

IN THE  
Supreme Court of the United States

STATE OF NEW JERSEY,  
*Plaintiff,*

v.

STATE OF DELAWARE,  
*Defendant.*

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

**VOLUME 9 (Pages 4747 - 4883)**

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February 15, 2007

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A

# DICTIONARY OF LAW

CONTAINING

DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE,  
ANCIENT AND MODERN

INCLUDING

THE PRINCIPAL TERMS OF INTERNATIONAL, CONSTITUTIONAL, AND COMMERCIAL LAW; WITH A COLLECTION OF LEGAL MAXIMS AND  
NUMEROUS SELECT TITLES FROM THE CIVIL LAW  
AND OTHER FOREIGN SYSTEMS

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BY HENRY CAMPBELL BLACK, M. A.

Author of Treatises on "JUDGMENTS," "TAX-TITLES," "CONSTITUTIONAL PROHIBITIONS," etc.

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ST. PAUL, MINN.  
WEST PUBLISHING CO.  
1891

**EXPORTATION.** The act of sending or carrying goods and merchandise from one country to another.

**EXPOSE, v.** To show publicly; to exhibit.

**EXPOSÉ, n.** Fr. A statement; account; recital; explanation. The term is used in diplomatic language as descriptive of a written explanation of the reasons for a certain act or course of conduct.

**EXPOSITIO.** Explanation; exposition; interpretation.

*Expositio quæ ex visceribus causæ nascitur, est aptissima et fortissima in lege.* That kind of interpretation which is born [or drawn] from the bowels of a cause is the aptest and most forcible in the law. 10 Coke, 24b.

**EXPOSITION.** Explanation; interpretation.

**EXPOSITION DE PART.** In French law. The abandonment of a child, unable to take care of itself, either in a public or private place.

**EXPOSURE OF PERSON.** In criminal law. Such an intentional exposure, in a public place, of the naked body or the private parts as is calculated to shock the feelings of chastity or to corrupt the morals of the community.

**EXPRESS.** Made known distinctly and explicitly, and not left to inference or implication. Declared in terms; set forth in words. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with "implied."

**EXPRESS ABROGATION.** Abrogation by express provision or enactment; the repeal of a law or provision by a subsequent one, referring directly to it.

**EXPRESS ASSUMPSIT.** An undertaking to do some act, or to pay a sum of money to another, manifested by express terms.

**EXPRESS COLOR.** An evasive form of special pleading in a case where the defendant ought to plead the general issue. Abolished by the common-law procedure act, 1852, (15 & 16 Vict. c. 76, § 64.)

**EXPRESS COMPANY.** A firm or corporation engaged in the business of trans-

porting parcels or other movable property, in the capacity of common carriers.

**EXPRESS CONSIDERATION.** A consideration which is distinctly and specifically named in the written contract or in the oral agreement of the parties.

**EXPRESS CONTRACT.** A contract the terms of which are openly uttered or declared at the time of making it. 2 Bl. Comm. 443; 2 Steph. Comm. 110. A contract made in distinct and explicit language, or by writing; as distinguished from an implied contract. 2 Kent, Comm. 450.

**EXPRESS MALICE.** Actual malice; malice in fact; a deliberate intention to commit an injury, evidenced by external circumstances.

**EXPRESS TRUST.** A trust created or declared in express terms, and usually in writing, as distinguished from one inferred by the law from the conduct or dealings of the parties.

Express trusts are those which are created in express terms in the deed, writing, or will, while implied trusts are those which, without being expressed, are deducible from the nature of the transaction, as matters of intent, or which are superinduced upon the transactions by operation of law, as matters of equity, independently of the particular intention of the parties. 56 Barb. 635.

**EXPRESS WARRANTY.** One expressed by particular words. 2 Bl. Comm. 300.

**In the law of insurance.** An agreement expressed in a policy, whereby the assured stipulates that certain facts relating to the risk are or shall be true, or certain acts relating to the same subject have been or shall be done. 1 Phil. Ins. (4th Ed.) p. 425.

*Expressa nocent, non expressa non nocent.* Things expressed are [may be] prejudicial; things not expressed are not. Express words are sometimes prejudicial, which, if omitted, had done no harm. Dig. 35, 1, 52; Id. 50, 17, 195. See Calvin.

*Expressa non prosunt quæ non expressa proderunt.* 4 Coke, 73. The expression of things of which, if unexpressed, one would have the benefit, is useless.

*Expressio eorum quæ tacite insunt nihil operatur.* The expression or express mention of those things which are tacitly implied avails nothing. 2 Inst. 365. A man's own words are void, when the law speaketh as much. Finch, Law, b. 1, c. 3, no. 26. Words used to express what the law will im-

DELAWARE LEGISLATURE WILL  
NOT ACCEPT BOUNDARY DIS-  
PUTE REPORT.

SNAKE LEGISLATION ALLEGED

DOVER, Del., March 16.—One of the warmest debates during the present session of the Delaware legislature took place this morning in the house of representatives when the reports of the commissioners appointed by the general assembly some weeks ago to determine the Delaware river fish boundary lines between New Jersey and Delaware, was read.

The commission consisted of Governor John Hunn, Attorney General H. H. Ward, and George H. Bates, on the part of Delaware and Governor Franklin Murphy, Attorney General Thomas McArthur, and Edward C. Stokes, on the part of New Jersey.

After the report had been read, Representative Holcomb arose and addressing the speaker, stated that the report and the bill accompanying it, of which there had been no previous notice given, was nothing more nor less than a scheme to pass "snake legislation." He accused Attorney General Ward, who was on the floor of the house at the time, of perpetrating the scheme, and also of exerting his influence to have the report accepted and the bill rushed through the house with undue haste.

The attorney general in reply denied the accusation, stating that his sole purpose and object was for the welfare of the state, and nothing else. Mr. Holcomb contended that if the bill went through the New Jersey fishermen in a few years would invade the Delaware waters to such an extent as to wipe out entirely the Delaware fishermen. "Already," he further said, "have the fishery industries along the Delaware river suffered by the prolonged dispute, and it is now time that the matter should be settled."

Other members of the house living within the radius of the twelve-mile circle objected to the rushing through of the measure, as they had not been consulted, as provided for in the resolution.

After an hour had been taken up in debate, blocking all other legislation, the report of the commission was, according to Representative Holcomb's motion, "received but not accepted."

NEW MEN JOIN STRIKERS.

Force Taken to Pittsburg From Louis-

Guernsey, our state superintendent speaker. Four hundred children present.

LITERATURE.

"Our committee on literature their usual good faithful work, papers, magazines, tracts and 600 foreign papers having been read. No one can estimate the amount of good that is done by their messengers, how their influence is out and beyond our possible and how many prodigals are brought to the Father's house only at reveal.

ANTI-NARCOTICS

"Our committee on anti-narcotics so trying by the distribution of leaflets to influence the school children to refrain from using the poison to give it up, and our departmentic temperance in public still looking after the carrying law in our city. We are glad that it is taught in the different

MEETINGS HELD

"Besides the many smaller held in our hall, we have had a house meeting, addressed by Hoole, of New York, one in the first church, by Miss Anna Manila, and addresses by Grant Cramer, Miss Abbie Bourne, Mrs. Demarest, Mrs. Mrs. Remington, Mrs. Bruen son, Miss Trowbridge, Miss and a medal contest at our library.

"Our evangelistic work at and under this head comes day night gospel temperance where pledges are signed a cases, by the help of God keep the pledge may fail, the ever never will. Hat coffee is served and women helped and saved testify to the power of Gospel. The messenger boys are visit daily and given a treat on hal a boy will look back in the year and thank God for kind, sagas brought to them by an

AT THE JAIL.

"Weekly visits are made to earnest women, who look of moral as well as the spirit this fallen class of women to be helped to a better whom directly or indirectly brought to their dreadfulness through the drink habit.

PRISON WORK

"Among our most faithful our visitors to the woman's capital ward at the state prison are held, Bible classes for inmates take part, and so converted and have been of wards, as many letters received committee testify. Wonder letters are written and sent they are read and rendered

The Daily State Gazette, Trenton, NJ  
Tuesday Morning, March 17, 1903

FISH LINES  
CAUSE A STIR

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DELAWARE LEGISLATURE WILL NOT ACCEPT  
BOUNDARY DISPUTE REPORT

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**CASE RUNS 30 YEARS**

The Washington Post, Feb 26, 1906; ProQuest Historical Newspapers The Washington Post (1877 - 1989)  
pg. 2

ON POST MONDAY, FEBRUARY 26, 1906

**JUST INTEREST**

contest, which

Whether sent by mail, or otherwise.

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Whether sent by mail, or otherwise.

WASHINGTON POST,ington, D. C.

**LE ON GRAHAM**

Has Excuse for Sounding Alarm of Fire.

for sounding a false fire morning at Third and st, Plumney Tolver, a was a victim of this fellow-prisoner, Thomas was the guilty party. id Tolver to the desk Second precinct, "Ah wrong to nobody. Ah home, when his zero h was pinched. He said of do law, and dat de of his duty must be pre-

d trump his dignity and Ah was one of his d lib'rate me if Ah pull m. Ah did, and before was squeezed. Dis yer id 'fess what he did, or de, with him meetin' de

four will appear in court

**NARROW ESCAPE**

190 Feet of Hauling Track.

**CASE RUNS 30 YEARS**

Boundary Dispute Between New Jersey and Delaware.

IN SUPREME COURT TO-DAY

Has Been Carried on Docket Until All but One of the Original Counsel Are Dead—Contest Settled by Commissioners and Legislators—Waits Action of Congress to Ratify Arrangement.

After cumbering the Supreme Court docket for nearly thirty years, the famous case of New Jersey against Delaware has reached a stage where the litigants feel justified in asking for a suspension of further proceedings pending a final settlement of the controversy. At least that is the purport of the motion which will be made to the court today by Commissioner Rawls, on behalf of counsel for the two commonwealths. This, however, does not necessarily imply that the actual settlement of the long-drawn-out legal battle will be brought about at once.

Judging from the celerity with which the case has not moved in the past generation it might be safe to predict that at least several more years will elapse before it is finally disposed of and stricken from the docket. By that time it will have dragged along into quite a formidable rival to Dickens' celebrated case of Jarndyce vs. Jarndyce. Like those in that fictional battle of law, the original counsel have nearly all passed away. But one, George H. Bates, of counsel for Delaware, is living, and he is still one of its representatives in the case. The late Thomas F. Bayard, who was Secretary of state under President Cleveland, and the first American Ambassador to Great Britain, was also one of Delaware's counsel in the case, and the late Theodore Freylinghansen, likewise once at the head of the State Department, was a representative of New Jersey.

**Jurisdiction Over River.**

The case originated in Delaware's claim to jurisdiction over the waters of the Delaware river within what is known as the 12-mile radius, which extended across the river up to the New Jersey shore. Those rights are claimed under the original grant, when the province of Delaware was created from what was then a part of Pennsylvania, and they have been the source of ill-feeling between the people of the two States for almost a century. One of the worst insults that a

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Hours, Hours, 11 A. M. to 6 P. M.

**Covert Coats For Women.**

Women's New Tan Covert Jackets, Buttoned, tailored seams, neck of coat finished, with stitched cloth; full coat sleeves; jacket lined through-out with satin; sizes 32 to 40; actual value, \$9.50. Special.

**\$7.68**

Women's New Tan Covert Jackets, Strapped seams; satin lined; sizes 32 to 40; actual value, \$8.99. Special.

**\$8.50**

Women's New Tan Covert Jackets, Trimmed with stitched straps; new coat sleeve; finished with stitched cloth; jacket lined with satin; sizes 32 to 40; actual value, \$11.50. Special.

**\$10.00**

Women's New Tan Covert Jackets, With collar; lined with satin; full coat sleeve; with cuffs; sizes 32 to 40; actual value, \$12.50. Special.

**\$11.50**

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420 to 426 Seventh Street.

**HENDRICKS' DEFENSE**

Thinks Criticism of His Department Unwarranted.

**CANNOT WATCH ALL DETAILS**

Business of Insurance Superintendent, He Says, Is to See that Companies Are Solvent, and Not to Compel Directors to Exercise Business Honesty—Would

Credit for

**How M**

Do you think would own to save enough money to buy a home and pay for not furnish a home on the plan? You can enjoy the the furniture while you are living for it, and we charge interest on extended plan. Our prices are all marked figures, and you will find them for cash. We shall be glad our large stock, and we in at any time.

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### LAYS BLAME ON GRAHAM

#### Plummer Tolliver Has Excuse for Sounding False Alarm of Fire.

When arrested for sounding a false fire alarm yesterday morning, at Third and Q streets northwest, Plummer Tolliver, a negro, claimed he was a victim of injustice, and that his fellow-prisoner, Thomas Graham, a negro, was the guilty party. "Yo' noman," said Tolliver to the desk sergeant at the Second precinct, "Ah ain't done nuffin' wrong to nobody. Ah was p'rambulating home, when dis yer nigger said dat Ah was pinched. He said he was 'er officer of de law, and dat de circumstances of his duty must be preserved.

"He den relaxed from his dignity and said, seeing dat Ah was one of his brethren, he would librate me if Ah pull in his call fer him. Ah did, and before Ah knowed it Ah was squeezed. Dis yer Graham better had 'fess what he did, or dere will be trouble, with him meetin' de business eid."

Graham and Tolliver will appear in court this morning.

### TRAIN HAS NARROW ESCAPE

#### Stopped Within 100 Feet of Boulders Covering Track.

#### Passengers Thrown from Their Seats, Thankful for Their Bruises When They Realize Situation.

Special to The Washington Post.

New York, Feb. 25.—The engineer of the first train running on the Greenwood Lake division of the Erie Railroad to-day closed his throttle and put on the brakes in a nervous hurry near Hewitt station, nine miles out from Greenwood Lake. The train was brought to a stop with a jerk that threw the passengers from their seats, but they did not mind the jostling when they got out and learned the reason.

"It's a lucky thing for me and you and the finances of the Erie Railroad," the engineer told them, "that this is Sunday and the train leaves at 9 o'clock, in the broad daylight, instead of in the dark of the early morning. Just look up the track a hundred feet and tell me what you think of that big pile of dirt and boulders which I'd have gone plunging into if the train had been running on a week-day schedule. Don't mind those bruises I gave you. Thank God you're alive."

The passengers looked and agreed with the engineer. Directly ahead of them, in a fifty-foot cut, known as Henderson's Cut, the track was covered to a depth of twenty feet with dirt and big boulders. Some time during the night or early morning the bank on one side of the cut had caved in, probably loosened by the frost and rain, and over 500 tons of rock and dirt had slid down on the track.

A wrecking crew in charge of Superintendent Elston, of the New York division, was sent out from Jersey City to clear the track. The men found they had to clear away, in addition to the dirt, three boulders weighing together over 300 tons. They sent back for dynamite and blasted and shoveled all day without finishing the job. Toward evening Mr. Elston said he would have the track in shape for traffic to-morrow morning.

### HOME FROM CUBAN CRUISE.

#### Several Members of Battlefields Party

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The case originated in Delaware's claim to jurisdiction over the waters of the Delaware river within what is known as the 12-mile radius, which extended across the river up to the New Jersey shore. These rights are claimed under the original grant, when the province of Delaware was created from what was then a part of Pennsylvania, and they have been the source of ill-feeling between the people of the two States for almost a century. One of the worst insults that a stranger could offer to a citizen of either State was to take one for a resident of the other, and when an occasion offered, the Delawarean could always get a rise out of his enemy by calling him a "sand Spaniard" or a "foreigner," the Jerseyman retorting by using the epithet of "corn-cracker," the Delawarean being somewhat sensitive over the reference to his fondness for hominy.

The dispute, however, did not become really acute—that is, it did not get into the courts—until the fisheries within the controverted area became valuable. The headquarters of the caviar industry are just at that point, and the oyster business is also of considerable moment. The Delaware authorities enacted laws requiring a stiff license from the citizens of another State to catch fish or oysters in its waters, and any Jerseyman found within the disputed line, even though he was on his own side of the channel, was arrested and jailed and his sturgeon nets confiscated.

### Men of Jersey Retaliate.

The New Jersey officers undertook the same course toward Delawareans who ventured on the other side of the river, and there was talk of creating a "navy" to enforce the jurisdiction of the smaller State when suit was brought in the Supreme Court of the United States in 1877 by the attorney general of New Jersey to prevent the interference of the other suit within the controverted waters pending the determination of the rightful boundary line.

The case has dragged on through several attempts for an amicable settlement, until about two years ago the court appointed Francis Rawls, of Philadelphia, a commissioner to take evidence. This work was almost completed last spring, when the Delaware legislature created a commission to confer with a like commission on the part of her neighbor, with the object of bringing about an amicable termination of the pending suit and a "final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay."

Four commissioners were also appointed by New Jersey, and a compact in the nature of a *modus vivendi*, was drawn up, which was subsequently enacted by the legislatures of the two States. The compact provided that, pending its ratification by Congress, and the actual determination of the legal boundary line and

Trimmed with stitched straps; new coat sleeve; finished with stitched cloth; jacket lined with satin; sizes 32 to 40; actual value, \$11.50. Special.

## \$10.00

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## \$11.50

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## HENDRICKS' DEFENSE

### Thinks Criticism of His Department Unwarranted.

### CANNOT WATCH ALL DETAILS

### Business of Insurance Superintendent, He Says, Is to See that Companies Are Solvent, and Not to Compel Directors to Exercise Business Honesty—Would Require Large Sum to Supervise.

Syracuse, N. Y., Feb. 25.—Francis Hendricks, State superintendent of insurance, to-night issued a statement relating to the recent report of the Armstrong committee of the legislature with special reference to that portion of the report which criticized the administration of the insurance department. He dwells at length on the manifold duties of his department, which, he says, is equally charged with the examination and supervision of fire, marine, casualty, and credit guaranty corporations, and business, assessment, and fraternal beneficiary associations, numbering in all 433.

"Outside of routine work," he says, "the primary duty of the department is a general supervision, by examination and otherwise, for the purpose of compelling compliance with the statutes regulating the subject of insurance and the preservation of assets, reserve and trust funds in such proportion to liabilities as would insure the full discharge of all obligations to policy holders, whether of life or fire insurance.

### Daily Watch Not Expected.

"I do not believe that it has been the expectation that this department would or could exercise a daily watch over the acts of officers and directors with reference to compelling the exercise of ordinary business ability and honesty in the management of the details of the business committed to their care. While, perhaps, the superintendent of insurance by indirect methods might influence salaries and the methods of investing funds, I know of no direct provision of law authorizing him to do this so long as the company complies with the statutory requirements, and does not impair its ability to meet the demands of policy holders. A careful examination of the statutes creating and regulating this department will, I believe, make it quite clear that it was not intended to be an overseer or administrator of the daily business management of these companies.

"Many of the companies under the supervision of this department are stock companies, whose stockholders are solely interested in and entitled to any surplus beyond what may be necessary to meet the demands of the policy holders. Such

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Henderson had some inside his own party was by no means a conduct in the Speaker had to cope with his Speaker Cannon tariff act, provoked among Republicans inly, which was re- by an active body- gents. Speaker Hen- sident McKinley, and g a majority in the il. Under President tration, the Cuban also caused serious a, and, in fact, was at here.

in Congress, after he l in the spring of 1902 n has often been ab- ent at the demand in of the tariff and for- extent, of high pri- letter Gen. Hender- unk, an ex-speaker of , figured considerably re- vision.

**the Reed's Rules.**

1 Speaker under the rule. He was one of means who conferred Speaker Reed in that the Shoreham Hotel of the Fifty-first Con- one day, saw the describing their seats is observed in an un- usual we've got to try was the first applica- tion. Crisp found him- self it is modified applied it during two ten Henderson suc-

cessions came to this into Illinois with but reign. However, by v. common to the id a good competence. Henderson, was at of three stone houses the sider Henderson He was a poet and cal repute. Having puts with the laird of at property. Thomas called for America. ker, Gen. Henderson, Europe, made dilapid- als of that appoid, ble for his residence l career in the new made little headway. eled extensively, vir- State in the Union, ntry of Europe.

**as a Lawyer.**

ood well at the Iowa led to practice in the ning out of the army. is firm of Bissell & s, the latter being brother of the retired me Court. About the m to the bar he was of internal revenue, at office four years, sistant United States

Allison were fellow- vo decades were obse- lics. At the Chicago Henderson bore a con- t a delegate-at-large. fully in debate with r, being a champion on. His selection for n a field of eager as- been ascribed to the Henderson gave of mal convention.

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tuak policy holders calling attention to the fact that it is not only necessary for them to co-operate in securing the remedial legislation recommended by the New York State Insurance Investigating committee, but also to get for themselves the control of the company through the election of their own trustees.

**Trying to Get Proxies.**

The association favors such legislation as will result in ousting all, or, at least, a majority of the present trustees of the Mutual, of whom there are thirty-six. If this cannot be accomplished, the association purposes to use every effort to secure through local organizations a sufficient number of proxies to elect nine new trustees. The leaders in the movement contend that, this accomplished, they will be able to elect nine additional trustees next year, and thus equally divide control with the present management, if not actually dominate the company.

At present only three of the thirty-six trustees of the company are nonresidents of New York City, and it is the plan of the association to select its candidates for trustees from various sections of the country in order to give all a fair representation. Policy holders in England, France, Australia, and other countries are co-operating in the movement through the headquarters here.

**Lively Fight on Hand.**

It is claimed that the present management of the company is expending large sums of the policy holders' money in an effort to procure proxies, and this effort the association is seeking to counteract by warning those who hold policies, and they have been asked to revoke their policies given to those now in control of the company and enroll themselves in this movement.

A lively fight is in progress, and the association officials assert that when the time comes they will have sufficient strength to gain a good foothold in the management of the affair of the company.

Among those interested in the under- taking are Gen. Gill, president of the Mercantile Trust Company; Douglas H. Gordon, president of the International Trust Company; Bernard H. Baker, president of the Baltimore Trust Company; Douglas H. Thome, capitalist, all of Maryland; Hamilton Carhart, of Detroit, a \$20,000 policy holder; George S. Steven, in charge of the theological department of Yale; Frank T. Patterson, of Philadelphia; Prof. W. R. Moody, of East Northfield, Mass.; George W. Stevens, president of the Chesapeake and Ohio Railroad; ex-Lieut. Gov. Emil Baensch, of Wisconsin, and a number of leading business men in other cities.

The late John B. Stetson, of Philadelphia, who carried \$100,000 of insurance up to the time of his death recently, was one of those chiefly interested in the movement.

**WOMAN TYPIST'S FAST WORK.**

**Blindfolded, She Writes 5,221 Words an Hour from Dictation.**

Special to The Washington Post.  
Springfield, Mass., Feb. 25.—At the military and naval carnival held here last night, Miss May Cappington, of this city, broke all records for blindfold typewriting from dictation, writing 2,590 words the first half hour and 2,521 the second, a total of 5,221 words in one hour, exclusive of errors, for each of which five words were deducted. This gave an average of a little more than 87 words a minute.

The best previous official record was 3,320 words in an hour, a trifle over 45 words a minute, made by Paul Munter, at Madison Square Garden last November.

**AGED WOMAN CUTTING TEETH.**

**Mrs. Lucinda M. Leavitt's Remarkable Experience at Eighty-seven.**

Special to The Washington Post.  
Campton, N. H., Feb. 25.—Mrs. Lucinda M. Leavitt, who is passing her declining years with the family of Mr. and Mrs. William Plaford, is a remarkably well-preserved woman for one of her years.

Mrs. Leavitt, who was eighty-seven years old last December, has cut, within three weeks, three upper teeth, in perfect shape and condition. Two of these teeth

jerk that threw the passengers from their seats, but they did not mind the jostling when they got out and learned the reason.

"It's a lucky thing for me and you and the finances of the Erie Railroad," the engineer told them, "that this is Sunday and the train leaves at 9 o'clock, in the broad daylight, instead of in the dusk of the early morning. Just look up the track a hundred feet and tell me what you think of that big pile of dirt and boulders which I'd have gone plunging into if the train had been running on a week-day schedule. Don't mind those bruises I gave you. Thank God you're alive."

The passengers looked and agreed with the engineer. Directly ahead of them, in a fifty-foot cut, known as Henderson's Cut, the track was covered to a depth of twenty feet with dirt and big boulders. Some time during the night or early morning the bank on one side of the cut had caved in, probably loosened by the frost and rain, and over 500 tons of rock and dirt had slid down on the track.

A wrecking crew in charge of Superintendent Elston, of the New York division, was sent out from Jersey City to clear the track. The men found they had to clear away, in addition to the dirt, three boulders weighing together over 300 tons. They sent back for dynamite and blasted and shoveled all day without finishing the job. Toward evening Mr. Elston said he would have the track in shape for traffic to-morrow morning.

**HOME FROM CUBAN CRUISE.**

**Several Members of Battlefields Party Left the Sumner.**

New York, Feb. 25.—The United States army transport Sumner arrived here today after a cruise of eighteen days to Cuban ports, where monuments to those killed in the Spanish-American war were dedicated. On board were members of the Santiago Battlefields Commission, a party of army officers who fought in the Cuban campaign, and their wives.

Lieut. Gen. S. M. B. Young, who represented President Roosevelt, remained in Havana for a visit of a month. Gen. Adna R. Chaffee, Mrs. Chaffee, and Miss Helen V. Chaffee also left the party at Havana, sailing from there for Mexico, where they will remain a month. Gen. Chaffee then goes to Los Angeles, where he will make his home.

Rear Admiral Charles D. Clark and Mrs. Clark left the Sumner at Fort Monroe, and will go to Washington when Mrs. Clark has fully recovered from a serious case of measles which followed plucking some flowers at Matro Castle, Santiago.

Charles F. Waits, thirty years old, a member of the crew of the Sumner, was taken from the vessel this afternoon and sent to a police station. Lieut. Henry D. Winter, of the Sumner, accused the latter of having attempted to stab him with a knife on board the vessel while she was off the southern coast of Cuba, February 15. The Sumner was upon the high seas at the time of the attempted assault. Waits will be arraigned in court to-morrow and probably turned over to the Federal authorities for prosecution.

**First Infantry Sails from Gibraltar.**

Gibraltar, Feb. 25.—The United States transports Kilpatrick and McClellan, having on board the First Infantry, bound for Manila, sailed for Malta to-day. The bollees of the McClellan, which were in bad condition, were thoroughly repaired here. The officers of the First Infantry presented Mr. Sprague, the American consul with a silver cup in recognition of the hospitality shown them.

**Deserters from Sigbee's Ships.**

Naples, Feb. 25.—Mr. Byington, the American consul, to-day notified the police authorities that sixteen sailors had deserted from the second squadron of the United States Atlantic fleet, commanded by Rear Admiral Sigbee, and seven of them have been arrested and sent on board the American vessels.

**Advisory Board for Yale.**

St. Louis, Mo., Feb. 25.—President Arthur T. Hadley, of Yale University, announced at a banquet last night of the Associated Women's Yale Club that he

quiring a stiff license from the citizen another State to catch fish or oyster in its waters, and any Jerseyman found within the disputed line, even though was on his own side of the channel, arrested and jailed and his sturgeon confiscated.

**Men of Jersey Retaliates.**

The New Jersey officers undertook same course toward Delawareans ventured on the other side of the ri and there was talk of creating a 'bis to enforce the jurisdiction of the sma State when suit was brought in the preme Court of the United States in by the attorney general of New Jersey prevent the interference of the other within the controverted waters, pent the determination of the rightful bc dairy line.

The case has dragged on through several attempts for amicable settlement until about two years ago the court pointed Francis Rawls, of Philadelphia, commissioner to take evidence. This was almost completed last spring, w the Delaware legislature created a mission to confer with a like commis on the part of her neighbor, with the ject of bringing about an amicable rmination of the pending suit and a "f adjustment of all controversies relat to the boundary line between said St and to their respective rights in the Delaware River and Bay."

Your commissioners were also appoint by New Jersey, and a compact, in nature of a modus vivendi, was det up, which was subsequently enacted the legislatures of the two States. The compact provided that, pending its rat on by Congress, and the actual de misation of the legal boundary line its markings by monuments, each S should have equal jurisdiction over own citizens in the waters within disputed area, such jurisdiction to ext from shore to shore, and each to h equal rights to the fisheries therein.

**Commission Drafts Laws.**

It also provided for a joint commis composed of three members from a State, which should draft laws to re late the catching of fish in Delaw River and Bay, such regulations to the sole law on the subject when enact by the legislatures of the respect States.

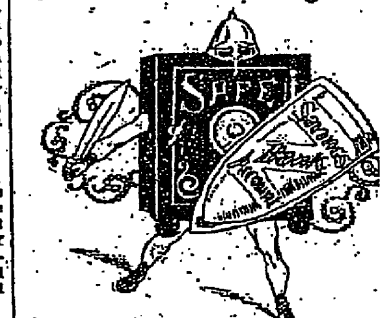
The commission was also to apcal the dividing line between the bay and river, and to mark it with suitable monuments, and the faith of each State pledged to the enactment of laws ne- sary to carry out all these stipulatio

Full ratification of the compact made by each legislature, but no act has so far been taken by Congress tow giving the "consent and approval" sp- cified as necessary to make the agreem "binding in perpetuity upon both of e States," and to permit the pending i in the Supreme Court to be discontin- "without costs to either party and wi out prejudice."

Pending the ratification by Congress this compact, the suit is to remain statu quo, and, therefore, the commiss ar will to-day ask the court to suspi further proceedings until Congress i act.

C. & S. Pure Oleana Ice Cream  
Is fine. Qt. bricks, "3" flavor, Druggist

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**HISTORY**  
**OF THE**  
**STATE OF DELAWARE**

**BY**  
**HENRY C. CONRAD**

**FROM THE EARLIEST SETTLEMENTS TO THE YEAR 1907**

**IN THREE VOLUMES**

**VOLUME III**

**PUBLISHED BY THE AUTHOR**  
**WILMINGTON, DELAWARE**  
**1908**



THOMAS F. BAYARD.  
1828-1898.

daughter of Charles Carroll of Carrollton, a Maryland signer of the Declaration of Independence. He died in Philadelphia in 1868.

