

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 1 (Pages 1 - 810)**

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08768

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

Relating to the boundary controversy between said States

Whereas

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

And Whereas

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

And Whereas

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

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

## — Now Therefore, —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Edward C. Baker  
Robert W. Carter  
Franklin Murphy  
Chauncey C. Parker

By Robert W. Carter  
Robert W. Carter  
Herbert H. Ward  
Geo. W. Bates

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Delaware-New Jersey  
Compact

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1905

NJ + DE Compact



<p>January 23, 1907. [H. R. 21089.] [Public, No. 81.]</p> <p>Light-house tenders. Cost of increased. Third district. Vol. 33, p. 1171.</p> <p>Sixth district. Vol. 33, p. 1172.</p> <p>Eleventh district. Vol. 33, p. 1172.</p> <p>Twelfth district. Ibid. p. 324.</p> <p>Thirteenth district. Ibid. p. 324.</p> <p>Contracts.</p> <p>May be built in navy-yards.</p>	<p>CHAP. 393.—An Act To increase the limit of cost of five light-house tenders heretofore authorized.</p> <p><i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,</i> That the limit of cost of tender for inspector in the third light-house district, in the Light-House Establishment, under the Light-House Board, in the Department of Commerce and Labor, heretofore authorized, is hereby increased by the sum of sixty-five thousand dollars, so as to make the total limit of cost two hundred thousand dollars instead of one hundred and thirty-five thousand dollars, as heretofore authorized.</p> <p>SEC. 2. That the limit of cost of tender for inspector in the sixth light-house district, heretofore authorized, is hereby increased by the sum of sixty thousand dollars, so as to make the total limit of cost two hundred thousand dollars instead of one hundred and forty thousand dollars, as heretofore authorized.</p> <p>SEC. 3. That the limit of cost of tender for inspector in the eleventh light-house district, heretofore authorized, is hereby increased by the sum of sixty thousand dollars, so as to make the total limit of cost two hundred thousand dollars instead of one hundred and forty thousand dollars, as heretofore authorized.</p> <p>SEC. 4. That the limit of cost of tender for engineer service in the twelfth light-house district, heretofore authorized, is hereby increased by the sum of sixty-five thousand dollars so as to make the total limit of cost two hundred and fifteen thousand dollars instead of one hundred and fifty thousand dollars, as heretofore authorized.</p> <p>SEC. 5. That the limit of cost of tender for inspection service in the thirteenth light-house district, heretofore authorized, is hereby increased by the sum of sixty-five thousand dollars, so as to make the total limit of cost two hundred and fifteen thousand dollars instead of one hundred and fifty thousand dollars, as heretofore authorized.</p> <p>SEC. 6. That the Secretary of Commerce and Labor is hereby authorized to enter into contracts for any or all of the tenders herein referred to within the respective limits of cost, as provided by this Act.</p> <p>SEC. 7. That the President may direct that all or any of the tenders in this Act referred to shall be constructed in any of the Government navy-yards within the respective limits of cost provided.</p> <p>Approved, January 23, 1907.</p>
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January 24, 1907.  
[S. 2476.]  
[Public, No. 32.]

Preamble.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EDWARD C. STOKES,  
ROBERT H. McCARTER,  
FRANKLIN MURPHY,  
CHAUNCEY G. PARKER,

PRESTON LEE,  
ROBERT H. RICHARDS,  
HERBERT H. WARD,  
GEO. H. BATES.

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

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

Approved, January 24, 1907.

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

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

JANUARY 23, 1907.  
[S. 1922.]

[Public, No. 22.]

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

Army.  
Artillery reorganiza-  
tion.  
Coast and field ar-  
tillery organization.  
Vol. 51, p. 794,  
amended.

Provis.  
Chief of Artillery to  
be Chief of Coast Ar-  
tillery after July 1,  
1908, etc.

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

To be additional  
member of General  
Staff Corps.

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

Vacancies; how  
filled.

Rank, etc., upon re-  
tirement.

Additional number  
in grade.  
Provis.  
Limit.

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

Coast artillery; de-  
fines.

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

Field artillery.

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

Coast artillery to  
constitute a corps.  
Number of officers.

Supreme Court of the United States:

OCTOBER TERM, 1884.

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No. 1. ORIGINAL DOCKET.

The State of New Jersey,  
*Complainant,*  
VS.

The State of Delaware.

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**RECORD.**

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

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Supreme Court of the United States  
IN EQUITY.

THE STATE OF NEW JERSEY

v.

THE STATE OF DELAWARE.

On Bill, &c.

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

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

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

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

I have the honor to be, very respectfully,

Your obedient servant,

JACOB VANATTA,

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

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

PROOF OF NOTICE OF MOTION.

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

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

MILO YEOMANS.

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

W. S. BELVILLE,

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

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

## MOTION FOR LEAVE TO FILE BILL.

Supreme Court of the United States. The State of New Jersey v. The State of Delaware. Original No. Now comes the above-named complainant and moves for leave to file in this court its bill in equity against the above-named defendant and for process to answer.

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

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

T. F. BAYARD.

Endorsed—Sup. Court U. S., 1876. Oct. Term. Original No. The State of New Jersey, Compt., v. The State of Delaware. Motion for leave to file bill and for process. Filed 13th March, 1877.

MINUTE ORDER GRANTING LEAVE TO FILE BILL,  
AWARDING SUBPENAS, AND ASSIGNING MO-  
TION FOR PRELIMINARY INJUNCTION FOR  
ARGUMENT.

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

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

On motion of Mr. E. L. Stanton leave is hereby granted to file bill in this cause, and it is ordered that subpoenas be issued to the defendants, and that the motion for preliminary injunction be assigned for argument on Monday next, the 19th instant."

## BILL OF COMPLAINT.

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

C. By lease and release, which lease was dated the 23d and the release the 24th day of June, 1664, made by the said James, Duke of York, etc., party of the first part, and Lord John Berkeley and Sir George Carteret, parties of the second part, the said James, after reciting the grant so as aforesaid made to him by the aforesaid letters-patent, dated 16th March, 1664, for a competent sum of good and lawful money to him paid by the said Berkeley and Carteret, did grant and bargain, sell, release and confirm to said Berkeley and Carteret, their heirs and assigns forever, all that tract of land adjacent to New England and lying and being to the westward of Long Island and Manhitas Island, and bounded on the east part by the main sea and part by Hud-



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2.

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

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

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

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

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

"A proclamation by the Governor of New Jersey.

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

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

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

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

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

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

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

"Attest,  
JOEL PARKER.  
"Jos. A. HALL, Private Secretary."

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

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

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

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

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

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

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

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

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

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

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

“Adopted at Dover, January 30th, 1873.”

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

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

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

“Resolved, by the Senate and House of Representatives

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

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

“Adopted at Dover, February 14th, 1873.”

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

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

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

“Adopted at Dover, February 19th, 1873.”

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

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

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

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

\* \* \* \* \*

Passed at Dover, February 19th, 1873.

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

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

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

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

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

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

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

"Approved February 26th, 1873."

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

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

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

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

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

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

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

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

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

"Approved March 11th, 1873."

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

"Joint resolution in reference to the fishery question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"NOTICE TO FISHERMEN.**

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

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

**"JOHN SPRINGER,**

Clerk of the Peace at New Castle.

"Attest,

"M. A. J. SPRINGER, Deputy,

"No. 309 West Second street, Wilmington."

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

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

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

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

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

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

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

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

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

"Approved March 30th, 1876."

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

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

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

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

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

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

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

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

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

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

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

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

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

SAMUEL CALLAHAN, SR.

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

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

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

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

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

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

"STATE OF DELAWARE, ss. :

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

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

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

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

"JAMES PONDER.

"JOHN H. PAYNTER, Secretary of State."

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

WILLIAM HAWN.

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

JAMES WILSON,  
U. S. Commissioner.

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

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

J. Q. A. DENNY.

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

JAMES WILSON,  
U. S. Commissioner.

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

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

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

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

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

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

GEORGE STANTON.

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

[L. S.]

J. D. HALL,  
*Notary Public.*

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

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

JOB BARBER.

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

[L. S.]

J. D. HALL,  
*Notary Public.*

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

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

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

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

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

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

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

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

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

## SUBPCENA.

THE UNITED STATES OF AMERICA, ss.

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

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

Hereof you are not to fail at your peril.

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

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

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

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

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

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PROOF OF SERVICE OF SUBPCENA.

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

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

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

JOHN G. NICOLAY,  
*Marshal.*

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

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ARGUMENT ON MOTION FOR PRELIMINARY INJUNCTION.

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

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

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

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ORDER FOR PRELIMINARY INJUNCTION.

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

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

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

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

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

March 26th, 1877.

True copy.

Test:

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

[L. S.]

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PROOF OF SERVICE OF PRELIMINARY  
INJUNCTION.

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

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

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

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

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INJUNCTION AND PROOF OF SERVICE.

THE UNITED STATES OF AMERICA, ss.

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

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

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

You and each of you are therefore hereby commanded

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

Hereof fail not at your peril.

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

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

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

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

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

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

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

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ORDER TO PLEAD, ANSWER OR DEMUR.

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

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

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

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

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

[L. S.]

JAMES H. MCKENNEY,

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

## DOCKET ENTRIES.

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

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

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

1877, March 13th. Leave granted to file bill and sub-  
pcena ordered to issue.

1877, March 13th. Bill filed.

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

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

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

1877, March 29th. Copy of order sent to Mr. Freling-  
huysen.

1877, March 31st. Injunction issued to Mr. Freling-  
huysen.

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

1877, April 20th. Proof of service of order and injunc-  
tion filed.

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

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

1892, May 16th. Stipulation filed.

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

True copy.

Test:

[L. S.]

JAMES H. MCKENNEY,

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

## AGREEMENT OF COUNSEL, MAY 2d, 1892.

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

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

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

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

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

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

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

GEO. GRAY,  
*Of Counsel for Defendant.*

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

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

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

Your obedient servant,

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

To the Hon. George Gray, Solicitor of Defendant.

Dated Trenton, N. J., September 8th, 1897.

Due and legal service of within notice is hereby acknowl-  
edged.

GEO. GRAY,  
*Solicitor for Defendant.*

## SUBSTITUTION OF COUNSEL.

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

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

October 2d, 1897.

GEO. GRAY,  
*Solicitor for Defendant.*



*✓* Brief of Vanatta (on record) for  
Filed 19<sup>th</sup> March 18,

**SUPREME COURT OF THE UNITED STATES.**

**IN EQUITY.**

---

THE STATE OF NEW JERSEY,

*vs.*

THE STATE OF DELAWARE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bill, pages 17—19.

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

That after the passage of that resolution, efforts were made

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

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

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

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

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

## I.

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

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

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

## II.

*As to the preliminary Injunction.*

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

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

*See Rev. Stat. § 687.*

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

This necessarily includes the writ of injunction, which is

one of the most necessary and useful instruments ~~in~~<sup>of</sup> a Court of Equity.

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

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

The same power was recognized—

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

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

*High on Injunctions*, §§ 4, 5, 12, 13, 480, 511.

*Pennsylvania vs. Whaling*, 13 Howard, 518.

*Kerr on Injunctions*, p. 11, 12.

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

*High on Injunctions*, § 21.

*Kerr on Injunctions*, pp. 603, 604.

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

*High on Injunction*, § 354, 357.

*Jacobus v. Jacobus*

*W. T. Bayard*  
*Brief of Bayard (on motion) for*  
*Defendant*  
*Filed 19<sup>th</sup> March 1877*

IN THE

**Supreme Court of the United States.**

THE STATE OF NEW JERSEY

vs.

THE STATE OF DELAWARE.

In Equity.

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

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

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

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

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

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

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

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

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

See opinion of this court in 1838.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Supreme Court of the United States.

No. 1, Orig. October Term, 1897.

The State of New Jersey,  
Complainant,

vs.

The State of Delaware.

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

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

October 12, 1897.

**DE H.S.**  
**Box 7 File 1**

**DE17171**

# Supreme Court of the United States.

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Between—

THE STATE OF NEW JERSEY, COMPLAINANT,

AND

THE STATE OF DELAWARE, DEFENDANT.

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On Bill for Injunction and Relief—Notice, etc.

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

Your obedient servant,

S. H. GRAY,

*Attorney General for the State of New Jersey and  
Solicitor of Complainant.*

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

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

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

H. H. WARD,

*Attorney General of the State of Delaware and  
Solicitor of the Defendant.*



No. 1 Orig<sup>e</sup>

Answer of Defendant.

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

Filed Oct. 15, 1901.

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**United States Supreme Court**

**No. 1 ORIGINAL. IN EQUITY.**

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

**AND**

*THE STATE OF DELAWARE,*  
*Defendant.*

**DEFENDANT'S ANSWER.**

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THE JOHN N. BOGGS PRESS, WILM., DEL.

# UNITED STATES SUPREME COURT.

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

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

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

## I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

whether or not in and by which alleged indenture, it is averred, that the said Sir George Carteret did convey, with the land on the westerly side of the said partition line, unto the said William Penn, Gawn Lawry and Nicholas Lucas all and every the isles, islands, rivers, mines, minerals, woods, fishings, hawkings, huntings and fowlings, and all other royalties, governments, powers, forts, franchises, harbors, profits, commodities and hereditaments whatsoever unto the said westerly part, share and portion of the said tract of land and premises, as in the section of said Bill of Complaint denominated by the letter F, by said complainant set forth and described; or whether or not the indenture of bargain and sale, dated the eighteenth of March 1678, between the said John, Lord Berkeley of the one part and John Fenwick of the other part, by which said Berkeley is said to have granted to Fenwick all the moiety or half part of him said Berkeley, of, in and to the said tract of land called New Ceserea or New Jersey, or the two other indentures, one being indenture of bargain and sale, dated the ninth of February, 1674, from the said John Fenwick and Edward Billinge of the one part, said William Penn, Gawn Lawry and Nicholas Lucas of the other part, and the other being an indenture tripartite of grant, release, or confirmation, bearing date the tenth day of February, 1674, between said John Fenwick of the first part, said Edward Billinge of the second part and the said William Penn, Gawn Lawry, and Nicholas Lucas of the third part, and the said several other alleged good and sufficient assurances in the law, duly executed, by which the said moiety or half part of said tract of land and all and every other the said several and respective premises so alleged to be conveyed unto the said John Fenwick were said to have been conveyed unto, and at the date of the said indenture quintipartite were said to be vested in, the said William Penn,

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

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

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

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

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

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

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

of the bed thereof to the said Duke of York by the letters patent of the said King, of March the twenty-second, 1688, even had the said King been only a private person; and that inasmuch as the said Charles the Second was King of England at the times of the granting of said two letters patent so cited and averred in said Bill of Complaint as and for the title of said complainant to the premises in dispute, and no estoppel binds the crown, no impediment, either in fact or law, appears wherefore the said letters patent of the twenty-second of March, 1688, were not legally and equitably effective to then pass the title to the Duke of York of the said premises in question. . And this defendant further claims and respectfully submits that, even if it shall appear by evidence in this cause that said alleged concessions and agreements of the third day of March, 1676, mentioned in the section denominated by the letter H in said Bill of Complaint, ever had legal existence and validity for any purpose, it is averred in said Bill of Complaint, in the section thereof denominated by the said letter G, that the powers and authority to make said concessions and agreements of March the third, 1676, were exclusively granted to and vested in the said Edward Billinge, the said supposed *cestui que trust* of the larger part of said West New Jersey, and the specially and solely named grantee of the said Duke of York of said powers and authorities; that the said William Penn, Gawn Lawry and Nicholas Lucas are averred in the last above mentioned section of said Bill of Complaint to have been, not the beneficial owners of said West New Jersey, or of any part thereof, but trustees thereof only for the said John Eldridge, Edward Warner and Edward Billinge; and that the said William Penn and his co-trustees joined, if it be a fact that they did join, in the execution of the said concessions and agreements of the third day of March, 1676, as formal parties only, by virtue of their said trus-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

That immediately after the said last mentioned Let-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### III

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

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

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

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

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

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

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

3. And this defendant, further answering, saith that it admits that on February 19th, 1873, its Legislature passed another Act entitled "A Supplement to the Act entitled 'An Act for the Protection of Fishermen'" (being Chap. 419, Vol. 14, Laws of Delaware), the terms and tenor of which said Act are substantially set forth in the said Bill of Complaint; but for greater certainty this defendant craves leave to refer to the said Act when produced at the hearing of this cause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HERBERT H. WARD,

*Attorney General of the State of Delaware.*

GEO. H. BATES,

*Of Counsel.*

*Solicitors of the Defendant.*

IN THE  
**Supreme Court of the United States**

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THE STATE OF NEW JERSEY,  
*Complainant*

vs.

