineering
CIVE790 Coastal Processes & Shoreline Erosion
CIVE790 Coastal & Port Structures
CIVE664 Open Channel Flow
CIVE662 Hydromechanics I
CIVE663 Hydromechanics II

STUDENTS SUPERVISED:

Doctoral Students:

Scott L. Douglass, Ph.D., "The Influence of Wind on Nearshore Breaking Waves," March 1989
Rifat N. Rustom, Ph.D., "Evaluation of Geosynthetic Erosion Control Systems on Steep Slopes," June 1993
Karen Ann Riley, Ph.D. – "A Model for Nitrate Mass in Runoff during Single Storm Events," June 2002
Muhammad Khan, Ph.D. – "Scaling Relations from Scale Model Experiments on Equilibrium Accretionary Beach Profiles," December 2002
Mehmet Hinis, Ph.D – "Cnoidal and Sinusoidal Wave Reflection from a Laboratory Sand Beach," March 2003

Masters Students

Sherrerd L. Steele, M.S., "A Sediment Budget for Ocean City, New Jersey"
Edward Doheny, M.S., "Application to Townsend's Inlet of a Numerical Model Using the Characteristic Equations of Open Channel Flow"
Rhomios Ram, M.S., "Evaluation of a Model Breakwater's Stability Using Acoustic Emissions"
Juan Carlos Escajadillo, "The Performance of Three Types of Groins in New Jersey"

Robert Webb, "New Jersey's Coastal Groins - Dimensional Considerations"

Matthew Moreale (University of Pennsylvania), "A Sediment Budget Analysis for the Beachfront at Ocean City, New Jersey"

Mohamed Dabees, "Shoreline Change Modeling and Application to Sea Isle City, New Jersey"

Maria Laura Beninati, "Modeling Chlorine Residuals in Water Distribution Systems"

Mehmet Hinis, "Procedure for Calculating Beach Dune Growth Rates"

Gwyneth Krimmel, "Laboratory Experiments on First Flush Pollution Runoff"

Brian Marengo - "Numerical modeling of Schuylkill River near its Confluence with the Wissahickon Creek"

PUBLICATIONS:

1. Weggel, J. Richard, "Epoxy Resins for Structural Connections", *Drexel Technical Journal*, Drexel Institute of Technology, October, 1964.
2. Maxwell, W.H.C. & J. R. Weggel, "Surface Tension in Froude Models", *Journal of the Hydraulics Division*, ASCE, #6482, March, 1969.
3. Weggel, J. Richard, "The Impact Pressures of Breaking Water Waves", Ph.D. Dissertation, Department of Civil Engineering, University of Illinois at Urbana-Champaign, October, 1968.
4. Weggel, J. Richard & W.H.C. Maxwell, "A Numerical Model for Wave Pressure Distributions", *Journal of the Waterways, Harbors & Coastal Engineering Division*, ASCE, #7467, August, 1970.
5. Weggel, J. Richard & W.H.C. Maxwell, "Experimental Study of Wave Impact Pressures", Proceedings of the Second Annual Offshore Technology Conference, OTC 1244, April 23-24, 1970, Houston, Texas.
6. Weggel, J. Richard, Discussion of "Shock Pressure on Coastal Structures", by Adel M. Kamel, *Journal of the Waterways, Harbors & Coastal Engineering Division*, ASCE, WW3, pp. 584-588.
7. Teleki, P.G. & J.R. Weggel, Discussion of "Skewness as an Environmental Indicator in the Solani River System, Roorkee, India", by A.K. Awasthi, *Sedimentary Geology*.
8. Weggel, J. Richard, "Maximum Breaker Height", *Journal of the Waterways, Harbors & Coastal Engineering Division*, ASCE, #9384, November, 1972.

9. Weggel, J. Richard, "Maximum Breaker Height for Design", Proceedings, 13th International Conference on Coastal Engineering, Vancouver, B.C., 1972.
10. Weggel, J. Richard, "An Introduction to Oceanic Water Motions and their Relation to Sediment Transport", in *Processes and Patterns of Sediment Dispersal on the Continental Shelf*, Dowd, Hutchinson and Ross, Publishers, Stroudsburg, PA.
11. Weggel, J. Richard, "A Wave Overtopping Equation", Proceedings 15th International Conference on Coastal Engineering, Honolulu, Hawaii, July, 1976.
12. Weggel, J.R., Roberts, & J. Hagar, "Wave Action on the Savannah Tide Gates", Proceedings, Coastal Structures '79 Conference, Alexandria, VA. March 14-16, 1979.
13. Weggel, J. Richard, "A Method for Estimating Long Term Erosion Rates from a Long Term Rise in Water Level", CETA 79-2, Coastal Engineering Research Center, Fort Belvoir, VA., 1979.
14. Weggel, J.R. & R.M. Sorensen, "Surging in the Shark River Boat Basin", Proceedings, Ports '80 Conference, Norfolk, VA. May 19-20, 1980.
15. Schneider, C. & J.R. Weggel, "Visually Observed Wave Data at Point, Mugu California", Proceedings, 17th International Conference on Coastal Engineering, Sydney, Australia, 1980.
16. Weggel, J. Richard, "Wave Loading on Vertical Sheet-pile Groins and Jetties", CETA 81-1, Coastal Engineering Research Center, Fort Belvoir, VA. 1981.
17. Weggel, J. Richard, "Weir Sand Bypassing Systems", Special Report, SR-8, Coastal Engineering Research Center, Fort Belvoir, VA. 1981.
18. Weggel, J. Richard, "Some Observations on the Economics of Over-designing Rubble-Mound Structures with Concrete Armor", CETA 81-7, Coastal Engineering Research Center, Fort Belvoir, VA. 1981.
19. Watts, G.M, C.H. Fisher, N.E. Parker & J.R. Weggel (1981) "Coastal Erosion Caused by Harbor Works and Corrective Measures," Section II, Subject 5, XXVth International Congress, PIANC, Edinburgh, Scotland, 1981.

20. Walton, T.L., W. Birkemeier, & J.R. Weggel, "Hand-held Calculator Algorithms for Coastal Engineering", CETA 82-1, Coastal Engineering Research Center, Fort Belvoir, VA. 1982.
21. Walton, T.L., & J.R. Weggel, "Stability of Rubble-Mound Breakwaters", *Journal of the Waterway, Port, Coastal & Ocean Division*, ASCE, WW3, August, 1981, pp. 195.
22. Weggel, J.R. & T.L. Walton, "Coastal Structures as Sediment Traps", unpublished CERC report, Coastal Engineering Research Center, Fort Belvoir, VA, 1981.
23. Schneider, C. & J.R. Weggel, "Littoral Environment Observation (LEO) Data Summaries, Northern California, 1968-1978," Miscellaneous Paper 82-6, Coastal Engineering Research Center, Fort Belvoir, VA, August 1982.
24. Weggel, J.R. & P. Vitale, "Sand Transport Over Weir Jetties and Low Groins", in *Physical Modeling in Coastal Engineering*, R.A. Dalrymple, editor, International Conference on Physical Modeling, University of Delaware, Newark, Delaware, August, 1981, A.A. Balkema, Rotterdam/Boston, 1985.
25. Weggel, J. Richard, "Analysis Method for Studying Sedimentation Patterns", *Journal of the Waterway, Port, Coastal & Ocean Division*, ASCE, WW2, May 1983.
26. Walton, T.L. and J.R. Weggel, "Computational Algorithm for Longshore Energy Flux Incorporating Friction", Proceedings of the 18th International Conference on Coastal Engineering, Cape Town, South Africa, November, 1982.
27. Weggel, J. Richard, "The Design of Weir Sand By-Passing Systems", Proceedings of the Coastal Structures '83 Conference, Arlington, Virginia, 9-11 March 1983.
28. Weggel, J. Richard, "Sediment Budget Calculations, Oceanside, California", Miscellaneous Paper CERC-83-7, Coastal Engineering Research Center, Vicksburg, Mississippi, December, 1983.
29. Sorensen, R.M. and J.R. Weggel, "Development of Ship Wave Design Information," Proceedings of the 18th International Conference on Coastal Engineering, Houston, Texas, September, 1984.
30. Sorensen, R.M. and J.R. Weggel, "Evaluation of Functional Behavior of Shore Structures and Related Shoreline Processes in Support of

Planned 1985 Beach Nourishment at Atlantic City," Proceedings, Ninth Annual Conference of the Coastal Society, *Gambling with the Shore*, Atlantic City, NJ, October 14-17, 1984.

31. Weggel, J.R. and N. Rajendran, "Optimization of a Shore Protection Scheme for the West Coast of India," Proceedings of the International Conference on Ocean Space Utilization, Ocean Space '85, Tokyo, Japan, June 1985, pp. 237-248.

32. Weggel, J. Richard, in *The Design and Construction of Mounds for Breakwaters and Coastal Protection*, P. Bruun, editor, Elsevier/North Holland Publishing Co., New York, NY, 1985.

33. Sorensen, R.M. and J.R. Weggel, "Evaluation of Beach Behavior and Coastal Structure Effect at Atlantic City, NJ," Fritz Engineering Lab Report No. 200.85.811.1, Lehigh University, Bethlehem, PA, April 1985.

34. Weggel, J.R. and S.L. Douglass, "An Interactive BASIC Program to Calculate Shallow Water, Limited Fetch Wave Conditions," Hydraulics and Hydrology Laboratory Report 85-1, Drexel University, Philadelphia, PA, September 1985.

35. Weggel, J. Richard, "Economics of Beach Nourishment Under a Scenario of Rising Sea Level," *Journal of Waterway, Port, Coastal and Ocean Engineering*, ASCE Vol. 112, No. 3, May 1986.

36. Weggel, J.R. and R.M. Sorensen, "Ship Wave Prediction for Port and Channel Design," Proceedings, ASCE Specialty Conference, Ports '85, Oakland, CA, May, 1986.

37. Weggel, J.R. and S.L. Douglass, "Synthetic Generation of Longshore Sand Transport Data and Simulation of Sand Bypassing at Indian River Inlet, Delaware," Hydraulics and Hydrology Laboratory Report 86-1, Drexel University, Philadelphia, PA, May 1986.

38. Douglass, S.L. and J.R. Weggel, "Estimation and Synthetic Generation of Longshore Sand Transport Data and Simulation of Sand Bypassing at Manasquan Inlet, New Jersey," Hydraulics and Hydrology Laboratory Report 86-2, Drexel University, Philadelphia, PA, September 1986.

39. Douglass, S.L. and J.R. Weggel, "Performance of a Perched Beach at Slaughter Beach, Delaware," Hydraulics and Hydrology Laboratory Report 87-1, Drexel University, Philadelphia, PA, January 1987.

40. Sorensen, R.M. and J.R. Weggel, "Beach Behavior and Effect of Coastal Structures, Bradley Beach, New Jersey," Report IHL-122-87, Imbt Hydraulics Laboratory, Lehigh University, Bethlehem, PA, February 1987.
41. Weggel, J.R., J.C. Escajadillo and T. Ting, "A Comparison of the Performance of Three Types of Groins," Proceedings, Second International Conference on Coastal and Port Engineering in Developing Countries, Beijing, PRC, September 1987.
42. Weggel, J.R., M. Perlin, "Statistical Description of Longshore Transport Environment," *Journal of Waterway, Port, Coastal and Ocean Engineering*, ASCE, Vol. 114, No. 2, March 1988.
43. Weggel, J.R., S.L. Douglass & J. Tunnell, "Sand-Bypassing Simulation Using Synthetic Longshore Transport Data," *Journal of Waterway, Port, Coastal and Ocean Engineering*, ASCE, Vol. 114, No. 2, March 1988.
44. Weggel, J.R., S. Brown, J.C. Escajadillo, P. Breen & E.L. Doheny, "The Cost of Defending Developed Shorelines along Sheltered Waters of the United States from a Two Meter Rise in Mean Sea Level," prepared for the U.S. Environmental Protection Agency, Drexel University Coastal Engineering and Geology Program Report, June 1988.
45. Weggel, J.R., S.L. Douglass & R.M. Sorensen, "An Engineering Study of Ocean City's Beaches, New Jersey, USA", Chapter 213, Proceedings, 21st International Conference on Coastal Engineering, Costa del Sol-Malaga, Spain, 20-25 June 1988, pp. 2867-2881.
46. Sorensen, R.M., S.L. Douglass & J.R. Weggel, "Results from the Atlantic City, NJ Beach Nourishment Monitoring Program," Chapter 2806, Proceedings, 21st International Conference on Coastal Engineering, Costa del Sol-Malaga, Spain, 20-25 June 1988, pp. 2806-2817.
47. Douglass, S.L & J.R. Weggel, "Laboratory Experiments on the Influence of Wind on Nearshore Wave Breaking," Chapter 46, Proceedings, 21st International Conference on Coastal Engineering, Costa del Sol-Malaga, Spain, 20-25 June 1988, pp. 632-643.
48. Weggel, J.R. "Seawalls: The Need for Research, Dimensional Considerations and a Suggested Classification," *Journal of Coastal Research*, Special Issue #4, The Effect of Seawalls on the Beach, N. Kraus & O. Pilkey, editors, September 1988

49. Weggel, J.R. & E.L. Doheny "The Cost of Protecting Sheltered Shorelines of the United States from a 2-Meter Rise in Mean Sea Level," Proceedings, Clean Energy Conference, Miami, FL, December 1989.
50. Weggel, J.R. & S.L. Farrell "The Effect of a Shore-Parallel Offshore Breakwater on the Beaches at Ocean City, NJ," Proceedings of the 22nd International Conference on Coastal Engineering, Delft, The Netherlands, July, 1990.
51. Doheny, E.J. & J.R. Weggel "Application to Townsends Inlet of a Numerical Model Using the Characteristic Equations of Open Channel Flow," Final Report, New Jersey Sea Grant Project R/S-9, Department of Civil and Architectural Engineering, Hydraulics and Hydrology Laboratory Report 90-1, September 1990.
52. Titus, J.G., R.A. Park, S.P. Leatherman, J.R. Weggel, M.S. Greene, P.W. Mausel, S. Brown, C. Gaunt, M. Trehan, and G. Yohe "Greenhouse Effect and Sea Level Rise: Potential Loss of Land and the Cost of Holding Back the Sea," *Coastal Management*, 1991.
53. Martin, J.P., J.R. Weggel, M. Bruno and S. Halsey "The Use of High Fly Ash Concrete for Marine Structures," Proceedings, 9th International Coal Ash Utilization Symposium, January 22-25, 1991, Orlando, FL
54. Weggel, J.R. & R.M. Sorensen "Performance of the 1986 Atlantic City, New Jersey, Beach Nourishment Project," *Shore & Beach*, Journal of the American Shore and Beach Preservation Association, Vol. 59, No. 3, July 1991
55. Weggel, J.R. & R.N. Rustom, "Soil Erosion by Rainfall and Runoff - State of the Art," Proceedings, 5th Geosynthetic Research Institute Seminar, Drexel University, Philadelphia, PA, December 12-13, 1991.
56. Weggel, J.R. & A. Gontar, "A Thickness Equation for Nonwoven, Needle-punched Geotextiles Under Normal Loading," *Geotechnical Testing Journal*, ASTM, December 1992, pp. 404-408.
57. Sorensen, R.M. & J.R. Weggel "Field Monitoring of a Modular Detached Breakwater System," Proceedings, Coastal Engineering Practice '92, ASCE, Long Beach, CA, 9-11 March 1992, pp. 189-204.
58. Weggel, J.R. & R. Rustom, "Soil Erosion by and Rainfall and Runoff - State of the Art," *Geotextiles Geomembranes*, Vol. 11, No. 4, 1992, pp. 645-666.