THOMAS FRANCIS BAYARD.

Thomas Francis Bayard, son of James Asheton Bayard and Anne (Francis) Bayard, was born in Wilmington, October 29, 1828. His education was pursued in his native State until 1841, when he was sent to Flushing, Long Island, to complete his studies under the Rev. Francis L. Hawks, D. D. On passing from the care of Dr. Hawks, Mr. Bayard entered the commercial house of his brother-in-law, Augustus Van Cortlandt Schermerhorn of New York. The opportunities afforded him in commercial life whereby he became conversant with the laws of trade and the management of financial affairs proved most valuable to him in public life.

At the age of twenty he returned to his home in Wilmington, and having devoted three years to the study of law, was admitted to the bar of Delaware in 1851. For two years he practiced as his father's assistant, and in 1853 was appointed United States Attorney for the District of Delaware. This office he resigned a year later and went to Philadelphia, where he entered into partnership with his friend William Shippen, Esq. The legal firm thus instituted existed until 1858, when he returned to Wilmington. From this time a large portion of the business devolving upon him, consisted of the fulfillment of trusts and executorships and the management of estates, a branch of the profession for which he was well qualified by reason of his early experience in business, his sound and practical judgment, and his great capacity for laborious work.

Like his father, Thomas F. Bayard was a strong Democrat and greatly interested in political affairs, taking a more prominent part after he was chosen to succeed his father in the United States Senate. His term in the Senate began at noon on March 4, 1869, at the moment that his father's term ex-

pired. He soon became one of the most active and influential members of the body, and performed much useful work upon committees. In 1875 he was re-elected, and in 1880 he became Chairman of the Committee on Finance and a member of the Committee on the Judiciary. He was again elected to the Senate in 1881. At the Democratic National Convention held in 1880 he was a candidate for the presidential nomination and stood second only to General Hancock in the number of votes he received. At the convention of 1884 two ballots were taken, in both of which Mr. Bayard's vote was the next highest to that given to Grover Cleveland, the nominee.

He was the first statesman invited in consultation by President Cleveland after the latter's election and immediately received the offer of the highest place in the new cabinet. After long deliberation Mr. Bayard accepted the position of Secretary of State that had been tendered him, but much against the wishes of some of the prominent leaders of his party who feared that his withdrawal from the Senate would be disadvantageous. The most notable incidents of our foreign relations during Mr. Bayard's term as Secretary of State, were the Fishery Treaty, the Behring Sea Controversy, and an agreement between the United States and Spain whereby each country abolished from its tariff such duties as discriminated against the other.

In 1889, at the close of President Cleveland's term, Mr. Bayard withdrew from public life, but from the retirement of private life and amid the duties of his profession he did not cease to watch with an eye of keen interest the course of his country's affairs, and to exert by voice and pen a potent influence upon them. In 1893 Thomas F. Bayard was called to represent this country at the Court of St. James. He was the first to bear the title of Ambassador to Great Britain. The whole course of his career as Ambassador was such as to promote good will between England and America, the existence of which has been most fully and happily made manifest during our recent Spanish-American War.

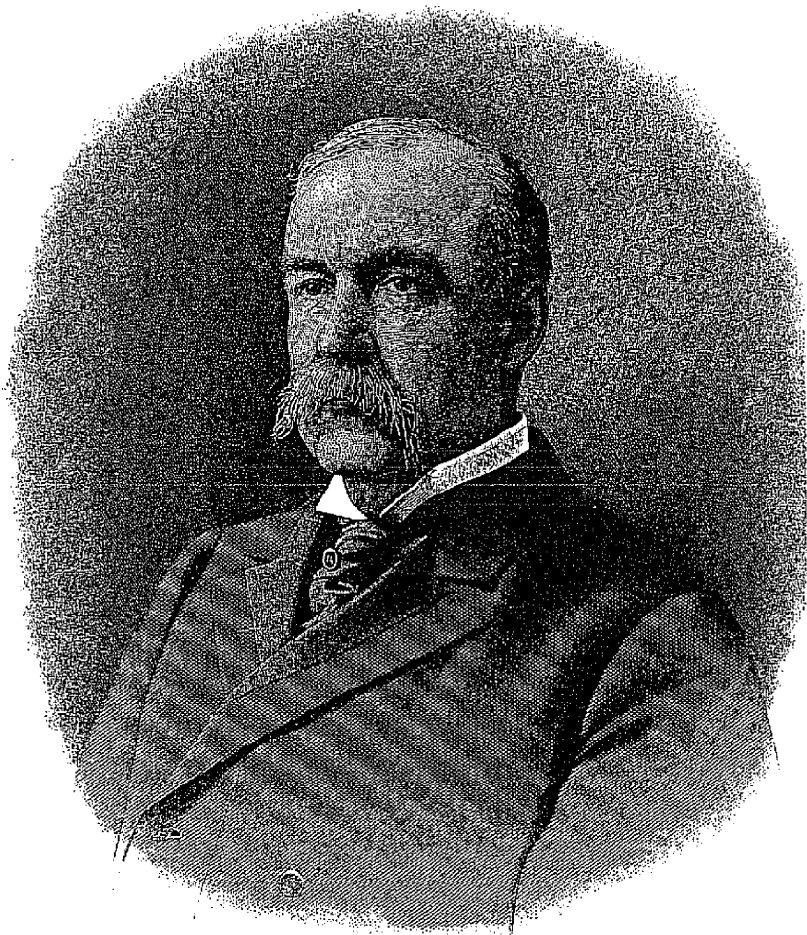
Mr. Bayard was a man whom all classes and conditions of men delighted to honor. The glory of his career was its consistency. With his intellectual strength were united a graceful courtesy and tender sympathy which everywhere won for him both profound respect and affectionate regard. He also possessed a moral strength which gave his life a strong and wholesome influence. The death of this eminent man occurred September 28, 1898, after an illness of six weeks at "Karlstein," the summer home of his daughter, Mrs. Warren, near Dedham, Mass. His remains were brought to his home and interred according to his expressed desire, with brief and simple services in the family vault in the graveyard of the Old Swedes' Church. There, in the shadowed sunlight of an autumn afternoon, and amid a large concourse of sympathetic friends, the dust was returned to the earth whence it came.

Mr. Bayard left three sons, James A., Thomas F., Junior, and Philip. Thomas F. Bayard, Junior, studied law with his father and was admitted to the New Castle bar in 1893, and has for several years been in active and successful practice.

#### THE McLANE FAMILY.

##### COL. ALLEN McLANE.

Col. Allen McLane, an eminent citizen of Delaware by adoption, was born in Philadelphia, August 8, 1746 and settled near Smyrna in Kent County, Delaware in 1774. He was early in the field in the cause of Independence. In 1775, he was appointed lieutenant in Colonel Caesar Rodney's regiment of Delaware militia, and in 1776 joined Washington's army and distinguished himself in the battles of Long Island, White Plains, Trenton and Princeton. Colonel McLane was present at the siege and surrender of Yorktown, and retired from service November 9, 1782. Many thrilling incidents are related of him which show his remarkable bravery as a soldier. On several occasions, when surprised by British troopers, he charged through them and escaped.



Eng. by E. C. Williams & Co. N.Y.

Geo. Gray



decisions, based upon his extensive knowledge of legal principles have almost without exception been upheld when appealed to a higher tribunal. A man of strong convictions, but imbued with a high sense of justice, his career on the bench has been marked by a firm and positive course which has indicated that he is complete master of the situation, and equal to all emergencies. He is held in high respect by the members of the Bar.

Judge Bradford has for many years been a member of St. John's Episcopal Church, and is also interested in the Church Club of Delaware, the Society of Colonial Wars and the Historical Society of Delaware. Judge Bradford married in 1872, Eleuthera Paulina, daughter of Alexis I. DuPont. His son Edward G. Bradford, Jr., is a member of the New Castle County Bar, having been admitted in 1903. He is the third Edward G. Bradford identified with the legal profession in New Castle County, and gives promise of the same high measure of success which has marked the careers of his eminent father and grandfather, whose names he bears.

#### GEORGE GRAY.

Could the verdict of all classes within the borders of the Diamond State irrespective of party affiliations be had, a consensus of opinion would undoubtedly nominate George Gray to the post of honor of Delaware's first living citizen. Since the genesis of any man's character and fame, rightly begins with his greatgrandfather, it may be useful to recur a moment to Mr. Gray's ancestors.

Early in the eighteenth century George Gray's paternal greatgrandfather, William Gray, son of Andrew Gray, sailed from Belfast, Ireland, for America, with his wife and young son William. Both he and his wife died on the voyage of ship fever. Having fortunately inherited an ample estate, the young orphan was carefully reared by his guardian, and when a young man became a successful merchant. He married Jean Caldwell, the daughter of Major Andrew Caldwell, of a

prominent Revolutionary family. Their son, Andrew Gray, who was born in Kent County, Delaware, after receiving an excellent education in his youth, graduated later from the University of Pennsylvania.

Until 1808 young Andrew Gray lived upon the large landed estates in Kent County inherited from his maternal grandfather, Andrew Caldwell, but lived thereafter upon a farm in Mill Creek Hundred near Newark. Though five times elected to the House and Senate of the General Assembly of the State, between 1816 and 1824, he took little active part in public affairs, spending much time in the study of the classics, of which he was very fond, and in the composition of essays, chiefly of a philosophical character.

He married Rebecca Rodgers, daughter of Colonel John Rodgers, of Hartford County, Maryland, and sister of Commodore John and George Rodgers who won distinction in the navy in the War of 1812. Of this marriage was born, in Kent County, May 25, 1804, a son, Andrew Caldwell Gray. Young Andrew graduated from Princeton College in 1821 at the early age of seventeen, and shortly after began the study of law under James R. Black, Esq., later an Associate Judge of the Superior Court of Delaware.

In 1826, upon his admission to the bar, he settled at New Castle. His professional success was pronounced, and he speedily acquired prominence both in legal and in commercial circles, becoming counsel for the Delaware and Chesapeake Canal Company, and in 1853, its president. Retiring in 1854 from active practice as a lawyer, he became prominently identified as director, president, etc., with the new railroad development in the State, and as president, with a number of its most important banking and manufacturing enterprises. Against all importunity he refused political honors, though as a Democrat taking a lively interest in public affairs. Andrew C. Gray was a man of spotless integrity, everywhere revered and loved for his unselfish and benevolent character. He married Elizabeth Scofield of Stamford, Conn.

George Gray, one of their four children, was born in New Castle, May 4, 1840. After receiving the invaluable benefit of an early training in the public schools of his town, young George Gray was prepared for college by the Rev. A. M. Wiggins and Professor William F. Lane, and in 1857 entered Princeton in the junior year, graduating thence with high standing at the age of nineteen, in two years thereafter. He was ever as a youth of a studious habit, fond of machinery and much given to haunting the machine shops and manufactories of his native town and of Wilmington, examining the construction and uses of the machines employed in the various manufacturing processes therein. He was likewise fond of boating, and on the nearby Delaware, acquired sufficient knowledge of boats and sail-craft and of their practical handling to make him quite a sailor. Soon after leaving college he began reading law under the tutelage of his father and the Hon. William C. Spruance, now one of the judges of the Supreme Court of the State. He then spent a year at Harvard law school, and in 1863 was formally admitted to the bar.

His legal brethren and the State at large were not long in discovering in him the possession of those high qualities of brain and character which have not only placed him at the very front of the profession in his own State, but have also brought him distinction and influence in the counsels of the nation, and indeed made his name known beyond the sea. As a lawyer he was careful and thorough in the preparation of his cases, and although not a brilliant trial lawyer yet he was a strong one, and had the habit of securing verdicts, which after all is the main thing. He was always a Democrat, and while taking a great interest in the political and in all other State interests, George Gray never in his life sought office. But his party, appreciating his qualifications for service and leadership, often urged his candidacy, but it was not until 1879, when for sixteen years he had been before the public as a lawyer, and active in the counsels and battles of the party,

that he consented to take at the hands of Governor John W. Hall the office of Attorney-General for the State. His able conduct of that position as he followed the ambulatory court throughout the State, more than ever brought him into prominence as a lawyer, while his kindly methods deservedly attached to him hosts of admirers and friends of all political views, who with flattering unanimity demanded his reappointment by Governor Charles C. Stockley, which was done.

Mr. Bayard entered President Cleveland's Cabinet as Secretary of State in 1885, and the Democracy of Delaware instinctively turned to Mr. Gray as the most fit successor to his mantle of leadership in State and Senate, and accordingly on March 16th of that year the General Assembly chose him to fill the remaining two years of Mr. Bayard's term, and at the end of that period re-elected him for the full term of six years, and again in 1893 for six years more. During his fourteen years' career in that great forum many weighty questions of national and several of international importance were debated and decided, and Senator Gray at length took his station among the few leading spirits who through their learning, wisdom and force of character shaped the legislation and policies of those years. He warmly supported the International Arbitration Treaty, that beneficent principle which is ever gathering force, to bring at last the day "when the war-drum will throb no longer and the battle-flags be furled in the Parliament of Man." His arraignment of the Election Bill of President Harrison was very forcible. The strong hatred of war, which he shared with President McKinley, led him to give his adherence to the latter's reluctance to call a halt in Spain's unparalleled brutality towards Cuba. His final action as a member of the Peace Commission which met at Paris after the close of the war with Spain displays the frankness and the high moral courage of the man. What heightens the quality of this courageous act is the further fact that it was done in the very teeth of the sentiments of his own party leaders and press everywhere denouncing that course as impe-

rialistic. He had at first opposed the retention by the United States of the Philippines, but when convinced of the wisdom of that course withdrew his objections and signed the treaty. At a reception given him by the Board of Trade of Wilmington, January 15, 1899, upon his return from Paris, he ably vindicated his changed attitude in an address, which is a fine specimen of robust reasoning couched in eloquent dress.

In 1898 his party was about to return him to the Senate for the fourth time, when he declined the honor in view of his expected assignment by President McKinley to one of the two additional United States Circuit Court Judgeships for the Third Circuit of which office he is now a distinguished incumbent. Although Senator Gray was one of the leaders of the opposite party, President McKinley, sharing the unbounded confidence of the whole country in his character and attainments, frequently availed himself of his wide experience and intelligent judgment in solving some of the difficult problems in statesmanship in his administration, no other Senator being summoned, it is said, to the White House for consultation oftener than Senator Gray. No loftier compliment could possibly be paid the political candor and patriotic integrity of any man. Judge Gray served on the Joint High Commission to settle certain disputes between the United States and Canada; and was a member of the International Arbitration Commission which met at the Hague in 1900; and also of the Alabama Coal Strike Commission. His frequent choice for these offices of arbitration, and the uniform success of his efforts therein, prove that in addition to his high legal and other qualifications and his unquestioned integrity, he is also the possessor, to an eminent degree, of an impartial and judicial temper that peculiarly fits him for these important tasks. Evidently President Roosevelt so believed when in 1902 he conferred upon him the exalted honor of chairman of the famous Anthracite Coal Strike Commission, with wide powers to settle the perplexing questions involved in the Pennsylvania coal strike of that year, one of the gravest industrial crises that ever arose in this country.

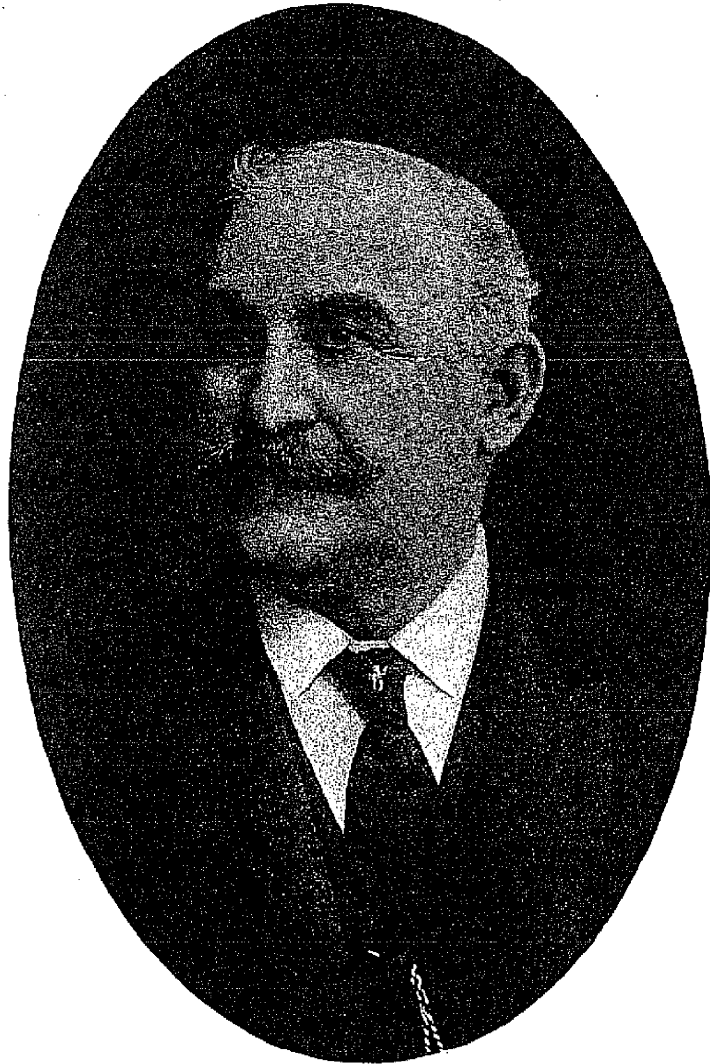
His selection commanded the respect of the immediate parties to this bitter controversy, and of the nation at large whose comfort, not to say, indeed, whose very lives were being imperiled. And his earnest and sagacious labors contributed in a large measure to avert a colossal calamity whose measureless evils appalls the imagination to contemplate. The difficulties these arbitrators met, by reason of the complex character of the interests represented, and the acrimonious antagonisms aroused between those interests, were prodigious! The quiet, poised temper of Chairman Gray, and the native honesty of his character were never better shown than in his skillful guidance of this Commission. All knew him learned and experienced in the law, and believed him fair; and this trial disclosed him also gifted with a tactful diplomacy which happily composed seemingly irreconcilable differences, and made possible the settlement which was satisfactory to the principals themselves and to the whole country. An eminent lawyer not of his political faith, declared that no other man in the country "could have brought these opposing elements to the common agreement of appending their approving signatures to the Commissioner's report." Judge Gray wrote his own and his state's name right nobly anew on the rolls of fame that day. Since George Read signed the three great charters of the nation's freedom, and John M. Clayton accomplished "the world's first universal fact," the Clayton and Bulwer treaty, no son of Delaware has written history in characters at once so large and so enduring! On the 4th of July, 1903, he addressed at Wilkesbarre, Pennsylvania, a large concourse of citizens composed of both mine operators and mine workmen, giving words of wise counsel to both, and declaring that their late peaceful meeting signalized a splendid advance towards the true principles that should govern the mutual relations of capital and labor.

Judge Gray has always been a strong Democrat, and from his early entrance into professional life has zealously championed the principles and candidates of his party. With one

exception, viz., that Quixotic episode in his party's history, wherein, among other doctrines equally sound, their candidate solemnly proclaimed it as one of the principles of his economic system, that the Almighty had foreordained that a bushel of wheat and a 16 to 1 silver dollar should be eternally joined in indissoluble bonds of matrimony! The Senator "gagged" at that and much more like it.

He was a delegate to the Democratic National Conventions of 1876, 1880, 1884 and 1892, and took a prominent part in them all. In 1880, at the Democratic National Convention in Cincinnati, and again in 1884 at Chicago, he presented the name of his distinguished fellow-citizen, Hon. Thomas F. Bayard as a candidate for President. His eloquent speech in placing Mr. Bayard in nomination at Cincinnati is quoted in full in the Chapter entitled "Great Speeches on Great Issues," in Thomas V. Cooper's "American Politics."

Judge Gray himself was honored with the nomination as the Democratic National Standard Bearer at the Convention held at St. Louis in 1904, L. Irving Handy, Esq., in an able speech pursuant to the unanimous instructions of the Democratic State Convention at Dover June 8, 1904, offering his name for the suffrages of the convention. Beyond doubt, his candidacy would have saved the party the inglorious Waterloo they met under the banner of the feeble "sage of Esopus." Mr. Gray was married in 1870 to Harriet, daughter of Charles H. Black, M. D., of New Castle, Delaware. Two daughters and three sons were born to them. May 26, 1880, Mrs. Gray suddenly died. August 8, 1882, Judge Gray married Margaret J. Black, the sister of his first wife.



JOHN HUNN.



leading and influential Democrat. He was the nominee of the Democratic party for the office of Governor in 1894, but was defeated by Joshua H. Marvel, Republican, and two years later, being renominated by his party, he was elected. Governor Tunnell has a charming personality, a man of kindly temperament and easy manners, is a general favorite wherever known, and no man has possessed more fully the confidence of the people of Delaware. Governor Tunnell is a bachelor and makes his home at Lewes with his widowed sister.

The election in the fall of 1900 resulted in the choice of John Hunn as the fifty-first Governor of Delaware. He had not figured in politics and had not previously held a public office. He was elected as a Republican, having received the votes of the two factions of the party as a compromise candidate. His first official act after taking the oath of office, in January, 1901, was to appoint Dr. Caleb R. Layton Secretary of State. Dr. Layton had been a pronounced and unwavering Union Republican since the split in the party in 1895. Strong pressure was brought to bear upon the Governor-elect to prevent the selection of Dr. Layton, and many of those who opposed his selection never forgave Governor Hunn for appointing him. The wisdom of the appointment was fully shown by the efficiency with which the duties of the office of Secretary of State were performed. Prompt, intelligent and capable service marked the conduct of the office under Dr. Layton, and when he relinquished it at the close of a four years' term, friend and foe alike had to admit that it had never been more efficiently managed.

John Hunn was a native of Delaware, having been born near Odessa, in New Castle County, June 23, 1849. He was the son of John Hunn and Mary Jenkins Swallow, both members of the Society of Friends, and was educated in the Friends' School at Camden, Delaware, and the Bordentown (N. J.) Military Academy. At the beginning of the Civil War young John went with his father to Port Royal, South Carolina, the latter being the representative of the Pennsylvania

Freedmen's Relief Association, whose mission was relief work among the freed men of the South. This work was under the control of the United States government, the commanding officer at that point being General Rufus R. Saxton of the United States Army. The son remained in South Carolina; being after the war connected with the Coosaw Mining Manufacturing Company, it being the pioneer company to engage in the excavation of South Carolina rock for fertilizing purposes.

In 1876 John Hunn returned to his native State and settled at Wyoming, where he has since resided, being engaged in the general business of selling fruit, lime and lumber. His wife was Sarah Cowgill Emerson, to whom he was married in 1874, and one daughter, Miss Alice, graces the household. When the rancor arising from as fierce a factional fight as ever divided a political party subsides, so that men will be guided by reason and not by prejudice, the administration of John Hunn as Governor will be fully vindicated and all fair-minded men will agree that he was an honest and capable public servant. His term of office extended from January, 1901, to January, 1905, and he is still living in comfort and quiet at his Wyoming home.

Preston Lea, the fifty-second Governor of Delaware, was born in Brandywine Village, now a part of the City of Wilmington, November 12, 1841. He was the son of William Lea and Jane (Lovett) Lea. His grandfather, Thomas Lea, was a native of Chester County, Pennsylvania, being a descendant of John Lea, who came from England to America in the latter part of the seventeenth century as a follower of William Penn. Thomas Lea, the grandfather of the Governor, was the first of the name to settle in Delaware. He became a partner with Edward Tatnall in the milling business on the Brandywine, and in 1785 married Sarah Tatnall, the oldest daughter of Edward Tatnall. The succeeding generations of Leas in the male line have continued in the milling business.

Preston Lea, under the tutelage of his father, who for almost

At that time he had been but seven years at the bar, and he was then in his thirty-second year. If there were any misgivings, owing to his age and lack of experience, as to the ability of Mr. Biggs to cope with the responsible duties of this important office, they were very soon dispelled, as it became evident, at once, that he was master of the situation.

In the preparation of his cases, both criminal and civil, he has always been most thorough and painstaking, and in the presentation of matters, both of fact and law, to the Court, he has shown unusual force. His administration of the office of Attorney-General was eminently successful. He has held no other public office. For several years he has been associate counsel of the Pennsylvania Railroad Company at Wilmington. Always identified with the Democratic party, he has been recognized as a leader and his name has been presented on several occasions by his political friends in the General Assembly, for United States Senator. A man of excellent business judgment and of the strictest integrity, careful, industrious and systematic, he has won and held a large clientele, and has the full respect, both of his associates at the bar and of the people of the State.

## ROBERT H. RICHARDS.

Among the younger members of the bar none have forged more rapidly to the front than Robert H. Richards. The oldest son of Charles F. Richards, Esq., he was born in Georgetown, Delaware, November 15, 1873, and after a preliminary education received in the schools and the noted academy of that town, entered Dickinson College, where he graduated in 1895. After the usual law course under the direction of his father, he came to the bar in 1897, and spent his first year of practice with his father. He then removed to Wilmington where he has since resided.

Both the court and the older members of the bar were soon impressed with the marked talent which he exhibited as a lawyer. His conduct of the cases early entrusted to him bore

evidence of thorough knowledge of the principles of law, and before the court he was strong and forcible. In 1901 he was appointed Deputy Attorney-General by the newly elected Attorney-General, Herbert H. Ward, and in this office served for four years, rendering to the State conspicuously able services, which resulted in his being the nominee of both factions of the Republican party for the office of Attorney-General in 1904. Although opposed by L. Irving Handy, the Democratic nominee, who as a campaigner had no equal in the State, he was triumphantly elected, and entered upon the duties of the office in January, 1905. Mr. Richards has shown himself thoroughly equipped as a lawyer. Keen in perception, cool and collected in temperament, his record as a prosecuting officer has measured up to the highest record heretofore made by the long line of distinguished lawyers who have occupied the post of Attorney-General.

## LEVIN IRVING HANDY.

Levin Irving Handy was born at Berlin, Worcester County, Maryland, on December 24, 1861. He is one of a family of eight children, and is the son of Rev. William C. Handy, a Presbyterian preacher, and the grandson of William W. Handy, Esq., who was in his generation the leading lawyer at the bar of Somerset County, Maryland. The mother of Levin Irving Handy was a daughter of Rev. Dr. Robert J. Breckinridge, of Kentucky, and was a woman of brilliant gifts and strong character.

The boyhood of Levin Irving Handy was spent partly on the eastern shore of Maryland, partly with his maternal relatives in Kentucky, and partly in rural New York, where his father went to preach in 1871. His education was irregular, and was obtained at private and public schools in Maryland and New York. He did not attend college, but began teaching school shortly before he was eighteen years of age at Dames Quarter, Somerset County, Maryland. In 1881 he was elected principal of the high school at Smyrna, and it was this call



*Eng. by E. Williams & Bro. N.Y.*

*H. H. Ward.*

and grandfather of Charles W. Cullen, at present one of the most active practitioners at the Sussex Bar.

## LEWIS C. VANDEGRIFT.

Lewis C. Vandegrift was born in St. George's Hundred on August 27, 1855. His ancestors were among the earliest settlers in that Hundred. After an education received in the public schools he entered Delaware College, from which institution he graduated in 1875. He graduated from Harvard Law School in 1880. George Gray was his legal preceptor. Admitted to practice in November, 1879, he opened an office in Wilmington. In 1881 he formed a co-partnership with Edward G. Bradford, which continued until the elevation of the latter to the bench of the United States District Court in 1897. Mr. Vandegrift was a man of most industrious habits. He applied himself most diligently, and soon won a commanding position at the bar. In politics he was a Democrat, and he made himself felt as a factor in the counsels of that party. In 1894 he was appointed United States Attorney for the District of Delaware, and made a most successful prosecuting officer. During his term he was called upon to prosecute several very important cases, and they were managed by him with signal ability. His industry and ability brought him unusual success, and his clientage increased rapidly. He was born a fighter, but fair and open as an antagonist, and possessed of the personal qualities which attracted to him a wide circle of friends. No member of the bar had a more promising future before him, but in the midst of his usefulness and success he was suddenly stricken with mortal disease, which terminated his life on July 31, 1900.

## HERBERT H. WARD.

The Delaware bar has been fortunate in several instances by the coming to the State of an educated and enterprising New Englander. Willard Hall, who was the father of the public school system of the State and who served so long and

honorably on the bench of the United States District Court, came to Delaware from Massachusetts in 1803.

Nearly eighty years later Herbert H. Ward, a Vermonter by birth, settled in this State, engaged for a few years as a tutor, studied law under William C. Spruance and entered upon the practice of the law in 1882 at the age of twenty-six. Bright, active and industrious, with ability of a high order, he was early recognized as a young man who was bound to rise. Soon after his admission he became a law partner with George Gray, and continued with him until the elevation of the latter to the bench of the United States Circuit Court. Of late years Mr. Ward and Andrew C. Gray, son of George Gray, have practiced law together. Mr. Ward's rapid progress at the bar has been entirely through his own merit. He gives most careful preparation to his cases and presents questions of law in argument in a convincing and impressive way that has made him particularly strong before the Court. As a trial lawyer he has few equals, and the large and influential clientage that he controls is an evidence of the success that he has won. An active member in high degree of the Masonic fraternity and other influential secret organizations, he is deservedly popular. An honored member of Grace M. E. Church, he has the full respect of the whole community. In 1900 he was impelled, against his wishes, to accept the nomination of the Republican party as its candidate for the office of Attorney-General of the State, and was triumphantly elected. He was the first Attorney-General elected by the people. His administration of this office fully met public expectation. He brought into play in his conduct of public office the same strong qualities which had brought him success in civil practice, and proved himself a fearless and capable prosecuting officer. Personally Mr. Ward is a gentleman of of attractive manners, whole-souled and generous, and those who have the entree of his charming home in Wilmington find in it an atmosphere of true-hearted hospitality.