THE STATE OF DELAWARE,  
*Defendant*

In Equity,  
No. 1, Original.

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

**DEAR SIR :**

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

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

Very respectfully yours,

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

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

April 30, 1903.

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

Service of the above notice is hereby acknowledged.

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

---

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

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

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

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

IN THE  
**Supreme Court of the United States**

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THE STATE OF NEW JERSEY, <i>Complainant,</i>	}	In Equity. No. 1, Original.
vs.		
THE STATE OF DELAWARE, <i>Defendant.</i>		

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**Notice of Intention to Call Up Motion.**

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

THE STATE OF NEW JERSEY, <i>Complainant,</i>	} No. 1 Original. <i>In Equity.</i>
<i>vs.</i>	
THE STATE OF DELAWARE, <i>Defendant.</i>	} Motion for reference, etc.

**DEAR SIR:**

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

Very respectfully yours,

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

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

May 15, 1903.

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

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

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



# FILE COPY.

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

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

THE STATE OF NEW JERSEY,  
*Complainant,*

*vs.*

THE STATE OF DELAWARE,  
*Defendant.*

} In Equity.

} No. 1, Original.

## Stipulation.

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

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

DE04668

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

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

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

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

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

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

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

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

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

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

GEORGE H. BATES,  
*Of Counsel.*

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



(Copy.)

SUPREME COURT OF THE UNITED STATES

No. 1, Original, October Term, 1904

The STATE OF NEW JERSEY,  
Complainant,

vs.

The STATE OF DELAWARE.

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

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

Endorsed:

January 3, 1905.

Supreme Court of the United States  
October Term, 1904, Term No. 1, Original.  
Order.

Filed Jany. 3d, 1905.

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

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DE18093

THE STATE OF NEW JERSEY,  
Complainant,

vs.

THE STATE OF DELAWARE

SUPREME COURT OF THE  
UNITED STATES.

January 11th, 1906.

Hon. Robert H. McCarter,

Attorney General of New Jersey,

Hon. Robert H. Richards,

Attorney General of Delaware.

Dear Sirs:

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

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

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

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

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

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

Yours very truly,

Master &c.

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

DE18141



IN THE  
Supreme Court of the United States.

THE STATE OF NEW JERSEY,  
*Complainant,*

*vs.*

THE STATE OF DELAWARE,  
*Defendant.*

No. 1. ORIGINAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Therefore, be it enacted, etc.

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

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

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

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

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

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

Respectfully submitted,

*Francis Rowle*

Commissioner.

# Supreme Court of the United States

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

## STIPULATION.

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

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

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

IN THE

# Supreme Court of the United States

STATE OF NEW JERSEY }  
                          us. } In Equity. No. 1, Original.  
STATE OF DELAWARE. }

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

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

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

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

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

# Supreme Court of the United States

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

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

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

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

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

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

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

A limited suspension can only operate by way of pressure

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

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

GEO. H. BATES,

*Of Counsel for Deft.*



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**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1906.

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**No. 1, Original.**

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**THE STATE OF NEW JERSEY, COMPLAINANT,**

*vs.*

**THE STATE OF DELAWARE**

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**MOTION FOR DIRECTIONS TO SPECIAL MASTER**

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**ROBERT H. McCARTER,**

*Attorney General of the State of New Jersey,  
Counsel for Complainant*

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**JEDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 20242**

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**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1906.**

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**No. 1, Original.**

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**STATE OF NEW JERSEY**

*vs.*

**STATE OF DELAWARE.**

---

**MOTION FOR DIRECTIONS TO SPECIAL MASTER.**

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**Statement.**

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

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

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

All of which is respectfully submitted.

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

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

SUPREME COURT OF THE UNITED STATES.

No. 1, ORIGINAL.

STATE OF NEW JERSEY

vs.

STATE OF DELAWARE.

NOTICE.

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

Yours respectfully,

ROBERT H. McCARTER,

*Attorney General of the State of New Jersey.*

*Dated September 14, 1906.*

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

## SUPREME COURT OF THE UNITED STATES.

No. 1, ORIGINAL.

STATE OF NEW JERSEY

vs.

STATE OF DELAWARE.

## AFFIDAVIT.

UNITED STATES OF AMERICA, ss:

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

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

ROBERT H. McCARTER.

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

[SEAL.]

NELLIE B. CRAWFORD,  
*Notary Public of New Jersey.*

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

Notice.

[1]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 19 Original.

STATE OF NEW JERSEY,

10

*Plaintiff,*

vs.

STATE OF DELAWARE,

*Defendant.*

NOTICE.

TO:

Hon. C. Douglas Busk, Governor, and

20

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

SIRS:

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

WILLIAM A. STEVENS,  
Attorney-General.

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

Dated May 25, 1929.

40

*Motion—Statement.*

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

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

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**WILLIAM A. STEVENS,**  
Attorney-General.

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

May 27, 1929.

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

**WILLIAM A. STEVENS,**  
Attorney-General.

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

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*Proof of Mailing Motion and Bill of Complaint.*

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

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

VERA E. CASTELLANO, of full age, being duly sworn according to law, on her oath deposes and says: 10

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

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

Edw. Reuben Satterthwaite, Jr., Attorney-General of Delaware, Du Pont Building, Wilmington, Delaware. 20

VERA E. CASTELLANO.

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

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

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*Bill of Complaint.*

[4]

**BILL OF COMPLAINT.**

Filed June 3, 1929.

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

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

**I.**

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

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

30

**II.**

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

**III.**

4. From the southeasterly corner of the State of Penn-  
sylvania in the Delaware River to the main sea at the  
40

*Bill of Complaint.*

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

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

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

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

*Bill of Complaint.*

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

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

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

*Bill of Complaint.*

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

10. Meanwhile the Dutch, whose seat of government in America was in New Amsterdam, now New York, claimed occupancy and actual government, by conquest and settlement of a portion of the territory conveyed by said lease and release of June 23, and 24, 1664. In or about the month of September, 1664, the Dutch in and about New Amsterdam were conquered by the military power of Charles II, King of England, and by the Treaty of Breda, made on or about July 31, 1667, between the governments of said Charles II, and the United Provinces of the Netherlands, all of the territories conquered by the English of the Dutch, including the territory of New Jersey above described in said lease and release of June 23, and 24, 1664, were surrendered and confirmed to the English Crown. 10 20

11. A doubt having arisen whether the English Crown was not re-vested by said Treaty of Breda with the title (8) and government of the lands granted and conveyed to said James, Duke of York, in and by said letters-patent of March 12, 1664, said Charles II, King of England, by letters-patent dated June 29, 1674, re-granted and re-conveyed to said James, Duke of York, said lands and territory by the same description and by the same words as theretofore in said letters-patent of March 12, 1664. 50

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

13. By deed dated February 9, 1674 and by deed dated February 10, 1674, said John Fenwick and said Edward 40

*Bill of Complaint.*

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

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

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

*Bill of Complaint.*

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

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

*Bill of Complaint.*

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

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

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

*Bill of Complaint.*

which by the said respective recited letters-patent, or either of them, are and were granted or intended to be granted to or exercised by the said Duke of York, his heirs, assigns, deputies, officers or agents, in, upon or in relation unto the said premises thereby confirmed or intended to be confirmed, and every of them, in case the same were then in the actual seizure of the said Duke of York 10

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

21. As a result of the American Revolution, which followed the Declaration of Independence on July 4, 1776, [12] the State of New Jersey became and ever since has been a free and independent State possessed of all the rights thereof and vested with all and every power of government in and over the territory thereof and the tidal waters adjacent thereto, which immediately before the Revolution were vested in the Crown of England. 30

22. At the time of said Revolution, the bed of the Delaware River and Bay underneath the tidal waters thereof and between the highwater mark on either side, from Trenton to the main sea at the mouth of the Bay at Cape May, belonged to and was vested in the Crown of England in trust for the use and possession of the subjects of the King; that by virtue of said Revolution and the resulting 40

*Bill of Complaint.*

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

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

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

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

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

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

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

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

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

*Bill of Complaint.*

20. The portion of the Delaware river and bay from which citizens of the defendant claim the right to take oysters from lands claimed by the plaintiff comprises a large area which produces annually seed oysters of great value, being a substantial part of valuable seed oyster beds, which are the only natural oyster beds from which plaintiff and its citizens can obtain an annual supply of seed oysters for planting more than thirty thousand acres of land leased by the plaintiff to its citizens and now under cultivation by them in the Manrice River Cove on the easterly side of said bay. 10

21. By Joint Resolution No. 4 entitled "Joint Resolution relating to the boundary controversy between the State of New Jersey and the State of Delaware," approved March 28, 1927, the Legislature of the plaintiff appointed a commission to confer with a like commission of the defendant for the purpose of framing a compact or agreement between said States and legislation consequent thereon to be submitted to the Legislatures of said States, respectively, for action thereon looking to the final adjustment of all controversies relating to the boundary line between the plaintiff and the defendant, and to their respective rights in the Delaware River and Bay. A similar commission was appointed by the Legislature of the defendant and said commissions conducted negotiations during a period, but were unable to agree upon the questions submitted for their consideration. 20 30

22. By a report dated April 16, 1929, the commission appointed by the Legislature of the plaintiff reported that meetings had been held with the commission appointed by the defendant but without reaching an agreement, and recommended that the matter of the boundary line controversy between the two States be referred to the Attorney General to the end that appropriate action should be taken to fix and determine said boundary line. 40

*Bill of Complaint.*

32. On April 17, 1929, by a joint resolution entitled "Joint Resolution concerning the boundary line between the States of New Jersey and Delaware in the Delaware River and Bay," approved May 6, 1929, the Legislature of the plaintiff instructed its Attorney-General to institute such legal proceedings as may be necessary to ascertain and establish the boundary line between the plaintiff and the defendant.

33. The defendant and its citizens by persisting in their present claims of title to the subaqueous soil claimed by the plaintiff on the easterly side of the thalweg of said Delaware river and bay, have created a conflict between the parties and their respective citizens and between the public authorities and officers of the plaintiff and the defendant respectively charged with the duty of enforcing the laws of the respective states, which cannot be settled or determined by any legal means other than by resort to this Honorable Court.

34. The plaintiff claims title in fee simple to the bed of said Delaware river and bay which divides the States of [17] New Jersey and Delaware from the thalweg thereof to the highwater mark on the easterly shore under and by virtue of the sovereignty of the Crown of England existing prior to, and to which it succeeded as a result of the Declaration of Independence, the American Revolution and the Treaty of Paris, aforesaid, and under and by virtue of the common law of England as existing and applied at that time both in England and in the British colonies in America and which was adopted by the plaintiff and the defendant upon attaining their independence, and has ever since existed and been applied by the courts of the plaintiff and the defendant.

*Bill of Complaint.*

## IV.

In consideration whereof, and for as much as the plaintiff is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable, plaintiff prays;

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That the said defendant, State of Delaware, may to the best and utmost of its knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived;

That this court grant unto the plaintiff the United States writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said defendant, State of Delaware, perpetually restraining and enjoining it, its citizens, officers, agents and employees, and all other persons acting or claiming or assuming to act under its authority, from taking oysters or other property, and from claiming or exercising any territorial or ownership rights in, upon or over the subaqueous soil in [the] said Delaware river and bay easterly of the thalweg thereof or between said thalweg thereof and the highwater mark on the easterly side of said river and bay;

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That the true boundary line between the State of New Jersey and the State of Delaware, may by order of this court, be ascertained, declared, defined and perpetually established and that the rights and title of the plaintiff, and of its citizens and inhabitants, claimants thereunder, to the bed of said Delaware river and bay and the territorial extent thereof may be so ascertained, declared and established.

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That this court grant unto the plaintiff the United States writ of subpoena, issuing out of and under the seal

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*Motion for Leave to File Bill of Complaint.*

of this Honorable Court, to be directed to the said defendant, State of Delaware, commanding it, by a certain day and under a certain penalty therein to be expressed, to be and appear before this Honorable Court, then and there to answer all and singular the said premises, and to stand to abide by and perform such order and decree therein as to  
10 your Honors shall seem meet, and shall be agreeable to equity and good conscience;

And that the plaintiff may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

And the plaintiff, as in duty bound, will ever pray, etc.

STATE OF NEW JERSEY,

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By WILLIAM A. STEVENS,  
Attorney-General.

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

WALTER H. BACON,  
Counsel.

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

Mr. Duane E. Minard, for Complainant.

June 3, 1929. Granted, and process is ordered to issue returnable on Monday, July 1, next. (279 U. S. 825; 73 L. ed. 978.)

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Answer.

[1]

ANSWER. 9

Filed July 1, 1929.

The Answer of State of Delaware, Defendant, to the Bill of Complaint of State of New Jersey, Plaintiff.

## I.

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1. This defendant admits that the plaintiff above named is a State of the Union, having its capital and seat of government at the City of Trenton, Mercer County, New Jersey, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits, under and by virtue of its constitution. This defendant believes it to be true that this suit was instituted by direction of the Legislature of the plaintiff and with the approval of the Governor thereof.

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2. This defendant admits that State of Delaware, the defendant, is a State of the Union, having its capital and seat of government in the City of Dover, Kent County, Delaware, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits, under and by virtue of its constitution.

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## II.

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

## III.

4. This defendant admits that from the southeasterly corner of the State of Pennsylvania in the Delaware River to the main sea at the mouth of Delaware Bay, that said

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*Answer.*

river and bay are navigable waters wherein the tide ebbs and flows and form the boundary line between the plaintiff and the defendant.