59. Rustom, R.N. & J.R. Weggel, "A Study of Erosion Control Systems: Experimental Apparatus," Proceedings, International Erosion Control Association Conference, Indianapolis, IN, February 1993.
60. Rustom, R.N. & J.R. Weggel, "A Study of Erosion Control Systems: Experimental Results," Proceedings, International Erosion Control Association Conference, Indianapolis, IN, February 1993.
61. Weggel, J.R. & A. Gontar, "In-Plane Air Flow Through Needlepunched, Nonwoven Geotextiles Under Normal Loading," *Geotechnical Testing Journal*, ASTM, June 1993, pp. 207-215.
62. Doheny, E.L. & J.R. Weggel, "The Cost of Defending Long Beach Island, NJ, from a Two Meter Rise in Mean Sea Level," Proceedings, The Hilton Head Island, South Carolina, USA, International Coastal Symposium, June 6-9, 1993, Vol. II, pp. 374-383.
63. Rustom, R.N. & J.R. Weggel, "A Laboratory Investigation of the Role of Geosynthetics in Interill Soil Erosion and Sediment Control," *Geotechnical Fabric Reports*, April, 1993
64. Weggel, J.R., W.F. Baird, B. Edge, O.T. Magoon, E. Mansard, D.D. Treadwell & R.W. Whalin, "Sines Breakwater Revisited - Repair and Reconstruction," Proceedings, ASCE Specialty Conference, Case Histories for the Design, Construction, and Maintenance of Rubble-Mound Structures, Eureka CA, May, 1994.
65. Weggel, J.R. et al. (ASCE Rubble Mound Structures Committee) "Rehabilitation of the West Breakwater - Port of Sines," Proceedings, 24th International Conference on Coastal Engineering, Kobe, Japan, October 1994.
66. Weggel, J.R. "A Primer on Monitoring Beach Nourishment Projects." *Shore & Beach*, Journal of the American Shore and Beach Preservation Association, Vol. 63, No. 3, July 1995.
67. Weggel, J.R., M. Morreale & R. Giegengack, "The Ocean City, New Jersey, Beach Nourishment Project: Monitoring its Early Performance," *Shore & Beach*, Journal of the American Shore and Beach Preservation Association, Vol. 63, No. 3, July 1995.
68. Webb, R. & J.R. Weggel, "Design of Groin Fields - Dimensional Considerations," Proceedings, Conference on Coastal and Port Engineering in Developing Countries (COPEDEC), Rio de Janeiro, September 1995.

- 69 Seymour, R.J., N.E. Bockstael, T.J. Campbell, R.G. Dean, P.D. Komar, O.H. Pilkey, Jr., A.P. Pratt, M.R. Snow, R.F. VanDolah, J.R. Weggel & R.L. Wiegel, *Beach Nourishment and Protection*, National Research Council, Marine Board, National Academy Press, 2101 Constitution Avenue NW, Washington, DC, December 1995.
70. Weggel, J.R. discussion of "Breaking Wave Loads on Vertical Walls Suspended above Mean Sea Level" by Chan, Cheong & Gin, *Journal of Waterway, Port, Coastal and Ocean Engineering*, ASCE, May 1997.
71. Weggel, J.R. "Maximum Daily Wind Gusts Related to Mean Daily Wind Speed," *Journal of Structural Engineering*, ASCE, Vol. 125, No. 4, April 1999.
72. Weggel, J.R. "Geosynthetic Erosion Control Systems for the 21st Century: New Solutions to Old Problems," *Geosynthetics in the Future: Year 2000 and Beyond*, Proceedings of the 13th GRI Conference, edited by R.M. Koerner, G.R. Koerner, Y.G. Hsuan & M.V. Ashley, December 1999.
73. Weggel, J.R. & B. Marengo (1999) "A Schuylkill River Model for the Vicinity of the Queen Lane Water Intake and the Wissahickon Creek, Philadelphia, PA" prepared for the City of Philadelphia Water Department by Drexel University, Department of Civil & Architectural Engineering, 30 June 1999.
74. Weggel, J.R. (1999) "Maximum Wind Gusts Related to Mean Daily Wind Speed," *Journal of Structural Engineering*, ASCE, Reston, VA, Vol. 125, No. 4, April 1999.
75. Valentine, A., V.M. Arms & J.R. Weggel, "Assessing Innovative, Project-Based Learning in Drexel's Freshman Core Curriculum," Proceedings of the 2001 ASEE Annual Conference & Exposition, Albuquerque, NM, 24-27 June 2001.
76. Weggel, J. Richard (2004) "Visibility over Shorefront Sand Dunes: Maintaining an 'Ocean View,'" *Shore & Beach*, Journal of the American Shore and Beach Preservation Association, Vol. 72, No. 4, Fall 2004, pp 3-4.
77. Weggel, J. Richard (2005) "On the Stability of Shore-Parallel Geotextile Tubes for Shore Protection," Proceedings, ASCE Geo-Frontiers Conference, Austin, TX, 26 January 2005.
78. Weggel, J. Richard & Joseph Lomax (2005) "Predicting Coastal Sand Dune Growth Rates at the Wildwood Convention and Civic Center,

Wildwood, NJ,” Proceedings, ASCE Solutions to Coastal Disasters Conference, Charleston, SC, 8-11 May 2005.

79. Khan, M. Shah & J. Richard Weggel (2006) “Scaling Relations based on Cross-Shore Variation in Scale Effect,” submitted to *Journal of Coastal Engineering*

CONSULTING ACTIVITIES:

1. US Army Engineer District, Los Angeles - Oceanside, California - preparation of sediment budget for a shoreline erosion control study and sand-bypassing study.

2. National Park Service & US Army Engineer District, San Francisco - Ocean Beach, San Francisco, California - shoreline erosion control project, determination of local coastal processes and evaluation of the suitability of excavation materials for use as beach fill.

3. US Army Engineer District, Savannah - Savannah River Tide Gates - evaluation of the dynamics of tide gates under the action of wind generated waves and establishment of gate operating procedures for periods of predicted high waves.

4. US Coast Guard - Shark River Boat Basin, Shark River, New Jersey - hydraulic model study of wave induced agitation in Coast Guard boat basin and recommendations for basin modifications.

5. US Army Engineer District, Savannah - Tybee Island, Georgia - design of modifications to a terminal groin at the northern terminus of the Tybee Island beach fill project, functional design of a weir/groin system and determination of wave loading on a concrete sheet-pile groin at the southern terminus of the project.

6. US Army Engineer District, Los Angeles - Ventura Harbor, California - evaluation of visual wave observation data to determine coastal processes at Ventura Harbor.

7. Board of Engineers for Rivers and Harbors, Corps of Engineers - Mill Cove, Jacksonville Harbor, Florida - develop methodology for data analysis to study shoaling patterns in Mill Cove.

8. Organization of American States - Argentina - present lectures on coastal structure design at Argentine Naval Hydrographic Office and consult on coastal problems at Mar del Plata, Argentina.

9. US Army Engineer District, Buffalo - Vermilion Harbor, Ohio - consultation on effect of harbor entrance breakwater on sand distribution along adjacent beaches and possible remedial measures.
10. US Army Engineer District, Buffalo - Lakeview Park, Lorain, Ohio - consultation on the development of a monitoring program to evaluate the performance of three offshore breakwaters as shore protection.
11. US Army Engineer District, Philadelphia, and State of New Jersey - consultation on plans to nourish beach at north end of Ocean City, New Jersey and review of plans by the State of New Jersey to construct groins to stabilize fill.
12. US Army Engineer District, Chicago - Racine Harbor, Wisconsin - consultation on a sedimentation problem at municipal small boat launching facility.
13. US Army Engineer District, New York - Lentz Marina, Keansburg, New Jersey - determination of causes of shoaling in marina vis-à-vis operation of a tidal flood gates.
14. Chief of Engineers, US Army Corps of Engineers - Loe's Highpoint Resort, Lake Texoma, Dennison, Texas - evaluate the feasibility of using a floating breakwater to alleviate wave problems in a marina.
15. US Army Engineer District, Charleston - Murrells and Little River Inlets, South Carolina - development of project monitoring programs to evaluate project effects on adjacent shorelines and performance of rubble-mound jetties.
16. US Army Engineer Division, New England - Popham Beach, Maine - evaluation of permit application for local shore protection.
17. Federal Emergency Management Agency - review of the methodology for adding wave elevations to coastal storm flood elevations.
18. Federal Emergency Management Agency - review of an appeal by the State of Alabama to the FIA of wave elevations for coastal flood hazard maps.
19. Department of Energy - consultation on the scope of work and model test program for shelf-mounted tower and heat exchangers for the Offshore Thermal Energy Conversion (OTEC) project.

20. Department of Justice - US vs. State of California - expert witness testimony before a Special Master of the US Supreme Court on the effect of coastal structures on the shoreline.
21. State of New Jersey - coastal processes study of Atlantic City, New Jersey, in preparation for a beach nourishment project. Included an evaluation of the suitability of sand from various alternative sources.
22. Hydro Research Science, Inc. - consultation on model test results of protective structures proposed to encircle piers of the Sunshine Skyway Bridge, Tampa, Florida.
23. Hydro Research Science, Inc. - consultation on model testing program to study possible breaking wave impact forces on the Offshore Thermal Energy Conversion (OTEC) Land Based Containment Structure, Kahe, Hawaii. Tests also considered the effect of the LBCS on local surfing conditions and on the littoral processes along nearby beaches.
24. City of Ocean City, NJ - consultation on the effects of a proposed shore protection structure on flooding and erosion of adjacent property.
25. Hidroservice S.A. (Brazil) - study of sedimentation processes at the entrance to the Rio Sergipe at Aracaju, Sergipe State, Brazil, for navigation channel maintenance and sand bypassing and to preclude erosion damage to updrift and downdrift recreation beaches.
26. Township of Egg Harbor, NJ - consultation on the wave environment and the wave forces on a timber bulkhead breakwater at the site of a proposed marina inside of Great Egg Harbor Inlet.
27. University of Texas at Austin - State of Texas - review proposal to reconstruct and modify Rollover Fish Pass, Gilchrist, TX, and determine the inlet's role in causing local beach erosion and sedimentation within the Gulf Intracoastal Waterway. Evaluate the feasibility of reopening and maintaining the Corpus Christi Fish Pass.
28. City of Aracaju, Sergipe State, Brazil (EMURB) - investigate critical erosion problem and resulting seawall failure at Coreo do Meio beaches along the entrance to the Rio Sergipe estuary and recommend solution for mitigating problem.
29. Connelly Containers, Inc. - investigation of the feasibility of withdrawing water from the Manayunk Canal for generating hydropower at the Connelly Containers, Inc. plant on Venice Island, Manayunk, Philadelphia.

30. Betz, Converse & Murdoch, Inc. - consultation on plans for a dispersion study along the Delaware River at Bristol, PA.
31. US Army Engineer District, Philadelphia - synthetic generation of longshore sand transport data and simulation of the operation of a sand bypassing system for Indian River Inlet, DE.
32. Hudson GEOTECH International - flood damage study at Valhoma Creek, Tulsa, OK.
33. Public Storage, Inc. - study of flood potential and design of remedial measures for Southampton Creek, Warminster, PA.
34. US Army Coastal Engineering Research Center - preparation of an Engineer Manual on the design of shoreline erosion control structures.
35. US Coast Guard - evaluation of wind- and ship-generated waves at a proposed Marine Safety Office site on the Delaware River, Philadelphia, PA.
36. International Playtex, Inc. - coastal processes of tampon applicators in the marine environment.
37. Rogers, Golden & Halpern, Inc. - consultation on sand bypassing system design for Indian River Inlet, DE.
38. Pennoni Associates, Inc. - develop wind- and ship-wave environment for a proposed marina in Margate, NJ.
39. US Army Engineer District, Philadelphia - synthetic generation of longshore sand transport data and simulation of the operation of a sand bypassing system for Manasquan Inlet, NJ.
40. State of New Jersey - evaluation of coastal processes at Bradley Beach, NJ, and recommendations regarding modifications to shore protection structures.
41. State of New Jersey - recommendations on the location of the navigation channel within Townsends Inlet and the use of sand dredged from the inlet as a source of beach nourishment for Avalon, NJ.
42. Hudson GEOTECH International - flood damage and retaining wall failure, New Hope Playhouse, New Hope, PA.
43. Hudson GEOTECH International - determination of cause of washout and landslide at Point Pleasant pumping station, Point Pleasant, PA.

44. City of Ocean City, NJ - evaluation of proposed dune modifications at two ocean-front residential sites.
45. Dr. Lawrence Pape - evaluation of beach conditions and bulkhead stability for a property on Shelter Island, Long Island, NY.
46. Mr. Robert Gerard - evaluation of a proposed solution to a flooding problem at 9236 Bryn Mawr Avenue, Pennsauken, NJ.
47. City of Ocean City, NJ - preliminary design of a nearshore breakwater to stabilize and protect Ocean City's beach in the vicinity of 9th Street.
48. City of Ocean City, NJ - evaluation of the suitability of sand from Drag Island, NJ as a source of beach nourishment for Ocean City.
49. Hudson GEOTECH International - hydrologic investigation of area upstream of B & O Railroad embankment failure.
50. City of Ocean City, NJ - preparation of a coastal sand dune development and maintenance program for the City of Ocean City.
51. State of New Jersey - evaluation of the performance of a beach nourishment project at Atlantic City, NJ.
52. New Jersey Marine Sciences Consortium - consultation on the development of a nearshore current/circulation measurement program in support of ocean pollution study by NJMSC.
53. Andropogon Associates, Inc. - hydrologic study of creek through Trexler Park, Allentown, PA
54. Hudson GEOTECH International, Inc. - evaluation of seismic analysis of site for solar energy conversion plant in California.
55. Friends of the Wissahickon - hydrologic and hydraulic analysis of the Gorgas Lane tributary of the Wissahickon Creek, Fairmount Park, Philadelphia, PA to determine how improvements can be made to reduce flooding and erosion.
56. Mid West Construction, Inc. - consultation on construction of marina breakwater in Lake Michigan.
57. Dravo-Van Houten, Inc. - consultation on potential for sedimentation problems in Port Reitz harbor expansion navigation channel, Mombassa, Kenya.

58. Dravo-Van Houten, Inc. - evaluation of longshore sediment transport conditions along south coast of Long Island in the vicinity of Fire Island Inlet, Suffolk County, NY to determine effect of structures proposed to protect Suffolk County sewer outfall where it crosses beach.
59. Offshore & Coastal Technologies, Inc. - review of the rubble toe protection design for a revetment at Ocean City, MD
60. M.V. Engineering & Lomax Associates, Inc. - water circulation analysis for a proposed lagoon in a marina planned for Cape May Harbor, NJ.
61. Lynch, Martin & Philibosian, Attorneys - determination of the cause of flooding at Moor's Landing, NJ along the Manasquan River.
62. New Jersey Shore Foundation and Lehigh University - monitoring the effects of a shore-parallel, precast concrete breakwater system on the beaches of Sea Isle City, NJ.
63. City of Ocean City, New Jersey - testimony before Zoning Board on the results of a dune study prepared for the City of Ocean City.
64. Woodward-Clyde Consultants - flood level determination for industrial site along the Delaware Bay in southern New Jersey.
65. MV Engineering - determination of flushing characteristics of a lagoon proposed for marina development in Cape May, NJ.
66. US Army Corps of Engineers, Philadelphia District - consultant on construction claim at Barnegat Inlet, NJ, New South Jetty construction.
67. Lisa Hardy, Esq. - consultation on State of New Jersey constraints on coastal sand dunes and beach front development.
68. White Horse Village - determination of seepage rates through a gabion dam and evaluation of flood attenuation performance of dam and detention basin.
69. International Environmental Services, Inc. - evaluation of flooding experienced in the vicinity of Granite Run Mall, Media, PA, due to rainstorm of 13 July 1991.
70. Clark, Ladner, Fortenbaugh & Young - evaluation of cause of flooding at Brooks Armored Car building on Governor Printz Boulevard due to storm of 5 July 1989 at Shellpot Creek, New Castle County, Delaware.

71. Walker, Previti, Holmes & Associates - consultation on design of timber and stone groins for Sea Isle City, New Jersey, and evaluation of the groins' impact on downdrift beaches.
72. Associated Construction Technologies, Inc. - evaluation of the hydraulic performance of three screw pumps at Salem Wastewater Treatment Plant, New Jersey.
73. U.S. Army Corps of Engineers, Coastal Engineering Research Center - participation in workshop to define contents of coastal structure planning and design chapters of Coastal Engineering Manual.
74. U.S. Army Corps of Engineers, Coastal Engineering Research Center - preparation of Coastal Engineering Manual Chapter entitled "Wind Blown Sand Transport."
75. West End Boat Club & Sullivan Floatation Systems, Inc. - wind and ship wave analysis for a marina site, Delaware River, Essington, PA.
76. City of Ocean City, NJ - preliminary evaluation of proposed dredging of backbay lagoons and marinas.
77. Pennoni Associates, Inc. - evaluation of the hydraulics of the Manayunk Canal and the design of hydraulic structures to control flow as part of a project to rehabilitate the canal in Philadelphia, PA
78. City of Sea Isle City/Walker Previti, Holmes & Associates, Inc. - design of groin field for north end of Sea Isle City, New Jersey
79. Greater Wildwoods Development and Tourism Authority - study of beach processes in the vicinity of the proposed Wildwood Convention Center.
80. Poverty Beach Joint Venture - study of coastal processes at the site of a proposed development in Cape May, New Jersey.
81. Seneca Pointe Marina, Havre de Grace, :MD - wind and ship wave study for proposed marina.
82. Walker, Previti, Holmes & Associates and the City of Sea Isle City, NJ - design of groin field for the northerly beaches of Sea Isle City.
83. Walker, Previti, Holmes & Associates and the City of Sea Isle City, NJ - design of a terminal groin for the Townsend's Inlet shoreline of Sea Isle City.