STATE OF DELAWARE  
OFFICE OF THE ATTORNEY GENERAL  
WILMINGTON, DELAWARE

MAY  
31st  
1955

Mr. Hugh R. Sharp, Chairman  
State Highway Department  
Dover, Delaware

Dear Sir:

Your letter of May 5 has been received in which you advise that the State Highway Department has entered into a contract with Tidewater Associated Oil Company for the sale to Tidewater of certain submerged lands in the Delaware River bordering on the tract of land recently acquired by Tidewater. You have requested our opinion as to whether the Highway Department has authority to sell submerged lands in the Delaware River and to deliver a good deed for the same. It is our opinion you do not have such authority.

It is assumed that title to the submerged land below the high-water mark of the Delaware River is in the State of Delaware and that in some instances the State might have the right to sell and convey such submerged lands. The narrow question presented is whether the legislature has granted the power to the State Highway Department to sell and convey title to such submerged lands.

The rights and duties of the State Highway Department with regard to public lands are found in Title 7, Del. C. of 1953, Chapter 45. Section 4508 provides as follows:

"The State Highway Department may supervise the sale of any material, product or thing which grows or may be grown upon any public lands; divide the public lands into tracts of fifty acres, or less; and sell such tracts, or any part thereof, as deemed advisable to sell."

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Mr. Hugh R. Sharp, Chairman  
State Highway Department

The power to sell is given the Highway Department by the phrase:

"divide the public lands into tracts of fifty acres, or less; and sell such tracts, or any part thereof, as deemed advisable to sell."

What is the meaning to be given to the words "the public lands" as used in Section 4508, Chapter 45?

The phrase "public lands" was first used in Chapter 5, 27 Del. L., app. April 2, 1913, which created a Public Lands Commission. Said Act read in part as follows:

"WHEREAS there is a great amount of public land within the State of Delaware the boundaries of which have not been ascertained, and

WHEREAS it is impossible for the State under present conditions to dispose of said lands when an opportunity shall offer, and

WHEREAS there is at present no supervision of said public lands, therefore,

\* \* \* \* \*

Section 1. That Dr. Hiram R. Burton, Richard H. Kenney, Harry J. Anderson and Edward G. Walls be and they are hereby created and constituted a Commission to ascertain the location of the public lands of the State of Delaware and to have the same surveyed and plotted and to have general supervision over said public lands. Said Commission shall, after having the said lands plotted, have said plots recorded in the office of the Recorder of Deeds in the County in which any such land may lie.

Section 4. Said Commission shall have authority by and with the approval of the Governor to divide said lands into tracts of fifty acres or less, and such Commissioners together with the Governor are hereby authorized and empowered to execute and deliver good and sufficient Deed for any part of said public lands, being fifty acres or less, in extent whenever said Commission and Governor shall deem it advisable to sell such tract or any part of any such

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Mr. Hugh R. Sharp, Chairman  
State Highway Department

fifty acre tract. The said Commission is authorized, if they shall deem it expedient, to require the expenditure of a certain amount of money upon any such tract of land by any person or persons purchasing or of placing on such sale any other conditions which they may deem advisable for the public good.

Section 5. The said Commission is hereby authorized and directed to care for the public land of the State of Delaware and supervise the sale of any material product such as hay, which may be grown or may grow upon any such land, and make return of their proceeds, showing the amount of receipts and expenditures to the next General Assembly of the State of Delaware.

Section 6. The said Commission is hereby authorized to survey and lay off such public highways through any such lands as they may deem advisable and for the public good.

The construction to be given of the words "public lands" in 27 Del. L. must be ascertained from the entire Act. Considering the directions to the Commission to locate the public lands; to have them surveyed and plotted; to record the plots in the Recorder of Deeds office; to divide the "said lands" into tracts of fifty acres or less with authority to sell such tracts "or any part of such fifty acre tract", to require the expenditures of monies upon any tract sold; to care for the public lands; to supervise the sale of any material product such as hay, which may be grown or may grow upon such land; and to survey and lay off public highways "through any such lands", it is our opinion the proper construction of the Act requires that only firm land usually sold by acreage was included in the definition of public lands and the Legislature did not intend to include submerged lands particularly those beneath a body of water as the Delaware River.

The authorities appear to confirm this construction of the statute. Farnham, on Waters and Water Rights, Vol. I, Section 45, 45A is to the effect that a power to sell or a grant of submerged lands must be given in clear and specific language.

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In the case of Money et al., v. Wood, 118 So. 357, Miss. (1928) the Court construed the statute giving the Land Commissioner authority to sell "land" owned by the State as not including lands lying under the waters of the Mississippi Sound. In its opinion the Court said:

"We think that the word 'land' used in the statute means lands as distinguished from water. One of the definitions given by Webster is the 'solid part of the surface of the earth as distinguished from water, constituting a part of such surface, especially from oceans and seas'."

The Court cited the earlier case of Huber v. Freret where the Court was called upon to construe the phrase "public lands" as to whether it was broad enough to cover urban business property. The Court there held it was not and in its opinion said:

"...we are of opinion that it was not the purpose of the legislature to deal with urban business property surveyed and divided into blocks and lots; that it was the purpose of the legislature to deal alone with those public lands which are usually bought and sold by acreage, in other words, property commonly known as rural lands, lands valuable for their timber or pasturage or for agriculture. It is true in order to so hold we must go beyond the strict letter of the statute. But that is justified in a proper case and we think this is a case of that character." This case is cited in 65 C.J.S., Page 218, Sec. 99(2).

In the case of Northern Pac. Ry. Co. v. Hirzel, et al., 161 Pac. 854, Idaho (1916) at Page 859 the Court said:

"Some question is raised as to whether the beds of the navigable streams of the State come within the terms 'public lands' or 'public domain'. Those terms are used in the United States Statutes and decisions to designate such lands as are subject to sale or other disposal under the general laws of the United States or States, and are not held back or reserved for any special or governmental purpose..."

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Mr. Hugh R. Sharp, Chairman  
State Highway Department

"Public Lands", such as are referred to in Article 9 of the State Constitution and which are subject to disposal by the State Land Board under the laws enacted or to be enacted by the legislature, do not include the beds of navigable waters or lands thereunder below high-water mark."

In Dafferitt v. Robison Land Commissioner, 102 Tex., 358, 116 S. W. 796 (1909) the statute permitted the sale of 'public lands'. The Court put this question "does this land come within the terms 'public land' as used in Article 3498(a), copied above, and is it subject to purchase, under Article 3498(j)?" p. 797. The Court then said:

"There is nothing in Articles 3498(a) and 3498(j) which indicates that the Legislature used the words 'public lands' in a sense other than that which the law attaches to them. It follows that the relator had no right to purchase, nor had the Commissioner power to sell the soil lying below the line of ordinary high tide. In contemplation of law, it was not land, but water." Page 797.

There are other similar authorities which could be cited to show the approach and conclusions reached by various Courts to this construction problem.

By Act of April 18, 1929, being Chapter 2, 36 Del. L., supervision and control over Public Lands was transferred to the State Highway Department. While Section 1 of Chapter 2 limited the transfer of supervision and control to "Public Lands of the State of Delaware, as ascertained in regard to location, surveyed and plotted under the supervision and direction of the Public Lands Commission," yet Section 2 appears to have given the State Highway Department essentially the same authority to survey unsurveyed Public Lands as was given the original Public Lands Commission under Section 4 of the 1913 Act.

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The Act of 1929 was in substance similar to the 1913 Act and did not contain any language which could be considered as specifically broadening the definition of "Public Lands" as derived from the 1913 Act.

The various Acts were included in the Revised Code of 1935 in Article 3, Chapter 166.

The next amendment was by Act of April 9, 1945, Chapter 272, 45 Del. L., which empowered the State Highway Department, together with the Governor

"to execute and deliver, in proper form, a lease of any part of the public lands of the State of Delaware, which public lands are under the supervision and control of the State Highway Department by virtue of the provisions of Article 3 of this Chapter." 5746A, Sec. 27A.

It is our opinion that the above language did not expand or enlarge the previous definition of "Public Lands" so as to include submerged lands under the Delaware River. The amendment by its very terms merely gave the State Highway Department the right to lease those public lands which were under its control by virtue of previous Acts.

The only paragraph which has offered any difficulty is the third paragraph in the 1945 Amendment. The first clause of this paragraph reads as follows:

"Nothing in this Act contained shall be construed as authorizing or empowering the Department to lease any land which is used as an oyster plantation, oyster bed, or oyster bottom."

Just what the Legislature had in mind by the above clause is difficult to say. It does not necessarily follow from the limitation of the power to lease as to any land which is used as an oyster plantation, bed or bottom, that the State Highway Department theretofore had been given by clear and specific language supervision of submerged lands in the Delaware River as "Public Lands" within the meaning of the prior Acts.

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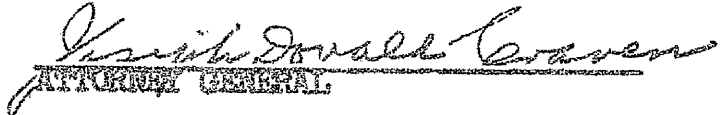
Mr. Hugh R. Sharp, Chairman  
State Highway Department

The incongruity in denying the right to lease any land used as an oyster plantation, had or bottom yet leave the right to sell the same lands is apparent.

Further, paragraph two in suggesting the right to authorize telegraph and telephone lines, building parks, power stations, gasoline plants, ponds and roadways on lands demised, together with paragraph four which authorizes the department to expend money for the "protection, improvement or restoration of lands demised or of lands adjacent to any public lands demised", indicates that something other than submerged lands in the Delaware River was intended.

We do not by this opinion pass upon the question as to when the State may be restricted as to selling or leasing lands which may affect navigation or the rights of the public.

Yours very truly

  
ATTORNEY GENERAL

HLC.kth

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Findings of Robert W. Knecht  
Assistant Administrator  
for  
Coastal Zone Management  
National Oceanic and Atmospheric Administration

Approval of the  
Delaware Coastal  
Management Program

SEP 3 2004

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## I. Introduction

As Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), I have reviewed the record of the development of the Delaware Coastal Management Program (the Program) including the Preliminary Draft developed in January, 1978, the Discussion Draft circulated in September, 1978, the Program/Draft Environmental Impact Statement (P/DEIS) issued in March, 1979, and the Program/Final Environmental Impact Statement (P/FEIS) issued in July, 1979, and all comments thereon. Based on the above, as well as on a review of the Coastal Zone Management Act of 1972, as amended (CZMA), and its implementing regulations pertaining to state program development and approval, I have concluded that the Delaware Coastal Management Program meets all the requirements of the Federal statute and regulations and should be approved. The essence of my review and conclusions is set forth below.

## II. Summary of the Program

The Delaware coast consists of two distinct areas, the 24.5 mile Atlantic coast in the south which runs from Fenwick Island to Cape Henlopen and the Delaware Bay and River area which includes the coast north of Cape Henlopen to the Pennsylvania line. However, for the purpose of the Coastal Management Program, Delaware has chosen to include the entire State within its Coastal Zone boundary. The rationale for this decision is based on the fact that nearly all lands in the State are in close proximity to coastal waters, no part of the State being more than approximately eight (8) miles from these waters. While including the entire State within the Coastal Zone boundary, two different geographic areas will be recognized as a focus for management

and control - the Coastal Strip and the remainder of the State.

The Coastal Strip, as defined in the Delaware Coastal Zone Act, is an area averaging four miles in width along the State's shoreline. Management in this area is based on three (3) State laws: the Underwater Lands Act which regulates uses in State bottoms from mean high tide to the limits of State jurisdiction; the Beach Preservation Act which controls uses on beaches and dunes; and, the Coastal Zone Act which prohibits heavy industry and bulk product transfer facilities from locating in the Coastal Strip and requires a permit for manufacturing uses to ensure protection of coastal resources. These laws are supplemented by other authorities which also apply to the remainder of the State. Among these authorities are the Erosion and Sediment Control Act; the Environmental Protection Act; the Wetlands Act; the Natural Areas Preservation System Act; the Land Use Planning Act; and, various public investment authorities which guide construction of public facilities, land acquisition and financial aid programs.

Implementation of the Delaware Coastal Management Program through the enforcement of these authorities will be accomplished by the appropriate State agencies under the directive outlined in Executive Order #61 which requires all State agencies to "enforce the goals, policies and objectives of the CMP". The Office of Management, Budget and Planning has been designated by Executive Order #60 as the lead agency to receive and administer CZM funds and to monitor and evaluate the management of Coastal resources.

### III. History of the Delaware Program Development

The development of the Delaware CMP was undertaken against a background of recognized need for the protection of the recreation industry and the valuable coastal resources of the State and of several attempts to meet this need through legislation. These efforts began in early 1970 with a Governor's Task Force on Marine and Coastal Affairs whose activities resulted in the Coastal Zone Act, and continues today in the body of the Delaware Tomorrow Commission. Over the years many authorities were established to address these needs, but have not been implemented in the context of a comprehensive coastal strategy.

For these reasons, the State began development of a Coastal Management Program and received its first grant for this effort on June 30, 1974. Activities during the ensuing years focused on an inventory of existing physical and social conditions, the development of techniques for the evaluation of resources and uses, delineation of geographic areas of particular concern, determination of permissible land and water uses, projection of demands on the coastal resources and identification of associated conflicts, and an analysis of existing authorities and organizational structures as well as what new authorities would be needed for the management of coastal resources. The latter resulted in the adoption of three laws designed to strengthen State authority over coastal resources - the Land Use Planning Act, the Erosion and Sediment Control Act and the Natural Areas Preservation Act. Numerous technical reports, studies and working papers were also developed during this period which have been widely used and have also served as a basis for the current program. The result of this effort

is a program which moves well beyond the industrial issues addressed in the 1970 Coastal Zone Act. It is comprehensive in scope and adequately and effectively addresses the full range of issues associated with resource protection and the competing demands for the use of coastal resources.

#### IV. The Federal Coastal Zone Management Program

The adequacy of the Program must be measured against the requirements of the CZMA. The CZMA was passed in recognition of the importance of the coastal zone of the United States and the potential adverse effects of intense pressures upon this natural resource. The Act authorizes a program of financial assistance to encourage the States to manage their coasts more effectively. The Program is administered by the Secretary of Commerce, who has delegated this responsibility to NOAA.

The CZMA states at the outset that "there is a national interest in the effective management, beneficial use, protection and development of the coastal zone" [Section 302(a)]. The Congressional findings go on to describe how competition for utilization of coastal resources, brought on by the increased demands of population growth and economic development, has led to degradation of the coastal environment. This degradation has included the "loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use and shoreline erosion" [Section 302(c)]. The CZMA also provides that "(t)he key to more effective production and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states in cooperation with Federal and

local governments and other vitally affected interests in the development of land and water use programs...for dealing with coastal land and water use decisions of more than local significance" [Section 302(h)].

These broadly stated goals of the CZMA recognize that each State should develop a management program appropriate to its unique needs and situation. Thus, it is at the State level that prime responsibility exists for achieving effective management of the coastal zone. Under Section 305 of the CZMA, up to four years of grants are available to 35 coastal states and territories, including the Great Lakes States, to finance up to 80 percent of program development costs. The entire process is a collaborative one in which both State and Federal interests are accommodated.

After developing a management program, the State may submit it for approval to the Assistant Administrator for Coastal Zone Management. If the program is approved, the State is then eligible for annual grants under Section 306 to administer its management program. In considering a program for Federal approval, the Assistant Administrator reviews it in accordance with the following general requirements:

- 1) That the management program is comprehensive. The CZMA emphasizes that important ecological, cultural, historic and aesthetic values are being lost or adversely affected by population growth and economic development in the coastal zone. Comprehensive management and protection of these values is a vital part of an approvable program.

- 2) That the policies, standards, objectives and criteria upon which decisions made pursuant to the program will be based are articulated clearly and are sufficiently specific to provide (a) a clear understanding of the content of the program, especially in identifying who will be affected by

the program and how, and (b) a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program; and

3) That there are sufficient policies of an enforceable nature to ensure the implementation of and adherence to the management program. OCZM has issued regulations providing additional guidance for State program development and approval pursuant to the CZMA requirements [15 CFR Part 932 (44 F. Reg. 18590 et seq., March 28, 1979)]. These regulations, which reflect the CZMA's Federal-State collaborative process and the need to respond to unique State coastal needs, form the basis of my decision to approve the Program.

#### V. What the Delaware Program Will Achieve

In furtherance of the national goals of the CZMA and the goals and policies of the State, the Program will accomplish the following basic objectives:

1) The Program will provide a comprehensive set of specific policies to address the management of significant resources and the uses of these resources in the coastal area. Among these are a set of policies which govern public investments as they affect the coastal zone and which compare favorably to those contained in other programs approved to date. These policies will result in an increased predictability of State level decision-making as State agencies conduct their various functions in the framework of these policies pursuant to the directive contained in Executive Order 61. This specificity of goals and policies will facilitate the processing of projects and activities requiring permits as applicants become aware of the probable State position on their proposals.

2) The Program will provide funding for a variety of efforts designed



to provide an increased understanding of physical and biological processes necessary for current resource management needs. Areas of study during the first year of implementation will include an investigation of open marsh water management techniques for mosquito control, an analysis of the environmental and fiscal impacts of rural wastewater management, an historic assessment of farmland loss and an examination of future alternatives, an analysis of shellfish closures in Delaware's inland bays, and an examination of management needs for freshwater wetlands.

3) Federal approval of the Delaware CMP will also activate the Federal consistency provisions of the CZMA, thus requiring Federal actions including Federal projects, licenses and permits, and assistance programs, to be consistent to the maximum extent practicable with the Program.

#### VI. Major Issues and Resolutions

Several issues and problems associated with the Delaware CMP have been raised during program development and review of the draft Program document and Environmental Impact Statement. The Delaware Program has resolved these difficulties either through clarification of policies and intent, or through actual changes in the Program document. Remaining difficulties will be resolved as a result of efforts undertaken during the first year of Program implementation. Some of the more significant issues are discussed below.

1) One of the most controversial aspects of the Delaware Program is the Coastal Zone Act which prohibits the siting of certain industrial facilities in the statutorily defined Coastal Strip. Various economic interests, particularly energy interests, have questioned whether this prohibition adequately considers the national interest. The CMP has

responded by noting that facilities that are absolutely prohibited in this sensitive coastal area are allowed in other areas of the State and, thus, Delaware is able and willing to do its share to fulfill national needs. Other manufacturing uses and activities which do not fall within the definition of heavy industry will be allowed by permit as long as environmental criteria and Program policies are met.

Relatedly, some concern was expressed after issuance of the Draft Program Document regarding a policy which prohibited the siting of LNG facilities in the State. A more complete explanation of this policy is included in the P/FEIS which removes the absolute prohibition on such a facility and demonstrates the lack of a suitable site for an LNG facility based on industry and government standards.

An opposing concern has been voiced by other commentors who feel that facilities such as platform fabrication yards and pipeline yards and the expansion of existing refineries should be defined as heavy industry and thus prohibited by this Act. The existing authority cites criteria for prohibition of activities both in terms of physical characteristics and the existence of facilities as of June 28, 1971. To the extent that proposed facilities do not fully meet these criteria, their construction is allowed in accordance with strict environmental standards that will serve to protect valuable coastal resources.

2) Questions have been raised regarding the adequacy of the program's policies to protect coastal resources. One area of concern is the small, isolated tidal salt and freshwater wetlands not currently mapped and those non-tidal wetlands which are not currently under the direct con-

trol of a State agency. Concern was expressed both in terms of identification of these areas and the adequacy of existing authorities to protect these areas. This is a problem common to most wetlands authorities and has to do with the cost and accuracy of alternative mapping technologies. During the first year of program implementation, the Program will undertake a major effort to update the maps of these areas, will analyze the adequacy of existing regulations under the Wetlands Act and will promulgate new wetlands regulations unless the analysis indicates that additional time is needed to put the regulations in place.

3) The protection of beach areas from overdevelopment and overutilization was also raised as an issue. Concern was expressed that current regulations and policies are not sufficient to control intensive development and that insufficient attention has been given to non-structural erosion control measures.

Development on beaches is controlled by the Beach Preservation Act. A new building setback line is currently being developed pursuant to this act and regulations to control beach areas will be promulgated early in 1980. The Program relies upon a variety of authorities and public investment policies to control development in adjacent areas. Among these are the Wetlands Act, the Environmental Protection Act, the Erosion and Sedimentation Act and the Land Use Planning Act. The P/FEIS was changed to accommodate questions concerning erosion control and mitigation policies by specifying criteria for the expenditure of Beach Preservation Act funds and by iterating the State's preference for non-structural erosion control techniques.

4) The lack of specificity and predictability in Coastal Zone Act policies was mentioned as an issue. Concern was expressed that the lack of Coastal Zone Act regulations for the permitting of manufacturing uses gave the decisionmaker too much discretion. To address this concern, OCZM will require that Delaware, during its first year of program implementation, develop regulations or standards for making decisions for manufacturing uses under the CZA.

5) Objections were received on the State's decision to include the entire State in the Coastal Zone as defined in the Coastal Zone Management Act. This decision has been justified by noting that no part of the State is more than about eight (8) miles from coastal waters, and that therefore, major activities occurring in this broad area have a significant probability of affecting coastal waters.

#### VII. Detailed Findings on the Delaware Program

Having reviewed the general requirements of the CZMA and the basic structure of the Program, I now turn to the question of how the Program satisfies the specific requirements of the CZMA and its implementing regulations. These findings follow the organizational scheme of the regulations. They begin by reviewing the uses subject to the Program (Subpart B), the special management areas involved (Subpart C), and the boundary, the general area that encompasses these uses and special areas, (Subpart D), address the authorities and organization necessary for management (Subpart E), and finally the public process by which the Program was developed (Subpart F).

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Section I - Uses Subject to Management (15 CFR Part 923, Subpart B)

- (A) The Program includes "a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters." (Section 305(b)(2); 15 CFR 923.11)

The Delaware CMP is quite specific as to permissible land and water uses having an impact on coastal waters and the conditions within which these uses will be controlled. The Program addresses residential and industrial development, recreation and tourism, transportation, and the preservation and exploitation of natural resources. These various uses are considered in terms of the area of impact in Sections 5A, 5B, and 5C, and further discussed generically in Section 5D of the P/FEIS.

The CMP's resource protection laws for wetlands, beaches and dunes, submerged lands, coastal waters and the Coastal Strip effectively control most uses by establishing permit systems to manage potentially damaging uses. In addition to these geographically specific resource protection laws, other laws to control uses include the Environmental Protection Act, the Land Use Planning Act and the Erosion and Sediment Control Act. When combined with the State's public investment authorities, these authorities represent control over those uses which might have a direct and significant impact on coastal resources.

- (B) The policies and procedures defining the permissibility of uses are sufficiently comprehensive to address the national findings and policy of Sections 302 and 303 of the CZMA (Section 305(c)(1); 15 CFR 923.3, 923.11, 923.12).

The Program has developed a comprehensive set of policies to govern uses within coastal waters, the Coastal Strip, and the rest of the State. These policies

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focus on the protection of valuable coastal resources while recognizing the need to accommodate economic growth and to judiciously allow competing use of coastal resources. Thus, while certain heavy industrial uses are prohibited from the Coastal Strip, they are allowed in other parts of the State. Also, within the Coastal Strip bulk product transfer facilities are restricted to the Port of Wilmington, so that any adverse effect on valuable natural resources will be mitigated while allowing such facilities which are of national interest.

These policies and procedures regulating uses in the coastal zone are spelled out in detail in the Program document and referenced to existing authorities for enforcement. The growth of these specific aspects of the Program is based on years of detailed study and analysis as outlined in the many background working papers. This lengthy assessment has resulted in regulations and policies governing those uses in the coastal zone which might have a significant effect on coastal resources.

- (C) The Program includes "a planning process for energy facilities likely to be located in, or which may significantly affect the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities." (Section 305(b)(8); 15 CFR 923.13)

Section 5.D.3 of the P/FEIS contains an extensive discussion of a broad variety of energy facilities, the effects of such facilities on coastal resources, the national interest and demand potential for these facilities, related siting criteria, and, based on these factors, the policies of the Delaware CMP which deal with these facilities. The major thrust of these policies is the prohibition of energy facilities in sensitive coastal areas

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while allowing them in other less vulnerable areas conditioned by adherence to State and local standards for environmental protection. OCS development is encouraged as long as environmental safeguards are maintained. This encouragement is evidenced by the recent amendment which conditionally allows OCS support bases to locate in the Coastal Strip.

Section II - Special Management Areas (15 CFR, Part 223; Subpart C)

- (A) The Program includes an inventory and designation of areas of particular concern within the coastal zone and has established priority of use guidelines for these areas. (Section 305(b)(3); 15 CFR 923.21 and 923.23)

Delaware has designated four areas as areas of particular concern: wetlands, "public lands", beach lands seaward of the building line, and the Port of Wilmington. A description of these areas and the management techniques employed in each can be found in Sections 5.A.1, 5.A.2, 5.B.1, and 5.B.4 of the P/FEIS, respectively. Although the designation does not provide any additional authorities or management efforts beyond those already existing in statute and program policy, it serves to highlight the value of these areas and thus to promote continued public understanding and support of the management strategies being used to effectively deal with significant issues in these areas.

The priority of uses for wetlands and designated beach areas are outlined in Appendix C of the Program document; those for "public lands" are included in the discussion in Section 6.B.1. The thrust in each is to maintain the natural integrity of these areas while allowing limited human activity consistent with this goal. The priority of use for the Port of Wilmington is set forth in Section 5.B.4 and recognizes the need to protect and enhance this valuable economic resource.

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- (B) The Program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values. (Section 306(c)(9); 15 CFR 923.22)

The Delaware CMP sets forth two procedures by which specific areas can be designated for preservation or restoration (APR's). The first is the Natural Areas Preservation Program which is described in Section 5.8.2 of the P/FEIS. Under this Program, the Department of Natural Resources and Environmental Control (DNREC) develops criteria and policies for selecting natural areas and maintains a registry of such areas. The DNREC is also empowered to acquire appropriate sites through purchase, easement or other legal mechanism, and to manage and protect these sites for their intended purpose. The amount of land thus acquired is left to the discretion of the DNREC based on fiscal capabilities and its success in encouraging private individuals and groups to voluntarily transfer land to the State for preservation or restoration purposes.

The second procedure for designating APR's is through the Critical Areas Program mandated by the Land Use Planning Act. This law requires the State and local jurisdictions to prepare a critical areas plan focusing on areas of physical, economic or social importance. After establishment of these plans, all land use actions affecting these sites will be subject to affected agency review prior to any decision. Although not as directly effective as the Natural Areas Preservation Program, this procedure will serve to highlight important areas and could lead to APR designation if appropriate.



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- (C) The Program provides for "a definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value." The Program includes "a planning process for (a) assessing the effects of shoreline erosion (however caused), and (b) studying and evaluating ways to control or lessen the impact of such erosion, and to restore areas adversely affected by such erosion." (Section 305(b)(7); 15 CFR 923.24; Section 305(b)(9); 15 CFR 923.25)

The Delaware CMP defines beaches as " the wet and dry sand area stretching from the low water mark inland to the line of vegetation." Public access to ocean beach areas is not a problem in Delaware since 72% of the Atlantic beaches are either owned by public agencies or are encumbered by perpetual public easements. Public access to other shorefront areas is also well accommodated as shown in the maps and discussion contained in Section 5.A.2 of the P/FEIS. To the extent that future demand for public access exceeds current resources, various policies of the CMP are directed toward anticipating and accommodating these demands as exemplified by Policy 2 and 14 in Section 5.A.2. These goals will be achieved through the exercise of the Natural Areas Preservation System previously discussed and other public access programs. During the past two years, Delaware's CMP has undertaken a comprehensive public lands survey to determine the exact location of all public beaches. This survey will ensure that private interests do not encroach upon public beaches and that adequate public access can be provided.

Much work has already been accomplished by the Delaware CMP in assessing beach erosion problems and solutions in the State. This effort is embodied in Working Paper No. 8, entitled "Beach Erosion Control and Shoreline Access Planning," which is referred to in the CMP, and forms the basis

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for the policies described in Section 5.A.2 of the P/FEIS. These policies define a broad area of regulatory control on land and adjacent water areas to the extent necessary to control activities which contribute to beach or dune erosion. The Beach Preservation Act and the Underwater Lands Act provide the authorities for this control. The Program document discusses the impacts of various structural defenses against erosion, specifies policies governing funding criteria and priorities, and encourages non-structural techniques of erosion control. These various components provide a comprehensive and specific process for erosion control.

Section III - Boundaries (15 CFR Part 923, Subpart D)

The Program includes "identification of the boundaries of the coastal zone subject to the management program." (Section 305(b)(1); 15 CFR 923.31-34)

The boundaries of the Delaware Coastal Management Program are described in Appendix D of the P/FEIS. Delaware has chosen to include the entire State within the Coastal Zone based upon the proximity of all State lands to coastal waters, and, therefore, the potential impact of activities anywhere in this area on these waters. As noted in Section IV - Authorities and Organization, management in the State will be more intensive in that region known as the Coastal Strip as defined in the Coastal Zone Act. All land areas owned, leased, held in trust by, or whose use is otherwise by law subject solely to the discretion of the United States Government or its officers or agents are excluded from the management area. These lands are depicted on the map at the end of the Appendix.

The seaward boundary of the management area is the three mile limit of the territorial sea. The boundary between New Jersey and Delaware in the

Delaware River and Bay was established by the United States Supreme Court. However, the lateral seaward boundaries between New Jersey and Delaware, and between Delaware and Maryland have yet to be determined.