5. This defendant admits that the controversy involved in this suit is where, in said river and bay, the exact division of territory between the said plaintiff and the said  
 10 defendant lies. This defendant admits that the plaintiff claims ownership in fee simple of that portion of the subaqueous soil lying easterly of the thalweg thereof; and that the defendant claims ownership in fee simple of the whole bed of said Delaware River to low water mark on the easterly shore thereof, lying within the circumference of a circle of a radius of twelve miles described about the courthouse in the Town of New Castle, in the State of Delaware, as a center, and all the islands in said river  
 20 within the compass of said circle, and all that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

6. This defendant believes that Charles II, King of England, by letters-patent dated March 12, 1664, did grant and convey to James, Duke of York, his heirs and assigns, certain lands in America, including all the lands from the west side of Connecticut to the east side of Delaware Bay, together with all the lands, islands, soils, rivers, harbours, mines, minerals, quarries, woods, marshes,  
 30 waters, lakes, fishings, hawkings, huntings and fowling, and all other royalties, profits, commodities and hereditaments to said several islands, lands and premises belonging and appertaining, with their and every of their appurtenances, but for greater certainty as to [3] said letters-patent and all of the provisions thereof, it craves leave to refer to the said letters-patent when produced in this cause. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause  
 40 that said alleged patent ever had legal existence and

*Answer.*

validity, that then and in that case, by legal and just construction thereof, it cannot and should not be construed so as to include within the express description of the lands and premises therein contained, or as to control any part of the bed of said Delaware River within the compass of said twelve mile circle or that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof. 10

7. This defendant believes that said letters-patent also granted to James, Duke of York, his heirs, deputies, agents, commissioners and assigns, full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of said King, his heirs and successors, as adventure themselves into any of the parts or places aforesaid, or that should at any time thereafter inhabit within the same, according to such laws, orders, ordinances, directions and instructions as by said Duke or his assigns should be established; and in defect thereof, in case of necessity, according to the good discretions of his deputies, commissioners, officers or assigns respectively; as well in all causes and matters capital and criminal as civil, both marine and others; so also as the said statutes, ordinances and proceedings should not be contrary to, but as near as conveniently may be agreeable to the laws, statutes and government of the realm of England. But this defendant claims and respectively submits that if said patent ever had any legal existence and validity, that then and in that case, by legal and just construction thereof, it cannot and should not be construed to apply to any part of the bed of said Delaware River within the compass of the said twelve mile circle, or to that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof. 20 30 40

*Answer.*

8. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not the said James, [4] Duke of York, by lease dated June 23, 1664, and release dated June 24, 1664, after reciting the grant aforesaid made to him by said letters-patent dated March 12, 1664, conveyed to Lord John Berkeley and Sir George Carteret, their heirs and assigns forever, all that tract of land adjacent to New England and lying and being to the westward of Long Island and Manhitas Island and bounded on the east part by the main sea and part by Hudson's River, and having upon the west Delaware Bay or River, and extending southward to the main ocean as far as Cape May at the mouth of Delaware Bay, and to the northward as far as the northernmost branch of the said Delaware Bay or Delaware River, which is forty-one degrees, forty minutes of latitude and crossing over thence in a straight line to Hudson's River in forty-one degrees of latitude, which said tract of land was thereafter to be called by the name or names of New Caesarea or New Jersey. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged lease and release ever had any legal existence and validity, that then and in that case, by legal and just construction thereof, they cannot and should not be so construed as to include or control any part of the bed of said River Delaware within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

9. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not said lease and release also conveyed all rivers, mines, minerals, woods, fishings, hawkings, hunting and fowling, and all other royalties, profits, commodities and hereditaments whatsoever to the said lands and premises belonging or in

thereof.

any way appertaining, with their and every of their appurtenances, in as full and ample a manner as the same were granted to the said Duke by the aforementioned letters-patent of March 12, 1664, and all the estate, right, title and interest, benefit, advantage, claim and demand of the said Duke of, in and to said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof. But this [5] defendant claims and respectfully submits that if it shall appear on evidence in this cause, that said lease and release ever had any legal existence and validity, that then and in that case, by legal and just construction thereof, they cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle, nor any right of jurisdiction in said portion of said river, or that portion of the alluvious soil of the remainder of said river and bay westerly of the geographical center thereof.

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This defendant believes that the Dutch, whose seat of government in America was in New Amsterdam, now New York, claimed occupancy and actual government, by conquest and settlement of a portion of the territory conveyed by said lease and release of June 23rd and 24th, 1664, and in or about the month of September, 1664, the Dutch in and about New Amsterdam were conquered by the military power of Charles II, King of England, and by the Treaty of Breda, made on or about July 31st, 1667, between the governments of said Charles II and the United Provinces of the Netherlands, all of the territories conquered by the English from the Dutch, including the territory of New Jersey above described in said lease and release of June 23rd and 24th, 1664, were surrendered and confirmed to the English Crown. And this defendant further claims and respectfully submits that the territories so surrendered cannot and should not be so construed as

*Answer.*

to include any part of the said River Delaware within the compass of said twelve mile circle, or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

10 11. This defendant believes that a doubt did arise as to whether the English Crown was not revested by said Treaty of Breda with the title and government of the lands granted and conveyed to said James, Duke of York, in and by said letters-patent of March 12, 1664, that said Charles II, King of England, by letters-patent dated June 29, 1674, regranted and reconveyed to said James, Duke of York, said lands and territory by the same description and by the same words as [6] theretofore in said letters-patent of March 12, 1664. And this defendant further  
20 claims and respectfully submits, that if it shall appear by evidence in this cause, that said alleged confirmatory patent ever had legal existence and validity, that then and in that case, by legal and just construction thereof, it cannot and should not be so construed as to include within the express description of the lands and premises therein contained, or to control any part of the bed of said Delaware River within the compass of said twelve mile circle, or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

30 12. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed dated March 18, 1673, said Lord John Berkeley conveyed to one John Fenwick, in trust for one Edward Byllynge, all the moiety or undivided one-half part or interest in and to said tract of land called New Jersey. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said deed dated March 18, 1673, had any legal existence or validity, that then and in  
40 that case, by legal and just construction thereof, it cannot

Answer.

and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

13. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed dated February 9, 1674, and by deed dated February 10, 1674, (the said John Fenwick and said Sir Edward Byllynge conveyed to William Penn, Gawen Lawrie and Nicholas Lucas, subject to an equitable interest claimed by said Edward Byllynge) said moiety or one-half undivided interest formerly of the said John Berkeley in said tract of land as aforesaid. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said deeds dated February 9, 1674, and February 10, 1674, had any legal existence or validity, that then and in that case, by legal and just construction thereof, they cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

14. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed dated July 20, 1674, said James, Duke of York, reciting said indenture of June 29, 1674, reconveyed unto the said George Carteret, his heirs and assigns, the northerly portion of the tract of land called New Jersey, described as all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitis Island, and bounded on the east part by the main sea and part of Hudson's River, and extending southward as far as a certain creek, called Barnegatt, being about the middle between Sandy Point and Cape May, and bounded

*Answer.*

on the west by a straight line from said creek called Barnegatt, to a certain creek in Delaware River next adjoining to and below a certain creek in Delaware River called Renkokus Kill, and from thence up said Delaware River to the northernmost branch thereof, which is in forty-one degrees and forty minutes of latitude, and on the north, crossing thence in a straight line to Hudson's River in forty-one degrees of latitude. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged indenture ever had legal existence or validity, that then and in that case, by legal and just construction thereof, it cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

15: This defendant does not know and cannot set forth as to its belief or otherwise, whether or not said last mentioned deed also conveyed all rivers, mines, minerals, wood, fishings, hawking, hunting and fowling, and all royalties, profits, commodities and hereditaments whatsoever to the said land belonging or appertaining; with their and every of their ap- [8] purtenances in as full and ample a manner as the same were granted unto the said James, Duke of York, by said letters-patent of June 29, 1674, and all the estate, right, title, interest, benefit, advantage, claim and demand of the said James, Duke of York, of, in and to said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged indenture ever had legal existence or validity, that then and in that case, by legal and just construction thereof, it cannot and should not be so construed as to

... or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

This defendant does not know and cannot set forth to his belief or otherwise, whether or not by deed dated the 1<sup>st</sup> 1676, between said Sir George Carteret, William Penn, Clawon Lawrie, Nicholas Lucas and Edward Byllynge, reciting said letters-patent of March 12, 1664, said release of June 23 and 24, 1664, and the deeds mentioned in the foregoing paragraphs 12 and 13 hereof, reciting that the said Penn, Lawrie and Lucas (including the equitable interest of said Byllynge) stood in and in one undivided moiety or half part, of all the conveyance of said premises so granted unto the said Lord Berkeley and Sir George Carteret as aforesaid, as tenants between themselves, and did then hold the same to them and to their heirs, as tenants in common with the said George Carteret who was then seized of the said undivided moiety or half part thereof, and reciting that the parties had agreed upon a partition of said tract of land into two parts, said Byllynge, Penn, Lawrie and Lucas conveyed unto said Sir George Carteret, his heirs and assigns forever, the easterly part of New Jersey, to have and to hold the same in severalty, and the said Carteret conveyed unto said Penn, Lawrie and Lucas, to their heirs and assigns forever, the westerly part of New Jersey, to have and to hold to them, their heirs and assigns in severalty, the line of division between said easterly and westerly parts being fully described in said deed; or whether or not said parts comprised the whole of the territory or tract originally conveyed by said James, Duke of York to said Berkeley and Carteret, and were conveyed with all the appurtenances and privileges heretofore de-

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*Answer.*

scribed with respect to the conveyance of said whole tract by said James, Duke of York, to said Berkeley and Carteret. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause, that the said deed dated July 1, 1676, ever had legal existence or validity, that then and in that case, by lawful and just  
 10 construction thereof, it cannot and should not be so construed as to include, refer to or control any part of the said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

17. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed dated August 6, 1680, containing certain recitals, including said  
 20 letters-patent of March 12, 1664, said lease and release of June 23 and 24, 1664; said deed from said Lord John Berkeley to said John Fenwick; said deed from Fenwick and Byllynge to said Penn, Lawrie and Lucas; the subsequent conveyance of interests to John Eldredge and Edward Warner; the claims to said territory by the Dutch and the reconquest thereof by the British; said letters-patent of June 27, 1674, and further reciting that for the better extinguishing of all such claims and demands as said Duke of York may anyways have of, or in the  
 30 premises aforesaid called West New Jersey or any part thereof and for the further and better settling, conveying, assuring and confirming the same, said James, Duke of York, conveyed unto Edward Byllynge, William Penn, Gawen Lawrie, Nicholas Lucas, John Eldredge and Edward Warner all that part, share or portion of all those parts, shares and portions of the entire premises so granted by said Duke of York unto said John Lord Berkeley and Sir George Carteret, and their heirs as aforesaid, as in and by and upon the said partition aforesaid was and  
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Answer.

were vested in [10] said Penn, Lawrie, and Lucas and their heirs, then agreed to be called by the name of West New Jersey, comprising all that part of New Jersey bordering on said Delaware River and Bay, except the portion thereof described in the deed recited in paragraph 14 hereof. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause, that the said indentures ever had legal existence or validity, that then and in that case, by lawful and just construction thereof, they cannot and should not be construed as to include, refer to or control any part of the said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

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18. This defendant does not know and cannot set forth to its belief or otherwise, whether or not said last mentioned deed also conveyed all the islands, bays, rivers, waters, forts, mines, quarries, royalties, franchises and appurtenances whatsoever to the same belonging or in anywise appertaining, and all the estate, right title, interest, reversion, remainder, claim and demand whatsoever, as well in law as in equity, of him the said James, Duke of York, of, into and out of the same, or any part or parcel of the same. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause, that the said alleged indentures ever had legal existence or validity, that then and in that case, by lawful and just construction thereof, they cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

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*Answer.*

19. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not said last mentioned deed also conveyed all and every such the same powers, authorities, jurisdictions, governments and other matters and things whatsoever, which by the said respective recited letters-patent, or either of them, are and were granted or intended to be granted to or exercised by the said Duke of [11] York, his heirs, assigns, deputies, officers or agents, in, upon or in relation unto the said premises thereby confirmed or intended to be confirmed, and every of them, in case the same were then in the actual seizure of the said Duke of York. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause, that the said alleged indenture ever had legal existence or validity, that then and in that case, by lawful and just construction thereof, it cannot and should not be so construed as to include or control any part of the bed of said Delaware River within the compass of said twelve mile circle or any portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

20. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not by deed of surrender dated April 15, 1702, and accepted April 17, 1702, the proprietors of East New Jersey and the proprietors of West New Jersey, for themselves, and their heirs, did surrender and yield up unto Anne, Queen of England, all sovereignty and powers of government as to New Jersey granted by Charles II, King of England, to James, Duke of York, and by said Duke of York to the said proprietors, or their predecessors, and whether or not thereafter until the war of the Revolution, the territory of New Jersey was governed by the English monarchs under governors appointed thereby; or whether or not said alleged surrender was ever legally made or

was legally delivered unto Anne, Queen of England. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged deed of surrender ever had legal existence or validity, that then and in that case, by just and lawful construction thereof, and of the alleged evidences of the supposed title of the complainant to the premises in dispute in this cause, the said alleged surrender cannot and should not be so construed as to include or control any part of the bed of the Delaware River within the compass of the said twelve mile circle, or that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof; and further that the [12] said alleged then proprietors of East and West New Jersey could not then and thereby surrender to the said Anne, Queen of England, a more extensive title or other, or more extended rights or powers of government, or over other territory than the title and the rights and powers of governments and territory then actually invested in them.

This defendant admits that as a result of the American Revolution which followed the Declaration of Independence on July 4, 1776, the State of New Jersey became and ever since has been a free and independent state, possessed of all the rights thereof and vested with all and every power of government in and over the territory thereof and the tidal waters adjacent thereto, which immediately before the Revolution were vested in the Crown of England. But this defendant expressly denies that by virtue of any of the premises that said complainant became vested with any power of government in or over the tidal waters adjacent to the territory of said State of New Jersey, so far as the said tidal waters are included within the compass of the twelve mile circle as aforesaid, or westerly of the geographical center of the remainder of said river and bay.

*Answer.*

22. This defendant denies at the time of said Revolution the bed of the Delaware River and Bay underneath the tidal waters thereof and between the highwater mark on either side, from Trenton to the main sea at the mouth of the Bay at Cape May, belonged to and was vested in the Crown of England, in trust for the use and possession of the subjects of the King; and that  
 10 by virtue of said Revolution and the resulting independence of the State of New Jersey, and by virtue of the Treaty of Paris, negotiated between the King of Great Britain and the United States of America, and signed at Paris September 3, 1783, that portion of the bed of the Delaware River and Bay which divides the States of New Jersey and Delaware, lying between the thalweg thereof and the high water mark on the easterly shore became and has ever since remained vested, in fee  
 20 simple, in the state of New Jersey, and that the remaining portion thereof westerly of the thalweg thereof to the high water mark on the westerly [13] shore became and has ever since remained vested, in fee simple, in the State of Delaware.

But on the contrary, this defendant avers and respectfully submits that at and immediately before the time the said Revolution took place, so much of the bed of the said Delaware River as then was and now is included within  
 30 the compass of the said twelve mile circle and all that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof belonged to and was vested in the proprietors of the land and the said river and soil thereof included within the compass of said twelve mile circle and westerly of the geographical center of said river and bay south of said twelve mile circle, by a title derived from the Crown of England, and hereinafter fully set forth; that by means  
 40 of the said Revolution, the said independence of the State

of Delaware, and the Treaty of Peace between the King  
 of Great Britain and the United States of America, con-  
 cluded at Paris as aforesaid, all that portion of the bed  
 of the Delaware River, situate between the States of New  
 Jersey and Delaware, included within the compass of the  
 said twelve mile circle, and all that portion of the said  
 river and bay south of said twelve mile circle westerly  
 of the geographical center thereof, became vested, in  
 the whole, in the State of Delaware; and that so the  
 said defendant respectfully submits, has ever since continued  
 and now is. This defendant avers and respectfully sub-  
 mits that ever since July 4, 1776, this defendant has had  
 and been entitled to the sole and exclusive interest in  
 so much of the waters, between the State of New Jersey  
 and the State of Delaware, of such river as are included  
 within the compass of said twelve mile circle, and in the  
 waters of said river and bay south of said twelve mile  
 circle, westerly of the geographical center thereof, subject  
 only to the common rights of navigation thereof, and hath  
 and the sole and exclusive jurisdiction in and over the  
 same. This defendant avers that it hath at all times  
 been alleged on behalf of this defendant that Charles II,  
 King of England, by due and authentic letters-patent  
 bearing date March 22, 1683, [14] did grant to his  
 brother, the Duke of York, "All that the Town of New  
 Castle, otherwise called Delaware, and fort therein, or  
 thereto belonging, situate lying and being between Mary-  
 land and New Jersey, in America; and all that tract of land  
 within the compass of a circle of twelve miles  
 about the said town, situate lying and being upon the  
 Delaware River, and all islands in the said Delaware  
 River; and the said river and soil thereof lying north  
 of the southernmost part of said circle of twelve miles  
 about the said town"; that said patent was duly and  
 legally made and duly and legally delivered by the said

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*Answer.*

10 King Charles II to the said Duke of York, and that the same has ever since the said making and delivering thereof continued to have legal existence; and that by legal and just construction thereof said patent may and should be construed to include and control the part of the bed of said river lying northerly and easterly of the middle of said river, and all rights of jurisdiction of said river, so far and to such an extent as the said part of the bed of said river and the waters thereof are included within the compass of the said twelve mile circle.