84. Walker, Previti, Holmes & Associates and the City of Sea Isle City, NJ - sediment budget for beaches south of 88th Street in Sea Isle City and evaluation of alternative shoreline stabilization measures.
85. White & Williams, Attorneys at Law - evaluation of flooding at Cabrini School, Fairless Hills, Bucks County, PA
86. Law Offices of Robert A. Stutman - investigation of reservoir regulations and cause of flooding at Perryville Yacht Club, Perryville, MD on 20 January 1996.
87. Boles, Smyth & Associates - regulatory flood study for proposed residential development on Venice Island, Manayunk, Philadelphia, PA.
88. Archdiocese of Philadelphia, Catholic Cemeteries Office - analysis of proposed grave vault spacing on groundwater infiltration rates.
89. Pennoni Associates, Inc. - evaluation of scour and deposition potential resulting from new supplementary piling to support pier.
90. Walker, Previti, Holmes & Associates - evaluation of potential impacts on Sea Isle City of extending 8th Street jetty in Avalon, New Jersey.
91. T. Sharp, Inc. - redesign of vinyl bulkhead for Harbor View Park, Cape May, New Jersey.
92. Geosystems Consultants, Inc. - determination of wave environment and wave and current loads on a sheet pile jetty at Motiva refinery facilities, Delaware City, DE.
93. S.T. Hudson Engineers, Inc. - design of a nearshore breakwater system for wetlands development at Holt's Landing State Park, Delaware.
94. State of Washington, Washington Fast Ferries - service on an expert review panel to evaluate the impact of high speed ferry operations on beaches and shoreline structures in Rich Passage.
95. Golden, Rothschild, Spagnola, Lundell & Levitt, PC - expert report on coastal processes relative to drowning incident at Jenkinson's Beach, Point Pleasant, NJ.
96. New Jersey Sports and Exposition Authority - prediction of dune growth rates and monitoring of dunes at site of proposed Wildwood Civic Center, Wildwood, NJ.

97. New Jersey Visitor and Convention Bureau, Wildwood Convention and Civic Center - review of FEMA requirements for the construction of a hotel in the V-zone and the requirements to reclassify the site.
98. NSF Cyber Security Workshop - editorial review of workshop proceedings
99. Paragon at Seaside Heights - review of dune conditions at site of proposed development
100. FHWA/University of South Alabama - Advisory Panel, preparation of a technical report addressing the design and construction of highways in coastal area.
101. Gannett-Fleming, Inc. - preliminary design of shore protection for AMTRAK's Niantic River bridge

CONSULTING REPORTS:

1. Weggel, J.R., "Breakwater Design Lectures", Lecture notes published for Advanced Course on Port Planning and Design, University of Buenos Aires, Argentina, September 1983.
2. Weggel, J.R., "Sunshine Skyway Bridge, Tampa, Florida - Review of Model Tests of Proposed Protective Islands", prepared for Hydro Research Service, Inc., Santa Clara, CA, February 1984.
3. Weggel, J.R., "TRW/Offshore Thermal Energy Conversion - Hydraulic Model Tests of Proposed Kahe, Hawaii, Installation", prepared for Hydro Research Science, Inc., Santa Clara, CA. March 1984.
4. Weggel, J.R., "Navigation Channel Maintenance and Sedimentation Control at the Mouth of the Rio Sergipe, Aracaju, Sergipe State, Brazil", prepared for Hidroservice: Engenharia de Projectos, Ltda, Sao Paulo, Brazil, June 1984.
5. Weggel, J.R., "Review of Site Development Plan, Lots 6K, 102K and 103K, Block 200, Ocean City, Cape May County, New Jersey (Berman Property)", prepared for the City of Ocean City, New Jersey, May 1984.
6. Sorensen, R.M. & J.R. Weggel, "Beach Processes and Coastal Structures at Atlantic City, New Jersey", Fritz Engineering Lab Report, Lehigh University, Bethlehem, PA, May 1984.

7. Weggel, J.R. "Review of Wave Environment and Wave Loading on a Breakwater for the Proposed Seaview Marina, Egg Harbor Township, NJ", prepared for the Township of Egg Harbor, November 1984.
8. Weggel, J.R. and R.M. Sorensen, "Review of Plans for the Rehabilitation of Rollover Fish Pass, Gilcrist, Texas", prepared for the University of Texas at Austin, April 1985.
9. Weggel, J.R. "Wind and Ship Waves at the US Coast Guard's Delaware River Marine Safety Office Site and Recommendations for a Wave Attenuating Breakwater," prepared for Commander, Third Coast Guard District, Governors Island, NY, August 1986.
10. Weggel, J.R. "Hydrologic and Hydraulic Analysis - Evaluation of a Proposed Development Plan for Lot 16, Block 24, Warminster, Bucks County, PA," prepared for Public Storage, Inc., Mount Laurel, NJ, March 1986.
11. Weggel, J.R. "Evaluation of Wave and Current Forces on Proposed Marina Structures at Margate, NJ," prepared for Pennoni Associates, Inc., November 1986.
12. Weggel, J.R. "Preliminary Design of a Nearshore Breakwater to Protect Ocean City's Beach in the Vicinity of 9th Street," prepared for the City of Ocean City, NJ, January 1987.
13. Weggel, J.R. "Suitability of Sand from Drag Island as Beach Nourishment for Ocean City, New Jersey," prepared for the City of Ocean City, NJ, August 1987.
14. Douglass, S.L. & J.R. Weggel "Hydrologic Investigation of the B & O Railway Failure," prepared for Hudson GEOTECH International, File No. G 5307, May 1987.
15. Sorensen, R.M. & J.R. Weggel "Improvement of Beach Conditions and Bulkhead Stability for Property Located at 68 Gardiners Bay Drive, Shelter Island, NY," prepared for Dr. Lawrence Pape, June 1987.
16. Weggel, J.R. "A Dune Establishment and Maintenance Program for the City of Ocean City, New Jersey," prepared for the City of Ocean City, New Jersey, Coastal & Marina Engineering Consultants, Inc., June 1988.
17. Weggel, J.R. "Report on Flooding, Jervis Collision Center & Philmont Associates Properties, Philmont Road, Bucks County, PA" prepared for Berlinger & Small, Attorneys at Law, Abington, PA, November 1988.

18. Weggel, J.R. "Longshore Sand Transport Analysis, Suffolk County Sewer Outfall Site, Cedar Island Beach, Long Island, New York, prepared for Dravo-Van Houten, 11 Penn Plaza, New York, NY, 16 January 1989.
19. Sorensen, R.M., J.R. Weggel & S.L. Douglass, "Monitoring and Evaluation of 1986 Beach Nourishment, Atlantic City, New Jersey," Marina & Coastal Engineering Consultants, Inc., prepared for the State of New Jersey, Division of Coastal Resources, February 1989.
20. Weggel, J.R. & T.Z. Wilson, "A Hydrologic Investigation of the Gorgas Lane Tributary of the Wissahickon Creek, Philadelphia, PA," prepared for Friends of the Wissahickon, 24 June 1989.
21. Weggel, J.R. "Evaluation of the Flushing Characteristics of a Proposed Marina Lagoon at Cape May, NJ," prepared for M.V. Engineering, Cape May Court House, NJ, March 1990.
22. Weggel, J.R. "Interim Report - Barnegat Inlet New South Jetty Construction Claim," prepared for Philadelphia District, US Army Corps of Engineers under contract DACW-90-M-1140, March 1991.
23. Weggel, J.R. "Barnegat Inlet - Review of a Consulting Report by R.G. Dean Prepared for Morrison-Knudsen Company, Inc." prepared for Philadelphia District, US Army Corps of Engineers under contract DACW-90-M-1140, August 1991.
24. Weggel, J.R. "An Investigation of Flooding Caused by the 13 July 1991 Storm at Granite Run Mall, Media, PA," prepared for International Environmental Services, Inc. 595 East Swedesford Road, Suite 2000, Wayne PA, February 1992.
25. Weggel, J.R. "Computation of Potential Seepage through a Gabion Dam at White Horse Village, Newtown Square, PA and a Determination of its Effect on Flood Discharge Attenuation," prepared for White Horse Village, Newtown Square, PA and Bower Lewis Thrower/Architects, Philadelphia, PA, February 1992.
26. Weggel, J.R. "Beach Profile and Groin Behavior Analyses, Sea Isle City, New Jersey," prepared for Walker, Previti, Holmes & Associates and the City of Sea Isle City, NJ, August 1992.
27. Weggel, J.R. "Evaluation of the Cause of Flooding at the Brooks Armored Car Facility, New Castle County, Delaware," prepared for Clark, Ladner, Fortenbaugh & Young, September 1992.

28. Weggel, J.R. "An Assessment of the Effects of the Proposed 83rd and 89th Street Groins on Downtdrift Beaches, Sea Isle City, New Jersey," prepared for Walker, Previti, Holmes & Associates and the City of Sea Isle City, NJ, November 1992.
29. Weggel, J.R. "Wind and Ship Wave Analysis, West End Boat Club, Delaware River, Essington, PA," prepared for West End Boat Club, Essington, PA, July 1994.
30. Weggel, J.R. "Wind Blown Sand Transport," prepared for the U.S. Army Corps of Engineers Coastal Engineering Research Center under contract DACW-39-93-M-6868, 15 April 1994.
31. Weggel, J.R. "The Cause of Flooding at the Quakertown High School Gymnasium and Recommended Remedial Actions," prepared for CFP Environmental Services, Norwood, PA, 15 March 1995.
32. Weggel, J.R. "Wind-Wave, Ship-Wave and River Current Analysis, Proposed Seneca Pointe Marina, Chesapeake Bay, Havre de Grace, MD, prepared for Headwater Construction Company, Suite 103, Barksdale Professional Center, Barksdale Road, Newark, DE, 25 March 1995.
33. Weggel, J.R. "An Evaluation of the Shoaling of Inside Thorofare at the Bay-Port Condominium, Atlantic City, New Jersey," prepared for Robert Matthews, Linwood, NJ, 14 April 1995
34. Lomax, J.L. & J.R. Weggel, "A Preliminary Assessment of Lagoon Dredging and Dredged Material Management, City of Ocean City, New Jersey," prepared for the City of Ocean City, New Jersey, July 1995
35. Weggel, J.R. "Investigation of Damage to Under-Media Drain Tiles at the North Jersey District Water Supply Commission's Water Treatment Plant, Wanque, NJ" prepared for International Environmental Services, Wayne, PA, 29 May 1995.
36. Weggel, J.R. "Hydrologic and Hydraulic Analysis of the Manayunk-Schuylkill Canal, Philadelphia, PA," prepared for Pennoni Associates, Inc., Philadelphia, PA, August 1995.
37. Weggel, J.R. "Design of a Groin Field for the Beaches North of Thirty-first Street in Sea Isle City, New Jersey, prepared for the City of Sea Isle City and Walker, Previti, Holmes and Associates, December 1995.
38. Weggel, J.R. "Coastal Processes Relevant to the Proposed Wildwood Convention Center Site, Wildwood, NJ, prepared for the Greater

Wildwoods Tourism Improvement and Development Authority, Wildwood, NJ, 27 December 1995.

39. Weggel, J.R. "Sand Budget for Proposed Dune, Greater Wildwoods Civic Center Site, Wildwood, NJ," prepared for the Greater Wildwoods Tourism Improvement and Development Authority, Wildwood, NJ. 27 19 July 1996.

40. Weggel, J.R. "Analysis of Flooding at the Red Cross Building at 7th & Spring Garden Streets, Philadelphia, PA, During the 14 July 1994 Rainstorm," prepared for Law Offices, White & Williams, 1800 Liberty Place, Philadelphia, PA 19103-7395, 3 January 1997.

41. Weggel, J.R. "Design of a Terminal Groin at Townsends Inlet, Sea Isle City, New Jersey," prepared for the City of Sea Isle City and Walker, Previti, Holmes & Associates, 156 Stagecoach Road, Marmora, NJ, 20 June 1996.

42. Weggel, J.R. "Sediment Budget Analysis and Evaluation of Beach Stabilization Alternatives, Townsends Inlet Shoreline, Sea Isle City, New Jersey," prepared for the City of Sea Isle City and Walker, Previti, Holmes & Associates, 156 Stagecoach Road, Marmora, NJ, March 1997.

43. Weggel, J.R. "The Impact on Adjacent Beaches of Cutting a Tidal Inlet near Norbury's Landing, Middle Township, Cape May County, New Jersey," prepared for Mr. Richard Adelizzi and Levin & Hluchan, Attorneys at Law, Voorhees, NJ, 27 November 1996.

44. Weggel, J.R. & B. Marengo "A Schuylkill River Model for the Vicinity of the Queen Lane Water Intake and the Wissahickon Creek, Philadelphia, PA" prepared for the City of Philadelphia, Water Department by Department of Civil & Architectural Engineering, Drexel University, 30 June 1999.

45. Weggel, J.R. (1999) "Design of Nearshore Breakwaters for Shore Protection and Salt Marsh Development: Holt's Landing State Park, Indian River Bay, Delaware," prepared for S.T. Hudson Engineers, Camden, NJ, 7 September 1999.

46. Weggel, J.R. (1999) "Application of 'DYNLET1' Inlet Model to Wetlands Design, Northern Mitigation Area, Bayonne, NJ," prepared for Princeton Hydro LLC, Lambertville, NJ, 2 January 1999.

47. Weggel, J.R. (1998) "Breakwater Designs for Wetlands Mitigation, Bayonne, NJ," prepared for Princeton Hydro LLC, Lambertville, NJ, 29 November 1998.

48. Weggel, J.R. (1998) "The Effect on Coastal Processes of a Proposed Dwelling, Block 37, Lots 4 & 5, Bay Head, Ocean Count, New Jersey," prepared for Bennett & Yoskin, Attorneys at Law, Princeton, NJ, 17 April 1999.
49. Weggel, J.R. (1999) "The Impact on Fronting Dunes of Constructing a Home at 5299 Dune Drive, Avalon, NJ," prepared for Engineering Design Associates, P.A. Ocean View, NJ, 26 January 1999.
50. Weggel, J.R. & R. M. Sorensen (1999) Analysis of Water Levels and Wave Conditions on 17 August 1995 at Jenkinson's Pavilion Beach, Point Pleasant, New Jersey, Akram Abdul-Majeed v. Jenkinson's Pavilion," prepared for Ronald S. Levitt, Esq. Attorney at Law, Golden, Rothschild, Spagnola, Lundell & Levitt, P.C., Bridgewater, NJ, 26 July 1999
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52. Weggel, J.R. (2000) "Bulkhead Design for Harborview Park, Cape May County, Cape May, New Jersey," prepared for T.J. Sharp, Inc. 303 Washington Lane, Fort Washington, PA 19034.
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SHORT COURSES PRESENTED:

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Coastal Engineering Workshop - Drexel University
An Introduction to Coastal Engineering for Non-Engineers - Coastal
Zone '89

THE
LAW OF WATERS
AND
WATER RIGHTS

INTERNATIONAL, NATIONAL, STATE, MUNICIPAL, AND INDIVIDUAL
INCLUDING
IRRIGATION, DRAINAGE, AND MUNICIPAL WATER SUPPLY.

By
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ASSOCIATE EDITOR OF
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CHAPTER V.

RIGHTS OF RIPARIAN OWNERS.