Section IV - Authorities and Organization (15 CFR Part 923, Subpart E)

- (A) The State is organized to implement the program and has the authorities necessary to do so. (Sections 305(b)(4), 305(b)(6), 306(c)(6), 306(c)(7), 306(e)(1); 15 CFR 923.40-923.42)

Organization

By Executive Order 60 dated August 24, 1978, Governor Pierre S. du Pont IV designated the Delaware Office of Management, Budget, and Planning (OMBP) as the lead agency to receive and administer program administration grants under Section 306 of the CZMA. OMBP administers the Land Use Planning Act and the Coastal Zone Act, both of which are incorporated into the program. The Department of Natural Resources and Environmental Control (DNREC) administers all of the other environmental statutes which are incorporated into the program. The Public Service Commission regulates public utilities and the State Department of Highways manages state roads, mass transportation, and airways.

Executive Order 61 from the Governor directs all state agencies to enforce the Coastal Management Program policies, and to notify OMBP, the lead agency, of any proposed changes to rules and regulations which will affect the program. Through monitoring of the program, OMBP informs an agency of CMP policies and provisions of Executive Order 61 with which it is not in compliance. To resolve conflicts, meetings are held at the staff level and the agency head level before being referred to the Governor for resolution.

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### Authorities

The statutory authority which these agencies rely upon for implementation of the Coastal Management Program is found in different State laws. The most significant are:

#### A. Authorities Applying to Specific Areas

##### The Wetlands Act

Title 7 Delaware Code, Chapter 66 regulates activities involving the alteration of wetlands, with the exception of activities such as mosquito control; construction of aids to navigation; and grazing, haying, hunting, fishing and trapping. The Department of Natural Resources and Environmental Control (DNREC) issues permits for activities occurring in areas between mean low and two feet above mean high water elevations. DNREC must consider the legislative and Program policy to preserve and protect the productive public and private wetlands and to prevent their depoliation and destruction. The Department must also consider the proposed activity's environmental impact, economic impact, esthetic effect, effect on neighboring uses, support facilities and their impact, need for water access, and the availability of alternatives.

##### The Beach Preservation Act

Title 7 Delaware Code, Chapter 68 regulates many activities on public beaches, requiring a DNREC permit. Activities regulated include changes which increase the potential for beach erosion, construction of structures seaward of the primary dune, carrying away of beach material, or operating dune buggies, cars or other machines. In processing permits, DNREC must consider the effect of the proposed project on beach erosion, flooding, or other potential damage to property, and the feasibility of

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alternate protection from storm damage.

#### The Underwater Lands Act

Title 7 Delaware Code, Chapter 61 authorizes DNREC to exercise state control over lands below mean high water. Projects on public submerged lands subject to DNREC regulation include erection of structures, excavation, dredging or filling of these lands or adjacent lands, and laying of utility lines. This Act will be used to implement policies dealing with the siting of facilities in which there is a national, regional, state or local interest, such as pipelines, power plants, and transportation facilities.

#### The Natural Areas Preservation System Act

Title 6 Delaware Code, Chapter 73 establishes a natural areas preservation system. DNREC is responsible for adopting regulations for the use and protection of natural areas. The Department may acquire nature preserves by gift, devise, purchase, exchange, or any other method of acquiring real property interests, except through the exercise of eminent domain. Dedication of areas acquired by DNREC occurs through recordation with the County Recorder. Once dedicated, the land cannot be used for purposes inconsistent with preservation unless approved by DNREC, the Governor, and the General Assembly after a public hearing is held.

#### The Coastal Zone Act

Title 7 Delaware Code, Chapter 70 authorizes the Office of Management, Budget and Planning (OMBP) to exercise state control over that portion of Delaware's coastal zone referred to in the Program document as the coastal strip. The Act prohibits location of new heavy industrial uses

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and bulk product transfer facilities in the coastal strip. New manufacturing uses may locate there by permit only. OMBP must account for the proposed project's environmental impact, economic effect, esthetic effect, supporting facilities and their impact, and effect on neighboring land uses.

B. Authorities Applying Throughout the Coastal Zone

The Environmental Protection Act

Title 7 Delaware Code, Chapter 60 authorizes DNREC to exercise state control over specified activities related to air and water pollution which occur throughout Delaware. The statute also requires a DNREC permit for ground or surface water withdrawal, solid waste disposal, and construction or operation of pipeline systems or water wells.

The Land Use Planning Act

Title 29 Delaware Code, Chapter 92 establishes a process whereby state, local and regional agencies are notified of and given a chance to review and comment on decisions involving matters such as critical areas, major institutions, and land use decisions having significant impact on more than one local jurisdiction. Conflicts are resolved through the Council on State Planning, which is empowered to require a reconsideration of these decisions. This authority, passed as a result of program development, will be used to ensure that local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

The Erosion and Sedimentation Control Act

Title 7 Delaware Code, Chapter 40 requires DNREC to develop and coord-

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dinate a comprehensive statewide erosion and sediment control program to be implemented at the local level. Erosion control plans must be approved prior to initiation of land disturbing activities. The development of a coastal management program provided the impetus for passage of this law.

### C. Acquisition Authorities

Several authorities enable Delaware to acquire interests in land for the purpose of protecting, preserving, or maintaining various areas. These authorities include:

#### 1. The Beach Preservation Act

Title 7 Delaware Code Section 6810 empowers DNREC to acquire fee simple or lesser interests in land when two-thirds of the property owners in the project area allow the Department to undertake protective works and to allow the free public access. These interests may be acquired through negotiation or condemnation proceedings.

#### 2. The Natural Areas Preservation System Act

Title 7 Delaware Code, Chapter 73 empowers the State, acting through DNREC, to acquire and hold an adequate system of nature preserves in trust for scientific, educational, esthetic, recreational, and other purposes. Other state agencies and public or private organizations and individuals are encouraged to dedicate areas to DNREC for preservation. The Act also establishes a Natural Areas Advisory Council to advise the Secretary of DNREC on the administration of nature preserves and the preservation of natural areas.

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### 3. State Parks

Title 7 Delaware Code Section 4701 empowers DNREC to acquire public lands for park, recreation, and conservation purposes. Acquisition may be by gift, devise or purchase, or through eminent domain.

#### D. Adequacy of Authorities

OCZM regulations at 15 CFR 923.42(d)(1) allow a State to base its program on existing laws and regulations, provided that they are sufficiently broad to implement the Program's policies.

The coastal policies to be implemented by these authorities can be found in Part II Section 5 of the FEIS. They have been derived from Delaware laws and regulations as evidenced by the references found at the end of each group of policies. I find that each policy is fully supported by these authorities. During the first year of program implementation, the policies dealing with wetlands and the coastal strip will be given further consideration regarding standards by which permitting decisions are made.

All agencies exercising implementation responsibilities are required to do so in conformance with the Program's policies, pursuant to 15 CFR 923.40(b). Most policies derive directly from statutory or regulatory language and thus provide grounds for challenge of inconsistent state agency actions. Executive Order 61 directs all state agencies to enforce CMP policies and to notify OMBP, the lead agency, of any proposed changes to rules and regulations which would affect the Program. This Executive Order similarly provides a basis for court challenge of inconsistent agency activities.



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- (3) The State has incorporated into its Program requirements established pursuant to the Federal Clean Water Act, as amended, and the Clean Air Act, as amended. (Section 307(f); 15 CFR 923.44)

The program incorporates the State's existing regulatory programs administered by DNREC pursuant to the Environmental Protection Act, established pursuant to the Federal Clean Water Act and the Federal Clean Air Act. (See Part II Sections 5A3 and 5D8, and pages 16-18 of Section 5E Appendix E of the FEIS).

- (C) The Program provides "for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." (Section 306(e)(2); 15 CFR 923.13 and 923.43)

The Land Use Planning Act, 29 Delaware Code Chapter 92, prohibits arbitrary exclusion from local Comprehensive Development Plans of land uses of more than local benefit. The statute forms a basis for ensuring that local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit. Under the Act, local plans which are deemed by state agencies to arbitrarily exclude a use are subject to review and comment by OMBP and other interested state, regional and federal agencies. The local jurisdiction must consider all comments and provide a written rationale for its decision, including a discussion of state comments and recommendations. OMBP may appeal the local decision if it is unreasonable or fails to adequately consider state comments. The local jurisdiction must then reconsider its decision and the review process begins again.

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Section V - Coordination, Public Involvement, and National Interests  
(15 CFR 923, Subpart F)

- (A) During the process of Program development, the State has provided the opportunity for full participation by relevant government agencies having interests and responsibilities affecting the coastal zone, all interest groups, and the general public, and has held public hearings on the Program. (Sections 306(c)(1), 306(c)(3); 15 CFR 923.50-923.55, 923.58)

The four years of Delaware CMP development involved a very extensive effort of public education and the solicitation of public input into the development process. The effort to increase the public awareness of the program involved the publication of a bimonthly newsletter, television and radio spots, the distribution of literature, and a series of briefings presented by the staff and by members of the League of Women Voters. Input into the program was solicited through a series of technical reports, working papers, and the activities of the Coastal Zone Management Committee and the Delaware Tomorrow Commission. These bodies represented a wide variety of public and private interests group and served as valuable advisors to the Program. From the initial release of the Discussion Draft in September, 1978, to the publication of the P/FEIS in July, 1979, a series of public hearings was held to allow further input and critique of the CMP. A chronology of these diverse activities can be found in Section 4 of the P/FEIS.

- (B) The views of the Federal agencies principally affected by the Program have been adequately considered. (Section 306(c)(1), 307(b); 15 CFR 923.51)

Section 4, Section 5 E, and Appendix F of the P/FEIS demonstrate that Delaware has contacted Federal agencies concerning the Program, provided timely opportunities for relevant participation in and input to

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Program development by those agencies, and advised those agencies of the public hearings on the Program. Several Federal agencies commented on the P/DEIS including the Environmental Protection Agency, the Federal Energy Regulatory Commission, the General Services Administration, and the U.S. Departments of Agriculture, Army, Defense, Energy, Housing and Urban Development, Interior, Navy, and Transportation. Some of the more significant comments are discussed below.

1. The Federal Energy Regulatory Commission (FERC) objected to the absolute prohibition of LNG facilities throughout the Coastal Zone. In response, the Program reviewed the LNG facility siting criteria as promulgated by FERC and found that no suitable sites for such a facility existed in Delaware. The policy in Section 5.D.3. was changed to reflect this finding.
2. FERC and the Department of the Interior (DOI) expressed concern that the prohibition of common carrier pipelines and bulk product transfer facilities was too stringent and that provision should be made for such facilities. Common carrier pipelines are permitted if they begin beyond the territorial sea and terminate landward of the Coastal Strip. Bulk product transfer facilities and pipelines are permitted in the Port of Wilmington. This selective permitting of these facilities satisfies the national interest issues raised while protecting fragile coastal resources.
3. DOI was concerned that the Program did not address uses and activities which occur adjacent to critical resource areas, such as wetlands, and which could have a significant cumulative impact on these resources. The FEIS was amended to address this concern with the addition of a policy which

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requires the consideration of cumulative impacts. A work task will be undertaken during the first year of implementation to determine how this policy can best be implemented.

- (C) The Program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, the coastal zones) which are necessary to meet requirements which are other than local in nature. The State has the means to give consideration to any applicable interstate energy plan or program. (Section 306(c)(8); 15 CFR 923.52)

Working Paper No. 7, which is summarized in the Program Document, contains an in-depth discussion of the national interest in facility siting and the manner in which Delaware responds to this need. The summary of this report can be found in Section 5.D.3 of the P/FEIS.

Delaware recognizes its role in satisfying the national interest. Although it does prohibit certain types of facilities from siting in the Coastal Strip, these facilities are permitted to locate inland if they meet certain specific criteria for environmental protection found in State and local laws. Prohibition of such facilities in this limited area is justified on the grounds of balancing the national need for facilities with the national interest in recreation and preservation of natural resources. To the extent that future developments necessitate a revision of these siting policies, a mechanism for review and modification has been provided utilizing the Delaware Energy Facilities Siting Liaison Committee. See Attachment A, Federal Agency Comments on the FEIS for additional discussion.

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- (D) The State has coordinated its Program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the Program was submitted for approval. (Section 306(c)(2); 15 CFR 923.57)

The State has coordinated the Program with other local and area plans applicable within the State through a number of mechanisms including the development of technical reports and working papers, and common membership on the Coastal Zone Management Committee. Workshops have also been held which brought together interested individuals and agencies to exchange thoughts and ideas. Examples of coordination can be found in Section 5.A.3. which describes, in part, the 208 planning efforts, and Section 5.B.3 which discusses plans under the Flood Insurance Act.

- (E) The State has established an effective mechanism for continuing consultation and coordination between the State and local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of the CZMA. (Section 306(c)(2)(B); 15 CFR 923.57)

Several mechanisms exist which will ensure continued consultation among various levels of government and pertinent agencies as the Delaware CMP is implemented. The principal mechanism for coordination between State and local governments is the Land Use Planning Act which establishes a formal mechanism for the governments involved to comment upon proposed actions which affect them. This effort is supplemented by the A-95 Project Notification and Review System.

Coordination between State agencies is ensured by three Executive Orders which establish the CMP as official state policy, direct State departments and agencies to enforce CMP goals and policies, and create a

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Coastal Management Committee. This Committee will have specified coordination responsibilities which will serve to keep its diverse membership apprised of activities in this area. Lastly, the public hearing process will allow input by all sectors of the government and the public into the decision-making process.

These various coordinative mechanisms are emphasized by the policies continued in Section 5E of the P/FEIS.

#### VIII. Conclusion

Having made the findings set forth above, and having determined that the Delaware Coastal Management Program meets the requirements of the Coastal Zone Management Act of 1972, as amended, and its implementing regulations, I have approved this Program on behalf of the Secretary of Commerce, effective August 21, 1979.



for Robert W. Knecht  
Assistant Administrator for  
Coastal Zone Management

ATTACHMENT A

## Federal Agency Comments on the FEIS

Six Federal Agencies commented on the P/FEIS: The Department of Energy (DOE), the Federal Energy Regulatory Commission (FERC), the Department of the Army (Army Corps), the Department of Transportation (D.O.T.), the Department of Interior (D.O.I.) and the Environmental Protection Agency (EPA).

DOE expressed concern about OCZM's intention to approve the Delaware Program when it contained policies which prohibited the siting of energy facilities in the Coastal Strip without benefit of objective regulatory review. The Department did not concur with our intent to approve the Program and requested the informal assistance of OCZM in resolving serious disagreement concerning the proposed approval of the Delaware CZM Program. The comments also noted that if serious disagreement persists, DOE might request formal mediation by the Secretary of Commerce pursuant to §923.54(d) of the regulations. As a part of the informal assistance of OCZM requested by DOE, members of both staffs met on August 14 along with members of FERC's staff. As a result of this meeting, OCZM agreed to reflect the concerns expressed by DOE in the program approval findings, to make clarifications in the findings and to answer the letter from DOE prior to program approval. OCZM also agreed to make the draft findings available to DOE for review and comment prior to Program approval. All of the above requests were honored prior to approval.

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The following information is designed specifically to address the concerns expressed by D.O.E. in its FEIS comments:

I. Petroleum Refineries

a. New refineries are prohibited in the Coastal Strip (which includes State waters).

b. Existing refineries are permitted to expand.

c. New refineries are permitted landward of the Coastal Strip.

d. As noted in II. below, associated common carrier pipelines are permitted when coming from beyond the Territorial Sea to a new refinery. Common carrier pipelines which begin or terminate in the Coastal Strip are prohibited as are single use docking and pipeline facilities when serving a new refinery landward of the Strip. Bulk product transfer facilities are permitted within the Port of Wilmington.

The Program's policies limit the siting of new refineries to the following cases: when the offloading and pipeline facilities come from beyond the Territorial Sea to landward of the Strip, near the Port of Wilmington where bulk product transfer facilities are permitted and landward of the Strip served by a pipeline coming from another State, i.e., Pennsylvania or Maryland.

The exemption of the Port of Wilmington from the bulk product transfer facility prohibition allows for the siting of a refinery in the Wilmington area landward of the Strip. Air pollution control requirements have been cited as a problem in this case. All of New Castle County is an attainment area for sulphur dioxide and all except for Wilmington and Newark are attainment areas for particulates. New Castle County is a non attain-



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ment area for ozone. As air emissions from refineries consist primarily of sulphur dioxide and particulates, the ozone non attainment area should not be a significant problem. In the siting of a refinery in New Castle County, such a facility would have to satisfy the prevention of serious deterioration requirements.

An element of uncertainty during informal discussion with DOE related to the possibility of siting single purpose pipelines and docking facilities within the Coastal Strip. The State has had very limited experience with this issue and is relying on one case (the DPL Summit Power Plant Case) in its determination that such facilities serving a new refinery would not be permitted. In the Summit Power Plant Case, the State Planner found that a pipeline serving a power plant located landward of the Strip was subject to the Coastal Zone Act because it was an integral part of the facility. In the case of heavy industry located landward of the Strip, an associated docking and pipeline facility would be prohibited because it represents an integral part of the heavy industry prohibited in the Coastal Strip. Because of remaining uncertainty concerning this issue, OCZM has required in the form of a grant condition that Delaware address this issue as a part of the adoption of new regulations or other enforceable standards under the Coastal Zone Act and that the need for new criteria for determining those uses which fit within the definition of heavy industry also be addressed.

Although the Program is prohibitive in some cases, OCZM has found that the demand for new refineries and the national interest for such facilities has been carefully balanced with other national interests in the coast especially recreation and natural resource protection. As a result

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of this analysis, the Program has concluded that the national interest in recreation and natural resource protection is pre-eminent in the Coastal Strip and that the national interest in new refinery capacity can best be served by location landward of the Strip or by expansion of existing capacity.

## II. Oilports/Bulk Product Transfer Facilities

- a. Oilports/Bulk Product Transfer Facilities are prohibited in the Coastal Strip.
- b. All types of transfer facilities are permitted in the Port of Wilmington.
- c. The Delaware Program permits and promotes a monobuoy beyond the territorial sea as long as the associated pipeline terminates landward of the Coastal Strip.

Oilports are limited to the situations detailed in II b and c above. The exemption of the Port of Wilmington from the bulk product transfer facility prohibition is supportive of the Program's policies which promote the concentration of development in the Port. The Delaware CMP will also continue to assess the possibility of a deepwater port off the Atlantic Coast.

Although, again in this case, the Program prohibits these facilities in most of the Coastal Strip, OCZM has found that the Program has considered the need for oilports and permits them under the conditions listed above. The national interest in these facilities has been carefully weighed against other national interests, particularly recreation and natural resource protection.

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### III. Gas Processing Plants.

- a. Gas processing plants are prohibited in the Coastal Strip.
- b. A docking facility and pipeline is permitted in the Port of Wilmington to connect with a gas plant landward of the Strip.
- c. A pipeline is permitted which begins beyond the Territorial Sea and terminates at a gas plant landward of the Strip.

At the August 14 meeting with DOE, we discussed the question of whether a treatment and separation facility associated with a pipeline coming from beyond the Territorial Sea to a gas plant landward of the Strip could be permitted within the Strip. Without more information it is difficult to determine whether such a facility would be considered as an integral part of a prohibited use and thus be prohibited. This question will be addressed as part of the grant condition which requires new Coastal Zone Act regulations and an assessment of the need for further definition of criteria for determination of prohibited heavy industries.

Although gas processing plants are prohibited in the Coastal Strip, OCZM has found that the program has considered the national interest in and need for such facilities. Ample opportunity is available for the siting of such a facility near the Port of Wilmington, connected with a bulk product transfer facility in the Port, and in other areas landward of the Strip when connected with a bulk product transfer facility starting beyond the Territorial Sea.

### IV. OCS Support Facilities

- a. The Program permits and supports such facilities which are characteristically less than 20 acres in size. Permitted uses would

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include both tank farms and associated single use pipeline and docking facilities.

The Program recognizes and supports the national interest in OCS development and allows for the siting of these facilities within the Coastal Strip.

#### V. LNG Facilities.

a. LNG facilities are permitted in the Port of Wilmington but are prohibited in the remainder of the Coastal Strip.

b. If feasible, an LNG pipeline could locate outside the Territorial Sea, cross the Coastal Strip, and terminate at a facility landward of the Coastal Strip.

LNG fits within the category of a bulk product transfer facility and could thus locate within the Port of Wilmington or in the area of the Port with an associated pipeline from the Port.

Given that the national interest in LNG is unclear and that other national interest uses are important, the Program generally discourages the location of LNG facilities other than in the Port of Wilmington.

FERC expressed some of the same concerns as DOE including opposition to approval of the Delaware Program at this time by OCZM and a request for informal assistance in mediating a serious disagreement. As a result of FERC and DOE comments on the FEIS, the previously mentioned August 14 meeting was held with OCZM and FERC staff in attendance. As a result of this meeting, OCZM agreed to reflect the concerns expressed by FERC

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in the program approval findings, to make clarifications in the findings and to answer the letter from FERC prior to Program approval. OCZM also agreed to make the draft findings available to FERC for review and comment prior to Program approval. All of the above requests were accomplished prior to approval.

The following information is designed specifically to address the concerns expressed by FERC in its FEIS comments.

I. L.N.G.

a. An LNG facility may locate within the Port of Wilmington. The Port includes all shoreline along the Delaware River, an extensive area, within the City of Wilmington.

b. In other areas of the Coastal Strip LNG is prohibited as a bulk product transfer facility.

c. If technologically feasible, an LNG facility could be permitted if it were possible to offload outside the territorial sea with a pipeline terminating at a facility landward of the Coastal Strip.

The policy related to LNG found in Section 5.D.3. p. 57 of the Program/FEIS indicates that the Coastal Program has not found a site suitable for a facility in Delaware. This statement simply establishes a rebuttable presumption. The siting of LNG facilities is presumed not to be compatible with the State's coastal program unless it can be established that such siting can, in fact, meet all pertinent standards. Accordingly, a positive Federal consistency finding with regard to LNG facilities may take place in the event such facilities meet these pertinent standards.

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Delaware has provided extensive material to all Federal agencies in its consideration of the national interest in energy facilities, including LNG facilities. A detailed discussion can be found in the P/FEIS in §5.D.3 p. 45 and in Working Paper #7 p. 132. This consideration of the national interest has resulted in the determination that the resources of the Coastal Strip, excluding the Port of Wilmington, are of clearer national interest at this time than is the siting of LNG facilities.

## II. Natural Gas Facilities.

- a. Gas processing plants are prohibited in the Coastal Strip.
- b. A docking facility and pipeline is permitted in the Port of Wilmington to connect with a gas plant landward of the Strip.
- c. A pipeline beginning beyond the Territorial Sea and terminating at a gas plant landward of the Strip is permitted. As noted previously in the findings, a question arose at our August 14 meeting as to whether a treatment and separation facility associated with a pipeline coming from beyond the territorial sea to a gas plant landward of the Coastal Strip would be permitted within the Strip. If a pipeline is considered an integral part of a heavy industry located landward of the Strip, the pipeline would be prohibited. Without more information it is difficult to determine whether such a facility would be considered as an integral part of a prohibited use and thus prohibited. This question will be addressed as a part of the grant condition which requires new Coastal Zone Act regulations and an assessment of the need for further definition of criteria for determination of prohibited heavy industry.

Although gas processing plants are prohibited in the Coastal Strip, OCZM has found that the Program has considered the national interest

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in and the need for such facilities. Ample opportunity is available for the siting of such a facility near the Port of Wilmington, connected with a bulk product transfer facility in the Port.

The new legislatively created Energy Facility Siting Liaison Committee (EFSLC) is charged with coordinating energy siting and with assessing the need for change in energy policy in close cooperation with interested Federal agencies. The EFSLC has the responsibility for reviewing national and regional energy needs, proposing legislative change if needed, evaluating potential coastal impacts from proposed facilities, and determining site suitability including allocation of facilities to coastal and inland locations. OCZM believes that the EFSLC will prove to be a very useful tool for DOE and FERC in assuring that their future concerns are addressed.

The Department of Interior (DOI) expressed concerns about modification of the Wetlands Act to enhance the State's ability to control discharges of dredged or fill material into wetlands, or the use of Section 404(b)(1) guidelines promulgated by EPA to address this issue. The second point that DOI raised constituted a clarification of Federal consistency as it applies to OCS plans. Third, DOE requested clarification of the roles and responsibilities of the entities involved in the energy facility planning and siting process. Fourth, they expressed concern over the effectiveness of state regulatory authority over freshwater wetlands of less than 400 acres in size. Finally, DOI is concerned about the state's floodplain management and protection program.

1- A study of the legislative history of the CZMA of 1972, as amended, indicates that although Section 307(f) of the Act requires "incorpora-

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tion" of Clean Water Act (CWA) and Clean Air Act requirements into state programs, they need only be "considered" during program development and "referred to" in the program document ("Legislative History of the CZMA of 1972, as amended in 1974 and 1976, with a Section by Section Index," 1976, p. 324). Thus, parts of the Federal Acts implemented by Federal agencies would continue to be implemented by them, with the states taking the Federal activity into consideration while implementing their coastal programs. This requirement of consideration of the Federal Acts extends to after-enacted amendments. (Legislative History, p. 281) such as the Section 404(b)(1) guidelines promulgated by EPA pursuant to the CWA. Since the Section 404 program has not yet been delegated to the states, it continues to be implemented by the Army Corps of Engineers. A determination as to whether to accept delegation of Section 404 programs is up to each state, and need not be made prior to program approval. During the first year of program implementation, the Wetlands regulations will be reviewed and revisions made where necessary.

2- OCZM concurs in the Federal consistency comment. Revisions reflective of this comment will be made during the first year of implementation.

3- With regard to energy facility planning and siting, please refer to OCZM responses to comments received from FERC and DOE in this Attachment.

4- During the first year of implementation, The Wetlands Act and regulations will be reviewed and refined where necessary. Particular attention will be given to the need to better regulate wetlands of less than 400 acres in size.



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5- A state agency review of existing rules and regulations must be submitted to OCZM by October 1, 1979. This schedule must include a timetable for the promulgation of appropriate rules and regulations to ensure proper consideration of flood hazards in state decision-making.

The Environmental Protection Agency had no objections to further development of the Program, but did express concern over the extent of possible alternatives addressed in the EIS, and the mechanism for State and local plan coordination. They also questioned the 1985 population projections for Sussex County and recommended an annual program evaluation process to monitor Delaware implementation of the CMP.

1- OCZM feels that the four alternatives discussed in the EIS are sufficient and provide a comprehensive review of possible actions by the State (withdrawal of the application) and by the Federal government (delay or deny approval) in light of the major concerns outlined. We believe this discussion adequately reflects the key issues involved and, therefore, meets the intent of NEPA.

2- During the first year of program implementation the DCMP will undertake a work element to refine the coordinative mechanisms under the Land Use Planning Act. This activity will include finalization of the notification and review process, completion of the critical areas plans, and establishment of inter-governmental agreements regarding definitions, intent, and format of various statutory requirements.

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3- The differing population projections for Sussex County shown in §5.D.2 reflect a difference in methodology by the two organizations which developed them. Sussex County endorses the higher figures developed by the Delaware Population Consortium.

4- The Delaware Coastal Management Program will be evaluated by OCZM annually pursuant to Section 312 of the Coastal Zone Management Act.

The United States Coast Guard was concerned that the discussion of Deepwater Port Regulations was incomplete and incorrect, and might possibly leave the impression that these regulations do not adequately protect the marine environment.

1- This discussion was not intended to deemphasize the benefits to the marine environment of the Coast Guard regulations. Although it is not possible at this time to delete or expand this discussion since no further printings of the document are anticipated we appreciate the further clarification of these regulations.

The Department of the Army, Office of the Chief of Engineers, objected to the reliance on Working Papers since they are not included in the Program Document. Although Policy 9 on page 11 of §5.D.7 has been clarified in response to previous comments, they were still concerned with the need for a positive policy statement on navigation and port facilities. A further concern was voiced concerning the method of determining the national interest for the purpose of Policy 1 in §5.D.7.

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1- The working papers which are referenced and summarized in the Program Document have received wide circulation during the development of the Program and are still available for public scrutiny. OCZM feels this visibility is a sufficient basis for utilizing the papers as part of the Program.

2- OCZM feels that the various policies in the Program document dealing with navigation and port facilities are sufficiently encouraging and positive to meet this objection. Please refer to Policy 7 which encourages the development of the Port of Wilmington and those in §5.D.3. which encourage the development of OCS facilities.

3- Working Paper #7 which has been well summarized in §5.D.7 of the FEIS, clearly spells out that Port transportation is an important national interest. The Working Paper and the Program document emphasize the importance of the Port of Wilmington in port planning and development. Construction, maintenance, and improvement of the Port of Wilmington and approaches would thus generally be considered essential to the national interest, the Port development activities proposed in other areas would have to be carefully considered in the context of local, regional and national needs.

4- Several other comments were included in this letter which will be considered by the Program. Previous corrections to Table F-1 were mistakenly omitted from the FEIS. We apologize for this oversight.



**SUN PETROLEUM PRODUCTS COMPANY**

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

*Released per order of the FERC and the...  
... to the FERC in...*

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.

-2-

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 [a]ffect 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

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**GRANTING THE CONSENT OF CONGRESS TO  
AMENDMENTS TO THE DELAWARE-  
NEW JERSEY COMPACT**

SENATE OF CONGRESS

JAN 24 1991

**HEARING**

BEFORE THE

**SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS**

OF THE

**COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES**

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

**H.J. Res. 657**

**GRANTING THE CONSENT OF CONGRESS TO AMENDMENTS TO THE  
DELAWARE-NEW JERSEY COMPACT AND FOR OTHER REASONS**

OCTOBER 2, 1990

**Serial No. 116**



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**GRANTING THE CONSENT OF CONGRESS TO  
AMENDMENTS TO THE DELAWARE-NEW  
JERSEY COMPACT**

TUESDAY, OCTOBER 2, 1990

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:30 a.m., in room B-352, Rayburn House Office Building, Hon. Barney Frank (chairman of the subcommittee) presiding.