20 23. This defendant believes that the Legislature of the plaintiff by joint resolution adopted February 14, 1905, appointed a commission to confer with a like commission appointed by the Legislature of the defendant for the purpose of framing a compact looking to the amicable termination of a dispute then pending over the boundary line in question. And that on February 13, 1905, the Legislature of the defendant appointed a like commission for that purpose. And that after a number of conferences said commissions agreed upon concurrent jurisdiction by the plaintiff and the defendant over the waters of the Delaware River and Bay but were unable to agree upon the question of boundary or upon the territorial rights of the parties therein. And that an agreement or compact respecting jurisdiction over said waters 30 was signed by the commissioners, and ratified by the Legislatures, of the plaintiff and defendant, respectively, and approved by an act of Congress. And that said agreement or compact expressly provided that nothing therein contained should affect [15] the planting, catching or taking of oysters, clams or other shellfish or interfere with the oyster industry as then or thereafter carried on under the laws of either State, and that each State should on its own side of the river continue to exercise riparian jurisdiction of every kind and nature and to 40

answer.

make grants, leases and conveyances of riparian lands and rights under the laws of the respective States. And that it was also expressly provided in said agreement or compact that nothing therein contained should affect the territorial limits, rights or jurisdiction of either State in or over the Delaware River, or the ownership of the subaqueous soil thereof, except as therein expressly set forth. But this defendant expressly denies that said commissions settled or attempted to settle or fix the boundary line between the State of New Jersey and the State of Delaware.

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

*Answer.*

[16] 25. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not ever since the year 1799 the Legislature of the plaintiff has enacted and had in force statutes regulating the oyster industry within its territorial limits, including Delaware River and Bay, and whether or not since the year 1899 said industry  
10 has been regulated by the plaintiff through a commission which, since the year 1915, has been and is now known as the Board of Shell Fisheries. And whether or not in the bed of said Delaware River and Bay within the area involved in the dispute between the plaintiff and the defendant the plaintiff has developed and maintained and now maintains extensive oyster beds along the easterly side of the thalweg of said river and bay. But this defendant expressly denies that the said complainant by  
20 virtue of any of the premises of the said complainant became seized of that part of the Delaware River within the compass of said twelve mile circle, or that portion of the subaqueous soil of the remainder of said river and bay westerly of the geographical center thereof.

26. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not during all of this time the citizens and residents of the plaintiff under and by virtue of the authority conferred and licenses issued by the plaintiff have improved the easterly side  
30 of said river and bay throughout the entire extent thereof by erecting dikes and embankments and the construction of wharves, docks, piers and other structures which have remained in the continuous and uninterrupted use and possession of said citizens and residents. But this defendant claims and respectfully submits that even if the citizens and residents of the State of New Jersey in the localities and in the manner set forth in the said Bill of Complaint have improved the easterly side of said river  
40 and bay throughout the entire extent thereof by erecting

dikes and embankments and the construction of wharves,  
 docks, piers, and other structures which have remained in  
 continuous and uninterrupted use and possession of said  
 citizens and residents, it cannot and should not be held  
 effectual in law or in equity in any event to affect in any  
 way or to any extent the title or right of this de- 10  
 fendant to, or its jurisdiction over, any portion of the soil  
 bed of the said river, or of the waters thereof included  
 within the compass of said twelve mile circle and that  
 of said bay or river west of the geographical cen-  
 thereof; and that the State of New Jersey cannot  
 by such actual or physical occupation, if any such  
 there be, of any part of the original territorial,  
 rights, privileges, franchises, powers, or es- 20  
 of any of them, of any and every nature and descrip-  
 of any appendants or appurtenances to them or  
 of them appertaining, of the State of Delaware as  
 or any of them existed at the date of the adoption  
 of the Constitution of the United States, or otherwise how-  
 acquire any part or portion of such territory, jurisdic-  
 rights, privileges, franchises, powers of estates,  
 of them, of any and every nature and description,  
 any appendants or appurtenances in them or any of  
 appertaining, of the State of Delaware, unless and  
 it may be and shall be shown that the Congress of 30  
 the United States and the several Legislatures of the  
 of New Jersey and Delaware have expressly and  
 consented thereto. And this defendant further  
 and respectfully submits that the said complainant  
 derive any title to, or any jurisdiction over any  
 premises in dispute in this cause as against the  
 defendant by prescription.

This defendant does not know and cannot set forth  
 his belief or otherwise, whether or not the oyster in-  
 of the plaintiff in Delaware River and Bay is of 40

*Answer.*

great actual and potential value and now produces annually four million bushels of oysters of the annual value of approximately seven million dollars. And that the plaintiff has appropriated and expended therein approximately one million dollars and the citizens of the plaintiff have invested therein and in the equipment and facilities necessary therefor and incident thereto upwards of fifteen million dollars.

28. This defendant does not know and cannot set forth as to its belief or otherwise, whether or not during the month of May, 1925, citizens of the defendant under the claim of [18] ownership by the defendant, came upon the waters of the easterly side of the thalweg of the bay and took seed oysters to the extent of many thousands of bushels from the bed of the bay claimed to be owned in fee simple by the plaintiff. But this defendant avers that during the month of May, 1925, it was the owner of the said Delaware Bay to the geographical center thereof and had a right to take seed oysters from said bay west of the geographical center thereof.

28. This defendant believes that the portion of the Delaware River and Bay from which citizens of the defendant claim the right to take oysters from lands claimed by the plaintiff comprises a large area which produces annually seed oysters of great value, being a substantial part of valuable seed oyster beds, which are the only natural oyster beds from which plaintiff and its citizens can obtain an annual supply of seed oysters for planting more than thirty thousand acres of land leased by the plaintiff to its citizens and now under cultivation by them in the Maurice River Cove on the easterly side of said bay.

30. This defendant believes that by Joint Resolution No. 4 entitled "Joint Resolution relating to the boundary controversy between the State of New Jersey and the

of Delaware," approved March 28, 1927, the Legislature of the plaintiff appointed a commission to confer with the commission of the defendant for the purpose of reaching a compact or agreement between said States consequent thereto to be submitted to the Legislature of said States, respectively, for action thereon in the final adjustment of all controversies relating to the boundary line between the plaintiff and the defendant and to their respective rights in the Delaware River. And that a similar commission was appointed by the Legislature of the defendant and said commissions conducted negotiations for a period, but were unable to reach an agreement upon the questions submitted for their

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adjustment. The defendant believes that by a report dated August 1, 1929, the commission appointed by the Legislature of the plaintiff reported that meetings had been held by the commission appointed by the defendant but that no agreement had been reached, and recommended that the boundary line controversy between the plaintiff and the defendant be referred to the Attorney-General to the end that appropriate action should be taken to fix and determine the boundary line.

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The defendant believes that on April 17, 1929, by a resolution entitled "Joint Resolution concerning the boundary line between the States of New Jersey and Delaware in the Delaware River and Bay," approved May 1, 1929, the Legislature of the plaintiff instructed its Attorney-General to institute such legal proceedings as may be necessary to ascertain and establish the boundary line between the plaintiff and the defendant.

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The defendant believes that the defendant and its agents are claiming in the present claims of title to the land claimed by the plaintiff on the easterly

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*Answer.*

side of the thalweg of said Delaware River and Bay, have created a conflict between the parties and their respective citizens and between the public authorities and officers of the plaintiff and the defendant respectively charged with the duty of enforcing the laws of the respective states, which cannot be settled or determined by any legal means other than by resort to this Honorable Court.

34. This defendant admits that the plaintiff claims title in fee simple to the bed of said Delaware River and Bay which divides the States of New Jersey and Delaware from the thalweg thereof to the high water mark on the easterly shore. And this defendant does not know and cannot set forth as to its belief or otherwise, whether or not the said plaintiff claims said title under and by virtue of the sovereignty of the Crown of England existing prior to, and to which it succeeded as a result of the Declaration of Independence, the American Revolution and the Treaty of Paris, aforesaid, and under and by virtue of the common law of England as existing and applied at that time both in England and in the British colonies in America and which was adopted by the plaintiff and the [20] defendant upon attaining their independence, and has ever since existed and been applied by the courts of the plaintiff and the defendant.

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

1.—The title by discovery of the Atlantic Coast of North America, at least as far south as Virginia, is claimed and, as this defendant is informed and believes, generally

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admitted to have been acquired by England by force of the voyage, along said coast, of Sebastian Cabot in or about the years 1497-8. That part of the coast which now constitutes the State of Delaware was, as this defendant is informed and believes, visited in or about the year 1606 by Captain John Smith, an English Navigator, and in or about the year 1611 by Lord Delaware, the English Governor of Virginia; but neither of them landed, merely sailing into Delaware Bay and departing. After a similar visit to the Bay, in or about the year 1609, Henry Hudson, then in the employment of a Dutch Company, and sailing under the flag of the Netherlands, went northward to the Bay of New York, and discovered and navigated the Hudson River, of which, in consequence of his report, in the following year (1610) the Dutch took possession, and established various trading posts, including one at the site of the City of New York and one at the site of the City of Albany, which were respectively known under the Dutch denomination as Fort Amsterdam (afterwards New Amsterdam) and Fort Orange.

—And this defendant, further answering, saith that after and after the establishment of the Dutch settlements in New York on the Hudson River, then called the North River, as hereinbefore set forth, there were repeated and continuous efforts by the same people to establish settlements on the Delaware River, then called the South River, which they explored so far as the Schuylkill, and to establish other settlements easterly from New York as the Connecticut River, both of which rivers and lands contiguous thereto were settled and governed as part of the colony having its headquarters and principal point of authority at and in the settlement on or near the City of New York, then designated as New Amsterdam. During the period of upwards of fifty years thereafter, all of said territory, including the territory

*Answer.*

composing the present State of Delaware, and the River Delaware, and the said twelve mile circle, was known as the New Netherlands, and was claimed and, except as herein stated, governed as and for a colony of the States General of the United Provinces of the Netherlands, or under the authority thereof. And this defendant is informed and believes that during the said period of Dutch supremacy, as early as the year 1622 or 1623, there were settlements by the Dutch from New Amsterdam on the easterly side of the River Delaware. In the year 1630, lands along the Delaware Bay and river, extending from Cape Henlopen to Bombay Hook, were acquired by Samuel Godyn on behalf of a Dutch Company, one of whom, De Vries, a navigator, in or about the year 1631, near what is now the Town of Lewis, then called Hoernkill, established a colony, which on his return in the following year, he found had been exterminated by the Indians. And this defendant further avers that a patent for the lands so acquired by the said Godyn were issued directly from the government of the States General of the United Netherlands, by the Director and Council of the Colonial Government, whose seat was on the island of Manhattans, and that other patents for lands in Delaware were from time to time issued by said Colonial Government, all of which always have been and still are recognized in the State of Delaware as the valid inception of the legal title to the lands to which they respectively relate. And this defendant craves leave to refer to the said patents and prays that the same when proved at the hearing of this cause may be taken as a part of this answer.

And this defendant further answering saith that in or about the year 1638 a Swedish expedition under Peter Minuit, [22] formerly Governor of the New Netherlands under the Dutch Sovereignty, arrived in the Delaware River and commenced to establish settlements on

west side thereof and built a fort named Fort Christina at or near the site of the present city of Wilmington. The settlement of the Country by the Swedes continued until about the year 1647; but immediately after the first arrival of Minuit, the Dutch authorities of the West Netherlands protested against the Swedish operations and did not cease, during all the years of their continuance, to assert the rights of government and of proprietary title of the United Provinces of the Netherlands in and in the Delaware River and the land now containing the State of Delaware, and of and over which the Dutch claims ownership, jurisdiction and government in this suit. These protests not having received the attention, and it being considered that the "intention" of the Swedes was "to dispossess and unseat (the Dutch) Company from the entire river," in or about the year 1651, as this defendant is informed and advised, the then Director at New Amsterdam, Stuyvesant proceeded to the Delaware and personally disputed with Johan Printz, who after the departure of Minuit had been the head of the Swedish settlements known as New Sweden, as to the right of the Swedes to interfere in a colony claimed by the Dutch as an appendage or appurtenance of the colony which had its seat of government at New Amsterdam. Thereupon, Director Stuyvesant proceeded to Fort Casimer, at or near New Castle, which action led to hostilities with the Swedes, who under Johan Printz, who had then succeeded Printz, took said fort about the year 1654; and, the hostilities continuing, about August thirty-first, 1655, Fort Casimer was retaken by the Dutch, to whom also a few days after the year 1655, Fort Christina also surrendered. As the result of these hostilities, the Swedish settlements formally acknowledged the sovereignty of the Dutch as established at New Amsterdam, and formal articles of the terms of the surrender were executed under date of September eleventh,

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*Answer.*

1655, as to Fort Casimer, and September twenty-fifth of the same year, as to Fort Christina. Provision was made therein for the protection of Swedes who chose to remain and for the return of [23] those who wished to go back to Europe. All of which will appear from the documents referred to and a multitude of others relating to the government of the Delaware Country and River by the Dutch Colonial Government of the Netherlands, to which when cited at the hearing of this cause, this defendant craves leave to refer and prays that they may be taken as part of this answer.

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

3.—Charles the Second, King of England, in assertion of the English title by discovery and partial occupation of the territories therein described, granted his letters patent to his brother, James, the Duke of York, bearing date the twelfth of March, 1664, which letters patent are those alleged, mentioned and described in the said Bill of Complaint; and this defendant hereby refers to the said letters patent as a whole and makes the same a part of this, its answer. That pursuant to the powers and authority in said letters patent contained, the said Duke of York did duly constitute and appoint, by his commission duly issued, dated on or about the second day of April, 1664, Colonel Richards Nichols to be his deputy

governor within the lands, islands and places in said letters patent mentioned and granted, to perform and execute all and every the powers which were by the said letters patent granted to the said Duke; as by the said commission, when produced in this case, will more fully appear, and which this defendant may be taken as a part of this its answer.

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And thereafter on or about the twenty-fifth day of the month of April, 1664, the said Charles the Second, issued [24] commission to the said Colonel Richard [25] and Sir Robert Carre, George Cartwright and [26] Maverick, to visit certain of the Colonies of [27] and in America and determine complaints, accompanied by two letters of instructions, by one of which said commissioners were directed to reduce to subjection and obedience to the English Crown the Dutch at [28] Island and elsewhere within the Colonies and territories claimed by the King. And this defendant refers to said commission and letters of instructions and that the same may, when produced in this case, be taken as a part of this, its answer.