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62. What are rights of riparian owners.—In all states where the common law has not been changed, the owners of land abutting on bodies of water are accorded certain rights by reason of their adjacency which are different from those belonging to the public generally, and are comprehended within the general term "riparian rights." The principle upon which these rights are founded is equally applicable upon all bodies of water, whether large or small, tidal or non-tidal; but the rights of the public require the confinement of the rights of the riparian owner within narrower limits in some instances than

not even be acquired by prescription.⁵ The fact that the killing of fish by the pollution of a stream throws many fishermen out of employment does not of itself make the pollution of the stream a nuisance.⁶

64b. Right of riparian owner to use water from stream.— One of the rights of the riparian owner is to use water from the stream for the purpose of supplying his natural wants, such as quenching the thirst of his family and his cattle, and the use of it for cooking purposes.¹ This right may be exercised to the full extent of the needs of the riparian owner, although the water in the stream is thereby entirely consumed. But in other respects the public rights of navigation are superior to those of the riparian owner; so that he can do no act which will interfere with those rights except by permission of the legislature.² When the stream is of sufficient size to be navigable, the use by the riparian owners of water from it to supply their natural wants will ordinarily have so little effect upon the bulk of the stream that the navigation rights will not be interfered with. Therefore, the general rule permitting the riparian owner to supply his natural wants from the stream is ordinarily applied to navigable streams, the same as to those which are non-navigable.³ But when the use of the water for extraordinary or artificial needs is attempted by the riparian owner, he is not entitled to use such a quantity of it as to interfere

plied to the use of such waters as a mere receptacle of filth, or as a place of deposit of worthless materials, such as saw-mill waste, allowed to float or sink without guidance or direction. *Gerrish v. Brown*, 51 Me. 256, 81 Am. Dec. 569.

That a mill proprietor owns an artificial channel or raceway in which he has discharged sawdust from his mill for over twenty years, and that no compensation has been paid him for such easement or its relinquishment, is not a defense in an action to recover damages for casting sawdust, contrary to the provisions of an ordinance, into the river with which the raceway connects. The legislature has the right to prescribe the mode and manner in which the raceway may be used. *Ogdensburg v. Lovejoy*, 2 Thomp. & C. 83.

Purchasers from the Crown of riparian lands, on condition that a saw mill be erected, cannot thereby have an implied license to throw their refuse into the stream, as the Crown cannot grant a license to commit a public nuisance, and also "it would be derogating from the honor of the Crown to assume an

intention to do that which would be injurious to the people." *Atty. Gen. v. Harrison*, 12 Grant Ch. (U. C.) 466.

Because dredging of a harbor is necessary, it cannot be said that there is no wrong in causing in the river a deposit of mill refuse which makes additional dredging necessary. *Ibid.*

See also *post*, § 519.

¹*Com. v. Yost*, 11 Pa. Super. Ct. 323.

A prescriptive right by long continued custom and the acquiescence of the state authorities to dump debris from hydraulic mining operations into a tributary of a navigable river cannot be acquired so as to permit the continuance thereof when it becomes a public nuisance affecting the rights of the people in such navigable waters. *People v. Gold Run Ditch Co.* 66 Cal. 138, 56 Am. Rep. 80, 4 Pac. 1152.

²*Rex v. Medley*, 6 Car. & P. 292.

³*Post*, § 465.

⁴*Post*, § 86.

⁵*Morrill v. St. Anthony Falls Water-Power Co.* 26 Minn. 222, 37 Am. Rep. 399, 2 N. W. 842; *State v. Minneapolis Mill Co.* 26 Minn. 229, 2 N. W. 839.

with the navigation rights, except by permission of the legislature. As stated in *Morrill v. St. Anthony's Falls Water Power Co.*⁴ the limit of the private right is imposed by the public right, and the private right exists up to the point beyond which it will be inconsistent with the public right. The court of civil appeals in Texas has made a ruling which seems to be at variance with this principle. The court held that the fact that a stream is navigable does not prevent the riparian owner from using its water for the purposes of irrigation, although he consumes the whole flow of the stream.⁵ The court bases its ruling upon the fact that the riparian owner has the right to use the water in the stream flowing past his land whether the stream is navigable or not, and that the irrigation of land is an ordinary use for which the water may be consumed if necessary. The court states that, in the use, by the riparian owner, for ordinary purposes, there is no distinction between navigable and non-navigable streams, although it admits that the use at common law is confined to domestic purposes only. By this holding the court ignores the fundamental principle upon which the riparian owner is permitted to take water from the stream for domestic purposes. That principle is, as already stated, that the amount of water needed for such purposes bears such a small proportion to that flowing in the stream that the withdrawal of it inflicts no injury on the public. If the water needed amounted to as much as is sometimes needed for irrigation purposes, so that the navigation rights would be seriously interfered with by permitting its withdrawal, all the principles upon which the common-law rights of riparian owners are based would be violated by recognizing the right; and, therefore, the Texas decision cannot be regarded as sound. The attitude of the common law courts towards this question is illustrated by an English case which has held that a railroad company had no right to take water from a stream for the supplying of its engines if the effect was to interfere with the navigability of the stream.⁶

65. Right of access to water.— After Charles I. had succeeded in putting sufficient pressure upon his judges to persuade them to recognize the validity of his prima facie title to the shore between high and low water mark around the kingdom in *Atty. Gen. v. Philpott*,¹ it became an important question as to the effect which this rule would have upon the rights of such riparian owners as could not establish their title against the King. If the title to the shore below high-water

⁴26 Minn. 222, 37 Am. Rep. 399, 2 N. W. 842. See also *post*, p. 413.

⁵*Barrett v. Metcalfe*, 12 Tex. Civ. App. 247, 33 S. W. 758.

⁶*Atty. Gen. v. Great Eastern R. Co.* 18 Week. Rep. 1187, 23 L. T. N. S. 344.

¹Moore, *Foreshore*, xxxi.

CHAPTER VIII.

HARBORS, WHARVES, AND DOCKS.

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110. Harbors.— The existence of water ways and rights of navigation would be of little practical value in the absence of terminal facilities by which an interchange of traffic between land and water could be effected. These terminal facilities consist of a sufficient

of its charter. No such right is given by general provision with respect to maintaining and improving streets and sidewalks;¹⁰ but the power may be implied where it is plainly the intention of the legislature to confer it.¹¹ It holds title to its wharves in its private, and not in its public or governmental, capacity; and it may, therefore, exact compensation for their use, and make regulations with regard to them in the same way that a private individual can with respect to a wharf owned by him; the only difference being that the municipal wharf is held solely for the benefit of the public, and all regulations must be made, and tolls fixed, with that fact in view. But the municipality may make such regulations and discriminations with respect to the use of the wharf as it may think necessary to secure the object for which it was erected.¹²

113. Construction by individual; general principles.— In considering the question of the right of a private individual to erect and maintain a wharf several conflicting interests must be taken into account. First, there is the right of the navigator to land his goods; second, the right of the owner of the soil to object to the placing of any structure on it; third, the right of the public to be free from any encroachment upon the water way which shall constitute a nuisance; fourth, the

¹⁰*Snyder v. Rockport Trustees*, 6 Ind. 237.

¹¹*Thompson v. New York*, 11 N. Y. 115; *Geiger v. Filor*, 8 Fla. 325.

A town situated on the banks of a navigable river, whose charter of incorporation authorizes it "to do all things necessary to be done by corporations," has the right to convert lands on the banks of the river, laid out in the original plans of the town for a public promenade, into wharfs for the accommodation of steamboats and other water crafts, and to pass ordinances regulating the manner in which they shall be used, which carries with it the right to enforce such ordinances by imposing a penalty upon boats violating their provisions. *Memphis v. Wright*, 6 Yerg. 497, 27 Am. Rep. 489.

Under a charter empowering a municipality to hold, purchase, and convey such real estate as the purposes of the corporation may require, it may purchase property necessary for the proper establishment of its wharf system, though it is located beyond its corporate limits; and its power so to do is not affected by a further provision declaring that it may purchase property located outside its corporate limits for particu-

lar designated purposes, among which the construction of wharfs is not, in terms, included. *Hafner v. St. Louis*, 161 Mo. 34, 61 S. W. 632.

The fact that a municipality unwisely exercised its power to purchase land located outside its corporate limits for wharf purposes cannot be raised by the grantors of such lands for the purpose of defeating the conveyance, as the state alone can be heard to complain on such ground. *Ibid.*

A municipality given by its charter the right to condemn land and construct wharves thereon is not deprived of such privilege by an offer from the owner of the land to construct a wharf upon the same land and devote it to public use, subject to such regulations as the municipality may direct. *Waddingham v. St. Louis*, 14 Mo. 190.

¹²*Horn v. People*, 26 Mich. 222.

A municipal corporation which has erected and maintained a public wharf under authority of law may subsequently, under legislative authorization, consent to its use for different public purposes, and such change will not be a taking for which compensation must be made. *Rees's Appeal* (Pa.) 11 Cent. Rep. 141, 12 Atl. 427.

right of adjoining proprietors to object to any erection which will interfere with the use by them of their property. These matters will be considered in the order named. It is doubtless to the interest of the public that no individual shall be permitted to stand in the way of commerce. The interchange of cargoes between water and land is as necessary to commerce as is the mere transportation of the goods; therefore, if the space available for such interchange were so restricted as to be in possession of one or a few persons they might be in a position to hold the commerce completely at their mercy, and it would be to the interest of the public to take the title to their property under the right of eminent domain, and hold the landing place for public use. Frequently, however, the available landing places are not restricted in number, and the natural competition between owners of them is in such cases sufficient to prevent the imposition of any serious restriction upon commerce; and, in cases where such is not the fact, the landings are affected with a public use, and subject to public regulation which is sufficient to prevent oppression or injury to the public interests. By the Roman law there was a right to use the banks and shores as landing places at will, without restriction or interference on the part of the riparian owner.¹ But, to make the banks available for landing places, artificial structures are necessary, and it is more to the interest of the public to have these structures erected by the owner of the property, and to allow him a small remuneration for their use, than it is to require the public to erect and control them. Under the principles of the common law, a private individual is not required to devote his property to the public use without receiving compensation for it; and it therefore became established at an early date that it was lawful for the owner of the shore to erect a wharf and other necessary adjuncts to the interchange of commerce upon it, and charge a fee for its use, so far as the rights of the shipowner to land his cargo was concerned. This was merely making a reasonable use, by the riparian owner, of his own property.²

The second interest to be considered is that which is known as the *jus privatum* of the Crown in the soil covered by water. At what period of time the Crown began to assert its *jus privatum* in the lands under the water it is impossible at this date to determine. As has been seen,³ at the time when the lands were parceled out by the Crown among its followers, commerce and navigation were practically unknown in the British islands. The only use for ships was to con-

¹Chapter ix., *post*.

²Hale, *De Portibus Maris*, chap. 6.

³Chapter iv., *ante*.

vey hostile arms from one land to another, or, in some few instances, to convey fishermen to the place of their labors. Wharves and docks were not needed, and there was nothing to suggest that they would ever be needed. Under such circumstances, of course, there was no provision in the grant by the Crown to his followers regulating the right to construct them; and there is no doubt that, if a shore owner desired to project a structure into the water for any purpose, he did so without question from anyone. The early records are searched in vain for any intimation as to the rights with respect to wharves and piers, and there is nothing to indicate that there was any legal idea in respect to them. In process of time commerce sprang up and grew. To meet its demands wharves were necessary, and were constructed, but no attempt was made by the Crown, so far as the records show, to seize or abate them. Commerce expanded; America was discovered; and the necessity for wharves increased correspondingly with the growth of the shipping interests. Finally Mr. Digges promulgated his theory with respect to the title of the Crown to the seashore.⁴ By this theory the title of the Crown to the soil under tide water extended so far as the tide extended. It was set forth at a period when learning in England had reached an advanced stage, and the lawyers were better able to grapple with its legal effect than they had formerly been. The rounding out of the system of real-property laws required that the soil under the water should be assigned an owner, and Mr. Digges placed the ownership in the only source compatible with the land law of that period when he said that, like all other real property, the title to the soil under the water was in the Crown, and remained so unless the Crown had parted with it. But the theory involved the destruction of rights which had grown up by custom and long acquiescence until they might be regarded as established by prescription. However, the theory was pleasing to the Crown and logical to the lawyers, and it received ready acceptance, so that all wharves placed upon soil covered by tide water were regarded as encroachments upon the property of the Crown, and, therefore, as purprestures which the Crown could seize and use according to his pleasure. And the Crown was not slow in utilizing the advantage thus given him, and suits for the protection of the King's rights were numerous in the few years immediately following the appearance of Mr. Digges's theory. But the enforcement of the theory was very likely to destroy the interests of the public. The King could not place a wharf in front of riparian property so as to cut it off from access to the water, and, besides, the

⁴ § 39a, *ante*.

Crown had no money to expend in constructing wharves and keeping them in repair; so that, unless the riparian owner could do so, they would disappear, and commerce would be destroyed. It therefore became the established custom to allow the riparian owner to obtain the right to erect the wharf by an *ad quod damnum* proceeding, in which could be ascertained the compensation which he must make to the Crown, and to other persons interested, for the right to erect and maintain his wharf. When the *jus privatum* of the Crown was transferred to the American states at the time they severed their connection from England, they held it, not for private emolument of an individual as the King had held it, but as a right owned by all the people in common, the title to which was held by the state for their benefit. This title can be transferred to the riparian owner, or held by the state, as the public good seems to require; but, as long as it is held by the state, it is held primarily for the advancement of the interests connected with the water ways, and one of the ways of making such advancement is the construction of wharves and piers. The riparian owner, being the only one who has access to the water in front of his land for that purpose, has a right, as one of the public, to make such use of the common property as he can make for the advancement of the public rights of navigation, and can, therefore, place wharves and piers in the water so long as he advances the interests of commerce thereby.⁵ This right is subject to public regulation, and, if the public good requires that no wharves or piers shall be constructed at any particular place, they may be forbidden;⁶ but, so long as wharves and piers are an aid to commerce, and needed for public use, they cannot be forbidden, and no regulations can be made which will discriminate between different individuals. At the time the state government is organized the state may reserve all shore and wharfage rights for public use, and, if it does so, it may prevent the riparian owner from exercising any of them; but the effect of such a course is to defeat its own object, because the wharves and piers can be constructed and maintained most economically and effectively by the riparian owner, and any attempt to reserve the right to the public is at the expense of the highest public good. The business of wharfing is not a proper governmental function, and the attempt to confer the wharf right

⁵ Under the New York laws, the state holds the title to navigable lakes and large rivers as trustee to protect navigation and prevent obstructions; but it also holds the right to make fillings and structures in aid of navigation in trust for the riparian owner. *Ledyard v. Ten Eyck*, 36 Barb. 102.

⁶ An addition to a pier in the public waters of a harbor where the statute forbids it will be a nuisance, so that the court will not interfere with the proceedings of the board of pilot commissioners to abate it. *Moore v. Commissioners of Pilots*, 32 How. Pr. 184.

upon one who does not own the adjoining shore necessitates the acquisition of rights of way and the use of landing places, besides being unjust and causing needless friction, all of which are not for the best interests of the state.

Of the right of the public to be free from nuisance little need be said. The primary use of the water way is that of commerce, and the principal aid to commerce is that of navigation, and the wharves and piers are only adjuncts to that right, and can never be erected so as to obstruct or interfere with it. Likewise, with reference to adjoining owners; each owner must exercise his own rights in such a way as not to impair the equal rights of his neighbors. He must, therefore, keep his wharf or pier in front of his own property, and not construct it in such a way as to prevent the adjoining owner from wharfing out, or so as to cut off access to his property.

113a. **The rule in England.**—As soon as the doctrine was accepted that the soil under tide water was the private property of the Crown, it necessarily followed that no structures could be placed there without the consent of the Crown, and that any structure placed there was a purpresture, and, as a fixture, became the property of the Crown.¹ But this doctrine was likely to be productive of much inconvenience and injury to the public interests. If no wharf could be constructed without the consent of the Crown, and it could impose such terms as it chose, the result would be likely to be the destruction of all wharves. But any serious clash of interests was obviated by the passage of a statute by which Parliament took charge of the Crown lands. Mr. Digges's theory placing the title to the tide land in the Crown was advanced during the reign of Queen Elizabeth, and the illegal status of wharves placed on his land was established during the reign of Charles I. The first statute with respect to the control of Crown lands was passed during the reign of Anne, only a short time after the establishment of the doctrine that wharves upon the Crown land were purprestures.² After the passage of that statute discussion of the question of purpresture or no purpresture no longer appears, but the question in every instance is whether or not the structure is a nuisance. No structure in a navigable water way is a nuisance unless it interferes with the public rights of navigation. The rule upon this subject is well stated by Lord Hale.³ Among the things that may be a nuisance to a port, he places "the straitening of the port by building too far into the water, where ships or vessels might for-

¹ Hale, *De Portibus Maris*, chap. 6;
Johnson v. Barret, Aley, 10; *Atty. Gen.*
v. Philpot, cited in 2 Anstr. 607.