Present: Representatives Barney Frank and Chuck Douglas.  
Also present: Belle Cummins, assistant counsel; David A. Naimon, assistant counsel; Cynthia Blackston, chief clerk; and Charles E. Kern, minority counsel.

Mr. FRANK. Two members of the subcommittee being present, we will commence the hearing.  
This is a meeting of the Subcommittee on Administrative Law and Governmental Relations.

We will convene the hearing on House Joint Resolution 657, which would grant the consent of the Congress to amendments to the Delaware-New Jersey Compact.  
Mr. Carper.

**STATEMENT OF HON. THOMAS R. CARPER, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF DELAWARE**

Mr. CARPER. I am happy to wait for Bill Hughes.

Mr. FRANK. I am not, so please testify.

You can get a favorable report out of this committee or you get courtesy, but not both.

I will note for the record that Mr. Hughes first addressed me on this and he and Mr. Carper have both pushed for quick action.

Mr. CARPER. Let me introduce several people: Secretary of State Mike Harkins; Frank Blandi, legal counsel to the Delaware River Bay Commission, as well.

Governor Florio is represented, too, I believe. The amendments to the compact that have been forwarded to the Congress enjoy the overwhelming support of the legislature of New Jersey, the overwhelming support of the legislature of Delaware, the support of both Governors, the support of both parties.

I believe a great deal of care has been taken to address the concerns raised during the hearing process in both States and the re-

(1)

sulting protections contained in these amendments, I think reflect fairly the widespread support that these proposals have received in our two States.

There are in Delaware a few people who are not all together satisfied with the final product.

I would ask you to leave the record open for a sufficient time so that those individuals may have time to submit their written statements for the record.

Mr. FRANK. It has been ratified by the appropriate legislatures in New Jersey and Delaware?

Mr. CARPER. That is correct.

Mr. FRANK. Mr. Douglas.

Mr. DOUGLAS. No questions.

Mr. FRANK. No further questions.

[The bill, H. J. Res. 657, follows:]

101st CONGRESS  
2d Session  
**H. J. RES. 657**

Granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 1990

Mr. HUGHES introduced the following joint resolution; which was referred to the Committee on the Judiciary

**JOINT RESOLUTION**

Granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes.

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, being 58 Laws of Delaware, chapter 145, and Public Law 1961, chapter 66 of the Laws of New Jersey, have provided, subject to the consent of Congress, for a compact, known as the Delaware-New Jersey Compact, establishing "The Delaware River and Bay Authority" for the development of the area in both States bordering the said Delaware River and Bay; and

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, subject to the consent of Congress, for an amendment to the Delaware-New Jersey Compact to authorize the Delaware

River and Bay Authority to undertake economic development projects, other than major projects, at its own initiative, and to undertake major projects after securing only such approvals as may be required by the legislation of the State in which the project is to be located, except the Authority is prohibited from undertaking any major project to be located in the Delaware River and Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States: Now, therefore, be it

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*
- 3 SECTION 1. CONSENT OF CONGRESS.
- 4 The Congress consents to the amendments to the Delaware-New Jersey Compact which have been enacted by the
- 5 States of Delaware and New Jersey, so that the Delaware-
- 6 New Jersey Compact reads substantially as follows:

"DELAWARE-NEW JERSEY COMPACT

"Whereas the States of Delaware and New Jersey are separated by the Delaware River and Bay which creates a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two States thereby hindering the economic growth and development of those areas in both States which border the River and Bay; and

"Whereas the pressures of existing trends from increasing traffic, growing population, and greater industrialization indicate the need for closer cooperation between the two States in order to advance the economic develop-

ment and to improve crossings, transportation, terminal, and other facilities of the area; and

"Whereas the financing, construction, operation and maintenance of such crossings, transportation, terminal, and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the two States and their citizens, the region and Nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

"Whereas the Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C. §1701) and Public Law 1961, c. 66 (C. 32:11E-1 et seq.) of the Pamphlet Laws of New Jersey, with the consent of the United States Congress by Joint Resolution being Public Law 87-878, 87th Congress, H.J. Res. 783, September 20, 1962, created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both States which border the Delaware River and Bay by the financing, development, construction, operation, and maintenance of crossings, transportation, or terminal facilities, and other facilities of commerce, and by providing for overall planning for the future economic development of those areas; and

"Whereas the economic growth and development of areas of both States will be further advanced by authorizing the Authority to undertake economic development projects, other than major projects, as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the State in which the project is to be located,

except that the Authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by current legislation, of the two States; and

“Whereas the natural environment of those areas in the two States which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the Authority shall be in complete compliance with all applicable environmental protection laws and regulations before the Authority may undertake the planning, development, construction, or operation of any project, other than a crossing:

1 “NOW, THEREFORE, the State of Delaware and the  
 2 State of New Jersey do hereby solemnly covenant and agree,  
 3 each with the other as follows:

4 “ARTICLE I

5 “SHORT TITLE

6 “This Compact shall be known as the ‘Delaware-New  
 7 Jersey Compact’.

8 “ARTICLE II

9 “DEFINITIONS

10 “ ‘Crossing’ means any structure or facility adapted for  
 11 public use in crossing the Delaware River or Bay between  
 12 the States, whether by bridge, tunnel, ferry, or other device,  
 13 and by any vehicle or means of transportation of persons or  
 14 property, as well as all approaches thereto and connecting

1 and service routes and all appurtenances and equipment  
 2 relating thereto.

3 “ ‘Transportation facility’ and ‘terminal facility’ means  
 4 any structure or facility other than a crossing, as herein de-  
 5 fined, adapted for public use within each of the States party  
 6 hereto in connection with the transportation of persons or  
 7 property, including railroads, docks, wharves, piers, slips, basins, stor-  
 8 ports and aircraft, sheds, warehouses, and every means or vehicle of  
 9 transportation now or hereafter in use for the transportation  
 10 of persons and property or the storage, handling or loading of  
 11 property, as well as all appurtenances and equipment related  
 12 thereto.

13  
 14 “ ‘Commerce facility or development’ means any struc-  
 15 ture or facility adapted for public use or any development for  
 16 a public purpose within each of the States party hereto in  
 17 connection with recreational and commercial fishery develop-  
 18 ment, recreational marina development, aquaculture (marine  
 19 farming), shoreline preservation and development (including  
 20 wetlands and open-lands acquisition, active recreational and  
 21 park development, beach restoration and development,  
 22 dredge spoil disposal and port-oriented development), foreign  
 23 trade zone site development, manufacturing and industrial fa-  
 24 cilities, and other facilities of commerce which, in the judg-

1 ment of the Authority, are required for the sound economic  
2 development of the area.

3 " 'Appurtenances' and 'Equipment' mean all works,  
4 buildings, structures, devices, appliances, and supplies, as  
5 well as every kind of mechanism, arrangement, object, or  
6 substance related to and necessary or convenient for the  
7 proper construction, equipment, maintenance, improvement,  
8 and operation of any crossing, transportation facility or ter-  
9 minal facility, or commerce facility, or development.

10 " 'Project' means any undertaking or program for the  
11 acquisition or creation of any crossing, transportation facility  
12 or terminal facility, or commerce facility or development, or  
13 any part thereof, as well as for the operation, maintenance,  
14 and improvement thereof.

15 " 'Major Project' means any project, other than a cross-  
16 ing, having or likely to have significant environmental im-  
17 pacts on the Delaware River and Bay, its shorelines or estu-  
18 aries, or any other area in the State of Delaware or the New  
19 Jersey counties of Cape May, Cumberland, Gloucester, and  
20 Salem, as determined in accordance with State law by the  
21 environmental agency of the State in which the major project  
22 is to be located.

23 " 'Tunnel' means a tunnel of one or more tubes.

1 " 'Governor' means any person authorized by the Con-  
2 stitution and law of each State to exercise the functions,  
3 powers, and duties of that office.

4 " 'Authority' means the Authority created by this Com-  
5 pact or any agency successor thereto.

6 "The singular whenever used in this Compact shall in-  
7 clude the plural, and the plural shall include the singular.

8 "ARTICLE III

9 "FAITHFUL COOPERATION

10 "They agree to and pledge, each to the other, faithful  
11 cooperation in the effectuation of this Compact and any  
12 future amendment or supplement thereto, and of any legisla-  
13 tion expressly in implementation thereof hereafter enacted,  
14 and in the planning, development, financing, construction,  
15 operation, maintenance, and improvement of all projects en-  
16 trusted to the authority created by this Compact.

17 "ARTICLE IV

18 "ESTABLISHMENT OF AGENCY; PURPOSES

19 "The two States agree that there shall be created and  
20 they do hereby create a body politic, to be known as 'The  
21 Delaware River and Bay Authority' (for brevity hereinafter  
22 referred to as the 'Authority'), which shall constitute an  
23 agency of government of the State of Delaware and the State  
24 of New Jersey for the following general public purposes, and

1 which shall be deemed to be exercising essential government  
 2 functions in effectuating such purposes, to wit:

3     “(a) The planning, financing, development, construction,  
 4 purchase, lease, maintenance, improvement, and operation of  
 5 crossings between the States of Delaware and New Jersey  
 6 across the Delaware River or Bay at any location south of  
 7 the boundary line between the State of Delaware and the  
 8 Commonwealth of Pennsylvania as extended across the Dela-  
 9 ware River to the New Jersey shore of said River, together  
 10 with such approaches or connections thereto as in the judg-  
 11 ment of the Authority are required to make adequate and  
 12 efficient connections between such crossings and any public  
 13 highway or other routes in the State of Delaware or in the  
 14 State of New Jersey; and

15     “(b) The planning, financing, development, construction,  
 16 purchase, lease, maintenance, improvement, and operation of  
 17 any transportation or terminal facility within the State of  
 18 Delaware or the New Jersey counties of Cape May, Cumber-  
 19 land, Gloucester, and Salem, which facility, in the judgment  
 20 of the Authority, is required for the sound economic develop-  
 21 ment of the area; and

22     “(c) The planning, financing, development, construction,  
 23 purchase, lease, maintenance, improvement, and operation of  
 24 any commerce facility or development within the State of  
 25 Delaware or the New Jersey counties of Cape May, Cumber-

1 land, Gloucester, and Salem, which in the judgment of the  
 2 Authority is required for the sound economic development of  
 3 the area; and

4     “(d) The performance of such other functions as may be  
 5 hereafter entrusted to the Authority by concurrent legislation  
 6 expressly in implementation hereof.

7     “The Authority shall not undertake any major project  
 8 or part thereof without having first secured such approvals as  
 9 may be required by legislation of the State in which the  
 10 project is to be located.

11     “The Authority shall not undertake any major project,  
 12 or part thereof to be located in the Delaware River or Bay,  
 13 including, without limitation, any deep-water port or super-  
 14 port, without having first secured approval thereof by concu-  
 15 rent legislation of the two States expressly in implementation  
 16 thereof.

17     “The Authority shall not undertake any major project  
 18 or part thereof without first giving public notice and holding  
 19 a public hearing, if requested, on any proposed major project,  
 20 in accordance with the law of the State in which the major  
 21 project is to be located. Each State shall provide by law for  
 22 the time and manner for the giving of such public notice, the  
 23 requesting of a public hearing and the holding of such public  
 24 hearings.



“ARTICLE V

“ARTICLE VI

“COMMISSIONERS

“BOARD ACTION

1 “The Authority shall consist of twelve Commissioners,  
 2 six of whom shall be residents of and qualified to vote in and  
 3 the State of Delaware, and six of  
 4 whom shall be residents of and qualified to vote in and shall  
 5 be appointed from the State of New Jersey; not more than  
 6 three of the Commissioners of each State shall be of the same  
 7 political party; the Commissioners for each State shall be ap-  
 8 pointed in the manner fixed and determined from time to time  
 9 by the law of each State respectively. Each Commissioner  
 10 shall hold office for a term of five years, and until his succes-  
 11 sor shall have been appointed and qualified, but the terms of  
 12 the first Commissioners shall be so designated that the term  
 13 of at least one Commissioner from each State shall expire  
 14 each year. All terms shall run to the first day of July. Any  
 15 vacancy, however created, shall be filled for the unexpired  
 16 term only. Any Commissioner may be suspended or removed  
 17 from office as provided by law of the State from which he  
 18 shall be appointed.

1 “The Commissioners shall have charge of the Authori-  
 2 ty’s property and affairs and shall, for the purpose of doing  
 3 business, constitute a Board, but no action of the Commis-  
 4 sioners shall be binding or effective unless taken at a meeting  
 5 at which at least four Commissioners from each State are  
 6 present, and unless at least four Commissioners from each  
 7 State shall vote in favor thereof. The vote of any one or more  
 8 of the Commissioners from each State shall be subject to can-  
 9 cellation by the Governor of such State at any time within 10  
 11 days (Saturdays, Sundays, and public holidays in the particu-  
 12 lar State excepted) after receipt at the Governor’s office of a  
 13 certified copy of the minutes of the meeting at which such  
 14 vote was taken. Each State may provide by law for the  
 15 manner of delivery of such minutes and for notification of the  
 16 action thereon.

“ARTICLE VII

“GENERAL POWERS

1 “For the effectuation of its authorized purposes, the  
 2 Authority is hereby granted the following powers:  
 3 (a) To have perpetual succession.  
 4 (b) To adopt and use an official seal.  
 5 (c) To elect a chairman and a vice chairman from  
 6 among the Commissioners. The chairman and vice chairman

1 shall be elected from different States and shall each hold  
 2 office for two years. The chairmanship and vice chairmanship  
 3 shall be alternated between the two States.

4 “(d) To adopt bylaws to govern the conduct of its affairs  
 5 by the Board of Commissioners, and it may adopt rules and  
 6 regulations and may make appropriate orders to carry out  
 7 and discharge its powers, duties, and functions, but no bylaw  
 8 or rule, regulation, or order shall take effect until it has been  
 9 filed with the Secretary of State of each State or in such  
 10 other manner in each State as may be provided by the law  
 11 thereof. In the establishment of rules, regulations, and orders  
 12 respecting the use of any crossing, transportation, or terminal  
 13 facility or commerce facility or development owned or operat-  
 14 ed by the Authority, including approach roads, it shall con-  
 15 sult with appropriate officials of both States in order to  
 16 insure, as far as possible, uniformity of such rules, regula-  
 17 tions, and orders with the laws of both States.

18 “(e) To appoint or employ such other officers, agents,  
 19 attorneys, engineers, and employees as it may require for the  
 20 performance of its duties and to fix and determine their quali-  
 21 fications, duties, compensation, pensions, terms of office and  
 22 all other conditions and terms of employment and retention.

23 “(f) To enter into contracts and agreements with either  
 24 State or with the United States, or with any public body,  
 25 department, or other agency of either State or of the United

1 States or with any individual, firm, or corporation deemed  
 2 necessary or advisable for the exercise of its purposes and  
 3 powers.

4 “(g) To accept from any government or governmental  
 5 department, agency, or other public or private body, or from  
 6 any other source, grants, or contributions of money or prop-  
 7 erty as well as loans, advances, guarantees, or other forms of  
 8 financial assistance which it may use for or in aid of any of its  
 9 purposes.

10 “(h) To acquire (by gift, purchase, or condemnation),  
 11 own, hire, lease, use, operate, and dispose of property,  
 12 whether real, personal, or mixed, or of any interest therein,  
 13 including any rights, franchise and property for any crossing,  
 14 facility, or other project owned by another and which the  
 15 Authority is authorized to own and operate.

16 “(i) To designate as express highways, and control  
 17 public and private access thereto, all or any approaches to  
 18 any crossing or other facility of the Authority for the purpose  
 19 of connecting the same with any highway or other route in  
 20 either State.

21 “(j) To borrow money and to evidence such loans by  
 22 bonds, notes, or other obligations, either secured or unse-  
 23 cured, and either in registered or unregistered form, and to  
 24 fund or refund such evidences of indebtedness, which may be  
 25 executed with facsimile signatures of such persons as may be

1 its control, any and all powers which might be exercised by a  
 2 natural person or a private corporation in connection with  
 3 similar property and affairs.

4 "ARTICLE VIII

5 "ADDITIONAL POWERS

6 "For the purpose of effectuating the authorized pur-  
 7 poses of the Authority, additional powers may be granted to  
 8 the Authority by legislation of either State without the con-  
 9 currence of the other, and may be exercised within such  
 10 State, or may be granted to the Authority by Congress and  
 11 exercised by it; but no additional duties or obligations shall be  
 12 undertaken by the Authority under the law of either State or  
 13 of Congress without authorization by the law of both States.

14 "ARTICLE IX

15 "EMINENT DOMAIN

16 "If the Authority shall find and determine that any  
 17 property or interest therein is required for a public use in  
 18 furtherance of the purposes of the Authority, said determina-  
 19 tion shall not be affected by the fact that such property has  
 20 theretofore been taken over or is then devoted to a public  
 21 use, but the public use in the hands or under the control of  
 22 the Authority shall be deemed superior to the public use for  
 23 which it has theretofore been taken or to which it is then  
 24 devoted. The Authority shall not exercise the power of emi-  
 25 nent domain granted herein to acquire any property, other

1 designated by the Authority and by a facsimile of its corpo-  
 2 rate seal.

3 "(k) To procure and keep in force adequate insurance or  
 4 otherwise provide for the adequate protection of its property,  
 5 as well as to indemnify it or its officers, agents, or employees  
 6 against loss or liability with respect to any risk to which it or  
 7 they may be exposed in carrying out any function hereunder.

8 "(l) To grant the use of by franchise, lease, or other-  
 9 wise, and to make charges for the use of any crossing, facili-  
 10 ty, or other project or property owned or controlled by it.

11 "(m) To exercise the right of eminent domain to acquire  
 12 any property or interest therein.

13 "(n) To determine the exact location, system, and char-  
 14 acter of and all other matters in connection with any and all  
 15 crossings, transportation, or terminal facilities, commerce fa-  
 16 cilities or developments or other projects which it may be  
 17 authorized to own, construct, establish, effectuate, operate,  
 18 or control.

19 "(o) To exercise all other powers not inconsistent with  
 20 the Constitutions of the two States or of the United States,  
 21 which may be reasonably necessary or incidental to the effec-  
 22 tuation of its authorized purposes or to the exercise of any of  
 23 the foregoing powers, except the power to levy taxes or as-  
 24 sessments, and generally to exercise in connection with its  
 25 property and affairs, and in connection with property within

1 than a crossing, devoted to a public use, of either State, or of  
 2 any municipality, local government, agency, public authority  
 3 or commission, or of two or more of them, for any purpose  
 4 other than a crossing, without having first secured the au-  
 5 thorization of the holder of the title to the land in question  
 6 and such other approvals as may be required by legislation of  
 7 the State in which the project is to be located. The Authority  
 8 shall not exercise the power of eminent domain in connection  
 9 with any commerce facility or development.

10 "In any condemnation proceedings in connection with  
 11 the acquisition by the Authority of property or property  
 12 rights of any character in either State and the right of inspec-  
 13 tion and immediate entry thereon, through the exercise by it  
 14 of its power of eminent domain, any existing or future law or  
 15 rule of court of the State in which such property is located  
 16 with respect to the condemnation of property for the con-  
 17 struction, reconstruction, and maintenance of highways  
 18 therein shall control. The Authority shall have the same  
 19 power and authority with respect thereto as the State agency  
 20 named in any such law, provided that nothing herein con-  
 21 tained shall be construed as requiring joint or concurrent  
 22 action by the two States with respect to the enactment,  
 23 repeal, or amendment of any law or rule of court on the  
 24 subject of condemnation under which the Authority may pro-  
 25 ceed by virtue of this Article.

1 "If the established grade of any street, avenue, high-  
 2 way, or other route shall be changed by reason of the con-  
 3 struction by the Authority of any work so as to cause loss or  
 4 injury to any property abutting on such street, avenue, high-  
 5 way, or other route, the Authority may enter into voluntary  
 6 agreements with such abutting property owners and pay rea-  
 7 sonable compensation for any loss or injury so sustained,  
 8 whether or not it be compensable as damages under the con-  
 9 demnation law of the State.

10 "The power of the Authority to acquire property by  
 11 condemnation shall be a continuing power, and no exercise  
 12 thereof shall be deemed to exhaust it.

### 13 "ARTICLE X

#### 14 "REVENUE AND APPLICATION

15 "The Authority is hereby authorized to establish, levy,  
 16 and collect such tolls and other charges as it may deem nec-  
 17 essary, proper, or desirable in connection with any crossing,  
 18 transportation, or terminal facility, commerce facility or de-  
 19 velopment or other project which it is or may be authorized  
 20 at any time to construct, own, operate, or control, and the  
 21 aggregate of said tolls and charges shall be at least sufficient  
 22 (1) to meet the combined expenses of operation, maintenance  
 23 and improvement thereof, (2) to pay the cost of acquisition or  
 24 construction, including the payment, amortization, and retire-  
 25 ment of bonds or other securities or obligations assumed,

1 issued, or incurred by the Authority, together with interest  
 2 thereon, and (3) to provide reserves for such purposes; and  
 3 the Authority is hereby authorized and empowered, subject  
 4 to prior pledges, if any, to pledge such tolls and other reve-  
 5 nues or any part thereof as security for the repayment with  
 6 interest of any moneys borrowed by it or advanced to it for  
 7 its authorized purposes and as security for the satisfaction of  
 8 any other obligations assumed by it in connection with such  
 9 loans or advances. There shall be allocated to the cost of the  
 10 acquisition, construction, operation, maintenance, and im-  
 11 provement of such facilities and projects such proportion of  
 12 the general expenses of the Authority as it shall deem prop-  
 13 erty chargeable thereto.

14 "ARTICLE XI

15 "COVENANT WITH BONDHOLDERS

16 "The two said States covenant and agree with each  
 17 other and with the holders of any bonds or other securities or  
 18 obligations of the Authority, assumed, issued, or incurred by  
 19 it and as security for which there may be pledged the tolls  
 20 and revenues or any part thereof of any crossing, transporta-  
 21 tion, or terminal facility, commerce facility or development or  
 22 other project, that the two said States will not, so long as  
 23 any of such bonds or other obligations remain outstanding  
 24 and unpaid, diminish, or impair the power of the Authority to  
 25 establish, levy, and collect tolls and other charges in connec-

1 tion therewith, and that neither of the two said States will, so  
 2 long as any of such bonds or other obligations remain out-  
 3 standing and unpaid, authorize any crossing of the Delaware  
 4 River or Delaware Bay south of the line mentioned in Article  
 5 IV(a) of this Compact by any person or body other than the  
 6 Authority, unless, in either case, adequate provision shall be  
 7 made by law for the protection of those advancing money  
 8 upon such obligations.

9 "ARTICLE XII

10 "SECURITIES LAWFUL INVESTMENTS

11 "The bonds or other securities or obligations which may  
 12 be issued by the Authority pursuant to this Compact, or any  
 13 amendments hereof or supplements hereto, are hereby de-  
 14 clared to be negotiable instruments, and are hereby made  
 15 securities in which all State and municipal officers and bodies  
 16 of each State, all banks, bankers, trust companies, savings  
 17 banks, building and loan associations, saving and loan asso-  
 18 ciations, investment companies and other persons carrying on  
 19 a banking business, all insurance companies, insurance asso-  
 20 ciations and other persons carrying on an insurance business,  
 21 and all administrators, executors, guardians, trustees, and  
 22 other fiduciaries and all other persons whatsoever who are  
 23 now or may hereafter be authorized to invest in bonds or  
 24 other obligations of either State may properly and legally  
 25 invest any funds, including capital, belonging to them or

1 within their control, and said obligations are hereby made  
 2 securities which may properly and legally be deposited with  
 3 and shall be received by any State or municipal officer or  
 4 agency of either State for any purpose for which the deposit  
 5 of bonds or other obligations of such State is now or may  
 6 hereafter be authorized.

#### 7 "ARTICLE XIII

##### 8 "TAX STATUS

9 "The powers and functions exercised by the Authority  
 10 under this Compact and any amendments hereof or supple-  
 11 ments hereto are and will be in all respects for the benefit of  
 12 the people of the States of Delaware and New Jersey, the  
 13 region and Nation, for the increase of their commerce and  
 14 prosperity and for the enhancement of their general welfare.  
 15 To this end, the Authority shall be regarded as performing  
 16 essential governmental functions in exercising such powers  
 17 and functions and in carrying out the provisions of this Com-  
 18 pact and of any law relating thereto, and shall not be re-  
 19 quired to pay any taxes or assessments of any character,  
 20 levied by either State or political subdivision thereof, upon  
 21 any of the property used by it for such purposes, or any  
 22 income or revenue therefrom, including any profit from a sale  
 23 or exchange. The bonds or other securities or obligations  
 24 issued by the Authority, their transfer and the interest paid  
 25 thereon or income therefrom, including any profit from a sale

1 or exchange, shall at all times be free from taxation by either  
 2 State or any subdivision thereof.

#### 3 "ARTICLE XIV

##### 4 "JURISDICTION; USE OF LANDS

5 "Each of the two States hereby consents to the use and  
 6 occupancy by the Authority of any lands and property of the  
 7 Authority in such State for the construction, operation, main-  
 8 tenance or improvement of any crossing, transportation, or  
 9 terminal facility, commerce facility or development, or other  
 10 project which it is or may be authorized at any time to con-  
 11 struct, own, or operate, including lands lying under water.

#### 12 "ARTICLE XV

##### 13 "REVIEW AND ENFORCEMENT OF RULES

14 "Judicial proceedings to review any bylaw, rule, regula-  
 15 tion, order, or other action of the Authority or to determine  
 16 the meaning or effect thereof may be brought in such court of  
 17 each State, and pursuant to such law or rules thereof, as a  
 18 similar proceeding with respect to any agency of such State  
 19 might be brought.  
 20 "Each State may provide by law what penalty or penal-  
 21 ties shall be imposed for violation of any lawful rule, regula-  
 22 tion, or order of the Authority, and, by law or rule of court,  
 23 for the manner of enforcing the same.

1 "ARTICLE XVI

2 "NO PLEDGE OF CREDIT

3 "The Authority shall have no power to pledge the credit  
4 or to create any debt or liability of the State of Delaware, of  
5 the State of New Jersey or of any other agency or of any  
6 political subdivision of said States.

7 "ARTICLE XVII

8 "LOCAL COOPERATION AND AGREEMENTS

9 "(a) All municipalities, political subdivisions, and every  
10 department, agency, or public body of each of the States are  
11 hereby authorized and empowered to cooperate with, aid and  
12 assist the Authority in effectuating the provisions of this  
13 Compact and of any amendment hereof or supplement hereto.

14 "(b) The Authority is authorized and empowered to co-  
15 operate with each of the States, or any political subdivision  
16 thereof, and with any municipality, local government,  
17 agency, public authority or commission of the foregoing, in  
18 connection with the acquisition, planning, rehabilitation, con-  
19 struction or development of any project, other than a cross-  
20 ing, and to enter into an agreement or agreements, subject to  
21 compliance with the laws of the State in which the project is  
22 to be located, with each of the States, or any political subdi-  
23 vision thereof, and with any municipality, county, local gov-  
24 ernment, agency, public authority, or commission or with two  
25 or more of them, for or relating to such purposes.

1 "(c) The Authority and the city, town, municipality, or  
2 other political subdivision in which any project, other than a  
3 crossing, is to be located are hereby authorized and empow-  
4 ers, subject to compliance with the laws of the State in which  
5 the project is to be located, to enter into an agreement or  
6 agreements to provide which local laws, resolutions, ordi-  
7 nances, rules, and regulations, if any, of the city, town, mu-  
8 nicipality, or other political subdivision affected by such  
9 project shall apply to such project. All other existing local  
10 laws, resolutions, ordinances or rules and regulations not pro-  
11 vided for in the agreement shall be applicable to the project,  
12 other than a crossing. All local laws, resolutions, ordinances  
13 or rules and regulations enacted after the date of the agree-  
14 ment shall not be applicable to such projects unless made  
15 applicable by the agreement or any modification thereto.

16 "ARTICLE XVIII

17 "DEPOSITARIES

18 "All banks, bankers, trust companies, savings banks and  
19 other persons carrying on a banking business under the laws  
20 of either State are authorized to give security for the safe-  
21 keeping and prompt payment of moneys of the Authority de-  
22 posited by it with them, in such manner and form as may be  
23 required by and may be approved by the Authority, which  
24 security may consist of a good and sufficient undertaking  
25 with such sureties as may be approved by the Authority, or

1 may consist of the deposit with the Authority or other deposi-  
 2 tory approved by the Authority as collateral of such securi-  
 3 ties as the Authority may approve.

4 "ARTICLE XIX

5 "AGENCY POLICE

6 "Members of the police force established by the Author-  
 7 ity, regardless of their residence, shall have in each State, on  
 8 the crossings, transportation or terminal facilities, commerce  
 9 facilities or developments and other projects and the ap-  
 10 proaches thereto, owned, operated, or controlled by the Au-  
 11 thority, and at such other places and under such circum-  
 12 stances as the law of each State may provide, all the powers  
 13 of investigation, detention, and arrest conferred by law on  
 14 peace officers, sheriffs, or constables in such State or usually  
 15 exercised by such officers in each State.

16 "ARTICLE XX

17 "REPORTS AND AUDITS

18 "The Authority shall make annual reports to the Gover-  
 19 nors and Legislatures of the State of Delaware and the State  
 20 of New Jersey, setting forth in detail its operations and  
 21 transactions, and may make such additional reports from time  
 22 to time to the Governors and Legislatures as it may deem  
 23 desirable.