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After the date of said letters patent, and in or about the month of September in said year 1664, the [29] of said territory described in said letters patent [30] occupancy and actual government of the Dutch, [31] by, and surrounding their then seat of government at New Amsterdam, otherwise and later called New York, under the commission aforesaid, to said Nicholas [32] others, conquered by the military power of the [33] of England, said Charles the Second. That at [34] of the said conquest, the said Bay and River [35] and the territories lying upon the west side [36] were and constituted a dependency of the Dutch Government having its seat of Government at said New Amsterdam; which said Government, for many years as

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aforesaid, had had and exercised, and then did have and  
 exercise, all the rights and powers of a proprietor in,  
 of and over the soil and waters of the said river  
 Delaware and said territories adjacent thereto, and all  
 jurisdiction, whether legislative, judicial or executive, and  
 all government and rights of government in, upon and  
 10 over the said river Delaware, the soil and waters thereof  
 and said territories adjacent thereto. That in or about  
 the month of October in said year 1664, the said Bay  
 and River Delaware and said territories adjacent thereto,  
 including the premises herein in dispute, so dependant  
 upon, subject to and owned by the Dutch Government at  
 New York, were, as such a dependency, also conquered  
 by the military power of the said King of England, and  
 the inhabitants thereof submitted without resistance to  
 the authority of said King, and took oaths of [25]  
 20 allegiance to him and his Governor. That by the treaty  
 of Breda, made on or about the thirty-first day of July,  
 1667, between the English and Dutch, all the territories  
 conquered by the English as aforesaid, including the  
 premises here in dispute, were confirmed to the English.  
 That from the year 1664 until the year 1673, the Bay  
 and River Delaware and the said territories lying adja-  
 cent to and west thereof, including the premises here in  
 dispute, constituted a dependency of, and were governed  
 in all particulars by the Government of the Duke of York  
 30 at New York, and the said Duke of York and his said  
 government during said period had and exercised all  
 government and rights of government, all jurisdiction,  
 whether legislative, judicial or executive, over said Bay,  
 River and Territory, as such a dependency as aforesaid,  
 and over all of the inhabitants thereof, and all and  
 every of the rights of a proprietor of, in and over the  
 soil and waters of said River and Territory, including the  
 premises here in dispute.

or about the month of July 1673, the territory of Government of which was at New York, was conquered by the military power of the States General of the Prince of Orange, whereupon without the use of military force, the Delaware dependency above described, including the premises hereunto annexed, the direct consequence of the conquest of said Government at New York, also fell into the hands of the United Provinces of the Netherlands; and in the month of September, in the same year, in obedience to the States-General of New Netherlands upon said reconquest of New York and dependency, and for the space of about seven years after, the governors and government of the said New York had and exercised all government and jurisdiction all jurisdictions, whether legislative, executive, and all and every of the rights of sovereignty, in and over the said River Delaware and the lands adjacent thereto, as a dependency of the Government at New York, and in and over the soil and lands of said River and Territory, including the lands in dispute.

By the Treaty of Peace, signed at Westminster, in the month of February, 1674, the territory of Government was at New York as afore-  
 saying the said dependency of the Bay and River Delaware and said Territories adjacent thereto, were restored to their former proprietor; and by virtue of which the said River Delaware and the lands adjacent upon the west, were restored as a dependency to the Government of the said Duke of York, who as Governor thereof, thereafter governed the same and exercised jurisdiction in, and the rights of a proprietor over,

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the same, in manner and form as he had theretofore done before the said reconquest of the same by the said States General.

10 7.—That thereupon, in order to make good and affirm and establish the aforesaid grant covered by the said letters patent of the said date of the twelfth of March, 1664, the said Charles the Second, King of England, by his  
 20 letters patent, bearing date on or about the twenty-ninth day of June, 1674, did grant and convey unto the said Duke of York, all and every of the property and all and every of the rights, powers and privileges, granted, conveyed, transferred and assured in and by the said patent first made as aforesaid, using in the last one of the said patents the same words which are used in the first of the said patents and no others, except those stating the date; to which last mentioned letters patent this de-  
 20 fendant refers, as a whole, and makes the same a part of this, its answer.

30 8.—That in the year 1680, William Penn petitioned King Charles the Second to grant him Letters Patent for a tract of land in America, lying north of Maryland, on the east bounded with the Delaware River, on the west limited as Maryland, and northward to extend as far as plantable. That said petition was referred by the said King to the Lords of the Committee of said King's most Honorable  
 30 Privy Council for the affairs of Trade and the Plantations, who considered the same from about the month of June 1680 until about the month of March 1681. That among other persons consulted by said Lords of said Committee as to said grant, was [27] his Royal Highness the Duke of York, in consideration of his recognized possession of and title to the lands and premises involved in said petition and the proposed grant thereunder. That the southerly boundary of the proposed grant was fixed and de-  
 40 termined by the said Lords of said Committee, and by

Chief Justice North, upon their reference of the same  
 only upon the consent and approval of the said  
 Duke of York, who was by them conceded to have held  
 and possessed ever since the conquest of New York by  
 General Nichols, as an appendix and part of the govern-  
 ment of New York, all that Colony or Plantation known  
 by the name of Delaware Colony, or more particularly,  
 New Castle Colony. And this defendant craves leave to  
 refer to all and every of the minutes, acts and proceed-  
 ings of the said Lords of the Committee of said King's  
 Honorable Privy Council for the affairs of Trade  
 and the Plantations, all correspondence with, and in be-  
 half of said Lords of said Committee, and all acts, pro-  
 ceedings and correspondence by, with and in behalf of his  
 Majesty's Highness, the said Duke, and of all other persons,  
 relative to the said petition and the consequent Royal  
 Order of the territory and Province of Pennsylvania, and  
 that the same may, when produced in this cause,  
 be taken as a part of this its answer.

That King Charles the Second, by letters patent  
 under the great seal of England, bearing date the fourth  
 day of March, 1681, and published by royal proclamation  
 the Second day of April 1681, granted unto William  
 Penn, his heirs and assigns, upon his petition aforesaid,  
 that tract or part of land in America, with all the  
 lands therein contained, as the same is bounded on the  
 south by Delaware River, from twelve miles distance,  
 northward of New Castle Town, unto the three and  
 fourth degree of northern latitude if the said river doth  
 extend so far northward; then by the said river so far as  
 it doth extend, and from the head of said river the eastern  
 limits are to be determined by a meridian line, to be  
 drawn from the head of the said river unto the said  
 third and fortieth degree, the said lands to extend west-  
 ward, five degrees in longitude, to be computed from

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10 the said east- [28] ern bounds, and the said lands to be bounded on the north, by the beginning of the three and fortieth degree of northern latitude, and on the south, by a circle drawn at twelve miles distance from New Castle northwards and westwards unto the beginning of the fortieth degree of northern latitude, and then by a  
 10 straight line westwards, to the limit of longitude above mentioned. That by the same charter, the territory of Pennsylvania was erected into a province, and appropriate powers of government thereof were conferred upon William Penn and his heirs. And this defendant prays leave to refer to said letters patent and charter and that the same may be taken as a part of this, its answer.

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

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and thereupon, by said indenture, said Duke released, released and forever quit claimed unto William Penn, his heirs and assigns, all the estate, right, title, interest, rents, services, duties, payments, property, claim and demand whatsoever, of his Royal Highness, of, into or out of the said tract of land and all and singular [29] parts of the lands, islands, tenements, hereditaments and things comprised in the said recited letters patent within the bounds and limits therein mentioned, to have and to hold the said tract of land, rents, services, hereditaments and premises unto the said William Penn, his heirs and assigns forever. And this defendant hereby refers to the said indenture and prays that the same may be taken and considered, when in evidence in this cause, as part of this, its answer.

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

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*Answer.*

12.—By a deed sealed and delivered in the presence of witnesses, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, demised, granted, bargained and sold unto William Penn, upon due consideration, all that town of New Castle and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the River Delaware, and all islands in the said river, and the said river and soil thereof lying north of the southernmost part of the said circle of [30] twelve miles about the said town, to have and to hold to the said William Penn, his executors and administrators and assigns, for ten thousand years, at the yearly rent of five shillings. And this defendant refers to the said deed of lease and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

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

that the same may, when produced in this cause, be taken as a part of this, its answer.

By a deed of feoffment, bearing date the twenty-first day of August, 1682, the said James, Duke of York, for the consideration therein mentioned, did bargain, sell, grant and confirm unto the said William Penn, his heirs and assigns forever, all that the town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same town, lying and being upon the River Delaware, in the said Province, and all islands in the said River Delaware, and the River and soil thereof, lying north of the southern part of the said circle of twelve miles about the said town, together with all rents, services, royalties, franchises, liberties, jurisdictions, liberties [31] and privileges thereto belonging; and all the estate, right, title, interest, claim and demand whatsoever, of his said Majesty's Highness, of, in or to the same, or any part thereof; saving always and reserving to his said Majesty's Highness, his agents and servants, free use of all ways and passages into, through and out of the barony premises, and every part and parcel thereof; to hold the said town and circle of twelve miles about the same, islands, and all other the before said or intended to be hereby bargained premises, together with their appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him the said William Penn, his heirs and assigns, forever, yielding and paying therefor yearly and every year unto his said Majesty's Highness, his heirs and assigns, the sum of five pounds of lawful money of England, at the feast of St. Michael the Archangel, only.

And by said indenture his said Royal Highness, himself, his heirs and assigns, did covenant and grant unto the said William Penn, his heirs and assigns,

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*Answer.*

10 that his said Royal Highness, his heirs and assigns, would at any time or times thereafter, during the space of seven years next ensuing the date thereof, upon the request, and at the costs and charges in the law of the said William Penn, his heirs and assigns, do, make and execute, or cause or procure to be made, done and executed, all and every  
 10 such further act and acts, conveyances and assurances in the law whatsoever, for the further conveying and assuring the said town and circle of twelve miles of land about the same, and islands, and all other premises, with the appurtenances, unto the said William Penn, his heirs and assigns, forever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, shall be reasonably advised, or required.

20 And his said Royal Highness further thereby made, constituted and appointed John Moll of New Castle aforesaid, Esquire, and Ephraim Harman, of New Castle aforesaid, gentlemen, jointly and either of them severally, his true and lawfully attorneys, and by said presents, did give and grant unto the said John Moll and Ephraim Harman, his  
 30 said at- [32] torneys, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises thereinbefore mentioned, or intended to be thereby aliened, enfeoffed and confirmed, and into every or any part or parcel thereof, in the name of  
 30 the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to enter and receive; and after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to the said William Penn, his heirs or assigns, or to his or their lawful attorney or attorneys, sufficiently authorized to receive and take the same, and him or them to leave in  
 40 the quiet and peaceable possession thereof, according to

the intent and meaning of said presents. And his said Royal Highness did further thereby allow of, ratify and confirm whatsoever the said John Moll and Ephraim Mott, his said attorneys, should lawfully do or cause to be done, in and about the premises, by virtue of said presents, to be as good and effectual in the law, to all intents and purposes whatsoever, as if his said Royal Highness had done the same in his own person, or had been present at the doing thereof.

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

By further deed or indenture of feoffment, bearing date the twenty-fourth day of August, 1682, the same Duke of York, for the due consideration therein expressed, did bargain, sell, enfeoff, and confirm unto the said William Penn, his heirs and assigns forever, all that certain land upon Delaware River and Bay, beginning at a certain place three miles south from the town of New Castle, otherwise called Delaware, and extending south to the Whore otherwise called Cape Henlopen, together with free and undisturbed use and passage into and out of all the said bays, waters, rivers, isles, and inlets, belonging to the same; together with [33] the soil, woods, underwoods, mountains, hills, isles, lakes, rivulets, bays, and inlets, situate in or belonging to the limits and bounds aforesaid; together with all the minerals and all the estate, interest, royalties, powers, privileges and immunities whatsoever, which his said Royal Highness therein, or in or into any part thereof; saving always and reserving to his said Royal Highness, his agents and servants, free use of all the ways and passages into, through and out of the said

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*Answer.*

10 bargained premises, and every part and parcel thereof; to have and to hold the said tract of land, and all and singular other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him, the said William Penn, his heirs and assigns forever, to be holden of his said Royal Highness and his heirs, as of their castle at New York, in free and common soccage, yielding and paying therefor yearly and every year, to his said Royal Highness, his heirs and assigns, one rose, at the feast of St. Michael the Archangel yearly, if demanded.

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

30 And his said Royal Highness for himself, his heirs and assigns, did further covenant and grant to and with the said William Penn, his heirs and assigns, by said presents, that his said Royal Highness, his heirs and assigns, would at any time or times thereafter, during the space of seven years next ensuing the date thereof, upon the request and at the costs and charges in the law of the said William Penn, his heirs and [34] assigns, do, make, and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances, in the law whatsoever, for the further conveying and assuring the said tract of land, and all and singular  
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the premises, with the appurtenances, under the said William Penn, his heirs and assigns, forever, as by the law of the said William Penn, his assigns, should be reasonably advised or required.

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

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*Answer.*

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

10 [35] 16.—That on or about the twenty-eighth day of October, 1682, the said William Penn, either in his proper person or by his attorney, did demand, and the said John Moll and Ephraim Harman, or one of them, being the said Duke's attorneys for such purposes, duly constituted as aforesaid, did with great form and solemnity, deliver and leave the said William Penn in the quiet and peaceable possession and seisin of the premises contained in both the said respective indentures of feoffment, pursuant to the power and authority given by the same respective indentures of feoffment by delivery to the said William Penn, of the fort at New Castle, and of turf and twig, and of water and soil of the River Delaware; memoran-  
20 dums of the delivery of seisin were duly prepared and attested by several witnesses, which memorandums, or records thereof, remain to this day. And this defendant hereby refers to the records and memorandums of the said liveries of seisin, and prays that they may when produced in this cause, be taken as parts of this, its answer.

30 17.—That on or about the said twenty-eighth day of October, 1682, the inhabitants of the town of New Castle upon Delaware River, having heard the indenture read made between his Royal Highness, James, Duke of York, &c., and said William Penn, wherein said Duke transferred his right and title to New Castle, and twelve mile circle about the same, with all powers and jurisdictions, and services thereunto belonging unto the said William Penn, and having seen by the said Duke's appointed attorneys, John Moll and Ephraim Harman, both of New Castle, possession given, and by their governor, the said William Penn, possession taken, whereby they were made subjects,  
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the king, to the said William Penn, did in the  
 name of God, solemnly promise to yield to him, the  
 said William Penn, all just obedience and to live quietly  
 peaceably under his government. That of the said  
 oath of allegiance and submission to the said William  
 Penn a memorandum was made and signed by said  
 inhabitants of the town of New Castle, or by representa- 10  
 thereof, which said memorandum, or a due record  
 remains to this day. And this defendant hereby  
 refers to the said memorandum of said oath of al-  
 legiance and submission, or to [36] the record thereof,  
 which he says that the same when produced in this cause,  
 shall be taken as a part of this, its answer.