² § 36, *ante*.

³ *De Portibus Maris*, chap. VII.

An injunction restraining the construction of a wharf between high and low water mark may be granted on *ex parte* application where an indictment has been found against the defendant for the same act, which will be tried in a short time.¹²

113b. The rule in the United States.— As already seen,¹ when the *jus privatum* of the Crown in England passed to the American states they took the private right of the Crown as representing the title to the soil, but they took it for the benefit of their citizens, so that it was no longer held for private emolument, but for the common good of all the citizens. The erection of wharves is for the advancement of the interests of commerce, and, therefore, for the public interest and for the public good, and the soil between the shore and deep water is of little use except as a foundation for wharves and piers, and it therefore is for the public good that it be devoted to that purpose. This right can be utilized only by those who can obtain access to the water, and, since the only ones who can obtain such access are riparian owners, they have a right, as members of the general public, to utilize the soil for the erection of such wharves and piers for the purpose of aiding navigation as can be placed there without injury to the rights of the public. This doctrine has been very generally recognized throughout the United States. As said by Mr. Justice Harlan in *Illinois v. Illinois C. R. Co.*,² a riparian owner has the right, by virtue of his ownership, to connect his shore line by artificial connections with outside navigable water, subject to such regulations—not amounting to prohibition—as the state may establish, and to the public rights of navigation.³ And this was the rule of the civil law.⁴

the statute 14 Car. II., chap. 11, which expressly prohibits all lading or unloading except upon open places. *London Wharf's Case*, 1 W. Bl. 581.

In *Parmeter v. Atty. Gen.* 1 Gow. 316, where the defendant justified an indictment for constructing a wharf between high and low water mark upon the ground of a grant from the Crown, the court affirmed a decree of removal of the nuisance upon the ground that the Crown had remained in possession of the seashore for one hundred and fifty years after the alleged grant, and that the defendant had been in possession not more than nineteen or twenty years.

¹²*Atty. Gen. v. Johnson*, 2 Wils. Ch. 87, 18 Revised Rep. 156.

¹ § 113, *ante*.

² 33 Fed. 730.

³*Mather v. Chapman*, 40 Conn. 382, 16 Am. Rep. 46; *Boston v. Richardson*, 105 Mass. 365; *Chicago v. Van Ingen*, 152

Ill. 624, 38 N. E. 894, 43 Am. St. Rep. 285; *New York, N. H. & H. R. Co. v. Long*, 72 Conn. 10, 43 Atl. 559; *Hanford v. St. Paul & D. R. Co.* 43 Minn. 110, 7 L. R. A. 722, 44 N. W. 1144; *Folsom v. Freeborn*, 13 R. I. 200; *Bainbridge v. Sherlock*, 29 Ind. 364, 95 Am. Dec. 644, 41 Ind. 35, 13 Am. Rep. 302; *Madison v. Mayers*, 97 Wis. 399, 40 L. R. A. 635, 65 Am. St. Rep. 127, 73 N. W. 43; *Cincinnati Cooperage Co. v. Com.* 11 Ky. L. Rep. 629; *Brisbine v. St. Paul & S. C. R. Co.* 23 Minn. 114; *Carl v. Stillwater Street R. & Transfer Co.* 28 Minn. 373, 41 Am. Rep. 290, 10 N. W. 205; *Rippe v. Chicago, D. & M. R. Co.* 23 Minn. 18; *Morrill v. St. Anthony Falls Water-Power Co.* 26 Minn. 222, 39 Am. Rep. 399, 2 N. W. 842; *Union Depot Street R. & Transfer Co. v. Brunswick*, 31 Minn. 297, 47 Am. Rep. 789, 17 N. W. 626; *Lake Superior Land Co. v. Emerson*, 38 Minn. 406, 38 N. W. 200, 8 Am.

The right to construct the wharf has been placed on various grounds. One is that the riparian owner's right of access includes the right to connect his water front with the point of navigability. As said in *Miller v. Mendenhall*,⁵ the right of access and communication with the navigable waters, which pertains particularly to the ownership of the upland, necessarily includes the right to fill in and to build wharves and other structures in the shallow water in front of such land and below low-water mark, and the exercise of such right, though subject to state regulation, can only be interfered with for public purposes; and such improvements are encouraged because they are in the general interest of navigation and commerce, and are for public, as well as private, benefit.⁶ It has also been placed on the ground that the owner of the upland has a qualified interest in the soil under the edge of the water at the shore, so as to give him a right to construct and maintain piers.⁷ It has also been said that the doctrine that the soil under the tide water is a private emolument of the Crown cannot be followed in this country if the dictates of reason and justice are applied to the situation of the American people.⁸ The doctrine has also been placed on the ground of usage. As said in

St. Rep. 679; *Concord Mfg. Co. v. Robertson*, 66 N. H. 1, 18 L. R. A. 679, 25 Atl. 718; *Norfolk City v. Cooke*, 27 Gratt. 430; *Bell v. Gough*, 23 N. J. L. 624; *New Jersey Zinc & I. Co. v. Morris Canal & Bkg. Co.* 44 N. J. Eq. 398, 1 L. R. A. 133, 15 Atl. 227; *People v. People's Coal Co.* 32 Misc. 478, 66 N. Y. Supp. 529; *People v. Mould*, 37 App. Div. 35, 55 N. Y. Supp. 453, Reversing 24 Misc. 287, 52 N. Y. Supp. 1032; *Buffalo v. Delaware, L. & W. R. Co.* 39 N. Y. Supp. 4; *Musser v. Hershey*, 42 Iowa, 356; *Saunders v. New York C. & H. R. R. Co.* 30 Abb. N. C. 88, 71 Hun, 153, 23 N. Y. Supp. 927, Modified in 144 N. Y. 75, 26 L. R. A. 378, 43 Am. St. Rep. 729, 38 N. E. 992; *Williams v. Lane*, 87 Wis. 152, 58 N. W. 77; *Alexandria & F. R. Co. v. Faunce*, 31 Gratt. 761; *Paine Lumber Co. v. United States*, 55 Fed. 854; *People ex rel. Cornwall v. Woodruff*, 30 App. Div. 43, 51 N. Y. Supp. 515; *Delaplaine v. Chicago & N. W. R. Co.* 42 Wis. 214, 24 Am. Rep. 386; *Boorman v. Sunnuchs*, 42 Wis. 233; *Diedrich v. Northwestern Union R. Co.* 42 Wis. 248, 24 Am. Rep. 399; *Cohn v. Wausau Boom Co.* 47 Wis. 314, 2 N. W. 546; *Janesville v. Carpenter*, 77 Wis. 288, 8 L. R. A. 808, 20 Am. St. Rep. 123, 46 N. W. 128.

Under the laws of Florida wharves when constructed by riparian proprietors are not purprestures, nor presumed to be a nuisance as constituting an obstruction to commerce. One who alleges that a wharf is not for the benefit of commerce has the burden of proving his allegation. *Sullivan v. Moreno*, 19 Fla. 200.

⁴The *interdictum utile* lies against one who projects a mole into the sea in favor of one who is injured. But if no one sustains injury he is to be protected who builds on the seashore, or projects a mole into the sea. Dig. L. 43, title 8, § 8.

⁵43 Minn. 95, 8 L. R. A. 89, 19 Am. St. Rep. 219, 44 N. W. 1141.

⁶*People v. Mould*, 37 App. Div. 35, 55 N. Y. Supp. 453.

It is held by the courts of Oregon to be common knowledge that, before and after the admission of the state into the Union, the right to wharfage was regarded as incident to riparian ownership on a navigable fresh-water stream. *Lewis v. Portland*, 25 Or. 133, 22 L. R. A. 736, 42 Am. St. Rep. 772, 35 Pac. 256.

⁷*Tuck v. Olds*, 29 Fed. 738.

⁸*Concord Mfg. Co. v. Robertson*, 66 N. H. 1, 18 L. R. A. 679, 25 Atl. 718.

Clement v. Burns,⁹ in this country a usage sprung up which at length acquired the force of law which gave the riparian owner an exclusive right to erect wharves and reclaim from the sea the flats in front of his land. The principles out of which this usage sprung are common in both countries,—the exclusive right of access to the water over his banks, enjoyed by the riparian owner, and the right of alluvion, from which are necessarily deduced the doctrine that none but the riparian owner can erect such wharves or conveniences for navigation. Nor can the sovereign power authorize it to be done without his consent, except through the right of eminent domain. To the exercise of these rights of the riparian owner from the earliest stages of the settlement of our country to the present time are undoubtedly due the great facilities enjoyed by our commerce in the erection of wharves, docks, and other conveniences; and it is easy to understand that the wants of navigation should give the most liberal interpretation to the rights of the riparian owner.¹⁰ These rules are all mere diverse statements of the broader and more accurate one giving the riparian owner the right to make use of the public property in front of his land as one of the public. The necessity of the adoption of such rule is emphasized by the fact that a wharf cannot be placed on, or annexed to, the property of the riparian owner in the way in which it is necessary to do in order to make the wharf available without his consent. As said by Lord Hale:¹¹ “If A hath the *ripa* or bank of the port, the King may not grant a liberty to unlade upon that bank or *ripa* without his consent, unless custom had made the liberty thereof free to all, as in many places it is; for that would be a prejudice to the private interest of A which may not be taken from him without such consent. And that many times it falls out that such a place within a port may be of great conveniency to make a common key or wharf where the propriety of the soil may belong to a subject, whereby either his interest must be bought in by the

⁹ 43 N. H. 617.

¹⁰ Mr. Angell adopts this reason. *Tidewaters*, 127, 152.

But he also says: The right of the first occupant to use the public property gives the right to erect wharves to the owner of the upland. Angell, *Tidewaters*, 158.

And that the one who uses land in front of his property to erect a wharf may retain it for a reasonable time. To determine what is to be regarded as a reasonable time the advantage which any other person might derive from a relinquishment is the only certain and

proper guide. If it is proved that the space taken up by an embankment in and upon salt water was never used by the public, and was in fact never calculated to afford the public any privilege whatever, is it not perfectly reasonable and consistent with strict legal principles that the embankment may be held and enjoyed by the projector and his assigns forever? Angell, *Tidewaters*, 159.

¹¹ Hale, *De Portibus Maris*, chap. 6; *Bowman v. Wathen*, 2 McLean, 376, Fed. Cas. No. 1,740.

lord of the port, or he must have those benefits that may arise by taking or landing of merchandise." The interest of the wharf owner is such that he may prevent the erection of structures in front of it which will cut off his access to the water.¹² Even where a municipal corporation owns the land under the water along the entire harbor front so that the shore owner has no riparian rights, it cannot, after granting a right to wharf out, make improvements which will defeat or obstruct the right.¹³ The result is that, in order to be entitled to construct the wharf, the one undertaking to do so must be a riparian owner, or must have acquired permission from the

¹²*Garitee v. Baltimore*, 53 Md. 422; *Philadelphia & R. Coal & I. Co. v. New York*, 21 Fed. 97; *Suffield v. Brown*, 33 L. J. Ch. N. S. 249, 4 De G. J. & S. 185, 3 New Rep. 340, 10 Jur. N. S. 111, 9 L. T. N. S. 627, 12 Week. Rep. 356; *Cowell v. Martin*, 43 Cal. 605; *Pennsylvania R. Co. v. Philadelphia Belt Line R. Co.* 1 Pa. Dist. R. 1, 29 W. N. C. 202.

The provisions of a statute permitting a municipal corporation to enlarge a wharf by extending a pier must be strictly complied with in order to cut off the right of the owner of the pier as it was formerly located. *Marshall v. Vultee*, 1 E. D. Smith, 294; *Commissioners of Pilots v. Erie R. Co.* 5 Robt. 366.

A railroad company authorized by municipal ordinance to inclose and occupy that portion of the levee batture and wharves in front of its riparian property acquired, or to be acquired, and to maintain thereon depots, wharves, and other structures, is not authorized to place wharves or other structures outside of the line of the city wharf. *Texas & P. R. Co. v. New Orleans*, 40 Fed. 111.

In *Coburn v. Ames*, 52 Cal. 385, 28 Am. Rep. 634, it is said that, if a riparian owner on the ocean desires to wharf out, and is unlawfully obstructed in the exercise of the right, he may maintain an action for damages; and, if the obstruction amounts to a public nuisance, it may be abated by appropriate proceedings for that purpose. If it be only a private nuisance which obstructs him in the exercise of his right to wharf out, he may, possibly, cause it to be abated by the appropriate method. But it is decided that he has no such title or right to the possession of the bed of the ocean as incident to his right to wharf out as will enable him to maintain an ejectment for that portion of the wharf and chute constructed on piles below high-water mark in front of his upland.

So, the owner of a bulkhead cannot enjoin the erection of a pier beyond the water under permission of the proper authorities. His remedy, if any, is an action for damages. *Taylor v. Brookman*, 45 Barb. 106.

And an injunction restraining the defendant from interfering with the plaintiff in the mooring of his rafts and other water crafts to the wharf he has built in front of his property is not justified by allegations in the petition that the defendant threatens to deprive the plaintiff of the use of his property, and disturb him in its possession, when it is not explained or specified what threats of the defendant were, or what they cover. *Otis v. Sweeney*, 48 L. Ann. 940, 20 So. 229.

¹³*Kingsland v. New York*, 45 Hun 198; *Williams v. New York*, 105 N. Y. 419, 11 N. E. 829; *Van Dolsen v. New York*, 21 Blatchf. 454, 17 Fed. 817.

The reservation, in a grant of the right to fill out land under tide water for wharf purposes, of a strip at the outer edge for a street, will not give the grantor the right to destroy the wharf by filling beyond it, where the right to the wharfage is expressly conveyed. *Langdon v. New York*, 28 Hun 158, Affirmed in 93 N. Y. 129, Reversing 6 Abb. N. C. 314.

But it had been held that a city which owns the soil under the water of a river along its front to the distance of 400 feet from the shore is not precluded, by a grant to one person of a right to build wharves upon less than the 400 feet upon condition that he is required to do so, from subsequently granting the right to another to build upon the space beyond his grant, the former grant never having been acted upon. *Furman v. New York*, 10 N. Y. 567. See also § 66b ante.

riparian owner to use his land.¹⁴ The mere grant of a right of way to a railroad or canal company does not transfer the riparian rights to such company so as to give it the wharfage rights and deprive the riparian owner of them.¹⁵ A street along the shore will deprive the abutting owner of his riparian rights if the title to the fee is in the public, and it is bounded by the water, but not if it is not so bounded, or the riparian owner retains title to the fee.¹⁶ A railroad company may maintain wharves and piers if necessary to the transaction of its business.¹⁷ The limitation upon the right to construct wharves

¹⁴ *Brown v. Morris Canal & Bkg. Co.* Minn. 114; *Barney v. Keokuk*, 94 U. S. 27 N. J. L. 648; *Dana v. Jackson Street Wharf Co.* 31 Cal. 118, 89 Am. Dec. 164; *Jeffersonville v. Louisville & J. Steam Ferry Co.* 27 Ind. 100, 89 Am. Dec. 495; *Casey v. Inloes*, 1 Gill, 430, 512, 39 Am. Dec. 658; *State, Morris Canal & Bkg. Co., Prosecutors, v. Brown*, 27 N. J. L. 13; *Musser v. Hershey*, 42 Iowa, 356; *Illinois C. R. Co. v. Illinois*, 146 U. S. 387, 36 L. ed. 1018, 13 Sup. Ct. Rep. 110.

But the licensing board has no power to inquire into the applicant's title to the land. *Brown v. Morris Canal & Bkg. Co.* 27 N. J. L. 648.

A wharf erected in navigable water, which does not abut the shore and cannot be lawfully connected therewith so as to be used in aid of navigation because the title of the shore is in another person, is a public nuisance which the owners of a dock and wharf may peaceably remove, where they are specially injured thereby because of the danger from such structure to vessels leaving their wharves when the wind is in a certain direction. *Larson v. Furlong*, 63 Wis. 323, 23 N. W. 584.