24 "It shall, at least annually, cause an independent audit  
 25 of its fiscal affairs to be made, and shall furnish a copy of

1 such audit report together with such additional information or  
 2 data with respect to its affairs as it may deem desirable to the  
 3 Governors and Legislatures of each State.

4 "It shall furnish such information or data with respect  
 5 to its affairs as may be requested by the Governor or Legisla-  
 6 ture of each State.

7 "ARTICLE XXI

8 "BOUNDARIES UNAFFECTED

9 "The existing territorial or boundary lines of the States  
 10 or the jurisdiction of the two States established by said  
 11 boundary lines shall not be changed hereby.

12 "ARTICLE XXII

13 "ENVIRONMENTAL PROTECTION

14 "(a) The planning, development, construction, and oper-  
 15 ation of any project, other than a crossing, shall comply with  
 16 all environmental protection laws, regulations, directives, and  
 17 orders, including, without limitation, any coastal zone laws,  
 18 wetlands laws, or subaqueous land laws or natural resources  
 19 laws, now or hereinafter enacted, or promulgated by the  
 20 State in which the project, or any part thereof, is located.

21 "(b) The planning, development, construction, and oper-  
 22 ation of any project, other than a crossing, to be located in  
 23 the Delaware River and Bay shall comply with all environ-  
 24 mental protection laws, regulations, directives, and orders,  
 25 including, without limitation, any coastal zone laws, wetlands



1 laws, subaqueous land laws or natural resource laws now or  
2 hereinafter enacted or promulgated by either State.

3       “(c) The planning, development, construction, and oper-  
4 ation of any project, other than a crossing, located in the  
5 coastal zone of Delaware (as defined in Chapter 70 of Title 7  
6 of the Delaware Code, as in effect on January 1, 1989), shall  
7 be subject to the same limitations, requirements, procedures,  
8 and appeals as apply to any other person under the Delaware  
9 Coastal Zone Act, Chapter 70 of Title 7 of the Delaware  
10 Code, as in effect on January 1, 1989. Nothing in this Com-  
11 pact shall be deemed to pre-empt, modify, or supersede any  
12 provision of the Delaware Coastal Zone Act, Chapter 70 of  
13 Title 7 of the Delaware Code, as in effect on January 1,  
14 1989. The interpretation and application of this paragraph  
15 shall be governed by the laws of the State of Delaware and  
16 be determined by the courts of the State of Delaware.

17       “(d) The planning, development, construction, and oper-  
18 ation of any project, other than a crossing, located in New  
19 Jersey, shall be subject to the provisions of New Jersey law,  
20 when applicable, including but not limited to the Wetlands  
21 Act of 1970, N.J.S.A. 13:9A-1, et seq. and the Coastal  
22 Area Facility Review Act, N.J.S.A. 13:19-1, et seq.”.

23 **SEC. 2. FEDERAL JURISDICTION NOT AFFECTED.**

24 Nothing contained in the compact set forth in section 1  
25 shall be construed as impairing or in any manner affecting

1 any right or jurisdiction of the United States in and over the  
2 area which forms the subject of such compact.

3 **SEC. 3. AUTHORITY FOR ADDITIONAL TOLL BRIDGES.**

4       Section 4 of the Act entitled “An Act to authorize the  
5 State of Delaware, by and through its State highway depart-  
6 ment, to construct, maintain, and operate a toll bridge across  
7 the Delaware River near Wilmington, Delaware” approved  
8 July 13, 1946 (60 Stat. 533), as amended by the Act of June  
9 27, 1951 (66 Stat. 91) and the Act of October 3, 1962 (76  
10 Stat. 741-742), is amended—

11       (1) by striking “and” at the end of paragraph (3);

12       (2) by striking the period at the end of paragraph  
13       (4) and inserting “; and”; and

14       (3) by adding after paragraph (4) the following:

15       “(5) to pay the cost of any project which the  
16 Delaware River and Bay Authority is or may be au-  
17 thorized to construct, own, operate, or control, under  
18 the Delaware-New Jersey Compact, as consented to  
19 by the Congress.”.

20 **SEC. 4. REQUIREMENTS OF OTHER LAWS.**

21 In addition to any other requirement of law, any project  
22 constructed by the Delaware River and Bay Authority in and  
23 over the navigable waters of the United States shall be sub-  
24 ject to the procedural requirements of section 2(e) of the Fish  
25 and Wildlife Coordination Act (16 U.S.C. 662(e)).

1 SEC. 5. CONSTRUCTION.

2 Nothing in this resolution shall be construed as—

3 (1) amending or superseding the provisions of the

4 Act of September 27, 1961 (75 Stat. 688); or

5 (2) granting advance consent of Congress for the

6 performance by the Delaware River and Bay Authority

7 of other functions, as contemplated by Article IV,

8 paragraph (d) of the compact set forth in section 1 or

9 for the assumption by the Authority of additional

10 powers, as contemplated by Article VIII of such

11 compact.

12 SEC. 6. DISCLOSURE OF INFORMATION.

13 The right is reserved to the Congress or any of its

14 standing committees to require of the Delaware River and

15 Bay Authority the disclosure and furnishing of such informa-

16 tion and data as is deemed appropriate by the Congress or

17 any committee thereof having jurisdiction of the subject

18 matter of this resolution.

19 SEC. 7. RESERVATION BY THE CONGRESS.

20 The right to alter, amend, or repeal this joint resolution

21 is expressly reserved.

○

Mr. FRANK. We will now hear from Mr. Hughes.

STATEMENT OF HON. WILLIAM J. HUGHES, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. HUGHES. Thank you, Mr. Chairman and members of the committee for scheduling this particular hearing so expeditiously.

Mr. Chairman, H.J. Res. 657 is needed to implement legislation enacted by both New Jersey and Delaware.

The compact, as a document, governs the Delaware River and Bay Authority, which is charged with maintaining the bridge and ferry crossings between New Jersey and Delaware, the Delaware Memorial Bridge, and the Cape May, NJ, Lewes, DE, ferry.

It makes two changes.

It increases the size of the board from 10 to 12, 6 from Delaware, 6 from New Jersey, and it gives economic development authority in southern New Jersey and in Delaware to the authority so that they can develop projects subject to the approval of both Governors and the legislature in the State where the project is to be located.

It does not change the funding formula. This particular authority has been very, very efficient.

They have managed the bridge and the ferry, which initially was a tremendous loser in revenues, in a very efficient manner.

The bridge toll, for instance, over the Delaware Memorial Bridge is only 75 cents.

There is no expectancy that that would increase, but they would like the authority to engage in some economic development projects subject to the approval of both States.

That, in essence, is what it does.

I have a statement for the record.

Mr. FRANK. We will put that statement in the record.

[The prepared statement of Mr. Hughes follows:]

PREPARED STATEMENT OF HON. WILLIAM J. HUGHES, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF NEW JERSEY

Development of the Proposed Amendment to the Compact

The initiative to amend the Delaware-New Jersey Compact, which had been unchanged since its adoption by each state in 1961 (53 Del. L., c.145 P.L. 1961, Chapter 66 of the Laws of New Jersey) and consented to by Congress in 1962 (Pub. L. No. 87-678, 76 Stat. 560) began with a meeting between Governor Michael N. Castle of Delaware and Governor Thomas H. Kean of New Jersey in 1985. At that meeting, Governor Kean noted that New Jersey is party to two bi-state transportation authorities with the states of New York and Pennsylvania respectively. Both of these other authorities (the Port Authority of New York and New Jersey and the Delaware River Port Authority) enjoy the power to use toll revenues for public purposes other than crossings. The governors agreed at that meeting that amendments to the Delaware-New Jersey Compact (the "Compact") should be adopted in order to remove existing restrictions on the Delaware River and Bay Authority's to utilize toll revenue for public purposes other than the maintenance and operation of its toll crossings, the Delaware Memorial Twin Bridges and the ferry which crosses the Delaware Bay between Cape May, New Jersey, and Lewes, Delaware. The existing restrictions on the Authority's use of revenues are dealt with in Section 3 House Joint Resolution 657 (hereinafter the "Joint Resolution"), which amends the Delaware Bridge Act of 1946 (60 Stat. 533) to permit the use of toll revenue for authorized projects of the Authority, and

in Section 5 of the Joint Resolution which eliminates Section 3(b) of Public Law No. 87-678 by which Congress approved the existing Compact (76 Stat. 560) but withheld its consent for the use of tolls for transportation or terminal facilities as defined in the Compact.

On July 10, 1989, the New Jersey legislature enacted Senate Bill No. 3702 amending the Compact. This bill was signed into law by Governor Kean on October 18, 1989. The Delaware General Assembly passed identical legislation on June 20, 1990, and it was signed into law by Governor Castle on June 28, 1990. Both statutes authorized the governors of each state to apply on the states' behalf to Congress for its consent and approval to the amended Compact as required by Article I, section 10 of the Federal Constitution. Both Governor Florio of New Jersey and Governor Castle of Delaware have done so, and the amended Compact, as approved by the legislatures of Delaware and New Jersey, is embodied in Section 1 of House Joint Resolution 657.

Maintenance of Authority Facilities and Use of Authority Revenues

As noted above, the principal purpose for amending the Compact is to permit the Delaware River and Bay Authority to utilize revenue generated by its toll crossings to finance projects of a public interest to the states of Delaware and New Jersey. The majority of the Authority's revenue is generated by tolls collected on the Delaware Memorial Twin

Bridges and the Cape May-Lewes Ferry. These revenues are currently used to: (i) amortize the principal and pay the interest on the Authority's long term debt, (ii) to pay operating costs at the ferry and bridges and (iii) to fund the cost, on a "pay-as-you-go" basis, of capital projects and construction.

Historically, the Authority has operated on a fiscally conservative basis. Since the completion of the second bridge in the early 1960s, the Authority has paid for capital improvements on a "pay as you go" basis. Following this fiscal policy, the Authority has consistently maintained the highest quality bridge and ferry facilities and it continues to pursue a program of responsible improvement and maintenance. For example, in 1987, the Authority embarked upon a five year capital improvement and maintenance program to upgrade existing facilities. Since 1987, the Authority has spent \$36,133,948 on capital projects without incurring any debt. Plans are currently under review for projects that would increase passenger capacity at the Cape May-Lewes Ferry and increase automobile throughput at the Delaware Memorial Bridge Toll Plazas. Further example of the Authority's fiscal soundness is its self-insurance fund in which it has accumulated \$11,000,000 since 1987.

Maintaining and upgrading the Authority's facilities is, and will continue to be, the Authority's primary purpose. The Authority is currently managed by ten commission-

ers, five from each state (the amended Compact will increase that number to six from each state). These Commissioners are charged under the Compact as originally approved by Congress and in the form now before Congress for its consideration -- and under the Trust Indenture governing the Authority's outstanding bond issue, with the responsibility for ensuring that the Authority's bridges and ferries are maintained in good condition and working order. In accordance with the Trust Indenture governing the Authority's original long term debt financing, the Commissioner's receive semi-annual reports and recommendations from an independent engineering firm regarding the maintenance needs of the Authority's facilities. Based on these reports, and future traffic analyses prepared by the Authority's staff and consultants the Commissioners are guided in meeting their primary responsibilities under the Trust Indenture and the Compact to see to it that the bridges and ferry are maintained in the highest working order and that there is sufficient and adequate crossing capacity over the Delaware River and Bay.

In addition to the responsibilities imposed on the Commissioners to see that the Authority's primary function is satisfied, the Governors of each state, by virtue of their right under the Compact to cancel the votes of their Commissioners on any matter, retain an absolute veto over any action by the Authority. Thus, each state individually maintains a check on the activities of the Authority, a check which is

unchanged by the Compact amendments set forth in the Joint Resolution. In this manner, each state can guarantee that the Authority continues to meet its fundamental responsibility to properly maintain its crossings and, once it has been empowered to engage in economic development projects by virtue of the Compact amendments, that such powers are exercised in a judicious manner.

The Proposed Amendments to the Compact

Article IV of the Delaware-New Jersey Compact sets out the purposes for which the Delaware River and Bay Authority was created and the scope of the activities in which the Authority may engage. In its current form, Article IV provides the Authority with the power to engage in the development, financing and operation of crossings and approaches or connections thereto. The Authority is also permitted to engage in the financing, development and operation of transportation or terminal facilities after securing the approval for any such facility by concurrent legislation of the states of Delaware and New Jersey. However, as noted above, Congress has expressly reserved its advance consent to the use of toll revenue for the financing of any transportation or terminal facility. Thus, under current law, notwithstanding concurrent legislation by Delaware and New Jersey, the Authority must obtain the consent of Congress to use toll revenue to finance a transportation or terminal facility.

Article IV of the existing Compact also provides that one of the roles of the Authority is the performance of such other functions as may be entrusted to the Authority by concurrent legislation expressly and in implementation thereof. However, Congress has reserved its consent to the performance by the Authority of any function other than crossings, approaches and connections thereto and transportation or terminal facilities.

House Joint Resolution 657 would amend the Compact in three significant ways:

First, it would provide the Authority with economic development functions in addition to the powers it already has to finance and develop crossings and transportation or terminal facilities.

Second, it would modify those provisions of the existing Compact that require the approval by concurrent legislation of both states prior to undertaking any project, other than a crossing. The amended Compact would provide instead that the Authority need only secure such approval for "major projects" as may be required by the law of the state in which a major project is to be located. A "major project" as defined by the amended Compact means:

Any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries or any other area in the State of Delaware or the New Jersey Counties of Cape May, Cumberland, Gloucester and Salem as determined in accordance with state law by the environmental

agency of the state in which the major project is to be located.

All major projects to be located in the Delaware River or Bay would, however, still require concurrent legislation from both states.

Third, the amended Compact would allow the Authority to use revenue generated by tolls in connection with the financing of any of the Authority's projects including economic development projects.

In essence, the amended Compact would allow the authority to engage in broader economic development activities, in addition to the construction of crossings and transportation or terminal facilities, and to use the proceeds of tolls to finance such projects, without having to obtain the concurrent legislative approval of the legislatures of Delaware and New Jersey (except for major projects to be located in the Delaware River or Bay, which, as noted, would still require approval by concurrent legislation). To this end, the Authority would be specifically granted the power to engage in the development of "commerce facilities or developments" which are defined as:

Any structure or facility adapted for public use or any development for a public purpose within each of the states party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development, including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spill or disposal and

port-oriented development, foreign trade zone site development, manufacturing and industrial facilities and other related facilities of commerce which in the judgment of the Authority are acquired for the sound economic development of the area.

While the amended Compact will permit the Authority to use Authority toll revenues in connection with economic development projects, as well as transportation and terminal facilities, it is important to note that the Authority's bridge tolls are limited as to rate and amount by federal law. Under the Surface Transportation and Uniform Relocation Assistance Act of 1987, the tolls for passage over the Authority's bridges must be "just and reasonable", (33 U.S.C. § 508) a term the Courts have interpreted as permitting a toll rate which allows a bridge operator to receive a reasonable rate of return on its investment in the bridge and related transportation facilities. Thus, even after amendment of the Compact, the bridge toll rate charged by the Authority is limited by federal law to allow only a rate which permits the Authority a reasonable rate of return on its transportation facilities.

#### State and Local Governmental Control

Coupled with the new economic development power afforded by the Compact amendment, are limitations designed to ensure that state and local governments have adequate input and control over the exercise of the Authority's expanded powers, including control in the area of land use and the exercise by the Authority of the power of eminent domain. As

a further control, the amended Compact is designed to ensure that the exercise of the Authority's new powers is subject to complete compliance with all federal, state and local laws and regulations designed to protect the environment. To this end, all of the Authority's economic development activities are subject to veto by the governor of either state in addition to the requirement that such projects must be approved by a majority of the Commissioners from each state.

Additionally, as noted, the Authority may not undertake any major project without having secured such approvals as may be required by the legislature of the state in which the project is to be located. Pursuant to companion legislation in New Jersey, with respect to any project to be located in New Jersey, the Authority must obtain legislative authorization and approval from a majority of each House in the legislature. Pursuant to companion legislation in Delaware, with respect to any major project to be located in Delaware, the Authority must receive the authorization and approval of three-quarters of the members of each House in its General Assembly. Finally, with respect to any major project to be located in the Delaware River or Bay, the Authority must secure authorization and approval by concurrent legislation of each state expressly in implementation thereof. In advance of such approval by the Commissioners, the Authority must conduct a public hearing, if requested, to discuss the merits of the proposed major project. (Article IV(d).)

In addition to these Compact restrictions relating to the approval by the Commissioners and Governors of both states, with subsequent legislative authorization, Authority projects, other than crossings, are made expressly subject to land use, environmental and other local laws, resolutions, ordinances, rules and regulations of any city, town, municipality or other political subdivision in which such project is to be located. Additionally, with respect to any project other than a crossing, the Authority may exercise the power of eminent domain to acquire property devoted to a public use only after having first secured the authorization of the title holder to the land in question and such other approvals as may be required by the laws of the State in which the project is to be located. It is important to note that with respect to the Authority's exercise of the economic development powers granted by this legislation, the Authority lacks the power of eminent domain and thus, as to the Authority's projects, it is in the same shoes as any other private citizen in either of the respective states.

#### Environmental Protection

One of the most important provisions of the amended Compact is Article XXII. This new section makes any Authority project, other than a crossing, subject to all the environmental protection laws, regulations, directives and orders now or hereinafter enacted or promulgated by the state in which such project is located. Additionally, any project, other than a crossing, to be located in the Delaware River or Bay must comply with the environmental protection laws and regulations of both states.

the project is located and, in the case of a major project in the Delaware River or Bay, by concurrent legislation of both states; and (iii) that Authority projects are subject to federal and state environmental protection laws, and to the land use requirements of local governments.

House Joint Resolution 657 will give the states of Delaware and New Jersey an agency which can serve as a positive force in the sound development of the lower Delaware River and Delaware Bay area. The amended Compact gives the Authority the opportunity to put its revenue to work for the citizens of New Jersey and Delaware in a way that protects the environment of New Jersey, Delaware and the Delaware River and Bay. The legislation applies greater environmental controls to the Authority than currently exist and is responsive to the fundamental concern of protecting the natural environment and quality of life of New Jersey and Delaware. Thank you for your consideration of this Joint Resolution.

SDP/TestHughes -12-

As part of these environmental protections, the governors and legislatures of both states have seen fit to specifically provide that the Authority will be bound by the environmental laws currently in force in both states in addition to such laws as may be passed in the future. In the case of Delaware, the planning, development, construction and operation of any project, other than a crossing, located in the coastal zone of Delaware is subject to the same limitations, requirements and procedures that apply to any private person under Delaware's Coastal Zone Act in force as of January 1, 1989. The planning, development, construction and operation of any project, other than a crossing, located in New Jersey is subject to applicable New Jersey environmental law including the provisions of the New Jersey Wetlands Act of 1970 and Coastal Area Facility Review Act.

#### CONCLUSION

The new powers granted to the Delaware River and Bay Authority by the states of Delaware and New Jersey, to which this Congress is asked to give its consent, are subject to numerous safeguards and controls designed to ensure (i) that such powers are exercised in a manner that is wholly consistent with the Authority's primary obligation to maintain, construct and operate safe and adequate crossings over the Delaware River and Bay; (ii) that major projects of the Authority will be approved by the Governors and Commissioners from each state and by the legislatures of the state in which

-11-



Mr. FRANK. My view is that if two sovereign States decide, as sovereign as States can be within the Constitution, decide to change an agreement, it doesn't seem to me it is appropriate for us to interpose objections unless they were conspiring in some way to violate the rights of citizens.

There is no allegation that that is happening, no third State not a party to the compact alleges that there is any violence done to its rights.

In the absence of those, since I have been chairman and a member of the subcommittee, our attitude has been to do what we can to carry out the wishes of the States.

That would be my intention now.

Mr. Douglas.

Mr. DOUGLAS. I was deeply in doubt after Mr. Carper's testimony, but yours is so persuasive I have no opposition to it.

Mr. FRANK. I think I want to lay out what I think are the rules. If we are talking about people in one of the States who disagree as a matter of general public policy, I don't think it is our position constitutionally to interpose our views over the States.

If some individuals come to us and say these two States have gotten together to violate our rights, that is a different story.

I have heard nothing like that, and in the absence of that, we have no intention to oppose this.

The subcommittee is adjourned.

[Whereupon, at 10:45 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

## APPENDIXES

APPENDIX 1.—JIM FLORIO, GOVERNOR, STATE OF NEW JERSEY,  
LETTER TO HON. THOMAS FOLEY, SEPTEMBER 28, 1990, WITH  
ENCLOSURE



STATE OF NEW JERSEY  
OFFICE OF THE GOVERNOR  
CN-001  
TRENTON  
08608

JIM FLORIO  
GOVERNOR

September 28, 1990

The Honorable Thomas S. Foley  
Speaker of the House  
U.S. House of Representatives  
H-204 The Capitol  
Washington, D.C. 20515-6501

Dear Mr. Speaker:

It is my pleasure to send you the enclosed certified copy of the Delaware River & Bay Authority Compact reauthorization as enacted by the New Jersey legislature, and signed by Gov. Kean on October 19, 1989.

If you require any additional information for the hearing scheduled on Tuesday, October 2, 1990, please do not hesitate to let me know. Ann Mosher of my Washington office will be eager to assist in this matter.

Sincerely,

Jim Florio  
Governor

(45)

P.L.1989, CHAPTER 192, approved October 18, 1989  
1989 Senate No. 3702 (First Reprint)

1 AN ACT concerning the Delaware River and Bay Authority and  
2 amending P.L.1961, c.66.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. Section 1 of P.L.1961, c.66 (C.32:11E-1) is amended to read  
7 as follows:

8 1. The State of New Jersey hereby agrees with the State of  
9 Delaware, upon enactment by the State of Delaware of  
10 legislation having the same effect as this section, to the  
11 following compact:

12  
13 DELAWARE-NEW JERSEY COMPACT

14 WHEREAS, The [State] States<sup>1</sup> of Delaware and New Jersey are  
15 separated by the Delaware River and Bay which create a  
16 natural obstacle to the uninterrupted passage of traffic other  
17 than by water and with normal commercial activity between  
18 the two States thereby hindering the economic growth and  
19 development of those areas in both States which border the  
20 river and bay; and

21 WHEREAS, The pressures of existing trends from increasing  
22 traffic, growing population and greater industrialization  
23 indicate the need for closer cooperation between the two  
24 States in order to advance the economic development and to  
25 improve crossings, transportation, terminal and other facilities  
26 of the area; and

27 WHEREAS, The financing, construction, operation and  
28 maintenance of such crossings, transportation, terminal and  
29 other facilities of commerce and the overall planning for  
30 future economic development of the area may be best  
31 accomplished for the benefit of the two States and their  
32 citizens, the region and nation, by the cordial cooperation of  
33 Delaware and New Jersey [1] by and through a joint or  
34 common agency or authority; and

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals<sup>1</sup> has been adopted as follows:  
<sup>1</sup> Senate SIA committee amendments adopted June 26, 1989.

1 WHEREAS, The Delaware-New Jersey Compact, enacted  
2 pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C.  
3 [A.]<sup>1</sup> §1701) and P.L.1961, c.66 (C.32:11E-1 et seq.) of the  
4 Pamphlet Laws of New Jersey, with the consent of the United  
5 States Congress in accordance with Pub. L. 87-678 (1962),  
6 created the Delaware River and Bay Authority with the  
7 intention of advancing the economic growth and development  
8 of those areas in both States which border the Delaware River  
9 and Bay by the financing, development, construction, operation  
10 and maintenance of crossings, transportation or terminal  
11 facilities, and other facilities of commerce, and by providing  
12 for overall planning for the future economic development of  
13 those areas; and

14 WHEREAS, The economic growth and development of areas of  
15 both States [bordering the Delaware River and Bay]<sup>1</sup> will be  
16 further advanced by [also entrusting the Delaware River and  
17 Bay Authority with responsibility or the general economic  
18 development of those areas, and by]<sup>1</sup> authorizing the authority  
19 to undertake "economic development" projects [relating  
20 thereto]<sup>1</sup>, other than major projects as defined in Article II, at  
21 its own initiative, and to undertake major projects after  
22 securing only such approvals as may be required by legislation  
23 of the State in which the project is to be located, except that  
24 the authority is prohibited from undertaking any major project,  
25 to be located in the Delaware River or Bay, including, without  
26 limitation, any deep-water port or superport, without the prior  
27 approval, by concurrent legislation, of the two States; and

28 WHEREAS, The natural environment of those areas in the two  
29 States which border the Delaware River and Bay would be  
30 better preserved by requiring that the projects, other than  
31 crossings, of the authority shall be in complete compliance  
32 with all applicable environmental protection laws and  
33 regulations before the authority may undertake the planning,  
34 development, construction or operation of any project, other  
35 than a crossing;

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37 NOW THEREFORE, The State of Delaware and the State of  
38 New Jersey, do hereby solemnly covenant and agree, each with  
39 the other as follows:

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ARTICLE I  
SHORT TITLE

This compact shall be known as the "Delaware-New Jersey Compact."

ARTICLE II  
DEFINITIONS

"Crossing" means any structure or facility adapted for public use in crossing the Delaware River or Bay between the States, whether by bridge, tunnel, ferry or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

"Transportation facility" and "terminal facility" [means] mean any structure or facility other than a crossing as herein defined, adapted for public use within each of the States party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

"Commerce facility or development" means any structure or facility adapted for public use or any development for a public purpose within each of the States party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (including wetlands and open-lands preservation and development), dredge spoil disposal, and acquisition, active recreational and park development, beach restoration and development, foreign trade zone site development, port-oriented development, industrial facilities, and other [related] facilities of commerce which, in the judgment of the authority, are required for the sound economic development of the area.

"Appurtenances" and "equipment" mean all works, buildings, structures, devices, appliances and supplies, as well as every kind of mechanism, arrangement, object or substance related to and necessary or convenient for the proper construction, equipment,

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maintenance, improvement and operation of any crossing, transportation facility or terminal facility, or commerce facility or development.

"Project" means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance and improvement thereof.

"Major project" means any project, other than a crossing, having or likely to have significant environmental [impacts] impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area [off] in the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, as determined in accordance with state law by the environmental agency of the State in which the major project is to be located.

"Tunnel" means a tunnel of one or more tubes.

"Governor" means any person authorized by the Constitution and law of each State to exercise the functions, powers and duties of that office.

"Authority" means the authority created by this compact or any agency successor thereto.

The singular whenever used [therein] in this compact<sup>1</sup> shall include the plural, and the plural shall include the singular.

ARTICLE III

FAITHFUL COOPERATION

They agree to and pledge, each to the other, faithful cooperation in the effectuation of this compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance and improvement of all projects entrusted to the authority created by this compact.

ARTICLE IV

ESTABLISHMENT OF AGENCY; PURPOSES

The two States agree that there shall be created and they do hereby create a body politic, to be known as "The Delaware River and Bay Authority" (for brevity hereinafter referred to as the

1 located.

2 The authority shall not undertake any major project, or part

3 thereof, to be located in the Delaware River or Bay, including,

4 without limitation, any deep-water port or superport, without

5 having first secured approval thereof by concurrent legislation of

6 the two States expressly in implementation thereof.

7 The authority shall not undertake any major project or part

8 thereof without first giving public notice and holding a public

9 hearing, if requested, on any proposed major project, in

10 accordance with the law of the State in which the major project

11 is to be located. Each State shall provide by law for the time and

12 manner for the giving of such public notice, the requesting of a

13 public hearing and the holding of such public hearings.

ARTICLE V

COMMISSIONERS

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17 The authority shall consist of <sup>1</sup>[10] <sup>2</sup>12<sup>1</sup> commissioners, <sup>3</sup>[five]

18 <sup>4</sup>six<sup>1</sup> of whom shall be residents of and qualified to vote in, and

19 shall be appointed from, the State of Delaware, and <sup>5</sup>[five] six<sup>1</sup>

20 of whom shall be residents of and qualified to vote in, and shall

21 be appointed from, the State of New Jersey; not more than three

22 of the commissioners of each State shall be of the same political

23 party; the commissioners for each State shall be appointed in the

24 manner fixed and determined from time to time by the law of

25 each State respectively. Each commissioner shall hold office for

26 a term of five years, and until his successor shall have been

27 appointed and qualified, but the terms of the first commissioners

28 shall be so designated that the term of <sup>6</sup>1<sup>1</sup> at least<sup>1</sup> one

29 commissioner from each State shall expire each year. All terms

30 shall run to <sup>7</sup>1<sup>1</sup> the first day of<sup>1</sup> July <sup>8</sup>1<sup>1</sup>. Any vacancy, however

31 created, shall be filled for the unexpired term only. Any

32 commissioner may be suspended or removed from office as

33 provided by law of the State from which he shall be appointed.

34 Commissioners shall be entitled to reimbursement for

35 necessary expenses to be paid only from revenues of the authority

36 and may not receive any other compensation for services to the

37 authority except such as may from time to time be authorized

38 from such revenues by concurrent legislation.

1 "authority"), which shall constitute an agency of government of

2 the State of Delaware and the State of New Jersey for the

3 following general public purposes, and which shall be deemed to

4 be exercising essential government functions in effectuating such

5 purposes, to wit:

6 (a) The planning, financing, development, construction,

7 purchase, lease, maintenance, improvement and operation of

8 crossings between the States of Delaware and New Jersey across

9 the Delaware River or Bay at any location south of the boundary

10 line between the State of Delaware and the Commonwealth of

11 Pennsylvania as extended across the Delaware River to the New

12 Jersey shore of said river, together with such approaches or

13 connections thereto as in the judgment of the authority are

14 required to make adequate and efficient connections between

15 such crossings and any public highway, or other routes in the

16 State of Delaware or in the State of New Jersey; and

17 (b) The planning, financing, development, construction,

18 purchase, lease, maintenance, improvement and operation of any

19 transportation or terminal facility within (those areas of both

20 States which border on or are adjacent to the Delaware River or

21 bay south of the aforesaid line and) the State of Delaware or the

22 New Jersey counties of Cape May, Cumberland, Gloucester and

23 Salem, which facility, in the judgment of the [States] authority, is

24 required for the sound economic development of the area; <sup>1</sup>and<sup>1</sup>

25 (c) The planning, financing, development, construction,

26 purchase, lease, maintenance, improvement and operation of any

27 commerce facility or development within the State of Delaware

28 or the New Jersey counties of Cape May, Cumberland, Gloucester

29 and Salem, which in the judgment of the authority is required for

30 the sound economic development of the area; and

31 [(c)] (d) The performance of such other functions as may be

32 hereafter entrusted to the authority by concurrent legislation

33 expressly in implementation hereof.