That shortly after the delivery of such possession  
 of said territory and River Delaware included  
 a twelve mile circle, to the said William Penn,  
 said, and sometime in the month of November, 20  
 said Duke of York's Commander-in-Chief and  
 established at New York, issued a proclamation,  
 or order, addressed or directed to the several  
 of the peace, magistrates, and other officers at  
 St. Jones, Deale, alias Whore Kill, at Dela-  
 within any of the bounds and limits mentioned  
 and recited indentures of feoffment to the said  
 Penn. Said order or proclamation recites that 30  
 His Highness had been graciously pleased by in-  
 for his hand and seal, bearing date the twenty-  
 of August, then last past, for the considera-  
 mentioned, to bargain, sell, enfeoff, and con-  
 William Penn, Esquire, his heirs and assigns  
 all that town of New Castle, otherwise called  
 and all that tract of land lying within the  
 circle of twelve miles about the same, with  
 and the river and the soil thereof lying north  
 the southernmost part of the said circle, and all rents 40

*Answer.*

and services, royalties, franchises, duties, jurisdiction, privileges and liberties thereunto belonging, and by another indenture of the same date, for the consideration therein likewise mentioned, had also bargained, sold, enfeoffed, and confirmed under the said William Penn, Esquire, his heirs and assigns forever all that tract of land upon  
 10 Delaware River and Bay, beginning twelve miles south from the town of New Castle, otherwise called Delaware, and extending south to the Whore Kills, otherwise called Cape in Lopen, with all isles, rivers, rivulets, bays and inlets, royalties, franchises, powers, privileges, and immunities whatsoever, and in and by the said indentures, appointed and authorized John Moll, esquire, and Ephraim Harman, gentleman, to deliver to him, the said William Penn, free and actual possession of the premises, as by the said indentures, there produced and shown to said Com-  
 20 mander-in-Chief and Council, and by them [37] well approved of and entered in the public records of said Province, did and may more at large appear; and said proclamation further recited that the said Commander-in-Chief and Council being thereby fully satisfied of the said William Penn's right to the possession and enjoyment of the premises; whereupon the said order or proclamation proceeded, that the said Commander-in-Chief and Council theretofore thought fit and necessary to signify and declare the foregoing to the persons to whom said  
 30 proclamation was addressed, to prevent any doubt or trouble that might arise or accrue, and to give them their thanks for their good services done in their several offices and stations during the time they remained under his Royal Highness' Government; which proclamation concluded as follows: "Expecting no further account than that you readily submit and yield all due obedience and conformity to the powers granted to the said William Penn in and by the said indentures in the performance and enjoyment of which we wish you all happiness." And  
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defendant refers to the said order or proclamation  
 by due record thereof, and prays that the same may,  
 produced in this cause be taken as a part of this  
 power.

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

That to the said application of the said Duke  
 to the said King, Charles the Second, by his  
 patent, under the great seal of England, bearing  
 at Westminster on or about the twenty-second day  
 of the month of July, which was in the thirty-fifth year of his  
 Anno Domini 1683, which [38] date was not  
 seven calendar months after the date of the said  
 said feoffments, did give and grant unto said  
 Duke of York, his heirs and assigns, all that,  
 of New Castle, otherwise called Delaware, and  
 therein or thereunto belonging, situate, lying and  
 between Maryland and New Jersey in America;  
 that tract of land lying within the compass or  
 of twelve miles about the said town, situate lying  
 upon the River Delaware, and all the islands  
 in said River Delaware, and the said river and soil  
 lying north of the southermost part of the said  
 twelve miles about the said town; and all that

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*Answer.*

tract of land upon Delaware River and Bay, beginning twelve miles south from the said town of New Castle otherwise called Delaware, and extending south to Cap Lopen; together with all the lands, islands, soils, rivers harbors, mines, minerals, quarries, woods, marshes, waters lakes, fishings, hawkings, huntings and fowlings, and al  
 10 other royalties, privileges profits, commodities and here ditaments, to the said town, fort, tracts of land, island and premises, or to any or either of them belonging or appertaining with their and every of their appurtenances, situate lying and being in America, and all of the said King's estate, right, title and interest, benefit  
 20 advantage, claim and demand whatsoever, of, in and to the said town, fort, lands or premises or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof, together with the yearly  
 30 and other rents, revenues and profits of the premises and of every part or parcel thereof; to have and to hold the said town of New Castle, otherwise called Delaware and fort, all and singular the said lands and premises with their and every of their appurtenances, thereby given and granted, or thereinbefore mentioned to be given and granted, unto the said James, Duke of York, his heirs and assigns forever; to be holden of the said King, his heirs and successors, as of his manor of East Greenwich, in his County of Kent, in free and common soccage, and  
 40 not in capite or by Knight service; yielding and rendering, and the said James, Duke of York, for himself, his heirs and assigns, did thereby covenant and promise to yield and render unto the said King, his heirs and successors, [39] of and for the same, yearly, and every year, four beaver skins, when the same should be demanded, or within ninety days after such demand made.

And of the King's special grace, certain knowledge, and mere motion, for him, his heirs and successors, the  
 40 said King did thereby give and grant unto the said

Duke of York, his heirs, deputies, agents, commissioners and assigns, full and absolute power and authority to correct, punish, pardon, govern and rule, the subjects of said King, his heirs and successors, or other person or persons as should from time to time adventure themselves into any of the ports and harbours aforesaid, or that should or did at any time inhabit the same, according to such laws, ordinances, directions, and instructions, as by the Duke of York, or his assigns, should be established in defect thereof, in cases of necessity, according to the good discretion of his deputies, commissioners, or assigns respectively, as well in all cases both capital and criminal as civil, both marine and inland, so always as the said statutes, ordinances and proceedings be not contrary, but (as near as may be) conformable to the laws, statutes and government of the King's realm of England; and saving and reserved to the said King, his heirs and successors, the receiving, hearing and determining of the appeal and appeals of any person or persons of, in, or belonging to the lands, tenements, messuages, houses, lands, and premises aforesaid, or touching the same, or any part thereof, or any right or interest therein, or any sentence to be there made or given.

By the said Letters Patent the said King further granted that it should and might be lawful to and for the Duke of York, his heirs and assigns, from time to time to nominate, make, constitute, ordain and confirm, as aforesaid, by such name or names, style or titles, as to him or they should seem good; and likewise to revoke, discharge, change and alter as well as to create, constitute, ordain, appoint, make, constitute, singular governors, officers and ministers, which should hereafter be by him, or them, thought fit and necessary to be made or used within that aforesaid town, and premises; and also to make, ordain and enact in all manner of laws, orders, directions, instructions, forms and ceremonies of government and

Answer  
 magistracy, in and necessary for and concerning the  
 government of the said town, fort, lands and premises,  
 so always as the same be not contrary to the laws  
 and statutes of said King's realm of England, but (as  
 near as may be) agreeable therunto, and the same at all  
 times hereafter to put an execution, or abrogate, revoke  
 or change not only within the precincts of the said town,  
 fort, lands and premises, but also upon the sea, com-  
 ing and coming to and from the same, as by the said  
 Duke of York, or his heirs and assigns in their special  
 discretion shall think fittest for the good of the said  
 town and inhabitants. And the said King did further  
 further grant, ordain and declare that such governors,  
 deputies, officers, and ministers, as from time to time  
 shall be authorized and appointed in manner and to the  
 aforesaid, shall and may have full power and authority  
 within the said town, fort, lands and premises, to use  
 and exercise martial law in case of rebellion, insurrection  
 and mutiny, in as large and ample manner as the said  
 King's Lieutenants, in his counties within his realm of  
 England, had or ought to have by force of their com-  
 mission of Lieutenancy, or any laws or statute of his  
 said realm.

And the King by said Letters Patent did further for  
 himself, his heirs and successors, grant unto the said  
 Duke of York, his heirs or assigns, in his or their  
 discretions, from time to time, to admit such and so  
 many person and persons to trade and traffic into and  
 within the said town, fort, lands and premises, and into  
 every and any part and parcel thereof, and to have,  
 possess and enjoy any lands and hereditaments in the  
 parts and places aforesaid, as they shall think fit, accord-  
 ing to the laws, orders, constitutions, and ordinances,  
 by the said Duke of York, his heirs, deputies, commis-  
 sioners and assigns, from time to time, to be made and

published by virtue of, and according to, the true intent and meaning of said presents, and under such conditions, covenants and agreements, as the said Duke of York, his heirs and assigns, should set down, order, direct and command, and not otherwise, as aforesaid.

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

And the said King by said letters patent did also for himself, his heirs and successors, grant to the said Duke of York, his heirs and assigns, and to all and every such Governor and Governors, Deputy or Deputies, or their officers or ministers, as by the said Duke, or his heirs or assigns, should be appointed, to have power and authority

*Answer.*

of government, and command in and over the inhabitants  
of the said town, fort, lands and premises, that they and  
every one of them, should, and lawfully might, from time  
to time, and at all times forever thereafter, for their  
several defences and safety, encounter, repulse and expel  
and resist by force of arms, as well by sea as by land,  
10 and by all ways and means whatsoever, all such person  
and persons as, without the special license of the said  
Duke, his heirs or assigns, should attempt to settle and  
inhabit within the several precincts and limits of the said  
town, fort, lands and premises, and also all and every  
[42] such person or persons whatsoever, as should attempt  
at any time thereafter, the destruction, invasion, detri-  
ment or annoyance, to the parts, places, town, fort, lands  
and premises aforesaid or any part thereof.

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

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cause or thing whatsoever, to the contrary thereof in any way notwithstanding.

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

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

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

*Answer.*

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

[44] 21.—That on or about the month of December 1682, the said William Penn under his hand and seal, as proprietor and governor of the Province of Pennsylvania, and of the said three Lower Counties, issued and published an Act of Union for annexing and uniting of the counties of New Castle, Jone's, and Whorekills, alias New Dale, to the Province of Pennsylvania. The said Act of Union, after sundry recitals of the title of the said William Penn to the said Province of Pennsylvania and the said Three Lower Counties, as by reference thereunto will fully appear enacted that the county of New Castle, Jone's and Whorekills, alias New Dale, should be annexed, and by

*Answer.*

the authority of the said proprietor and governor, by and with the advice and consent of the deputies of the freemen of said Province, and counties aforesaid in assembly made, were thereby annexed unto the Province of Pennsylvania, as of the proper territory thereof; and that the people therein should be governed by the same laws, and enjoy the same privileges in all respects, as the inhabitants of Pennsylvania did or should enjoy from time to time therein, anything in said law, or any other law, act, or thing, in said Province to the contrary thereof in any wise notwithstanding. And this defendant hereby refers to the said Act of Union and prays that the same when produced in this cause, may be taken as a part of this answer.

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

*Answer.*

23.—That from the year 1682 down to the year 1776, the said William Penn and his heirs, under various wills, deeds of settlement, and descents, continually had, held, possessed, retained, and exercised the rights of proprietor and proprietors of the territory, lands, waters, and premises, included within the compass of the said twelve mile  
 10 circle, under the powers, titles, and authorities granted to the original proprietor, and so held and exercised by him as aforesaid, and as modified by various charters of privileges granted by said proprietors to the Province of Pennsylvania, and the said Three Lower Counties. And this defendant prays leave to refer to the said wills, deeds of settlement, and descents, or to the due records thereof, and to the several charters of privileges, for further particulars in this behalf; and that the same may, when produced in this cause, be taken as parts of this, its answer.

20 24.—That at the date of the American Revolution, and by the Declaration of Independence, bearing date the Fourth day of July, 1776, the territorial limits of the State of Delaware extended to and included, inter alia, all those lands and that portion of the Delaware River, its waters and the soil and bed thereof to low water mark on the New Jersey shore, included within the compass of said twelve mile circle; and such its limits and boundaries had  
 30 continuously been and remained down to the date of said Revolution from about the year 1682. That by said American Revolution, the State of Delaware became and was and from thenceforth has been, a free and independent state, and as such became entitled to have and to hold all such rights as free and independent states may have or hold to do all acts and things which independent states may of right do; and by force of the said Revolution and said Independence the said State of Delaware became  
 40 invested with all and every power of govern- [46] ment in and over the territory of said State and the tide waters

adacent thereto, and particularly to the full extent of the limits and boundaries of said State as they existed at the time of said American Revolution as aforesaid, and also became invested, not only with all the property and rights of property, royalties, powers, and franchises, governmental powers and authority and jurisdictions within and pertaining to said State, which immediately before said Revolution were vested in the then and former proprietor and proprietors of its territory within the limits and bounds aforesaid, but also with all the property rights of property, privileges, franchises, powers, governmental powers and jurisdictions, if any thereof yet then remained in the Crown of England, in manner and form as they were so vested in said Crown; that by means of said Revolution, and the said independence of the State of Delaware and the Treaty of Peace between the King of Great Britain and the United States of America, concluded at Paris, September 3d, 1783, all that portion of the bed, soil and water of the Delaware River last hereinbefore mentioned, to low water mark on the New Jersey shore and included within the compass of said twelve mile circle, became vested in and simple in the State of Delaware; and so the title to the bed of said portion of said river, this defendant respectfully submits, hath ever since continued and now is.

That to and in the said bed and soil of said portion of the Delaware River and to jurisdiction in and over said river, so as aforesaid claimed, this defendant hath title and right by long and peaceable possession, use and enjoyment, which use, possession and enjoyment began at the earliest determination of the said boundaries of said State as hereinbefore set forth and hath ever since continued, without interruption or dispute. That in, over and with reference to the portion of said Delaware River and the soil and the bed thereof, as a part of the recognized territory of said State of Delaware, the said State

*Answer.*

10 hath from time to time conclusively passed and enforced legislative acts, its courts have continuously, both before and after the American Revolution, exercised jurisdiction and issued and enforced processes, writs, [47] orders, judgments and decrees, and the courts of the United States within the district of said State, have enforced their processes, orders and writs. That with reference to the rights of fishing and every regulation and control thereof in said river, within the limits of said twelve mile circle, the State of Delaware hath never relinquished or abandoned the proprietary rights which it hath always possessed, had and defended, from the inception of its title to the bed and soil and waters of said river, within the limits of said twelve mile circle, in the year 1682, to the present day, but on the contrary, this defendant saith that the said proprietary rights, and title to said fisheries and fishings in said portion of said river, and the regulation and control thereof, this defendant hath continuously from the said year 1682 to the present day, claimed, exercised and defended.

20 That in the exercise, by this defendant, of proprietary right, jurisdiction and sovereignty, in and over the said twelve mile circle, its Legislature did, on May 27th, 1813, pass an Act entitled "An Act Ceding to the United States of America the jurisdiction which this State has over the Pea Patch, on certain conditions therein mentioned" (being Digest of Delaware Laws of 1829, page 673), in and by which the State of Delaware ceded to the United States of America, for the purpose of erecting forts, batteries, and fortifications thereon for the protection of the River Delaware and the adjacent country, a certain island in the River Delaware and within the twelve mile circle; which was thereupon in pursuance of said cession, occupied by the Government of the United States of America, and fortifications were thereupon built thereon, and have

ever since been maintained. That after said cession, and  
 prior to the year 1847, the title of the United States of  
 America under said cession, was questioned by James  
 Humphrey who claimed through sundry mean convey-  
 ances, under grants from the State of New Jersey; and  
 for the purpose of determining the right, title, sover-  
 eignty and jurisdiction of the State of Delaware in and 10  
 over the said island, at the time of said cession, as afore-  
 said to the United States of America, an arbitration of and  
 determination [48] of the same was had, heard, and deter-  
 mined by and before the Honorable John Sergeant of Penn-  
 sylvania, who was designated as an arbitrator for the ex-  
 press purpose of determining the said right, title, jurisdic-  
 tion and sovereignty, under and pursuant to the authority  
 of an Act of the Congress of the United States, approved  
 April 8th, 1846, under which the said arbitrator was 20  
 appointed, and, when so appointed, was constituted a spe-  
 cial tribunal for determining the same. That the question  
 of right, title, jurisdiction and sovereignty of the State of  
 Delaware of, in, to and over the River Delaware and the  
 island thereof, within the twelve mile circle, was the very  
 question involved in said litigation and determined by the  
 special tribunal so created for that purpose; and that  
 in said litigation and decision the parties to this suit,  
 to say, the States of New Jersey and Delaware, 30  
 were parties in estate to and with the respective parties.  
 During the hearing and determination of said arbitra-  
 tion full and accurate minutes of all proceedings were  
 taken by the Secretary of the reference, who was then,  
 before and subsequently, the regular and only re-  
 cord of the decisions of the District and Circuit Courts  
 of the United States in the District of Pennsylvania and  
 Third Circuit; and that said minutes, having been  
 fully written out, were transmitted to the proper de-  
 partment of the Government of the United States and 40

*Answer.*

were, pursuant to a resolution of the Senate of the United States, printed and published as Senate Executive Document No. 21 of the first session of the Thirtieth Congress. That the decision of the said arbitrator was, that the title and jurisdiction to and over said island and to the river and soil thereof, within the said twelve mile circle, was  
 10 in the said State of Delaware. That the said decision was reached after the most thorough examination of the facts, upon the original documents, the testimony of witnesses, the law applicable thereto, and the argument of able counsel representing both sides. And the defendant craves leave to refer to the said Senate Executive Document No. 21, and to the record and proceedings of the said arbitration and decision, when produced at the hearing of this cause.