The dedication of the land along the bank of a river to a town as public property vests in such town the right to erect wharves and charge toll for their use; and no right thereto remains in the original proprietor of such town, where such dedication was made without reservations. *Poovan v. Portland*, 8 B. Mon. 232.

¹⁵ *Illinois C. R. Co. v. Illinois*, 146 U. S. 387, 36 L. ed. 1018, 13 Sup. Ct. Rep. 110; *New Jersey Zinc & I. Co. v. Morris Canal & Bkg. Co.* 44 N. J. Eq. 398, 1 L. R. A. 133, 15 Atl. 227.

¹⁶ *Madison v. Mayers*, 97 Wis. 399, 40 L. R. A. 635, 65 Am. St. Rep. 127, 73 N. W. 43; *Potomac S. B. Co. v. Upper Potomac S. B. Co.* 109 U. S. 672, 27 L. ed. 1070, 3 Sup. Ct. Rep. 445, 4 Sup. Ct. Rep. 15, Affirming *MacArth. & M.* 285; *Brisbine v. St. Paul & S. C. R. Co.* 23

Minn. 114; *Barney v. Keokuk*, 94 U. S. 324, 24 L. ed. 224; *Verplanck v. New York*, 2 Edw. Ch. 220.

See also chap. ix., post.

A street platted between a navigable river and the highway along the shore, and which is incapable of being used as a street, does not affect the rights of the owner of the land bordering on the river as against one claiming the title to the land under the water. *Shepard's Point Land Co. v. Atlantic Hotel*, 132 N. C. 517, 61 L. R. A. 3, 44 S. E. 39.

¹⁷ *Indian River S. B. Co. v. East Coast Transp. Co.* 28 Fla. 387, 10 So. 480; *State v. Baltimore & O. R. Co.* 48 Md. 49, 76.

But in *Rensselaer & S. R. Co. v. Davis*, 43 N. Y. 137, it was held that the construction of slips for the accommodation of vessels bearing freight to, or taking it from, a railroad is not a necessary corporate purpose, within the meaning of a statute giving the railroad corporation the right of eminent domain, so that it can condemn for such purposes land on the shore of a navigable body of water.

A railroad company having a terminus upon a navigable river bordering on the state of Illinois is authorized by the Illinois water-craft act of July 1, 1877, to own for its own use any water craft necessary to transport cars, property, or passengers across the river to a connecting line, but cannot condemn land for an inclined track and transfer ferry-boat landing, since the act expressly provides that no right shall exist under it to condemn real estate for a landing, or for any other purpose. *St. Louis & C. R. Co. v. Thomas*, 34 Fed. 774.

A railroad company, although prohibited by the Illinois water-craft act of July 1, 1877, from condemning land for the purpose of a ferry-boat landing, may be permitted to purchase an unexpired leasehold interest in riparian prop-

and piers is that they must not unreasonably interfere with the right of public navigation, for, if they do, they become nuisances, and are subject to abatement.¹⁸ But a wharf is not *per se* a nuisance, and, in order to abate it, it must be shown to be one.¹⁹ In deciding whether or not a wharf is a nuisance, the character of the water, and the existing modes of navigation, as well as the necessity of wharves for commerce, should be borne in mind.²⁰ The question whether it is

erty in the hands of receivers, if the sale will not injure the just rights of creditors and stockholders. *Thomas v. St. Louis & C. R. Co.* 37 Fed. 839.

¹⁸*People v. Vanderbilt*, 28 N. Y. 396, 84 Am. Dec. 351; *Madison v. Mayers*, 97 Wis. 399, 40 L. R. A. 635, 65 Am. St. Rep. 127, 73 N. W. 43; *Kean v. Stetson*, 5 Pick. 492; *Sherlock v. Bainbridge*, 41 Ind. 35, 13 Am. Rep. 302, Modifying 29 Ind. 364, 95 Am. Dec. 644; *Murphy v. Bullock*, 20 R. I. 36, 37 Atl. 348; *Frink v. Lawrence*, 20 Conn. 117, 50 Am. Dec. 274; *Engs v. Peckham*, 11 R. I. 210; *Angell, Tidewaters*, 45; *Harlan & H. Co. v. Paschall*, 5 Del. Ch. 435.

¹⁹*Laughlin v. Lamasco City Trustees*, 6 Ind. 223; *Yates v. Milwaukee*, 10 Wall. 497, 19 L. ed. 984; *People ex rel. Teschemacher v. Davidson*, 30 Cal. 379; *Harlan & H. Co. v. Paschall*, 5 Del. Ch. 435; *Com. v. Wright*, Thacher Crim. Cas. 211; *Geiger v. Filor*, 8 Fla. 325; *Providence Steam Engine Co. v. Providence & S. S. S. Co.* 12 R. I. 348, 357, 34 Am. Rep. 652; *Delaware & H. Canal Co. v. Lawrence*, 2 Hun. 163.

The fact that an improper use of a lawful wharf constitutes a public nuisance does not render the wharf itself a public nuisance. *New York, N. H. & H. R. Co. v. Long*, 72 Conn. 11, 43 Atl. 559.

²⁰*Thornton v. Grant*, 10 R. I. 477, 14 Am. Rep. 701.

It is no obstruction to build out a wharf if a sufficient passage or way is left for the public. *Com. v. Crowninshield*, 2 Dane, Abr. 697.

The construction of a wharf does not constitute an obstruction to the free navigation of the waters of a bay, and will not be enjoined as a nuisance, where the width of the bay opposite the contemplated wharf is 7 miles, the width of the ship channel opposite the same spot about 2 miles, and the distance between the wharf and the usual track of vessels 500 feet. *Griffing v. Gibb*, 1 McAll. 212, Fed. Cas. No. 5,819.

Where the evidence is very slight that

the erection of a wharf will obstruct navigation, except as to one whose land adjoins the land in front of which the wharf is to be constructed, and it appears that such adjoining owner uses the navigable channel which the wharf will obstruct only occasionally as a way of egress for his unloaded vessels when his wharves are crowded, a preliminary injunction sued out at the instance of such adjoining owner restraining the construction of the wharf will be dissolved, except that it may remain in force for the purpose of preventing the construction of the wharf so as to spread materials in front of the plaintiff's property. *Thornton v. Grant*, 10 R. I. 477, 14 Am. Rep. 701.

The erection of docks by a riparian owner upon land adjacent to the Brooklyn navy yards will be provisionally restrained until it be shown that their construction will not interfere with the free ingress and egress of vessels to and from the navy yard, or with the full enjoyment of the rights and privileges belonging to the government as proprietor of such yard. *United States v. Ruggles*, 5 Blatchf. 35, Fed. Cas. No. 16,204.

Under an indictment for obstructing a navigable river by the erection of a wharf, where there was no evidence that the part of the river covered by the alleged obstruction had ever been navigated by vessels of any moderate size, and the most that was shown was that, by reason of the wharf, the prosecutor was prevented from landing with his skiff, a verdict of not guilty is the only one which may be rendered. *Queen v. Port Perry & P. W. R. Co.* 38 U. C. Q. B. 430.

The fact that the ordinary and usual course of a ferry-boat will bring her within 10 or 20 feet of the corner of a pier, not itself the boundary of her slip, keeping as closely as she can, does not give any exclusive or superior rights to the occupation of so much of the water area surrounding the pier as may be re-

so or not is for the jury.²¹ It may even be a nuisance to permit a wharf to go to decay to the injury of commerce.²²

113c. The Federal decisions.— The question of the right to project wharves or piers into the waters in front of the riparian land is one of local law to be settled by the states in which the waters are found. Therefore, the Federal courts have nothing to do when cases involving the question come before them but to follow the local law, unless the question is raised whether or not, by an attempted change of the local law, either by statute or by change of decision by the court, a vested right has been impaired in a manner which cannot be done under the Federal Constitution. But the Supreme Court of the United States has been in the habit of expressing its opinion upon the question as one of Federal common law, and the result is that, not only are its own utterances in hopeless conflict, but the attempt to follow them has caused much needless confusion among the state decisions. In an early case the court recognized the rule of *King v. Ward*,¹ that it is no defense to an indictment for nuisance in building a wharf on public property that the wharf was beneficial to the public.² That decision apparently, however, overlooks the distinction between nuisance and purpresture, because it is not necessarily a nuisance to construct a wharf on public property. In *Dutton v. Strong*³ a riparian owner had projected a pier into navigable water, and a vessel driven by stress of weather made fast to it, and the owner, fearing injury to it, cast the vessel loose, whereupon it drifted to shore and was sunk. The vessel owner brought suit for the injury, alleging, *inter alia*, that the pier was a nuisance, and had interfered with its right of navigation, and prevented it from making the harbor or putting out into the lake. Mr. Justice Clifford, in delivering the unanimous opinion of the court in reply to such contention, said: "Piers and landing places are frequently constructed by riparian proprietors on the shores of navigable rivers, bays, and arms of the sea, and, where they conform to the regulations of the state, and do not extend below the low-water mark, it has never been held that they would be a nuisance unless it appeared that they were an obstruction to the paramount right of navigation. Whether a nuisance or not is a question of fact, and, where they are confined to the shore, and no positive law or regulation was violated in their erection, the presumption is that they

quired for the uses for which it was erected. *Conover v. The John S. Darcy*, 38 Fed. 619.

²¹*Folsom v. Freeborn*, 13 R. I. 200; *Thornton v. Grant*, 10 R. I. 477, 14 Am. Rep. 701.

²² Hale, *De Portibus Maris*, chap. 6.

¹ 4 Ad. & El. 384, 6 Nev. & M. 38, 1 Hurlst. & W. 703, 5 L. J. K. B. 221.

²*Respublica v. Caldwell*, 1 Dall. 150, 1 L. ed. 77.

³ 1 Black, 23, 17 L. ed. 29.



State of New Jersey

Department of Environmental Protection
Site Remediation Program
Office of Dredging and Sediment Technology
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Bradley M. Campbell
Commissioner

Richard J. Codey
18th Governor

October 19, 2005

Mr. David Blaha
Environmental Resources Management
200 Harry S. Truman Parkway Suite 400
Annapolis, MD 21401

Re: Sediment Sampling Concurrence for
BP / Crown Landing LNG Import Terminal
Waterfront Development Permit Application
File No. 0809-02-0011.1 WFD 050001
Location: Logan Township, Gloucester County

Dear Mr. Blaha:

The Office of Dredging and Sediment Technology (ODST) is responding to recent inquiries made by you and other BP representatives, who have sought guidance on the Department's dredge material characterization requirements as they apply to the subject Waterfront Development Permit application.

Approximately 800,000 yd³ of material is proposed to be hydraulically and mechanically dredged to a project depth of -40' MLW plus -2' overdredge within the currently proposed LNG ship berth located in the Delaware River. The proposed disposal site has been identified as the Weeks/White's Rehandling Basin located in Logan Township, Gloucester County, New Jersey.

On December 28, 2004, via e-mail, the ODST conditionally accepted an electronically submitted revised sediment core location proposal submitted by Weston Solutions. Subsequently, Weston Solutions submitted a Revised Sediment Sampling and Analysis Plan (SAP) dated January 2005.

The subject SAP proposes to collect twelve sediment cores at the locations noted on the plan entitled "SAMPLE LOCATION PLAN, BP, BATHYMETRY MAP CROWN LANDING, LLC LOGAN TOWNSHIP GLOUCESTER COUNTY, NEW JERSEY" prepared by Weston Solutions, dated August 20, 2004 and last revised December 9 2004. Subsequent to sample collection, each sample will be separated into four zones relative to specified depths (as depicted on table 5 of the referenced report) and separated into aliquots. This will yield a total of 38 samples. Each of these aliquots will be discretely analyzed following approved methods for the requisite physical and chemical parameters.

The ODST has reviewed the materials submitted and determined that the proposed SAP is consistent with the protocol found in the Department's Technical Manual entitled "The Management and Regulation of Dredging Activities and Dredged Material in New Jersey's Tidal

Waters" (Dredging Manual), dated October 1997. The proposed SAP must be conducted to enable the Department to review this project.

The Department requires sediment characterization of all materials to be dredged in accordance with the Rules on Coastal Zone Management specifically, N.J.A.C. 7:7E-7.12 - Dredged Material Placement On Land. This Rule requires that: *Dredged material placement on land is conditionally acceptable provided that the use is protective of human health, groundwater quality, and surface water quality, and manages ecological risks.*

Given the significant quantity of material proposed to be dredged as part of this project, adequate characterization is an essential component of the application review process. The application was found deficient on February 4, 2005, and again on July 15, 2005, because in part, the requisite sediment data had not been received from the applicant. Accordingly, you have been previously advised that this application will not be deemed complete for review and for a public hearing until the Department receives a complete data package in accordance with the SAP.

Should you have any questions concerning this letter or the information required by the Dredging Manual, you may contact me at (609) 292-9342

Sincerely,



David Q. Risilia
Project Manager, Office of Dredging and Sediment Technology

C: Cecelia Oswald, Weston
Laurie Beppler, BP
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10 April 2006

Mr. David Risilia
Office of Dredging and Sediment Technology,
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New Jersey Department of Environmental Protection
P.O. Box 028
Trenton, NJ 08625

Re: Supplemental Responses to Notices of Deficiency, Waterfront Development Application
Applicant: Crown Landing LLC
Project: Crown Landing LNG Import Terminal
Block: 101; Lot: 2
Location: Logan Township, Gloucester County
File No. 0809-02-0011.1 WFD 050001

Dear Mr. Risilia,

In this response, Crown Landing is supplementing our Waterfront Development Application which was reviewed in your first deficiency letter dated 4 February 2005 and your second deficiency letter dated 15 July 2005. In this submission, we wish to document materials that have been provided to you since July 2005 and to provide additional materials which have now been prepared. As you know, the State of Delaware has sought to block us from taking the sediment samples that you require and so Crown Landing recognizes that this application will continue to remain deficient until such time as sediment samples from our intended pier and berth location can be collected and analyzed, and all parties can agree on an appropriate mitigation plan to address any necessary, unavoidable, impacts.

The footprint of the berth area and the volume of sediment to be dredged has been changed, as per our discussion of 17 November 2005 and as documented herein (Attachment 1) and in our FERC submission of 1 December 2005. The new configuration was optimized to reduce the increased subtidal shallows and dredge volume. The final impact for subtidal shallows is 9.7 acres and the final dredge volume is 1.24 million cubic yards, respectively.

Sincerely,

Janis Farmer
Senior Environmental Advisor
Crown Landing

APR 12 RECD

Enclosures as defined by the following table.

LAW OFFICES
OF

MORRIS, STEEL, NICHOLS & ARSHT
DU PONT BUILDING
WILMINGTON 1, DELAWARE

TELEPHONE OL 8-0101

HUGH W MORRIS
EDWIN D STEEL, JR
ALEXANDER L NICHOLS
S SAMUEL ARSHT
GEORGE T COULSON
WILLIAM B MESONICAL, JR
JOHN T GALLAGHER
ANDREW B KIRKPATRICK, JR.
HARVEY S KRONFELD

January 8, 1958

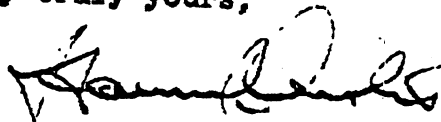
Alan L. Skinner, Esquire
E. I. du Pont de Nemours & Co.
Legal Department
DuPont Building
Wilmington, Delaware

Dear Alan:

In accordance with our telephone conversation of this morning, I enclose here-with a copy of a letter dated December 13, 1957 from Mr. R. A. Haber, Chief Engineer of the Highway Department, to the Corps of Engineers, United States Army, that was written pursuant to the following resolution adopted by the Highway Department at its meeting held on December 11, 1957:

"On motion duly made, seconded and carried, the Department, taking cognizance of the above opinion (of S. Samuel Arsht, Department Attorney, to Mr. R. A. Haber, Chief Engineer, dated December 2, 1957), directed the Chief Engineer to notify the Corps of Engineers, U. S. Army, that while the Department has no jurisdiction over the area mentioned, the Department wishes to be notified of all permits requested and granted."

Very truly yours,



S. SAMUEL ARSHT

SSA: MJ

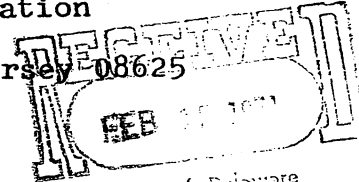
Enc.