34 The authority shall not undertake any major project or part

35 thereof [ other than a crossing.] without having first secured

36 approval thereof by concurrent legislation of the two States

37 expressly in implementation hereof] such approvals as may be

38 required by legislation of the State in which the project is to be

1 States in order to insure, as far as possible, uniformity of such  
 2 rules, regulations and orders with the law of both States.  
 3 e. To appoint, or employ, such other officers, agents,  
 4 attorneys, engineers and employees as it may require for the  
 5 performance of its duties and to fix and determine their  
 6 qualifications, duties, compensation, pensions, terms of office  
 7 and all other conditions and terms of employment and retention.  
 8 f. To enter into contracts and agreements with either State or  
 9 with the United States, or with any public body, department, or  
 10 other agency of either State or of the United States or with any  
 11 individual, firm or corporation, deemed necessary or advisable for  
 12 the exercise of its purposes and powers.

13 g. To accept from any government or governmental  
 14 department, agency or other public or private body, or from any  
 15 other source, grants or contributions of money or property as well  
 16 as loans, advances, guarantees, or other forms of financial  
 17 assistance which it may use for or in aid of any of its purposes.  
 18 h. To acquire (by gift, purchase or condemnation), own, hire,  
 19 lease, use, operate and dispose of property, whether real,  
 20 personal or mixed, or of any interest therein, including any rights,  
 21 franchise and property for any crossing, facility or other project  
 22 owned by another, and which the authority is authorized to own  
 23 and operate.

24 i. To designate as express highways, and control public and  
 25 private access thereto, all or any approaches to any crossing or  
 26 other facility of the authority for the purpose of connecting the  
 27 same with any highway or other route in either State.  
 28 j. To borrow money and to evidence such loans by bonds, notes  
 29 or other obligations, either secured or unsecured, and either in  
 30 registered or unregistered form, and to fund or refund such  
 31 evidences of indebtedness, which may be executed with facsimile  
 32 signatures of such persons as may be designated by the authority  
 33 and by a facsimile of its corporate seal.

34 k. To procure and keep in force adequate insurance or  
 35 otherwise provide for the adequate protection of its property, as  
 36 well as to indemnify it or its officers, agents or employees  
 37 against loss or liability with respect to any risk to which it or  
 38 they may be exposed in carrying out any function hereunder.

39 l. To grant the use of, by franchise, lease or otherwise, and to

ARTICLE VI

BOARD ACTION

1 The commissioners shall have charge of the authority's  
 2 property and affairs and shall, for the purpose of doing business,  
 3 constitute a board; but no action of the commissioners shall be  
 4 binding or effective unless taken at a meeting at which at least  
 5 [three] four- commissioners from each State are present, and  
 6 unless at least [three] four- commissioners from each State shall  
 7 vote in favor thereof. The vote of any one or more of the  
 8 commissioners from each State shall be subject to cancellation by  
 9 the Governor of such State at any time within 10 days (Saturdays,  
 10 Sundays and public holidays in the particular State excepted)  
 11 after receipt at the Governor's office of a certified copy of the  
 12 minutes of the meeting at which such vote was taken. Each State  
 13 may provide by law for the manner of delivery of such minutes,  
 14 and for notification of the action thereon.

ARTICLE VII

GENERAL POWERS

1 For the effectuation of its authorized purposes, the authority is  
 2 hereby granted the following powers:

- 3 a. To have perpetual succession.
- 4 b. To adopt and use an official seal.
- 5 c. To elect a chairman and a vice-chairman from among the  
 6 commissioners. The chairman and vice-chairman shall be elected  
 7 from different States, and shall each hold office for two years.  
 8 The chairmanship and vice-chairmanship shall be alternated  
 9 between the two States.
- 10 d. To adopt bylaws to govern the conduct of its affairs by the  
 11 board of commissioners, and it may adopt rules and regulations  
 12 and may make appropriate orders to carry out and discharge its  
 13 powers, duties and functions, but no bylaw, or rule, regulation or  
 14 order shall take effect until it has been filed with the Secretary  
 15 of State of each State or in such other manner in each State as  
 16 may be provided by the law thereof. In the establishment of  
 17 rules, regulation and orders respecting the use of any crossing,  
 18 transportation or terminal facility of commerce facility or  
 19 development owned or operated by the authority, including  
 20 approach roads, it shall consult with appropriate officials of both

1 has theretofore been taken or to which it is then devoted. The  
 2 authority shall not exercise the power of eminent domain granted  
 3 herein to acquire any property, other than a crossing, devoted to  
 4 a public use, of either State, or of any municipality, [county],<sup>1</sup>  
 5 local government, agency, public authority or commission, or of  
 6 two or more of them, for any purpose other than a crossing,  
 7 without having first secured the authorization of the holder of  
 8 the title to the land in question and such other approvals as may  
 9 be required by legislation of the state in which the project is to  
 10 be located. The authority shall not exercise the power of  
 11 eminent domain in connection with any commerce facility<sup>1</sup> or  
 12 development.

13 In any condemnation proceeding in connection with the  
 14 acquisition by the authority of property or property rights of any  
 15 character in either State and the right of inspection and  
 16 immediate entry thereon, through the exercise by it of its power  
 17 of eminent domain, any existing or future law or rule of court of  
 18 the State in which such property is located with respect to the  
 19 condemnation of property for the construction, reconstruction  
 20 and maintenance of highways therein, shall control. The  
 21 authority shall have the same power and authority with respect  
 22 thereto as the State agency named in any such law; provided that  
 23 nothing herein contained shall be construed as requiring joint or  
 24 concurrent action by the two States with respect to the  
 25 enactment, repeal or amendment of any law or rule of court on  
 26 the subject of condemnation under which the authority may  
 27 proceed by virtue of this article.

28 If the established grade of any street, avenue, highway or other  
 29 route shall be changed by reason of the construction by the  
 30 authority of any work so as to cause loss or injury to any property  
 31 abutting on such street, avenue, highway or other route, the  
 32 authority may enter into voluntary agreements with such abutting  
 33 property owners and pay reasonable compensation for any loss or  
 34 injury so sustained, whether or not it be compensable as damages  
 35 under the condemnation law of the State.

36 The power of the authority to acquire property by  
 37 condemnation shall be a continuing power, and no exercise  
 38 thereof shall be deemed to exhaust it.

1 make charges for the use of, any crossing, facility or other  
 2 project or property owned or controlled by it.  
 3 m. To exercise the right of eminent domain to acquire any  
 4 property or interest therein.  
 5 n. To determine the exact location, system and character of  
 6 and all other matters in connection with any and all crossings,  
 7 transportation or terminal facilities, commerce facilities or  
 8 developments or other projects which it may be authorized to  
 9 own, construct, establish, effectuate, operate or control.  
 10 o. To exercise all other powers not inconsistent with the  
 11 Constitutions of the two States or of the United States, which  
 12 may be reasonably necessary or incidental to the effectuation of  
 13 its authorized purposes or to the exercise of any of the foregoing  
 14 powers, except the power to levy taxes or assessments, and  
 15 generally to exercise in connection with its property and affairs,  
 16 and in connection with property within its control, any and all  
 17 powers which might be exercised by a natural person or a private  
 18 corporation in connection with similar property and affairs.

ARTICLE VIII

ADDITIONAL POWERS

21 For the purpose of effectuating the authorized purposes of the  
 22 authority, additional powers may be granted to the authority by  
 23 legislation of either State without the concurrence of the other.  
 24 and may be exercised within such State, or may be granted to the  
 25 authority by Congress and exercised by it; but no additional  
 26 duties or obligations shall be undertaken by the authority under  
 27 the law of either State or of Congress without authorization by  
 28 the law of both States.

ARTICLE IX

EMINENT DOMAIN

31 If the authority shall find and determine that any property or  
 32 interest therein is required for a public use [because] in  
 33 furtherance of the purposes of the authority, said determination  
 34 shall not be affected by the fact that such property has  
 35 theretofore been taken over or is then devoted to a public use,  
 36 but the public use in the hands or under the control of the  
 37 authority, shall be deemed superior to the public use for which it

ARTICLE X

REVENUES AND APPLICATION

1 The authority is hereby authorized to establish, levy and  
 2 collect such tolls and other charges as it may deem necessary,  
 3 proper or desirable, in connection with any crossing,  
 4 transportation or terminal facility, commerce facility, or  
 5 development, or other project which it is or may be authorized at  
 6 any time to construct, own, operate or control, and the aggregate  
 7 of said tolls and charges shall be at least sufficient (1) to meet  
 8 the combined expenses of operation, maintenance and  
 9 improvement thereof. (2) to pay the cost of acquisition or  
 10 construction, including the payment, amortization and retirement  
 11 of bonds or other securities or obligations assumed, issued or  
 12 incurred by the authority, together with interest thereon and (3)  
 13 to provide reserves for such purposes; and the authority is hereby  
 14 authorized and empowered, subject to prior pledges, if any, to  
 15 pledge such tolls and other revenues or any part thereof as  
 16 security for the repayment with interest of any moneys borrowed  
 17 by it or advanced to it for its authorized purposes and as security  
 18 for the satisfaction of any other obligations assumed by it in  
 19 connection with such loans or advances. There shall be allocated  
 20 to the cost of the acquisition, construction, operation,  
 21 maintenance and improvement of such facilities and projects,  
 22 such proportion of the general expenses of the authority as it  
 23 shall deem properly chargeable thereto.

ARTICLE XI

COVENANT WITH BONDHOLDERS

24 The two said States covenant and agree with each other and  
 25 with the holders of any bonds or other securities or obligations of  
 26 the authority, assumed, issued or incurred by it and as security  
 27 for which there may be pledged the tolls and revenues or any part  
 28 thereof of any crossing, transportation or terminal facility,  
 29 commerce facility or development, or other project, that the two  
 30 said States will not, so long as any of such bonds or other  
 31 obligations remain outstanding and unpaid, diminish or impair the  
 32 power of the authority to establish, levy and collect tolls and  
 33 other charges in connection therewith, and that neither of the  
 34 two said States will, so long as any of such bonds or other

1 obligations remain outstanding and unpaid, authorize any crossing  
 2 of the Delaware River or Delaware Bay south of the line  
 3 mentioned in Article IV (a) of this compact, by any person or  
 4 body other than the authority; unless, in either case, adequate  
 5 provision shall be made by law for the protection of those  
 6 advancing money upon such obligations.

ARTICLE XII

SECURITIES LAWFUL INVESTMENTS

7 The bonds or other securities or obligations which may be  
 8 issued by the authority pursuant to this compact, or any  
 9 amendments hereof or supplements hereto, are hereby declared  
 10 to be negotiable instruments, and are hereby made securities in  
 11 which all State and municipal officers and bodies of each State,  
 12 all banks, bankers, trust companies, savings banks, building and  
 13 loan associations, saving and loan associations, investment  
 14 companies and other persons carrying on a banking business, all  
 15 insurance companies, insurance associations and other persons  
 16 carrying on an insurance business, and all administrators,  
 17 executors, guardians, trustees and other fiduciaries and all other  
 18 persons whatsoever who are now or may hereafter be authorized  
 19 to invest in bonds or other obligations of either State, may  
 20 properly and legally invest any funds, including capital, belonging  
 21 to them or within their control; and said obligations are hereby  
 22 made securities which may properly and legally be deposited with  
 23 and shall be received by any State or municipal officer or agency  
 24 of either State for any purpose for which the deposit of bonds or  
 25 other obligations of such State is now or may hereafter be  
 26 authorized.

ARTICLE XIII  
TAX STATUS

27 The powers and functions exercised by the authority under this  
 28 compact and any amendments hereof or supplements hereto are  
 29 and will be in all respects for the benefit of the people of the  
 30 States of Delaware and New Jersey, the region and nation, for  
 31 the increase of their commerce and prosperity and for the  
 32 enhancement of their general welfare. To this end, the authority  
 33 shall be regarded as performing essential governmental functions

1 in exercising such powers and functions and in carrying out the  
 2 provisions of this compact and of any law relating thereto, and  
 3 shall not be required to pay any taxes or assessments of any  
 4 character, levied by either State or political subdivision thereof,  
 5 upon any of the property used by it for such purposes, or any  
 6 income or revenue therefrom, including any profit from a sale or  
 7 exchange. The bonds or other securities or obligations issued by  
 8 the authority, their transfer and the interest paid thereon or  
 9 income therefrom, including any profit from a sale or exchange,  
 10 shall at all times be free from taxation by either State or any  
 11 subdivision thereof.

ARTICLE XIV

JURISDICTION; USE OF LANDS

15 Each of the two States hereby consents to the use and  
 16 occupancy by the authority of any lands and property of the  
 17 authority in such State for the construction, operation,  
 18 maintenance or improvement of any crossing, transportation or  
 19 terminal facility, commerce facility or development, or other  
 20 project which it is or may be authorized at any time to construct,  
 21 own or operate, including lands lying under water.

ARTICLE XV

REVIEW AND ENFORCEMENT OF RULES

25 Judicial proceedings to review any by-law, rule, regulation,  
 26 order or other action of the authority or to determine the  
 27 meaning or effect thereof, may be brought in such court of each  
 28 State, and pursuant to such law or rules thereof, as a similar  
 29 proceeding with respect to any agency of such State might be  
 30 brought.

31 Each State may provide by law what penalty or penalties shall  
 32 be imposed for violation of any lawful rule, regulation or order of  
 33 the authority, and, by law or rule of court, for the manner of  
 34 enforcing the same.

ARTICLE XVI

NO PLEDGE OF CREDIT

38 The authority shall have no power to pledge the credit or to  
 39 create any debt or liability of the State of Delaware, of the State

1 of New Jersey, or of any other agency or of any political  
 2 subdivision of said States.

ARTICLE XVII

LOCAL COOPERATION AND AGREEMENTS

6 a. All municipalities, political subdivisions and every  
 7 department, agency or public body of each of the States are  
 8 hereby authorized and empowered to cooperate with, aid and  
 9 assist the authority in effectuating the provisions of this compact  
 10 and of any amendment hereof or supplement hereto.

11 b. The authority is authorized and empowered to cooperate  
 12 with each of the States, or any political subdivision thereof, and  
 13 with any municipality, [county,] local government, agency,  
 14 public authority or commission of the foregoing, in connection  
 15 with the acquisition, planning, rehabilitation, construction or  
 16 development of any project, other than a crossing, and to enter  
 17 into an agreement or agreements<sup>1</sup>, subject to compliance with  
 18 the laws of the state in which the project is to be located,<sup>1</sup> with  
 19 each of the States, or with any political subdivision thereof, and  
 20 with any municipality, county, local government, agency, public  
 21 authority or commission or with two or more of them, for or  
 22 relating to such purposes.

23 c. The authority and the city, town, municipality or other  
 24 political subdivision in which any project, other than a crossing, is  
 25 to be located are hereby authorized and empowered<sup>1</sup>, subject to  
 26 compliance with the laws of the state in which the project is to  
 27 be located,<sup>1</sup> to enter into an agreement<sup>1</sup> or agreements<sup>1</sup> to  
 28 provide which local laws, resolutions, ordinances, rules and  
 29 regulations, if any, of the city, town, municipality or other  
 30 political subdivision affected by such project shall apply to such  
 31 project. All other existing local laws, resolutions, ordinances or  
 32 rules and regulations not provided for in the agreement shall be  
 33 applicable to the project, other than a crossing. All local laws,  
 34 resolutions, ordinances or rules and regulations enacted after the  
 35 date of the agreement shall not be applicable to [any] such<sup>1</sup>  
 36 projects unless made applicable by the agreement or any  
 37 modification thereto.



1 its affairs as may be requested by the Governor or Legislature of  
2 each State.

3 ARTICLE XXI

4 BOUNDARIES UNAFFECTED

5 The existing territorial or boundary lines of the States, or the  
6 jurisdiction of the two States established by said boundary lines,  
7 shall not be changed hereby.  
8

9 ARTICLE XXII

10 ENVIRONMENTAL PROTECTION

11 a. The planning, development, construction and operation of  
12 any project, other than a crossing, shall comply with all  
13 environmental protection laws, regulations, directives and orders,  
14 including, without limitation, any coastal zone laws, wetlands  
15 laws, or subaqueous land laws or natural resource laws, now or  
16 hereinafter enacted, or promulgated by the State in which the  
17 project<sup>1</sup> or any part thereof, is located.

18 b. The planning, development, construction and operation of  
19 any [major]<sup>1</sup> project, other than a crossing, to be located in the  
20 Delaware River and Bay [having or likely to have significant  
21 environmental impacts upon both States]<sup>1</sup> shall comply with all  
22 environmental protection laws, regulations, directives and orders,  
23 including, without limitation, any coastal zone laws, wetlands  
24 laws, subaqueous land laws or natural resource laws, now or  
25 hereinafter enacted or promulgated by either State.

26 c. The planning, development, construction and operation of  
27 any project, other than a crossing, located in the coastal zone of  
28 Delaware (as defined in Chapter 70 of Title 7 of the Delaware  
29 Code, as in effect on January 1, 1989), shall be subject to the  
30 same limitations, requirements, procedures and appeals as apply  
31 to any other person under the Delaware Coastal Zone Act,  
32 Chapter 70 of Title 7 of the Delaware Code, as in effect on  
33 January 1, 1989. Nothing in this compact shall be deemed to  
34 preempt, modify or supersede any provision of the Delaware  
35 Coastal Zone Act, Chapter 179, 70<sup>1</sup> of Title 7 of the Delaware  
36 Code, as in effect on January 1, 1989. The interpretation and  
37 application of this paragraph shall be governed by the laws of the  
38 State of Delaware and be determined by the courts of the State  
39

1 ARTICLE XVIII

2 DEPOSITARIES

3 All banks, bankers, trust companies, savings banks and other  
4 persons carrying on a banking business under the laws of either  
5 State are authorized to give security for the safekeeping and  
6 prompt payment of moneys of the authority deposited by it with  
7 them, in such manner and form as may be required by and may be  
8 approved by the authority, which security may consist of a good  
9 and sufficient undertaking with such sureties as may be approved  
10 by the authority, or may consist of the deposit with the authority  
11 or other depository approved by the authority as collateral of  
12 such securities as the authority may approve.

13 ARTICLE XIX

14 AGENCY POLICE

15 Members of the police force established by the authority,  
16 regardless of their residence, shall have in each State, on the  
17 crossings, transportation or terminal facilities, commerce  
18 facilities or developments and other projects and the approaches  
19 thereto, owned, operated or controlled by the authority, and at  
20 such other places and under such circumstances as the law of  
21 each State may provide, all the powers of investigation, detention  
22 and arrest conferred by law on peace officers, sheriffs or  
23 constables in such State or usually exercised by such officers in  
24 each State.  
25

26 ARTICLE XX

27 REPORTS AND AUDITS

28 The authority shall make annual reports to the Governors and  
29 Legislatures of the State of Delaware and the State of New  
30 Jersey, setting forth in detail its operations and transactions, and  
31 may make such additional reports from time to time to the  
32 Governors and Legislatures as it may deem desirable.

33 It shall, at least annually, cause an independent audit of its  
34 fiscal affairs to be made and shall furnish a copy of such audit  
35 report together with such additional information or data with  
36 respect to its affairs as it may deem desirable to the Governors  
37 and Legislatures of each State.

38 It shall furnish such information [on] or [of] data with respect to  
39

1 of Delaware;

2 d. The planning, development, construction and operation of

3 any project, other than a crossing, located in New Jersey, shall be

4 subject to the provisions of New Jersey law, when applicable,

5 including, but not limited to, 1[the] 1 [The] Wetlands Act of

6 1970," P.L.1970, c.272 [C.13:9A-1 et seq.] and the "Coastal Area

7 Facility Review Act," P.L.1973, c.185 [C.13:19-1 et seq.]

8 (cf: P.L.1961, c.66, s.1)

9 2. Section 2 of P.L.1961, c.66 (C.32:11E-2) is amended to read

10 as follows:

11 2. The commissioners for the State of New Jersey, provided

12 for in Article V of the compact set out in section 1 hereof, shall

13 be appointed by the Governor with the advice and consent of the

14 Senate [, and 3 of the 5 commissioners shall, at the time of their

15 appointment, be residents of the area embraced by the counties

16 of Salem, Cumberland and Cape May] as follows: one resident

17 each from the counties of Salem, Cumberland, Gloucester and

18 Cape May, and 1[one] two<sup>1</sup> at-large 1[commissioner who]

19 commissioners each of whom<sup>1</sup> shall be a resident of the area

20 embraced by the counties of Salem, Cumberland, Gloucester and

21 Cape May. 1[Notwithstanding the aforementioned residency

22 requirement, any commissioner from the State of New Jersey

23 -serving on the effective date of this 1989 amendatory act shall be

24 eligible for reappointment regardless of that commissioner's

25 place of residence. 1 immediately upon enactment of this act.

26 the Governor may so appoint the first commissioners for the

27 State of New Jersey, notwithstanding that the said compact may

28 not have yet taken effect. The persons nominated by him to

29 serve as the first commissioners shall be authorized to sign

30 duplicate originals of said compact on the part of the State of

31 New Jersey and to apply to Congress for such consent thereto as

32 may be required by law, although they may not then have been

33 confirmed or have taken their oath of office.

34 (cf: P.L.1961, c.66, s.2)

35 3. This act shall take effect immediately but shall remain

36 inoperative until the enactment into law by the State of

37 Delaware of legislation of substantially similar substance and

38 effect; but if such legislation already has been enacted, this act

39 shall take effect immediately.

AUTHORITIES AND REGIONAL COMMISSIONS

Building and Construction

1 Empowers the Delaware River and Bay Authority to take certain

2 actions with respect to commerce facilities and developments

3 and requires projects, other than crossings, approved by the

4 authority to comply with environmental laws.

APPENDIX 2.—MICHAEL HARKINS, SECRETARY OF STATE, STATE OF DELAWARE, LETTER TO HON. THOMAS S. FOLEY, OCTOBER 1, 1990, WITH ENCLOSURE

SECRETARY OF STATE

POST OFFICE BOX 666  
DOVER, DE 19903-0666  
(302) 738-4111

MICHAEL HARKINS

October 1, 1990

BY HAND

The Honorable Thomas S. Foley  
Speaker of the House  
U.S. House of Representatives  
H-204 The Capitol  
Washington, D.C. 20515-6501

Dear Mr. Speaker:

It is my pleasure to forward to you the enclosed copy of House Substitute No. 1 for House Bill No. 338 as Amended by House Amendment Nos. 3, 4, 5, 6, and 7 and Senate Amendment No. 2, the Delaware legislation amending the Delaware-New Jersey Compact. I hereby certify that this enclosed legislation was signed by Michael N. Castle, Governor of the State of Delaware, on June 28, 1990.

If you require any additional information in connection with the hearing on the legislation scheduled for Tuesday, October 2, 1990, before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, please do not hesitate to let me know.

Respectfully,

*M. Harkins*  
Michael Harkins  
Secretary of State

MH/sjpb  
Enclosure

cc: The Hon. Joseph R. Biden  
The Hon. Robert C. Byrd  
The Hon. William J. Hughes



JUN 28 1990 67 252

HOUSE OF REPRESENTATIVES  
135TH GENERAL ASSEMBLY  
HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL NO. 338

AS AMENDED BY

HOUSE AMENDMENT NOS. 3, 4, 5, 6 AND 7

AND

SENATE AMENDMENT NO. 2

AN ACT TO AMEND SECTION 1701, TITLE 17 OF THE DELAWARE CODE THE "DELAWARE-NEW JERSEY COMPACT" CREATING THE DELAWARE RIVER AND BAY AUTHORITY.

WHEREAS, the Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 DEL. C. §1701) and P.L. 1961, c. 66 (C. 32111B-1 et seq.) of the Pughlett Laws of New Jersey, with the consent of the United States Congress by Joint Resolution being Pub. L. 87-476, 87th Congress, H.J. Res. 783, September 20, 1962, created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both States which border the Delaware River and Bay by the financing, development, construction, operation and maintenance of crossings, transportation of terminal facilities, and other facilities of commerce, and by providing for overall planning for the future economic development of those areas; and

WHEREAS, the economic growth and development of areas of both States will be further advanced by authorizing the Authority to undertake economic development projects, other than major projects, as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the State in which the project is to be located, except that the Authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States; and

WHEREAS, the Authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States; and

1 of 15

MH:MDG:jmh  
LC:KEMV/BLG  
542

than crossing of the Authority shall be in complete compliance with all applicable environmental protection laws and regulations. The Authority may undertake the planning, development, construction or operation of any project other than a crossing; provided that the construction of any project other than a crossing:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Section 1701, Title 17 of the Delaware Code is hereby amended to read in its entirety as follows:

§1701. Delaware-New Jersey Compact.

The State of Delaware agrees with the State of New Jersey, upon the enactment by the State of New Jersey of legislation having the same effect as this section, to the following Compact:

DELAWARE-NEW JERSEY COMPACT

WHEREAS, the States of Delaware and New Jersey are separated by the Delaware River and Bay which creates a natural barrier to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two States thereby hindering the economic growth and development of those areas in both States which border the River and Bay; and

WHEREAS, the pressures of existing trends from increasing traffic, growing population and greater industrialization indicate the need for closer cooperation between the two States in order to advance the economic development and to improve crossings, transportation, terminal and other facilities of the area; and

WHEREAS, the financing, construction, operation and maintenance of such crossings, transportation, terminal and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the two States and their citizens, the region and Nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

WHEREAS, the Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 DEL. C. §1701) and P.L. 1961, c. 66 (C. 3211B-1 ~~ET SEQ.~~) of the Pamphlet Laws of New Jersey, with the consent of the United States Congress by Joint Resolution being Pub. L. 87-878, 87th Congress, H.J. Res. 783, September 20, 1962, created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both States which border the Delaware River and Bay by the financing, development, construction, operation and maintenance of crossings, transportation or terminal facilities, and other facilities of commerce, and by providing for overall planning for the future economic development of those areas:

and

WHEREAS, the economic growth and development of areas of both States will be further advanced by authorizing the Authority to undertake economic development projects, other than major projects, as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the State in which the project is to be located, except that the Authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States; and

WHEREAS, the natural environment of those areas in the two States which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the Authority shall be in complete compliance with all applicable environmental protection laws and regulations before the Authority may undertake the planning, development, construction or operation of any project, other than a crossing;

NOW, THEREFORE, the State of Delaware and the State of New Jersey do hereby solemnly covenant and agree, each with the other as follows:

ARTICLE I  
SHORT TITLE

This Compact shall be known as the "Delaware-New Jersey Compact."

ARTICLE II  
DEFINITIONS

"Crossing" means any structure or facility adapted for public use in crossing the Delaware River or Bay between the States, whether by bridge, tunnel, ferry or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

"Transportation facility" and "terminal facility" mean any structure or facility other than a crossing, as herein defined, adapted for public use within each of the States party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, bays, storage places, sheds, warehouses and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

"Commerce facility or development" means any structure or facility adapted for public use or any development for a public purpose within each of the States party

hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development (including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spoil disposal and port-oriented development), foreign trade zone site development, manufacturing and industrial facilities, and other facilities of commerce which, in the judgment of the Authority, are required for the sound economic development of the area.

"Appurtenances" and "equipment" mean all works, buildings, structures, devices, appliances and supplies, as well as every kind of mechanism, arrangement, object or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement and operation of any crossing, transportation facility or terminal facility, or commerce facility or development.

"Project" means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance and improvement thereof.

"Major Project" means any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area in the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, as determined in accordance with state law by the environmental agency of the State in which the major project is to be located.

"Tunnel" means a tunnel of one or more tubes.

"Governor" means any person authorized by the Constitution and law of each State to exercise the functions, powers and duties of that office.

"Authority" means the Authority created by this Compact or any agency successor thereto.

The singular whenever used in this Compact shall include the plural, and the plural shall include the singular.

#### ARTICLE III

##### FAITHFUL COOPERATION

They agree to and pledge, each to the other, faithful cooperation in the effectuation of this Compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance and improvement of all projects entrusted to the authority created by this Compact.

#### ARTICLE IV

##### ESTABLISHMENT OF AGENCY; PURPOSES

The two States agree that there shall be created and they do hereby create a body politic, to be known as "the Delaware River and Bay Authority" (for brevity hereinafter referred to as the "Authority"), which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential government functions in effectuating such purposes, to wit:

(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of crossings between the States of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said River, together with such approaches or connections thereto as in the judgment of the Authority are required to make adequate and efficient connections between such crossings and any public highway or other routes in the State of Delaware or in the State of New Jersey; and

(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any transportation or terminal facility within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which facility, in the judgment of the Authority, is required for the sound economic development of the area; and

(c) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any commerce facility or development within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which in the judgment of the Authority is required for the sound economic development of the area; and

(d) The performance of such other functions as may be hereafter entrusted to the Authority by concurrent legislation expressly in implementation hereof.

The Authority shall not undertake any major project or part thereof without having first secured such approvals as may be required by legislation of the State in which the project is to be located.

The Authority shall not undertake any major project, or part thereof to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without having first secured approval thereof by concurrent legislation of the two States expressly in implementation thereof.

The Authority shall not undertake any major project or part thereof without first giving public notice and holding a public hearing, if requested, on any proposed major project, in accordance with the law of the State in which the major project is to be located. Each State shall provide by law for the time and manner for the giving of such public notice, the requesting of a public hearing and the holding of such public hearings.