20 [49] Whereupon this defendant, having fully answered, confessed, traversed and avoided or denied all the matters in the said Bill of Complaint material to be answered, according to the best knowledge and belief of this defendant, humbly prays this Honorable Court to enter its decree that this defendant be hence dismissed with its reasonable costs, in this behalf, most wrongfully sustained.

State of Delaware, by

REUBEN SATTERTHWAITE, JR.

30

Attorney General

Solicitor of the Defendant.

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**NOTICE.**

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

be advised that on Monday, December 9, 1929, 10  
plaintiff will apply to the Court for the appointment  
Special Master.

**WILLIAM A. STEVENS,**  
Attorney-General.

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

December 2, 1929. 20

service hereof is acknowledged this 2d day of Decem-  
1929.

**REUBEN SATTERTHWAITE,**  
*Solicitor for Defendant*

30

40

*Motion for the Appointment of a Special Master.*

**[2] MOTION FOR THE APPOINTMENT OF A  
SPECIAL MASTER.**

Comes now the State of New Jersey, by its Attorney-  
General, and asks the Court for the appointment of a  
Special Master to take testimony and prepare and file his  
findings, with recommendations for a decree herein.

WILLIAM A. STEVENS,  
Attorney-General.

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

WALTER C. BACON,  
Counsel.

December 9, 1929.

**[1] MOTION FOR THE APPOINTMENT OF A  
SPECIAL MASTER IN THIS CASE.**

Mr. Duane E. Minard, of Newark, New Jersey, for the  
motion.

January 6, 1930, Granted; and William L. Rawls,  
Esquire, of Baltimore, state of Maryland, is appointed  
Special Master in this cause, with the power to summon  
witnesses, issue subpoenas, and to take such testimony as  
may be introduced and such as he may deem necessary to  
call. The master is directed to make findings of fact and  
conclusions of law, and to submit the same to this court  
with all convenient speed, together with his recommenda-  
tions for a decree. The findings, conclusions and recom-  
mendations of the special master shall be subject to con-  
sideration, revision, or approval by the court. (280 U. S.  
529; 74 L. ed. 595.)

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IN THE SUPREME COURT  
OF THE UNITED STATES

- - -  
STATE OF NEW JERSEY : NO. 134, Original

v.

STATE OF DELAWARE

- - -  
OCTOBER 26, 2006  
- - -

Oral deposition of  
DAVID P. BLAASCH taken pursuant to  
notice, was held at the law offices of  
CONNOLLY, BOVE, LODGE & HUTZ, LLP, The  
Nemours Building, 1007 North Orange  
Street, 9th Floor, Wilmington, Delaware  
beginning at 9:25 a.m. on the above date,  
before Dottyann Y. Walsh, a Certified  
Shorthand Reporter and Notary Public in  
the State of Delaware.

- - -  
ESQUIRE DEPOSITION SERVICES  
Suite 1210  
1600 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
(215) 988-9191

ESQUIRE DEPOSITION SERVICES

10	<p>1 Q. Can you tell me the 2 substance of those conversations. 3 A. The conversations were 4 limited to scheduling, rescheduling. 5 Q. First we will get into a 6 little background information. Where did 7 you go to high school? 8 A. New York. 9 Q. When did you graduate? 10 A. 1984. 11 Q. Did you go on to college? 12 A. Yes. 13 Q. What college did you attend? 14 A. SUNY Cobleskill, State 15 University of New York at Cobleskill. 16 Q. Spell Cobleskill for me. 17 A. C-O-B-L-E-S-K-I-L-L. 18 Q. Did you graduate from SUNY 19 Cobleskill? 20 A. Yes. 21 Q. When did you graduate? 22 A. 1986. 23 Q. What degree did you receive? 24 A. An associates degree.</p>	12	<p>1 certification. 2 Q. Where are you employed? 3 A. State of Delaware. 4 Q. What division of the State 5 of Delaware do you work for? 6 A. Department of Natural 7 Resources and Environmental Control, 8 called DNREC, D-N-R-E-C. 9 Q. And where particularly in 10 DNREC do you work? 11 A. Division of Fish and 12 Wildlife Enforcement. 13 Q. And what is your position 14 with DNREC Fish and Wildlife Enforcement? 15 A. I believe the common title 16 now is enforcement officer 5, called 17 lieutenant. 18 Q. And how long have you been a 19 lieutenant with DNREC? 20 A. I believe it is three or 21 four years. 22 Q. And before holding the 23 position of lieutenant, what position or 24 job did you hold?</p>
11	<p>1 Q. In what major or field of 2 study? 3 A. Fisheries and wildlife 4 technology. 5 Q. Did you have any other 6 formal education after your associates 7 degree from SUNY? 8 A. Yes. 9 Q. Could you tell me what that 10 was? 11 A. Delaware State Police 12 Academy. 13 Q. Did you graduate from the 14 Academy? 15 A. Yes. 16 Q. When was that? 17 A. 1988. 18 Q. Did you receive some sort of 19 certificate or degree as a result of that 20 Academy attendance? 21 A. Yes. 22 Q. What degree did you receive? 23 A. Certified through the 24 Council on Police Training, COPT</p>	13	<p>1 A. Senior corporal. 2 Q. And was that also with DNREC 3 enforcement? 4 A. Yes. 5 Q. How long did you hold the 6 position of senior corporal? 7 A. I don't remember. 8 Q. Was senior corporal your 9 first position with Delaware DNREC? 10 A. No. 11 Q. What position did you hold 12 with DNREC prior to becoming a senior 13 corporal? 14 A. Corporal. 15 Q. Prior to being a corporal 16 were you also employed with DNREC? 17 A. Yes. 18 Q. Can you tell me what 19 positions you held? 20 A. Agent first class, AFC. 21 Q. Was agent first class 22 basically your entry position with DNREC 23 when you sought employment there? 24 A. No.</p>

<p style="text-align: right;">14</p> <p>1 Q. What was your position prior 2 to agent first class? 3 A. Trainee, fish and wildlife 4 enforcement trainee. 5 Q. Would that have been your 6 first position at DNREC? 7 A. Yes. 8 Q. Do you remember when you 9 began your employment as a trainee at 10 DNREC? 11 A. Yes. 12 Q. Could you tell me? 13 A. March of 1988. 14 Q. Was DNREC the employer you 15 went to immediately after graduating from 16 the Delaware Police Academy? 17 A. Yes. 18 Q. Can you tell me what your 19 responsibilities were as a trainee at 20 DNREC fish and wildlife. 21 A. Yes, my responsibilities as 22 a trainee were to learn the job of a fish 23 and wildlife enforcement agent. 24 Q. How long did the trainee</p>	<p style="text-align: right;">16</p> <p>1 agent first class, patrolling the lands 2 and waters of Delaware, enforcing fish, 3 game, boating regulations as well as 4 criminal and traffic law. Primarily 5 fish, game and boating. 6 Q. Do you recall how long you 7 remained a corporal? 8 A. Ma'am, I don't remember. 9 Q. When you became a senior 10 corporal with Delaware DNREC, what were 11 your responsibilities? 12 A. Responsibilities as senior 13 corporal were to enforce the fish, game 14 and boating laws in the State of Delaware 15 as well as the criminal, traffic 16 violations associated with fish, game and 17 boating stops; also, and this can go back 18 to the other ranks as well, instructing 19 at hunter safety, boater safety classes, 20 doing public presentations, public 21 outreach. 22 Q. Where do you conduct your 23 hunter and boating safety classes? 24 A. Various locations throughout</p>
<p style="text-align: right;">15</p> <p>1 position last? 2 A. I don't remember. 3 Q. After completing the trainee 4 position, you moved to agent first class? 5 A. Yes. 6 Q. And what were your 7 responsibilities as an agent first class? 8 A. My primary responsibilities 9 were to enforce the fish, game and 10 boating regulations in the State of 11 Delaware as well as any criminal and 12 traffic violations that might be 13 associated with those fish, game and 14 boating stops. 15 Q. I forget if I asked you 16 before, do you remember how long you 17 remained an agent first class before 18 becoming corporal? 19 A. I don't remember. 20 Q. When you moved from becoming 21 agent first class to corporal, what were 22 your responsibilities? 23 A. Responsibilities I had as a 24 corporal were similar to those of the</p>	<p style="text-align: right;">17</p> <p>1 New Castle County. 2 Q. I believe you said that for 3 the last three or four years you held 4 your present position as lieutenant with 5 DNREC, correct? 6 A. That is correct, I believe 7 it is three or four years. 8 Q. Can you tell me what your 9 responsibilities are as the lieutenant? 10 A. My responsibilities as a 11 lieutenant have switched from routine 12 patrol to more of an investigative 13 supervisory position. 14 Q. How many employees do you 15 supervise? 16 A. One. 17 Q. And who would that be? 18 A. Sergeant John Webb. 19 Q. Is Sergeant John Webb the 20 individual who actually conducts the 21 patrols over the last three or 22 four years? 23 A. Sergeant Webb conducts some 24 patrols.</p>

<p style="text-align: right;">18</p> <p>1 Q. What patrols does he 2 conduct?</p> <p>3 A. <b>Sergeant Webb conducts</b> 4 <b>waterborne as well as upland patrols,</b> 5 <b>targeting violations of fish, game and</b> 6 <b>boating laws and regulations.</b></p> <p>7 Q. Would it be fair to say that 8 you have not been involved in routine 9 patrols for the last three or four years?</p> <p>10 A. <b>No, that is not fair to say.</b></p> <p>11 Q. What would be accurate then, 12 do you conduct routine patrols?</p> <p>13 A. <b>I do occasionally conduct</b> 14 <b>routine patrols.</b></p> <p>15 Q. Can you describe for me the 16 routine patrol of a DNREC officer such as 17 yourself.</p> <p>18 A. <b>The routine patrol of DNREC</b> 19 <b>officers assigned to fish and wildlife is</b> 20 <b>to patrol the lands and waters of the</b> 21 <b>State of Delaware, to enforce fish, game,</b> 22 <b>boating regulations and law, to detect</b> 23 <b>violations of fish, game and boating law,</b> 24 <b>respond to complaints from the public</b></p>	<p style="text-align: right;">20</p> <p>1 known as the 12-mile circle? As a 2 factual basis, are you familiar with the 3 12-mile circle in the Delaware River?</p> <p>4 A. <b>Not really.</b></p> <p>5 Q. What is your understanding 6 of the Delaware/New Jersey border at the 7 Delaware River?</p> <p>8 A. <b>Delaware's territory extends</b> 9 <b>to the mean low watermark on the New</b> 10 <b>Jersey shore of the Delaware River.</b></p> <p>11 Q. And is that your 12 understanding for the entire coastline or 13 is there a discrete area to which that 14 applies?</p> <p>15 A. <b>It is not for the entire</b> 16 <b>coastline.</b></p> <p>17 Q. Could you tell me where that 18 border applies as you understand it.</p> <p>19 A. <b>That border would begin at</b> 20 <b>the southern end at Artificial Island and</b> 21 <b>it continues north up to near Oldmans</b> 22 <b>Creek.</b></p> <p>23 Q. Could you describe for me 24 now DNREC enforcement patrols within the</p>
<p style="text-align: right;">19</p> <p>1 <b>called in to our dispatcher about</b> 2 <b>violations of fish, game and boating laws</b> 3 <b>and regulations.</b></p> <p>4 Q. Where are your operations 5 based for the water patrols in the 6 Delaware?</p> <p>7 A. <b>Are you asking my personal</b> 8 <b>operations or the division's operations?</b></p> <p>9 Q. The division's operations.</p> <p>10 A. <b>The enforcement sections'</b> 11 <b>main office is in Dover, Delaware.</b></p> <p>12 Q. And where does enforcement 13 base its equipment, its boats that it 14 uses for these patrols?</p> <p>15 A. <b>Several locations throughout</b> 16 <b>the state, one in each county, one field</b> 17 <b>office in each county.</b></p> <p>18 Q. And what area of the state 19 is serviced by your Delaware City 20 facility?</p> <p>21 A. <b>New Castle County.</b></p> <p>22 Q. Can you describe for me 23 DNREC's enforcement patrols within the 24 area of the Delaware River, commonly</p>	<p style="text-align: right;">21</p> <p>1 area of the Delaware River from 2 Artificial Island to Oldmans Creek?</p> <p>3 A. <b>Enforcement patrols consist</b> 4 <b>of fish and wildlife agents from Delaware</b> 5 <b>checking boats, recreational boats,</b> 6 <b>commercial fishing boats and also doing</b> 7 <b>special operations, targeting negligent</b> 8 <b>operation, operating under the influence</b> 9 <b>and commercial fisheries violations and</b> 10 <b>also recreational fishing violations.</b></p> <p>11 Q. Is there any regularly 12 scheduled pattern for these patrols?</p> <p>13 A. <b>The pattern would depend</b> 14 <b>upon the seasons and tides.</b></p> <p>15 Q. Is there a schedule or 16 routine for these patrols that you could 17 describe during the summer months?</p> <p>18 A. <b>During the summer months</b> 19 <b>fish and wildlife agent patrols are</b> 20 <b>geared mostly towards recreational</b> 21 <b>boating law enforcement.</b></p> <p>22 Q. Are your enforcement people 23 out on the river every day, multiple 24 times a day, is there some way that you</p>