Ex 9

cc: Mr. F. J. Kelly, Assistant Chief
Department of Environmental Protection
Division of Natural Resources
Bureau of Navigation
P. O. Box 1889
Trenton, New Jersey 08625



E. I. DU PONT DE NEMOURS & COMPANY
INCORPORATED
WILMINGTON, DELAWARE 19898



State of Delaware
Division of Environmental Control

February 10, 1971

LEGAL DEPARTMENT

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. John C. Bryson
Director of Environmental Control Division
Department of Natural Resources of the
State of Delaware
Dover, Delaware 19901

Re: Permit Application to construct fuel
oil storage tank on underwater lands
within the State of Delaware at
Deepwater Point, New Jersey

Dear Mr. Bryson:

As I informed you in our telephone conversation of February 9, 1971, we applied to the Corps of Engineers for the above named permit and as a result of such application your Mr. B. E. Lane, Staff Geohydrologist, notified both the Corps of Engineers and our Chambers Works personnel that a permit from the State of Delaware would be necessary and that the project falls within the terms of a moratorium placed on subaqueous lands projects by the Delaware Legislature. We question the jurisdiction of the State of Delaware in this matter.

This question of jurisdiction is not new to us, having been raised in 1957 by R. A. Haber, Chief Engineer of the Delaware State Highway Department. At that time, it was determined that the State of Delaware had no jurisdiction in such matters on the easterly side of the Delaware River.

As background information I am enclosing photocopies of the following letters:

1. Letter dated January 29, 1971 addressed to Mr. P. H. Collins of our Chambers Works by B. E. Lane, Staff Geohydrologist, Water Resources and Subaqueous Lands.
2. Letter dated January 29, 1971 addressed to Colonel Carroll D. Strider, District Engineer, Corps of Engineers by B. E. Lane, Staff Geohydrologist, Water Resources and Subaqueous Lands.
3. Letter dated September 30, 1957 addressed to R. A. Haber, Chief Engineer of the Delaware State Highway Department by the undersigned.

4. Letter dated October 25, 1957 addressed to the undersigned by R. A. Haber, Chief Engineer of the Delaware State Highway Department.

5. Letter dated December 2, 1957 addressed to Mr. R. A. Haber, Chief Engineer of the Delaware State Highway Department by S. Samuel Arsht, Attorney for the Delaware State Highway Department.

6. Letter dated December 13, 1957 addressed to the United States Army, Corps of Engineers by R. A. Haber, Chief Engineer of the Delaware State Highway Department.

7. Letter dated January 8, 1958 addressed to the undersigned by S. Samuel Arsht, Attorney for the Delaware State Highway Department.

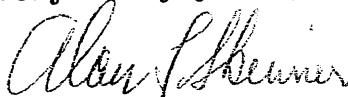
The question was finally resolved on December 11, 1957, by the passage of a resolution by the Delaware State Highway Department directing its Chief Engineer to notify the Corps of Engineers, United States Army that while the Department has no jurisdiction over the area mentioned, the Department wishes to be notified of all permits requested and granted. In my opinion, the language of the 1905 Treaty as confirmed by the decision of the United States Supreme Court will permit no other conclusion. Certainly the unilateral passage of legislation in Delaware or the creation of a new department in charge of subaqueous lands could not change the Treaty or alter the court decision so as to affect the division of jurisdiction between the two states.

As I stated to you the moratorium passed by the Delaware Legislature cannot in any event apply to the easterly side of the river, since that statute is limited to the area "between the high and low water marks along the Delaware River and Bay within the State of Delaware." There is no land on the easterly side of the river between the high and low water marks within the State of Delaware.

Our people are very anxious to move on the proposed project. It is immaterial to us whether we get a permit from the State of Delaware or the State of New Jersey, provided it is obtained from the state that actually has jurisdiction of the subject matter, which we believe to be New Jersey.

As you offered to do, it would be appreciated if you would submit this question to the Attorney General of the State of Delaware.

Very truly yours,


Alan L. Skinner

ALS:met

4A AFTER FIVE DAYS RETURN TO



ESTABLISHED 1802
E. I. DU PONT DE NEMOURS & COMPANY
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WILMINGTON, DELAWARE 19888

NOTIFIED
FEB 12 1971

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BETTER THINGS for BETTER LIVING
... THROUGH CHEMISTRY

REGISTERED MAIL
RETURN RECEIPT REQUESTED

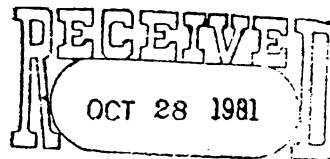
Mr. John C. Bryson
Director of Environmental Control Division
Department of Natural Resources of the
State of Delaware
Dover, Delaware 19901

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153
113

(M)



E. I. DU PONT DE NEMOURS & COMPANY
INCORPORATED
WILMINGTON, DELAWARE 19898



DNREC
LEGAL OFFICE

LEGAL DEPARTMENT

October 27, 1981

June D. MacArtor, Esq.
Deputy Attorney General
Department of Justice
State of Delaware
Tatnall Building
P.O. Box 1401
Dover, Delaware 19901

Dear Ms. MacArtor:

Lease No. SL 558/1971

I agree that the two cases, New Jersey v. Delaware, 291 U.S. 361 (1933), and New Jersey v. Delaware, 295 U.S. 694 (1935), determined that the boundary between New Jersey and Delaware within the 12-mile circle was the low water mark on the New Jersey side; however, the actual holding of the Court was as follows:

"Within the 12-mile circle the river and sub-aqueous soil thereof up to low water mark on the easterly or New Jersey side will be adjudged to belong to the State of Delaware, subject to the Compact of 1905."

The question at the time of the execution of the 1971 lease was the effect of the Compact of 1905. There has been no final judgment of a Federal Court of competent jurisdiction since 1971 determining this matter as required in the lease.

Pursuant to our telephone conversation of yesterday and for your information I have enclosed the following:

1. Copy of letter dated September 30, 1957, addressed by me to Mr. R. A. Haber, Chief Engineer of the Delaware State Highway Department.
2. Copy of letter dated October 25, 1957, addressed to me by R. A. Haber, Chief Engineer.
3. Copy of letter dated December 2, 1957, addressed to Mr. R. A. Haber, Chief Engineer, by S. Samuel Arsht.

June D. MacArtor, Esq.

October 27, 1981

-2-

4. Copy of letter dated December 13, 1957, addressed by R. A. Haber, Chief Engineer, to the U.S. Army Corps of Engineers.

5. Copy of letter dated January 8, 1958, addressed to me by S. Samuel Arsht.

6. A copy of my opinion as to the intention and meaning of the Compact of 1905.

It is my opinion that New Jersey has jurisdiction over the matters covered by the 1971 lease as previously agreed to by S. Samuel Arsht, Esq., and the Delaware State Highway Department.

Your comments would be appreciated.

Yours very truly,



Alan L. Skinner

ALS:cca
Enclosures

Wilmington, Delaware,

January 31st 1903.

To His Excellency,

John Hunn,

Governor of the State of Delaware.

Dear Sir:

It becomes my official duty again to direct your attention to the litigation which has long been pending in the Supreme Court of the United States, between the states of New Jersey and Delaware, concerning which I addressed you in February, 1901. This litigation, as I then stated, grew out of legislation in our State, prohibiting persons who were not citizens of Delaware from fishing within certain limits which were claimed to be within the exclusive jurisdiction of our State, and over which limits the jurisdiction of our State has, from time immemorial, been asserted and maintained.

The Act in question was passed on March 28th 1871, being Chapter 72 of Volume 14, Laws of Delaware, and such parts of which as are now in force can be found on page 467, &c., of the Revised Code as published in 1893. The jurisdiction in question is that claimed by the State of Delaware over the waters of the Delaware River to low water mark on the New Jersey shore, within the limits of the twelve miles circle having its center at the Court House at New Castle, and an arc of which circle constitutes the Northern boundary of this State.

The enforcement of the provisions of the Act of March 28th 1871, by the arrest of citizens of New Jersey engaged in fishing within that portion of the Dela-

ware River lying within the twelve mile circle, was promptly opposed by the authorities of that State, with a claim of jurisdiction over said river East of the middle line, and of the legal right of her citizens to fish on the New Jersey shore of the river without the license of Delaware, either within or without the said circle.

During the year 1872, the then Executives of the two States had certain correspondence and conferences over this controversy, the result of which was their recommendation to the legislatures of their respective states that commissioners should be appointed on the part of each to settle the matter in dispute. Upon such recommendation, a joint commission, consisting of three members from each state, was appointed by legislative authority, and the General Assembly of this State suspended the law of 1871, pending the negotiations between such commissioners.

These joint commissioners having failed to reach a satisfactory basis of settlement of the matter in controversy, the commissioners from this State reported to the Executive, in 1874, their failure to arrive at a satisfactory settlement of the matter in dispute, and delivered a statement asserting and vindicating the claim and title of Delaware. On March 26th 1875, the General Assembly of this State adopted a joint resolution, declaring that the commissioners on the part of this State having fully performed their duties and reported the results of their labors, were relieved of further duty as such commissioners. This joint resolution appears in Chapter 249, Volume 15, Laws of Delaware. The effect

of this resolution was to abrogate the authority of such commissioners, to terminate their negotiations, and to revive the suspended license laws. Such license laws were thereafter enforced by the authorities of this State and the original conditions resulting therefrom recurred. As the result of this state of affairs, New Jersey, in pursuance of leave granted, on March 13th 1877, filed a Bill in Equity in the Supreme Court of the United States to restrain the State of Delaware from the exercise of its jurisdiction.

Prior to the filing of said Bill in Equity, your predecessor, Honorable John P. Cochran, then Governor of the State of Delaware, on the second day of January, 1877, addressed and delivered to the General Assembly his Message, in the course of which he recited the foregoing historical facts and informed the General Assembly of the purpose, as communicated to him by the Governor of New Jersey, of said State to commence proceedings in the Supreme Court of the United States. In concluding his discussion of the subject, Governor Cochran said:

"If this proceeding shall be taken by New Jersey, it will be incumbent upon the General Assembly at its present session, to make adequate provision for the proper vindication of that rightful claim of title and jurisdiction which, I believe, has never before been denied by New Jersey, but which, on the contrary, is uninterruptedly asserted and maintained by the State of Delaware for the space of nigh two centuries, and I would respectfully recommend that such legislation be had as will meet all exigencies likely to arise, pending the litigation."

As a result of this Message of Governor Cochran, the General Assembly, on the twenty-sixth day of January, 1877, adopted joint resolutions, reciting the claim of

this State to the ownership and exclusive jurisdiction of that portion of the Delaware River which is included within a circle of twelve miles radius, taking the Court House in the City of New Castle as a central point, and delcaring,-

"That the Attorney General be, and he is hereby, authorized and directed to cause his appearance, in behalf of this State, to be promptly entered upon the Record of the said suit in the Supreme Court of the United States, whenever the same shall be commenced by the State of New Jersey. And be it further resolved, that the Governor be, and he is, hereby, authorized to employ, in behalf of the State, additional Counsel to assist the Attorney General in the defense of the said suit".

These resolutions are contained in Chapter 504, Volume 15, Laws of Delaware.

In pursuance of said resolutions and authority, the Governor subsequently, from time to time, appointed Messrs. Thomas F. Bayard, George Gray, and George H. Bates, as Counsel to represent the State in this cause. Subsequently, Mr. Bayard withdrew from his position as Counsel, upon his appointment as Secretary of State of the United States. Mr. George Gray has since been appointed United States Circuit Judge. Of the original Counsel in the cause, Mr. George H. Bates now remains.

In February 1901 I received communications from the Clerk of the Supreme Court of the United States, from the Honorable Samuel H. Grey, then Attorney General for the State of New Jersey, and from the Hon. George H. Bates, the special Counsel for the State of Delaware, calling my attention to the cause, and communicating to me the order of the Supreme Court that the cause before it should be forthwith proceeded with. Upon a conference with Messrs. Grey and Bates, and upon the examination of the record of the

cause, it appeared that the State of Delaware must take the next step in the action, by filing its Answer to the Bill of Complaint of New Jersey. Inasmuch as the State of New Jersey had not theretofore been pressing its suit against this State, under a written agreement of Counsel filed in the cause, no Answer for the State of Delaware had theretofore been filed.

On February 14th 1901 I addressed you, reciting the history of the controversy, and suggesting that you send to the General Assembly a Message, embodying the facts set forth in said report, and that you recommend the passage of a joint resolution by the General Assembly then in session, which should reiterate the authority of this State to defend said action to its termination, and renew its statement of confidence in the position heretofore assumed in said controversy by this State. Thereupon, you sent the following Message to the Senate and House of Representatives:-

"I have received and herewith transmit for your information a communication from the Attorney General relating to the suit now pending in the Supreme Court of the United States, between the States of New Jersey and Delaware. It is unnecessary for me to enlarge upon the importance of this report. The unanimity with which the people of this State, through various General Assemblies and Executives, have always defended the integrity of the jurisdiction, territory, and sovereignty of this State in this controversy, constitutes a just guide for present action. I cannot bring myself to believe that the present generation of Delawareans will, when properly advised on the subject, find themselves less sensitive and earnest in maintaining the rights of the State than the generations which have preceded us. It would seem that if the controversy is ever to be settled finally, it could not be placed in a position of greater advantage than to embrace the present opportunity to have it forever set at rest by the decision of that tribunal which, under the Federal Constitution, is competent to sit in judgment between sovereign states. From personal conference with the Attorney General and Counsel who have heretofore represented the State in

this litigation, and from such investigation of the case as I have been able to make, I believe that the interests of the State have been carefully guarded in the past, and that such interests will be fully protected in the future by such of the existing counsel for the State as are now living and as are now free to act in her behalf, together with the Attorney General of the State.

"I therefore recommend that the General Assembly renew its declaration of purpose, not to abandon the vindication of its sovereign right and title to the territory which immemorially has been conceded to be a part of its domain, and that it shall make such provision for the further defense thereof against what must be considered the unfounded pretensions of the State of New Jersey, as will comport with the honor, dignity and best interests of the State."

Acting upon the suggestion of this Message, the Senate and House of Representatives adopted the joint Resolution, which was approved February 26th 1901, and which appears at page 531, Volume 22, Laws of Delaware. This Resolution, after reciting that said General Assembly was desirous to maintain the claims of this State set forth in the joint Resolution passed January 28th 1877, to exclusive jurisdiction over that portion of the Delaware River which is included within the circle of twelve miles radius, taking the Court House in the City of New Castle as a central point, declared:-

"That the Attorney General and such of the special counsel heretofore appointed to assist him as are now free to act in said behalf, be and they are hereby instructed to maintain the defense of said suit, and they are hereby authorized to take such steps therefor as may be necessary."

In due course the Answer of the State of Delaware was prepared and duly filed in the Supreme Court of the United States, and a copy of which Answer I herewith send you. Issue has been joined upon the pleadings by the State of New Jersey. The case has, therefore, now arrived at the stage when proof may be produced. No testimony has been taken. The preparation and presentation of this testimony, both on the part of New Jersey and upon the part of the State of Delaware will entail the production of ancient original documents, which are distributed probably mainly between London, England, and Albany, N. Y.

There may be some few records in the archives of the various counties of this State - chiefly New Castle County. The proper production of this testimony will entail very considerable expense.

Owing somewhat to the expiration of the term of the Hon. Samuel H. Grey, late Attorney General for the State of New Jersey, and the succession of the Honorable Thomas N. McCarter, present Attorney General for said State, and the necessity which Mr. McCarter found himself under to familiarize himself with the case, the actual taking of testimony has not begun. There has recently come from the Supreme Court of the United States an intimation that the case must advance.

On the 27th inst. there was a conference between the Attorney Generals of New Jersey and Delaware, together with the Honorable George H. Bates, associate counsel for the State of Delaware, for the purpose of expediting the progress of the cause. Upon a full consideration at this conference of the difficulties and probable cost of the

production of proof upon each side of the controversy to sustain the allegations in the Bill and Answer, and upon a somewhat careful consideration of the history and bearing of the controversy upon the citizens of the two states interested in the cause, it was agreed between counsel for the two states to again make an attempt to equitably determine and settle the rights of Delaware and New Jersey to the disputed territory, and if possible to adjust all differences between the two states arising out of Delaware's territorial claim, in a manner satisfactory to both states.