ARTICLE V  
COMMISSIONERS

The Authority shall consist of twelve Commissioners, six of whom shall be residents of and qualified to vote in and shall be appointed from the State of Delaware, and six of whom shall be residents of and qualified to vote in and shall be appointed from the State of New Jersey; not more than three of the Commissioners of each State shall be of the same political party; the Commissioners for each State shall be appointed in the manner fixed and determined from time to time by the law of each State respectively. Each Commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the term of the first Commissioner shall be so designated that the term of at least one Commissioner from each State shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any Commissioner may be suspended or removed from office as provided by law of the State from which he shall be appointed.

Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the Authority and may not receive any other compensation for services to the Authority except such as may from time to time be authorized from such revenues by concurrent legislation.

ARTICLE VI  
BOARD ACTION

The Commissioners shall have charge of the Authority's property and affairs and shall, for the purpose of doing business, constitute a Board, but no action of the Commissioners shall be binding or effective unless taken at a meeting at which at least four Commissioners from each State are present, and unless at least four Commissioners from each State shall vote in favor thereof. The vote of any one or more of the Commissioners from each State shall be subject to cancellation by the Governor of such State at any time within 10 days (Saturdays, Sundays and public holidays in the particular State accepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by

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law for the manner of delivery of such minutes and for notification of the action thereon.

ARTICLE VII  
GENERAL POWERS

For the effectuation of its authorized purposes, the Authority is hereby granted the following powers:

- (a) To have perpetual succession.
- (b) To adopt and use an official seal.
- (c) To elect a chairman and a vice-chairman from among the Commissioners. The chairman and vice-chairman shall be elected from different States and shall each hold office for two years. The chairmanship and vice-chairmanship shall be alternated between the two States.
- (d) To adopt bylaws to govern the conduct of its affairs by the Board of Commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties and functions, but no bylaw or rule, regulation or order shall take effect until it has been filed with the Secretary of State of each State or in such other manner in each State as may be provided by the law thereof. In the establishment of rules, regulations and orders respecting the use of any crossing, transportation or terminal facility or commerce facility or development owned or operated by the Authority, including approach roads, it shall consult with appropriate officials of both States in order to insure, as far as possible, uniformity of such rules, regulations and orders with the laws of both States.
- (e) To appoint or employ such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.
- (f) To enter into contracts and agreements with either State or with the United States, or with any public body, department or other agency of either State or of the United States or with any individual, firm or corporation deemed necessary or advisable for the exercise of its purposes and powers.
- (g) To accept from any government or governmental department, agency or other public or private body, or from any other source, grants or contributions of money or property as well as loans, advances, guarantees or other forms of financial assistance which it may use for or in aid of any of its purposes.

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(h) To acquire (by gift, purchase or condemnation), own, hire, lease, use, operate and dispose of property, whether real, personal or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility or other project owned by another and which the Authority is authorized to own and operate.

(i) To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the Authority for the purpose of connecting the same with any highway or other route in either State.

(j) To borrow money and to evidence such loans by bonds, notes or other obligations, either secured or unsecured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the Authority and by a facsimile of its corporate seal.

(k) To procure and keep in force adequate insurances or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

(l) To grant the use of by franchise, lease or otherwise, and to make charges for the use of any crossing, facility or other project or property owned or controlled by it.

(m) To exercise the right of eminent domain to acquire any property or interest therein.

(n) To determine the exact location, system and character of and all other matters in connection with any and all crossings, transportation or terminal facilities, commerce facilities or developments or other projects which it may be authorized to own, construct, establish, effectuate, operate or control.

(o) To exercise all other powers not inconsistent with the Constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE VIII  
ADDITIONAL POWERS

For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the Authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States.

ARTICLE IX  
RIGHTS OF DOMAIN

If the Authority shall find and determine that any property or interest therein is required for a public use in furtherance of the purposes of the Authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands of under the control of the Authority shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted. The Authority shall not exercise the power of eminent domain granted herein to acquire any property, other than a crossing, devoted to a public use, of either State, or of any municipality, local government, agency, public authority or commission, or of two or more of them, for any purpose other than a crossing, without having first secured the authorization of the holder of the title to the land in question and such other approvals as may be required by legislation of the State in which the project is to be located. The Authority shall not exercise the power of eminent domain in connection with any commerce facility or development.

In any condemnation proceedings in connection with the acquisition by the Authority of property or property rights of any character in either State and the right of inspection and immediate entry thereon, through the exercise by it of its power of eminent domain, any existing or future law or rule of court of the State in which such property is located with respect to the condemnation of property for the construction, reconstruction and maintenance of highways therein shall control. The Authority shall have the same power and authority with respect thereto as the State agency named in any such law, provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two States with respect to the enactment, repeal or amendment of any law or rule of court on the subject of condemnation under which the Authority may proceed by virtue of this Article.

If the established grade of any street, avenue, highway or other route shall be changed by reason of the construction by the Authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway or other route, the Authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the State.

The power of the Authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

#### ARTICLE X

##### REVENUE AND APPLICATION

The Authority is hereby authorized to establish, levy and collect such tolls and other charges as it may deem necessary, proper or desirable in connection with any crossing, transportation or terminal facility, commerce facility or development or other project which it is or may be authorized at any time to construct, own, operate or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof, (2) to pay the cost of acquisition or construction, including the payment, amortization and retirement of bonds or other securities or obligations assumed, issued or incurred by the Authority, together with interest thereon and (3) to provide reserves for such purposes; and the Authority is hereby authorized and empowered, subject to prior pledges, if any, to pledge such tolls and other revenues or any part thereof as security for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance and improvement of such facilities and projects such proportion of the general expenses of the Authority as it shall deem properly chargeable thereto.

#### ARTICLE XI

##### COVENANT WITH MUNICIPALITIES

The two said States covenant and agree with each other and with the holders of any bonds or other securities or obligations of the Authority, assumed, issued or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation or terminal facility, commerce facility or development or other project, that the two said States will

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not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish or impair the power of the Authority to establish, levy and collect tolls and other charges in connection therewith, and that neither of the two said States will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV(a) of this Compact by any person or body other than the Authority, unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligations.

#### ARTICLE XII

##### SECURITIES LAWFUL INVESTMENTS

The bonds or other securities or obligations which may be issued by the Authority pursuant to this Compact, or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all state and municipal officers and bodies of each State, all banks, bankers, trust companies, savings banks, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either State may properly and legally invest any funds, including capital, belonging to them or within their control, and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any State or municipal officer or agency of either State for any purpose for which the deposit of bonds or other obligations of such State is now or may hereafter be authorized.

#### ARTICLE XIII

##### TAX STATUS

The powers and functions exercised by the Authority under this Compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the States of Delaware and New Jersey, the region and Nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the Authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this Compact and of any law

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relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the Authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either state or any subdivision thereof.

ARTICLE XIV

JURISDICTION; USE OF LANDS

Each of the two states hereby consents to the use and occupancy by the Authority of any lands and property of the Authority in such state for the construction, operation, maintenance or improvement of any crossing, transportation or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own or operate, including lands lying under water.

ARTICLE XV

REVIEW AND ENFORCEMENT OF RULES

Judicial proceedings to review any by-law, rule, regulation, order or other action of the Authority or to determine the meaning or effect thereof may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.

Such state may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation or order of the Authority, and, by law or rule of court, for the manner of enforcing the same.

ARTICLE XVI

NO PLEDGE OF CREDIT

The Authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey or of any other agency or of any political subdivision of said states.

ARTICLE XVII

LOCAL COOPERATION AND AGREEMENTS

(a) All municipalities, political subdivisions and every department, agency or public body of each of the states are hereby authorized and empowered to cooperate with, aid and assist the Authority in effectuating the provisions of this Compact and of any amendment hereof or supplement hereto.

(b) The Authority is authorized and empowered to cooperate with each of the States, or any political subdivision thereof, and with any municipality, local government, agency, public authority or commission of the foregoing, in connection with the acquisition, planning, rehabilitation, construction or development of any project, other than a crossing, and to enter into an agreement or agreements, subject to compliance with the laws of the state in which the project is to be located, with each of the States, or any political subdivision thereof, and with any municipality, county, local government, agency, public authority or commission or with two or more of them, for or relating to such purposes.

(c) The Authority and the city, town, municipality or other political subdivision in which any project, other than a crossing, is to be located are hereby authorized and empowered, subject to compliance with the laws of the state in which the project is to be located, to enter into an agreement or agreements to provide which local laws, resolutions, ordinances, rules and regulations, if any, of the city, town, municipality or other political subdivision affected by such project shall apply to such project. All other existing local laws, resolutions, ordinances or rules and regulations not provided for in the agreement shall be applicable to the project, other than a crossing. All local laws, resolutions, ordinances or rules and regulations enacted after the date of the agreement shall not be applicable to such projects unless made applicable by the agreement or any modification thereto.

ARTICLE XVIII

DEPOSITARIES

All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either State are authorized to give security for the safekeeping and prompt payment of moneys of the Authority deposited by it with them, in such manner and form as may be required by and may be approved by the Authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the Authority, or may consist of the deposit with the Authority or other depository approved by the Authority as collateral of such securities as the Authority may approve.

ARTICLE XIX

AGENCY POLICE

Members of the police force established by the Authority, regardless of their residence, shall have in each State, on the crossings, transportation or terminal

facilities, commerce facilities or developments and other projects and the approaches thereto, owned, operated or controlled by the Authority, and at such other places and under such circumstances as the law of each State may provide, all the powers of investigation, detention and arrest conferred by law on peace officers, sheriffs or constables in such State or usually exercised by such officers in each State.

ARTICLE XX  
REPORTS AND AUDITS

The Authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

It shall, at least annually, cause an independent audit of its fiscal affairs to be made, and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each State.

It shall furnish such information or data with respect to its affairs as may be requested by the Governor or Legislature of each State.

ARTICLE XXI  
BOUNDARIES UNAFFECTED

The existing territorial or boundary lines of the States or the jurisdiction of the two States established by said boundary lines shall not be changed hereby.

ARTICLE XXII  
ENVIRONMENTAL PROTECTION

(a) The planning, development, construction and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, or subsequent land laws or natural resources laws, now or hereinafter enacted, or promulgated by the State in which the project, or any part thereof, is located.

(b) The planning, development, construction and operation of any project, other than a crossing, to be located in the Delaware River and Bay shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, subsequent land laws or natural resource laws now or hereinafter enacted or promulgated by either State.

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(c) The planning, development, construction and operation of any project, other than a crossing, located in the coastal zone of Delaware (as defined in Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989), shall be subject to the same limitations, requirements, procedures and appeals as apply to any other person under the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. Nothing in this Compact shall be deemed to pre-empt, modify or supersede any provision of the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. The interpretation and application of this paragraph shall be governed by the laws of the State of Delaware and be determined by the courts of the State of Delaware.

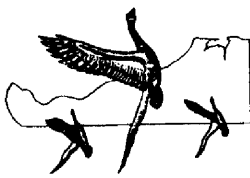
(d) The planning, development, construction and operation of any project, other than a crossing, located in New Jersey, shall be subject to the provisions of New Jersey law, when applicable, including but not limited to the Wetlands Act of 1970, N.J.S.A. 13:9A-1, SI 880L and the Coastal Area Facility Review Act, N.J.S.A. 13:19-1, SI 880L.

Section 2. This Act shall take effect upon the enactment by the State of New Jersey of legislation having a substantial similar effect as this Act, but if the State of New Jersey shall have already enacted such legislation, this Act shall take effect immediately. The Governor is hereby authorized to apply on behalf of the State of Delaware to the Congress of the United States for its consent and approval to the aforesaid Compact or Agreement and to the use of tolls collected on any crossing for the financing of any transportation or terminal facility or commerce facility or development constructed or operated by the Authority; but in the absence of such consent and approval the Delaware River and Bay Authority shall have all of the powers which the State of Delaware and the State of New Jersey may confer upon it without the consent and approval of Congress.

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APPENDIX 3.—GRACE W. PIERCE-BECK, CONSERVATION DIRECTOR,  
DELAWARE AUDUBON SOCIETY, LETTER TO HON. BARNEY FRANK,  
OCTOBER 10, 1990



DELAWARE AUDUBON SOCIETY

Chapter of National Audubon  
Box 1713, Wilmington, Delaware 19899  
October 10, 1990

The Honorable  
Barney Frank  
Chairman of the Sub-Committee on  
Administrative Law and Governmental Relations  
Committee on the Judiciary  
U. S. House of Representatives  
Rayburn House Office Building 8-351A  
Washington, D. C. 20515

Dear Mr. Frank:

The Delaware Audubon Society is a statewide organization of 1,100 Delaware citizens committed to the conservation and preservation of our natural world. We offer herewith our concerns, comments and questions on legislation before you that extends the powers of the Delaware River and Bay Authority by amending Delaware Code, Title 17, Section 1701, - "The Delaware-New Jersey Compact".

Unlike Delaware's Coastal Zone Act which protects and preserves our Delaware coastal lands and waters from commercial overdevelopment, this legislation extends the powers of the Delaware River and Bay Authority allowing them to become another Delaware Development agency to advance economic growth and development in Delaware, the Delaware River, and Delaware Bay. It is possible under this bill for the Authority to put a "commerce facility" anywhere in Delaware. With this legislation, each of the two state governments would be able to finance and operate any number of commercial ventures in competition with the private sector.

DELAWARE AUDUBON SOCIETY

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We worry about the 80% of toll monies paid by citizens of all other states. Should they pay for "commerce facilities" in Delaware and New Jersey?

When the "commencal facilities" of the Authority produce a profit, shouldn't the facility be paying taxes to the State of Delaware or New Jersey?

Also, shouldn't the "commencal facilities" on development be subject to Delaware and New Jersey labor laws?

Should a bi-state Authority be allowed to deal in real estate anywhere in Delaware or New Jersey?

Should this politically appointed body have the power to by-pass present funding procedures for economic development?

The Delaware Bay is one of the largest transfer sites for petro-chemical barges in the world. In sharp contrast, this same bay each year hosts thousands of migrating shorebirds from South America, serves as a major staging area for 80% of snow geese in the Atlantic Flyway, and supports a remarkable variety of fish and wildlife that results in a multi-million dollar recreational and commercial resource for thousands of citizens.

Citizens and officials of Delaware have worked over the past years to clean up our river and bay. We are winning - the waters in the Delaware River and Bay are cleaner, even to the point of trying to re-establish oyster beds in the bay. We will lose the war if we allow our river and bay to be rined with "commencal facilities". The Chesapeake Bay is struggling to survive. Overdevelopment of all kinds has caused this. Can't we even learn from past mistakes? Let's really look at this legislation and ask, do we need this? Will it benefit our fragile coastal lands and waters? - or will its eventual impact be one of destruction for Delaware and New Jersey lands and waters?

Members of the Delaware Audubon Society have no problem with the Authority being allowed to use excess funds to improve those entities over which they have present jurisdiction. We have problems with the Authority becoming a third development department. Most Delaware citizens feel we have enough growth in our state.

ENOUGH IS ENOUGH!!

DELAWARE AUDUBON SOCIETY

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*Delaware Audubon urges you to consider our concerns and those of other Delawareans and to reject this amendment to the Delaware-New Jersey Compact. We thank you for your considerations.*

*Very truly yours,*

*Grace W. Pierce-Beck*  
 Grace W. Pierce-Beck,  
 Conservation Director

GWPB:bp

cc: The Honorable  
 Thomas R. Casper  
 U.S. House of Representatives

APPENDIX 4.—ROBERT S. WEINER, ZONING VICE PRESIDENT, COUNCIL OF CIVIC ORGANIZATIONS OF BRANDYWINE HUNDRED, LETTER TO HON. BARNEY FRANK, OCTOBER 2, 1990, WITH ENCLOSURE

COUNCIL OF CIVIC ORGANIZATIONS OF BRANDYWINE HUNDRED  
 ROBERT S. WEINER  
 Zoning Vice President  
 11 TENBY DRIVE  
 WILMINGTON, DELAWARE 19803

(W) 302-658-8700

October 2, 1990

The Honorable Barney Frank, Chairman  
 Subcommittee on Administrative Law  
 and Governmental Relations  
 Committee on the Judiciary  
 B-351-A Rayburn House Office Building  
 Washington, D.C. 20515

Re: H. J. Res. 657

The Delaware-New Jersey Compact Amendments

Dear Mr. Frank:

The proposed Compact Amendments would empower the Delaware River & Bay Authority to spend surpluses from the Delaware Memorial Bridge on economic development projects in Delaware and New Jersey.

Under the Compact between Delaware and New Jersey, tolls collected from users of the bridge and ferry connecting Delaware and New Jersey pay for the construction and maintenance of the facilities crossing the Delaware River and Delaware Bay.

The system has worked well and the trust maintained between the users and the Authority should not be broken - as could happen if the tolls that are collected are sidetracked to economic development projects.

The Delaware River & Bay Authority issued a technical memorandum titled, "Future Traffic Demands Between Delaware and New Jersey". This study forecasts that current surpluses plus additional revenue will be needed by the year 2000 for expenses associated with crossing the Delaware River.

The Honorable Barney Frank, Chairman

October 2, 1990

This Authority report was not available at the time that Delaware and New Jersey approved these Compact Amendments.

Using surplus funds for economic development will contribute to deterioration of traffic service on the bridge and ferry facilities.

If any true surplus funds exist, using those resources on facilities that are likely to be used by the toll payer makes the most sense.

The structures involved in these crossings of the Delaware River are some of the largest and most complex structures in this region. Since the overall management of the Authority is entrusted to a politically appointed ten person commission, it would be in the best interest of the users and that of the general public to have a day-to-day operations overseen by a professional engineer.

The Council of Civic Organizations of Brandywine Hundred, The Delaware Audubon Society, Save-Our-Waterways, The Delaware Nature Society, The League of Women Voters of Delaware, The Civic League for New Castle County and many other groups are opposed to this legislation. There has been no citizen support for this legislation. The Delaware State Legislature passed this bill without meaningful opportunity for public hearing. Such a hearing would have afforded an opportunity for members of the public to express their opposition.

The Authority has no expertise in economic development and would be in competition with other economic development arms of each of the respective states.

Without a Sunshine Law and without public accountability, members of the Authority would be free to abuse the public trust with which they are charged by handing out big contracts, dispensing patronage and soliciting political contributions in exchange.

There has been much discussion about the integrity of this Bill and of the process surrounding its composition and passage. The power and potential for abuse which this Bill gives the Delaware River & Bay Authority and its Executive Director are obvious.

If true surpluses were shown to exist looking at a realistic time horizon in the future, then those funds ought to be

The Honorable Barney Frank, Chairman

October 2, 1990

directed solely to construction and maintenance of transportation systems since tolls are collected from users with the implied promise that the funds will be used for transportation purposes.

I have enclosed some articles which have appeared in Delaware newspapers from other groups sharing similar thoughts on this subject.

Respectfully,

ROBERT S. WEINER  
C.C.O.B.H.  
Zoning Vice President

RSW:lm  
Enc.

U. S. Representative Thomas R. Carper  
131 Cannon House Office Building  
Washington, D.C. 20515

### FOR OPENERS:

#### PERHAPS UNWISE TO EXPAND RIVER & BAY AUTHORITY

We have recently sent a letter to all members of the Delaware Senate regarding pending bills that would revise the compact under which the Delaware River and Bay Authority operates. We question the basic premise for expanding the authority's power to include "commerce facilities or development" (language used in the legislation).

The rationale for two states joining in a compact to build and operate a bridge and ferries across a large river which divides them is, in our view, clear. That those facilities should be tax exempt is also reasonable.

We do question, however, the whole idea of expanding the power of the authority to include "commerce facilities or development" which could compete with the private sector and be tax exempt besides! We think the impact on infrastructure needed by such facilities as well as the effect on the tax base of local governments and school districts should be examined closely with input from experts of differing economic philosophies. Only four of New Jersey's counties are affected by the compact, whereas in Delaware "commerce facilities" could be developed anywhere in the state.

This tax-exempt authority is not even subject to the Freedom of Information Act. We urge the Senate to examine closely the long-term results of revising the present compact.

Joann O. Messer, President  
League of Women Voters of Delaware  
Wilmington

Wilmington News Journal  
January 24, 1990

## Negatives in widening river-bay unit's powers

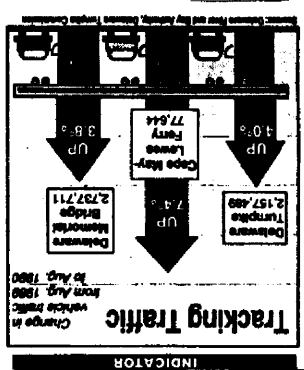
Wilmington, Del. (UPI) — A Delaware River and Bay Authority proposal to expand its powers to include "commerce facilities or development" has drawn sharp criticism from local officials and business leaders.

The Delaware River and Bay Authority, a bi-state agency that manages the Delaware River and Delaware Bay, is currently studying a plan to expand its powers to include "commerce facilities or development" as part of a larger effort to modernize the authority's infrastructure.

The plan would allow the authority to build and operate a variety of facilities, including bridges, ferries, and other infrastructure projects. It would also allow the authority to collect taxes on these facilities.

Local officials and business leaders are concerned that the plan would give the authority too much power and that it would be unfair to local businesses. They also worry that the plan would increase taxes on local businesses.

The Delaware River and Bay Authority is currently studying the plan and has not yet made a final decision. It is expected to release a report on the plan in the next few months.



Wilmington News Journal  
October 1, 1990

**LOAD**  
**TRUCKING OUT**

INDICATOR

# Crowds in forecast for twin spans, ferry

**Delaware River and Bay Authority. An** evaluation of possible improvements — including a new bridge across the middle or upper Delaware Bay — is expected next month.

"We wanted to make everyone aware of the fact that we're growing like Topsy," said William J. Miller, the authority's executive director, who declined to speculate on the need for a new bridge or ferry. "If this occurs on the bridge, not only we, but the state of Delaware and New Jersey, are going to have to handle an awful lot more traffic. The approaches are going to get clogged up, too."

Delaware River and Bay Authority can start preparing. It is expected that they're at all correct, because the one-including a new bridge across the middle or upper Delaware Bay — is expected next month.

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See STUDY — B3

## Study: Brace for crush on bridge, ferry

**FROM PAGE B1**

nearly 1.5 million vehicles, over the previous year.

URS projected that traffic would increase by 60 percent by the year 2008. Weekly traffic in the year 2008 is expected to average 100,000 crossings averaging 150,000 daily.

Overall ferry traffic is expected to double by 2008, the study predicted, with average August weekly traffic rising from 7,500 in 1986 to 6,500 by 2005 and 7,500 by 2020.

"These forecasts of traffic assumed that sufficient capacity is provided to support the proposal in Delware Memorial Bridge project, Miller said.

Miller confirmed that the study omitted some Delaware highway projects that could influence traffic.

The study is not related to an effort to allow the authority to use surplus funds for economic development projects, Miller said.

Miller said when asked about recommendations for a new bridge or ferry, "We'll have to wait and see what the next report says. All we know is this is the amount of traffic we expect across those bridges."

Also will be considered, along with rate changes to encourage improvements to loading ramps for or larger ships.

Improvements to loading ramps for or larger ships.

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Wilmington News Journal  
August 16, 1989

# River and Bay authority should not have these new powers to act

## ANOTHER OPINION

**By JERRY A. SHULER**

A June 28 editorial titled "Let us have an increased bridge authority" was brought out as a result of the editorial.

It correctly stated that the Delaware River and Bay Authority was beyond direct control of voters and staff and secure "steady" low-stress employment for the initially will connect.

It also opined that, if the DRBA gets the power to act, it will be able to borrow against projected toll revenues to undertake that far unspecified "economic development" that has been promised should be let into the process that previously has been.

So far so good.

Had the editorial stopped there, it would have rendered good service by pointing out the danger of "semi-governmental" entities, "virtually outside the law."

Unfortunately it went further, calling named not at the authority members who have so often abused their power but at opponents of the DRBA legislation.

"De-regulation," it called us, and made "de-regulation" a bad thing to be called, given that the alternative is doing bad or doing nothing.

Give us a break!

Ask where we'd be today had not environmentalists stood up to the "de-regulation" of our water and wildlife, our coastal zone and woods and farm lands. To paraphrase Patrick Henry if it is to be changed, make the most of it.

The editorial makes other points, some wrong, some wrong-headed.

As an example of a wrong point: "Because the authority would be the vehicle for major development, the object of the environmentalists' opposition."

That's not what happened. Environmentalists — including former Gov. Russell Peterson and recent Delaware gubernatorial candidate Kathleen Kuntz — were not the ones who were met with prompt amendments that eliminated their proposals.

What actually happened was that several prominent environmentalists — including former Gov. Russell Peterson and recent Delaware gubernatorial candidate Kathleen Kuntz — were not the ones who were met with prompt amendments that eliminated their proposals.

When this happens, you get the feeling that you're being snubbed. It's a common feeling of the legislature, especially when amendments couldn't fix all the problems that were being solved with it.

The bill that was passed with it, which had in concept, included and approved.

When this happens, you get the feeling that you're being snubbed. It's a common feeling of the legislature, especially when amendments couldn't fix all the problems that were being solved with it.

The bill that was passed with it, which had in concept, included and approved.

tually more than the necessary three-fourths majority.

The bills, like much other legislation, got bogged down in 11th hour amendments. It is possible that it is still the same which will no doubt resurface later.

Voters and users of the Delaware Memorial Bridge and Cape May-Lewes ferry will be well-served if the authority continues with the same in the interim.

They can begin by looking up the history of the DRBA and learning why we distrust the authority and oppose broadening of its powers.

Actually, we do trust the authority. We trust it to do what it has done since its founding a quarter-century ago: to act in the public interest and to do so as fairly as possible.

When asked about all this, it is clear that the authority still has a long way to go. The only confidence they have, it seems, is in their own judgment. That kind of cynicism is not healthy.

Maybe our editor had better go back and reread Thomas Jefferson's words:

"Whom judgment should we trust? The DRBA or ourselves?"

The legislature?

We've already had a bad experience with the legislature. It's not the legislature that we should trust. It's the authority that we should trust.

However, because reality is not always what we want it to be, we should also trust the authority.

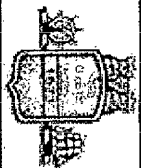
House Bill 233, with five amendments, was introduced through the Senate on June 15, 1989. It is not voting, after only a couple of days, after the Senate has already passed it.

Call it what you wish, the bill is a step toward the authority to democracy, though it was not intended to be.

Walter A. Shuler is chairman of the Delaware River and Bay Authority.







**New Castle County, Delaware**  
**CHRISTOPHER A. GOONS, COUNTY EXECUTIVE**

County Departments: | [How Do I Find Information On...](#) | [Home](#)

Parcel #: \_\_\_\_\_ Deed Book/Page: \_\_\_\_\_

Street Number/Name: \_\_\_\_\_

Display  Results

**Parcel # 0699999027**  
 Unincorporated

**Property Address:** 0 UTILITIES  
 BRANDYWINE, DE  
**Subdivision:** SEE KEYSTONE FILE  
**Owner:** KEYSTONE ENERGY SERVICES CO LP  
**Owner Address:** ATTN TED GREGG  
 500 SHELL ROAD  
 CARNEYS POINT, NJ 08069

[View Map](#)  
 Last 10 Sales

**Lot #:** \_\_\_\_\_ **Property Class:** UTILITY  
**Location:** \_\_\_\_\_  
**Map Grid:** 00000000 **Lot Size:** 0  
**Block:** \_\_\_\_\_ **Lot Depth:** 0  
**Census Tract:** \_\_\_\_\_ **Lot Frontage:** 0  
**Street Type:** \_\_\_\_\_ **Street Finish:** \_\_\_\_\_  
**Gas:** \_\_\_\_\_ **Electric:** \_\_\_\_\_  
**Water:** \_\_\_\_\_  
**Microfilm #:** 000000

**District & Zoning Info**

Districts  
BRANDYWINE SCHOOL DIST-TRES  
NORTH OF C&D CANAL  
Zoning

**Sales History**

Deed	Cur. Owner?	Multi?	Sale Date	Sale Amount
0 0	Y	Y	1/1/1901	0

**Tax/Assessment Info**

Assessment	Exemption	Exp. Amount
Land: 0		
Structure: 1352000		
Homeste: 0		
<b>Total:</b>		

County Taxable: 1352000 School Taxable: 1352000

**Tax History as of 06-22-2006 08:29:36 P.M.**

Printable Tax Details

Tax Year	County			School		
	Principal Due	Penalty Due	Last Paid Date	Principal Due	Penalty Due	Last Paid Date
2002A	\$0.00	\$0.00	09/18/2002	\$0.00	\$0.00	08/07/2002
2003A	\$0.00	\$0.00	09/17/2003	\$0.00	\$0.00	09/22/2003
2004A	\$0.00	\$0.00	09/24/2004	\$0.00	\$0.00	08/04/2004
2005A	\$0.00	\$0.00	09/21/2005	\$0.00	\$0.00	09/23/2005
	<b>\$6,449.04</b>					
						<b>\$18,731.96</b>

\$6,250.30

\$20,841.08

County Balance Due: \$0.00  
School Balance Due: \$0.00

These amounts are valid through the last day of the month. For accounts with delinquent balances, statutory penalty will accrue on the first day of next month.

No Sewer Service

### Commercial Property Characteristics

Building	Occupancy:	# Stories	Year Built
	Struc Class	Quality	Condition
	Floor Level	Grnd Fl Area	Total Flr Area
	Ext Wall Type	Wall Height	Perimeter
	AC %	Heat %	Rentable Units
	Bsmt %	Bsmt Util	
	Year Renov	Renov Rtnng	Eff. Yr Built

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