In my former official communication to you, under date of February 14th 1901, certain reasons were set forth which justified confidence in the validity and strength of the claim of the State of Delaware to the territory in question. The very laborious and critical examination of ancient documents and reprints thereof, made by the Attorney General and Mr. Bates, Associate Counsel for Delaware, which preceded the preparation of the somewhat voluminous Answer of the State which was filed in the said cause, has greatly strengthened the belief and reliance of counsel for this state upon the justice of her claim. Notwithstanding this well grounded hope that the State of Delaware would be ultimately successful in the suit now depending in the Supreme Court of the United States, yet if the entire controversy between the two states can be settled out of court in a manner creditable and satisfactory to both states, it would seem the part of good reason to attempt to make such a settlement.

At the conference above mentioned, between counsel for the two states, it was agreed that the Attorneys General and associate counsel of the respective states should confer with the executive and legislative authorities of Delaware and New Jersey respectively, in order to ascertain the sentiment of the said authorities of the two states concerning the settlement of the cause upon lines to be hereafter determined.

In view of the foregoing, I would therefore advise you to send to the General Assembly a Message, recommending the appointment of a special joint committee of the Senate and House of Representatives to consider and advise with the Attorney General and special counsel for this State concerning the proper disposition of the said territorial controversy between this State and the State of New Jersey.

I remain,

Yours very truly,

Herbert A. Ward,
Attorney General

Recorded.

COMMUNICATION FROM ATTORNEY
GENERAL TO THE GOVERNOR REL-
ATIVE TO THE CASE OF THE STATE
OF NEW JERSEY VS. THE STATE
OF DELAWARE, IN THE SUPREME
COURT OF THE UNITED STATES.

" " " " " " " " " " " "

(p. 653)

JOINT RESOLUTIONS.

Joint Resolution No. 1.

Joint Resolution relating to the boundary controversy between the States of New Jersey and Delaware.

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

Edward C. Stokes, Governor, Robert H. McCarter, Attorney-General, Franklin Murphy and Chauncey G. Parker, be and they hereby are appointed and constituted commissioners of the State of New Jersey to confer with like commissioners representing the State of Delaware for the purpose of framing a compact or agreement between the said states and legislation consequent thereon to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware river and bay.

This joint resolution shall take effect immediately.

Approved February 14, 1905.

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OF

NOAH PORTER, D. D., LL. D.
Of Yale University

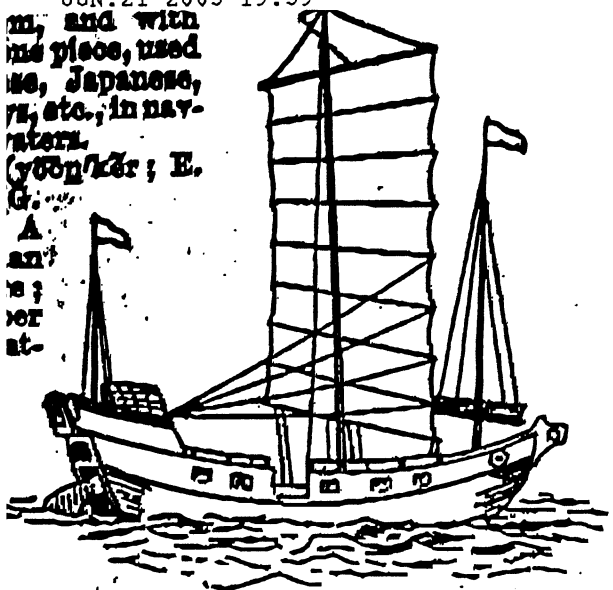
WITH A VOLUMINOUS APPENDIX



SPRINGFIELD, MASS.
PUBLISHED BY G. & C. MERRIAM COMPANY
1898

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me piece, used
se, Japanese,
n, etc.; in nav-
aters.
(jōn/kār; E.
G.)

A
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at-



Junk.

ūp/kēt), n. [Formerly also *juncate*, fr. It.
un cheese, made in a wicker or rush basket,
a rush. See 2d JUNK, and cf. JUNCATE.]
e cake; a sweetmeat; any delicate food.

How Faery Mab the *junkets* eat. Milton.

Victuals varied well in taste,
d other *junkets*. Chapman.

; an entertainment.

A new *jamnt* or *junket* every night. Thackeray.

To feast; to banquet; to make an enter-
sometimes applied opprobriously to feasting
leers at the public cost.

ldren *junketed* and feasted together often. South.

v. t. [*imp.* & *p. p.* JUNKETED; *p. pr.* & *vb.*
g.] To give entertainment to; to feast.

oman took my lodgings over my head, and was in
to *junket* her neighbors. Walpole.

ng, n. A feast or entertainment; a revel.

ng *junketings* and public gormandizings for which
magistrates were equally famous with their modern
W. Irving.

s would have no reveling or *junketing* upon the
South.

ries (-rīz), n. pl. Sweetmeats. [Obs.]

ī'nō), n.; pl. JUNOS (-nōz). [L.] 1. (Rom.)
e sister and wife of Jupiter, the queen of
l the goddess who presided over marriage.
onds to the Greek Hera.

weester than the lids of *Juno's* eyes. Shak.

n.) One of the early discovered asteroids.

mo, the peacock.

jūn'tā), n.; pl. JUNTAS (-tāz). [Sp., fr. L.
ned, p. p. of *jungere* to join. See JOIN, and

A council; a convention; a tribunal; an
esp., the grand council of state in Spain.

tō), n.; pl. JUNTOS (-tōz). [Sp. *junto* united.
] A secret council to deliberate on affairs of
t or politics; a number of men combined for
rue; a faction; a cabal; as, a *junto* of minis-
to of politicians.

he puzzling sons of party next appeared,
dark cabals and mighty *juntos* met. Thomson.

le' (jūp'ār-tē), n. Jeopardy. [Obs.] Chaucer.

' palm' (jōp'ā-tē p' -
palm tree (*Raphia* &
many purposes.

2. (Law) The memorandum or certificate at the end
of an affidavit, or a bill or answer in chancery, showing
when, before whom, and (in English practice), where, it
was sworn or affirmed. Wharton. Bowler.

Ju'ra-to-ry (jū'rā-tō-rī), a. [L. *juratorius*, fr. *jurare*
to swear: cf. F. *juratoire*.] Relating to or comprising
an oath; as, *juratory* caution.

Ju'ra-tri'as (-trī'ās), n. (Geol.) A term applied to
many American Mesozoic strata, in which the charac-
teristics of the Jurassic and Triassic periods appear to be
blended. — Ju'ra-tri-as'ic (-trī-ās'ik), a.

Jur'dic'oi-on (jūr-dīk'oi-on), n. Jurisdiction. [Obs.]

Jur'don (jūr'dōn), n. Jordan. [Obs.] Chaucer.

Ju'rel (jūr'ēl), n. (Zool.) A yellow carangoid fish
of the Atlantic and Gulf coasts (*Caranz chrysus*), most
abundant southward, where it is valued as a food fish;
— called also *hardtall*, *horse crevallé*, *jack*, *buffalo jack*,
skipjack, *yellow mackerel*, and sometimes, improperly,
horse mackerel. Other species of *Caranz* (as *C. fallax*)
are also sometimes called *jurel*.

Ju-rid'ic'o (jū-rīd'ik), a. [L. *juridicus* relating to

Ju-rid'ic'o-al (-ī-kal), } the administration of justice;
jus, juris, right, law + *dicare* to pronounce: cf. F.
juridique. See JUST, a., and DICTION.] Pertaining to a
judge or to jurisprudence; acting in the distribution of
justice; used in courts of law; according to law; legal;
as, *juridical* law. "This *juridical* sword." Milton.

The body corporate of the kingdom, in *juridical* construction,
never dies. Burke.

Juridical days, days on which courts are open.

Ju-rid'ic'o-al-ly, adv. In a *juridical* manner.

Ju'ris-con'sult (jū'rīs-kōn'sult), n. [L. *jurisconsultus*;
jus, *juris*, right + *consultere*, *consultum*, to consult:
cf. F. *jurisconsulte*.] (Law) A man learned in the civil
law; an expert in *juridical* science; a professor of juris-
prudence; a jurist.

Ju'ris-dic'tion (-dīk'shūn), n. [L. *jurisdictio*; *jus*,
juris, right, law + *dictio* a saying, speaking: cf. OF.
jurisdiction, F. *jurisdiction*. See JUST, a., and DICTION.]

1. (Law) The legal power, right, or authority of a par-
ticular court to hear and determine causes, to try crimi-
nals, or to execute justice; judicial authority over a cause
or class of causes; as, certain suits or actions, or the cog-
nizance of certain crimes, are within the *jurisdiction* of
a particular court, that is, within the limits of its author-
ity or commission.

2. The authority of a sovereign power to govern or
legislate; the right of making or enforcing laws; the
power or right of exercising authority.

To live exempt
From Heaven's high *jurisdiction*. Milton.

You wrought to be a legate; by which power
You main'd the *jurisdiction* of all bishops. Shak.

3. Sphere of authority; the limits within which any
particular power may be exercised, or within which a
government or a court has authority.

Jurisdiction, in its most general sense, is the
power to make, declare, or apply the law. When con-
fined to the *judiciary department*, it is what we denomi-
nate the *judicial power*, the right of administering jus-
tice through the laws, by the means which the laws have
provided for that purpose. *Jurisdiction* is limited to
place or territory, to persons, or to particular subjects.

Duponceau.

Ju'ris-dic'tion-al (-al), a. [Cf. LL. *jurisdictionalis*,
F. *jurisdictionnel*.] Of or pertaining to *jurisdiction*; as,
jurisdictional rights.

Ju'ris-dic'tive (-tīv), a. Having *jurisdiction*. Milton.

Ju'ris-pru'dence (-prū'dens), n. [L. *jurisprudentia*;

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... *ripped* up all that had been done from the beginning of the rebellion. *Clarendon.*

For brethren to debate and *rip* up their falling out in the ear of a common enemy . . . is neither wise nor comely. *Milton.*

4. To saw (wood) lengthwise of the grain or fiber.

Ripping chisel (*Carp.*), a crooked chisel for cleaning out mortises. *Knight.* — Ripping iron. (*Shipbuilding*) Same as RAVEBOOK. — Ripping saw. (*Carp.*) See RIPPASAW. — To rip out, to rap out; to utter hastily and violently; as, to rip out an oath. [*Colloq.*] See To rap out, under RAP, v. t.

Rip, n. 1. A rent made by ripping, esp. by a seam giving way; a tear; a place torn; laceration.

2. [Perh. a corruption of the first syllable of reprobate.] A term applied to a mean, worthless thing or person, as to a scamp, a debauchee, or a prostitute, or a worn-out horse. [*Slang*]

3. A body of water made rough by the meeting of opposing tides or currents.

Ri-pa'ri-an (rĭ-pā'rĭ-an), a. [*L. riparius, fr. ripa* a bank. See RIVER, and cf. ARRIVE.] Of or pertaining to the bank of a river; as, riparian rights.

Ri-pa'ri-ous (-ūs), a. [*L. riparius.*] Growing along the banks of rivers; riparian.

Ripe (rĭp), n. [*L. ripa.*] The bank of a river. [*Obs.*]

Ripe (rĭp), a. [*Compar. RIPER (-ēr); superl. RIPPEST.*] [*AS. ripe; akin to OS. rĭpt, D. rĭpp, G. reif, OHG. rĭst; cf. AS. rĭp harvest, rĭpan to reap. Cf. REAP.*] 1. Ready for reaping or gathering; having attained perfection; mature; — said of fruits, seeds, etc.; as, ripe grain.

So mayst thou live, till, like ripe fruit, thou drop into thy mother's lap. *Milton.*

2. Advanced to the state of fitness for use; mellow; as, ripe cheese; ripe wine.

3. Having attained its full development; mature; perfected; consummate. "Ripe courage." *Chaucer.*

He was a scholar, and a ripe and good one. *Shak.*

4. Maturated or suppurated; ready to discharge; — said of sores, tumors, etc.

5. Ready for action or effect; prepared.

While things were just ripe for a war. *Addison.*

I am not ripe to pass sentence on the gravest public bodies. *Burke.*

6. Like ripened fruit in ruddiness and plumpness.

Those happy smiles, That played on her ripe lip. *Shak.*

7. Intoxicated. [*Obs.*] "Reeling ripe." *Shak.* Syn. — Mature; complete; finished. See MATURE.

Ripe, v. t. [*AS. rĭptan.*] To ripen; to grow ripe. [*Obs.*]

Ripe, v. t. To mature; to ripen. [*Obs.*]

Ripe'ly, adv. Maturely; at the fit time.

Rip'en (rĭp'n), v. t. [*imp. & p. n. RIPPENED (-'nd); p. pr. & vb. n. RIPPENING.*] 1. To grow ripe; to become mature, as grain, fruit, flowers, and the like; as, grapes ripen in the sun.

2. To approach or come to perfection.

Rip'en, v. t. 1. To cause to mature; to make ripe; as, the warm days ripened the corn.

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1244

April 29, 1935.

Clarence A. Southerland, Esq.,
Delaware Trust Building
Wilmington, Delaware

Re: New Jersey v. Delaware Boundary.

My dear Mr. Southerland:

I herewith return the enclosed draft relative to the boundary line between the States of New Jersey and Delaware.

The proposed draft meets with my approval.

I note that Par. 7 is in the redrafted form suggested by Mr. Minard, which meets with my approval, as I feel his reason for the correction to the present form is proper.

Very truly yours,

Attorney General.

PNG*B
ENCL.

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

No. 68-058

1968 Del. AG LEXIS 57; 1968 Op. Atty Gen. Del 130

February 8, 1968

SYLLABUS:

[*1]

Effect of Interstate Compact between New Jersey and Delaware

REQUESTBY:

Mr. Norman G. Wilder, Director, Board of Game and Fish Commissioners, Dover, Delaware

OPINIONBY:

Jay Paul James, Deputy Attorney General

OPINION:

1. Is the Interstate Compact between the States of New Jersey and Delaware, enacted in 1907, found in 24 Del. Laws, Ch. 146, still binding upon both States?

2. If so, would a law pertaining to fishing in Delaware Bay enacted by the Delaware General Assembly be effective absent the enactment of a similar law by the New Jersey Legislature?

The Interstate Compact, enacted in 1907, providing uniform laws to regulate the catching and taking of fish in the Delaware River and Bay between the State of Delaware and the State of New Jersey appears to still be binding upon both States. A copy of this Compact can be found in appendix "B." This uniform law was an outgrowth of an enabling act, passed by the General Assembly of Delaware on March 23, 1905, and the Legislature of New Jersey on March 21, 1905, which provided for the appointment of three Commissioners from each State to draft the Uniform Laws. A copy of this enabling act can be found in appendix "A."

Article IV of the enabling act provides: [*2]

Upon the adoption and passage of said laws so recommended by the respective Legislatures of said two States said laws shall constitute the *sole laws for the regulation of the taking and catching of fish in the said river and bay between said States. Said laws shall remain in force until altered, amended or repealed by concurrent legislation of the said two States.* (See appendix "A")

Section 26 of the Uniform Laws, 24 Del. Laws, Ch. 146, provides:

This Act shall not become operative until the Legislature of the State of New Jersey shall have passed, and the Governor of that State shall have approved of a similar law, agreed upon by the Commission, as recited in preamble of this Act.

Therefore, the policy apparent in the above legislation is that both States must enact similar laws regarding the catching and taking of fish in the Delaware River and Bay between the two States before such law becomes effective.

This policy has been continued through the years as is evidenced by the failure of two laws, passed by the Delaware Legislature but not by the New Jersey Legislature, to become effective. The first attempt was when the Delaware Legislature enacted a modification of [*3] the existing laws on March 14, 1923, 33 Del. Laws, Ch. 193, with a provision that

the law should not become effective until a similar law be enacted by the New Jersey Legislature failed to enact a similar law, and the Delaware law never became effective. The second attempt with similar results occurred on March 2, 1927, 35 Del. Laws, Ch. 243.

It is the opinion of this Office that (1) the Interstate Compact, passed in 1907, is still binding upon both the State of Delaware and the State of New Jersey, and (2) that a law enacted by the Delaware Legislature pertaining to fishing in Delaware Bay would not be effective until a similar law was enacted by the New Jersey Legislature.