<p style="text-align: right;">22</p> <p>1 could describe the frequency of your 2 patrol? 3 <b>A. Are you asking if I</b> 4 <b>personally go once a day or the agents in</b> 5 <b>general?</b> 6 <b>Q. The agents in general, the</b> 7 <b>people.</b> 8 <b>A. I can't tell you how many</b> 9 <b>times per day the agents go out.</b> 10 <b>However, the agents are required, fish</b> 11 <b>and wildlife agents are required to log</b> 12 <b>in 150 hours underway time, that would be</b> 13 <b>on board a patrol boat, 150 hours per</b> 14 <b>year. During the summer months, the</b> 15 <b>agents are generally assigned anywhere</b> 16 <b>from 25 to 30 hours per month underway.</b> 17 <b>Q. And how many agents are</b> 18 <b>there on staff at DNREC who conduct these</b> 19 <b>patrols?</b> 20 <b>A. The entire DNREC, I'm not</b> 21 <b>sure. I couldn't give you an accurate</b> 22 <b>number.</b> 23 <b>Q. How about in New Castle</b> 24 <b>County where your base of operations is?</b></p>	<p style="text-align: right;">24</p> <p>1 <b>goal of that operation, if it was a</b> 2 <b>scheduled patrol or scheduled special</b> 3 <b>operation or just routine patrol. It</b> 4 <b>would also depend on the seasons and</b> 5 <b>weather.</b> 6 <b>Q. Summer day, routine patrol,</b> 7 <b>could you describe for me the course your</b> 8 <b>patrol would take on the water?</b> 9 <b>A. The course of routine patrol</b> 10 <b>on a summer day could possibly include</b> 11 <b>higher traffic areas where more</b> 12 <b>recreational boaters would be likely to</b> 13 <b>congregate.</b> 14 <b>Q. Can you describe the higher</b> 15 <b>traffic areas in your jurisdiction?</b> 16 <b>A. The higher traffic areas</b> 17 <b>generally include boat ramps and marinas.</b> 18 <b>Q. Are there any boat ramps and</b> 19 <b>marinas on the Jersey side of the river</b> 20 <b>that you would routinely patrol?</b> 21 <b>A. Yes.</b> 22 <b>Q. Can you tell me what they</b> 23 <b>are?</b> 24 <b>A. The Pennsville boat ramp.</b></p>
<p style="text-align: right;">23</p> <p>1 <b>A. New Castle County, the</b> 2 <b>agents that are assigned boat hours per</b> 3 <b>month, I believe there is five or six of</b> 4 <b>us that are assigned hours underway.</b> 5 <b>Q. Are you as a lieutenant</b> 6 <b>still assigned hours underway each month?</b> 7 <b>A. I am assigned some hours</b> 8 <b>underway, but not as many as the lower</b> 9 <b>ranking officers.</b> 10 <b>Q. Who supervises the five or</b> 11 <b>six officers who do these patrols out of</b> 12 <b>New Castle?</b> 13 <b>A. Captain Robert Hutchins</b> 14 <b>supervises the other officers with the</b> 15 <b>exception of Sergeant Webb.</b> 16 <b>Q. Is there a routine path or</b> 17 <b>practice for conducting these water</b> 18 <b>patrols that you could describe for us?</b> 19 <b>A. I'm not sure what you mean</b> 20 <b>by routine path or practice.</b> 21 <b>Q. On an average day, on a</b> 22 <b>routine patrol, boat puts into water at</b> 23 <b>Delaware City, where would it proceed to?</b> 24 <b>A. That depends on the specific</b></p>	<p style="text-align: right;">25</p> <p>1 <b>Q. If you can, describe what</b> 2 <b>actions your enforcement officer would</b> 3 <b>take coming upon the Pennsville boat ramp</b> 4 <b>with just recreational boat traffic</b> 5 <b>there.</b> 6 <b>A. Stop and board any vessels,</b> 7 <b>observe committing rules of the road</b> 8 <b>violations.</b> 9 <b>Q. Assuming it is the right</b> 10 <b>time of the year -- assuming -- assuming</b> 11 <b>we are at the right time of the year for</b> 12 <b>fishing to be permitted on the river,</b> 13 <b>would you also make inspections for</b> 14 <b>fishing licenses?</b> 15 <b>A. The state doesn't require</b> 16 <b>fishing license for recreational</b> 17 <b>fishermen in tidal water. But we would</b> 18 <b>check those boats if it was the closed</b> 19 <b>season, we would check those boats for</b> 20 <b>undersize or possessing any striped bass</b> 21 <b>during that time of the year during</b> 22 <b>closed season.</b> 23 <b>Q. If you found a violation of</b> 24 <b>either the rules of the road or fishing</b></p>

<p style="text-align: right;">26</p> <p>1 rules, what actions would your officer 2 take? 3 A. The officer would generally 4 issue a voluntary assessment, I should 5 say write a ticket, make an arrest. And 6 he would also board that vessel and 7 during his boarding check that boat for 8 any equipment violations, to insure that 9 the operator of the boat was in 10 compliance carrying all of the safety 11 equipment that was necessary on board -- 12 flares, life jackets, horns, bells, 13 whistles, PFDs, and all registration, 14 current registration. And nighttime 15 lights. 16 Q. If your officer determined 17 that there was an equipment deficiency, 18 what actions would they take? 19 A. The officer would arrest 20 him, write a ticket, issue a voluntary 21 assessment. 22 Q. What is a voluntary 23 assessment? 24 A. A voluntary assessment is</p>	<p style="text-align: right;">28</p> <p>1 determines whether or not they will just 2 be directed back to their home port or 3 whether they will be towed in or whether 4 they will be escorted in. 5 Q. Can you describe for me the 6 nature of violations that would result in 7 towing or an escort in. And when you say 8 in, I'm assuming you are talking about 9 back to your base of operations, is that 10 correct? 11 A. Not necessarily. 12 Q. Perhaps then you could 13 describe to me the violations that would 14 result in towing or escort of a vessel. 15 A. If the operator was 16 intoxicated, if there were children on 17 board without life jackets, if there were 18 adults on board without life jackets, if 19 there was no life jackets on the vessel 20 period. 21 Q. How do you determine where 22 to tow or escort the vessel to in those 23 situations? 24 A. Unless the operator is going</p>
<p style="text-align: right;">27</p> <p>1 mail-in ticket, similar to a traffic 2 ticket I suppose, with the violations 3 noted on the Universal Criminal Complaint 4 and Summons. The defendant has a certain 5 amount of time, a month to either send 6 the thing in with payment or else contest 7 it. 8 Q. Where do tickets that are 9 contested go for hearing? 10 A. Most of us drop all our 11 tickets off, our court copies off to the 12 justice of the peace courts, either 9 in 13 Middletown or 11 up in New Castle. The 14 defendant will either contest them in JP 15 court or Court of Common Pleas in 16 Wilmington. 17 Q. If you notice or your 18 officer discovers a boat with inadequate 19 safety equipment on the river, is the 20 boater then allowed to continue on the 21 water or are they directed to do 22 something? 23 A. Ma'am, it depends what sort 24 of violation they have committed</p>	<p style="text-align: right;">29</p> <p>1 to be taken into custody, such as a 2 operating under the influence, that 3 vessel will be either towed or escorted 4 to its mooring or the ramp it was 5 launched out of. 6 Q. If the vessel is moored or 7 launched out of a marina on the New 8 Jersey shore, would your officers then 9 take the vessel to the New Jersey marina? 10 A. Yes. 11 Q. But assuming the operator is 12 intoxicated and going to be taken into 13 custody, where would he go with his 14 vessel at that point? 15 A. Most of the time back to 16 Delaware City where our police boats are 17 moored. 18 Q. You said most of the time, 19 are there occasions where you have taken 20 them somewhere else? 21 A. Yes. 22 Q. Could you describe where you 23 take them on those alternate occasions? 24 A. To the Wilmington fire dock</p>

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1 on the Christiana River. It is close to  
2 Wilmington PD where they have the  
3 toxalyzer machine.  
4 Q. When conducting your  
5 patrols, do your officers ever board  
6 docks, piers or wharves that are attached  
7 to the New Jersey coastline to take  
8 enforcement action?  
9 A. Occasionally.  
10 Q. Can you describe those  
11 occasions to me.  
12 A. The most recent one I can  
13 recall, there was a call for assistance  
14 for a vessel in distress which we also do  
15 search and rescue in addition to the  
16 enforcement duties. I drove my patrol  
17 boat to the east side of Pea Patch  
18 Island, that was the location the vessel  
19 in distress was described as being. It  
20 was described as a small boat with three  
21 or four men on board that was yelling for  
22 help, the person reporting the incident  
23 was supposed to have called in from the  
24 pier on Fort Mott. I drove my patrol

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1 boat to the area, I checked several boats  
2 that were fishing, there was some sort of  
3 fishing contest going on, I believe it  
4 was for catfish. None of the boats I  
5 talked to had any information or  
6 knowledge of men yelling for help. I  
7 drove my police boat over to the Fort  
8 Mott pier, I tied off, I hopped the  
9 fence, and talked to the half dozen  
10 people standing up on the pier. None of  
11 them admitted to calling to dispatcher  
12 with a report of men yelling for help.  
13 None said that they had heard anybody  
14 yelling for help.  
15 Q. Other than as part of your  
16 investigation, does DNREC routinely  
17 patrol on the docks and piers in New  
18 Jersey or do you stay away from them and  
19 stay on the water?  
20 MR. BOYER: Objection,  
21 compound. You may answer the  
22 question.  
23 THE WITNESS: Are you asking  
24 if we patrol the piers?

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1 BY MS. CHUDZIK:  
2 Q. Yes.  
3 A. I believe the parks, the  
4 division of parks patrols the pier at  
5 Fort Mott.  
6 Q. And when you say the  
7 division of parks, the division of parks  
8 from which state are we talking about?  
9 A. Delaware division of parks  
10 and recreation.  
11 Q. I believe earlier you said  
12 that in addition to routine patrols, you  
13 do special operations on the river as  
14 part of your duties?  
15 A. Yes.  
16 Q. Could you describe those  
17 special operations to me.  
18 A. A special operation would be  
19 providing an enforcement presence for an  
20 event that was to include a large number  
21 of recreational vessels such as a  
22 fireworks display at night, a boat  
23 parade, this special operation could also  
24 include a pattern check of every boat in

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1 a high traffic area or the pattern might  
2 include every third boat that passed by a  
3 location, every second boat. It is a  
4 certain pattern so we are not picking out  
5 boats at random you understand. So we  
6 are not targeting boats, we want to make  
7 it as fair as possible. Normally our  
8 pattern checks consist of every boat  
9 unless we are busy at the time.  
10 Q. And how often would checks  
11 like that be conducted by DNREC?  
12 A. More than weekly during the  
13 summer. The pattern check could also  
14 include OUI enforcement, setting up  
15 specifically at times when people would  
16 be leaving events. And we would check  
17 every boat to insure that the operator is  
18 not intoxicated.  
19 MR. BOYER: For the record,  
20 tell us what OUI stands for.  
21 THE WITNESS: Operating  
22 under the influence. Some states  
23 call it BUI, boating under the  
24 influence.

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1 BY MS. CHUDZIK:  
2 Q. Do you conduct these special  
3 operations on both the Delaware and New  
4 Jersey side of the river?  
5 A. Yes.  
6 Q. Can you tell me the  
7 locations in New Jersey at which you  
8 frequently conduct such operations?  
9 MR. BOYER: Objection.  
10 THE WITNESS: We don't --  
11 MR. BOYER: I don't believe  
12 he testified to --  
13 MS. CHUDZIK: The frequency.  
14 MR. BOYER: Or in New  
15 Jersey.  
16 BY MS. CHUDZIK:  
17 Q. On the New Jersey side of  
18 the river, can you tell me where DNREC  
19 has conducted such operations?  
20 A. In the Delaware River on the  
21 east side of the channel, we conducted  
22 operations off the ramp in Pennsville.  
23 Q. Is there a way to describe  
24 for particularly what off the ramp in

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1 Pennsville means?  
2 A. We were in the Delaware  
3 River to the west side of the Pennsville  
4 ramp.  
5 Q. Are there markers or buoys  
6 in the river that your officers use as  
7 reference points in setting up these  
8 operations?  
9 A. Not normally.  
10 Q. How would an officer on a  
11 DNREC boat determine -- that set up his  
12 location in Pennsville beyond the mean  
13 low waterline?  
14 A. Our patrol boats are large  
15 enough, the water is shallow enough that  
16 unless it is high tide, we can't get  
17 right up to the ramp.  
18 Q. So if I'm understanding this  
19 correctly, your boats are large enough  
20 that you really can't travel closer to  
21 shore beyond the mean low waterline, is  
22 that accurate?  
23 A. That would be correct unless  
24 it is high tide. At low tide we cannot

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1 generally get past that mean low  
2 watermark.  
3 Q. How do the officers orient  
4 themselves during high tide to the mean  
5 low watermark?  
6 A. The officers generally stay  
7 20 feet or so off the ramp in the  
8 shoreline. We try not to get close to  
9 either shore with the motors. There is  
10 generally a lot of sand, rocks, there  
11 could be pilings, and we don't generally  
12 try to run our patrol boats too close to  
13 either shore in order to protect the  
14 lower units and propellers.  
15 Q. Would it be fair to say that  
16 20 feet from shoreline is your rule of  
17 thumb for conducting a patrol along the  
18 shore?  
19 A. I could say 20 feet roughly,  
20 but more so than the actual distance, we  
21 look at the depth gauges on our boats and  
22 try not to run in less than two feet of  
23 water.  
24 Q. In addition to your fish and

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1 wildlife enforcement responsibilities, do  
2 your officers patrol or make inspections  
3 for any other purposes along the  
4 Delaware?  
5 A. No, we patrol for fish, game  
6 and boating. Occasionally we have been  
7 called for homeland security to do  
8 surveillance work, observation work,  
9 photography with other agencies.  
10 Q. In conducting your patrols  
11 or investigations along the Delaware, do  
12 you have occasion to coordinate with any  
13 New Jersey law enforcement agencies?  
14 A. Yes.  
15 Q. Could you describe those  
16 occasions for me.  
17 A. Most of the time it is  
18 Pennsville Police Department.  
19 Q. And how does this  
20 coordination happen?  
21 A. The City of Pennsville hosts  
22 an event called Septemberfest annually.  
23 It includes a fireworks display, and the  
24 Pennsville Police Department calls the

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1 division of fish and wildlife to provide  
2 a waterborne enforcement presence.  
3 Q. When you are called upon to  
4 do this for Septemberfest, where would  
5 the DNREC officers locate themselves for  
6 this enforcement effort?  
7 A. DNREC fish and wildlife  
8 enforcement agents generally park or moor  
9 or patrol the area right off of the  
10 Pennsville ramp.  
11 Q. And when you say right off  
12 again, how close to the Pennsville ramp  
13 do you locate yourself?  
14 A. I couldn't give you an exact  
15 distance because normally we circulate  
16 around through the crowd of boats  
17 checking safety equipment, registrations  
18 and also for rules of the road  
19 violations.  
20 Q. In addition to Pennsville,  
21 are there any other locations on the  
22 eastern or New Jersey side of the  
23 Delaware that your enforcement officers  
24 are frequently drawn to?

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1 A. Not as frequently as  
2 Pennsville.  
3 Q. How about can you list after  
4 Pennsville the next location of most  
5 activity on the eastern or New Jersey  
6 side of the river?  
7 A. It would either be  
8 Killcohook National Wildlife Refuge or  
9 possibly the area of the river near the  
10 Phoenix wreck, that would be down towards  
11 Salem Cove. Gull Island would be another  
12 one in that area.  
13 Q. What is that?  
14 A. It is called Gull Island.  
15 Q. As a DNREC officer, what  
16 statutes of the State of Delaware are you  
17 charged with enforcing?  
18 A. As a DNREC officer with the  
19 Division of Fish and Wildlife, I'm  
20 charged with enforcing the fish, game and  
21 boating regulations and laws and also  
22 associated criminal and traffic laws.  
23 Q. Could you describe to me the  
24 traffic laws you are charged with

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1 enforcing?  
2 A. If I observe a dangerous  
3 moving violation on the road, I will then  
4 take action, I will take enforcement  
5 action to stop that moving violation. If  
6 I make a fish, game or boating arrest,  
7 and there is an associated motor vehicle  
8 violation, I then may or may not charge  
9 for that motor vehicle violation.  
10 Q. I believe you stated earlier  
11 that Delaware doesn't have its own  
12 fishing restrictions or limitations, is  
13 that correct?  
14 A. I don't remember saying  
15 that. We do have seasons, we do have  
16 regulations.  
17 Q. What Delaware fishing  
18 regulations apply to fishing on the  
19 Delaware River?  
20 A. Size limit for certain  
21 species of fish and also creel limits,  
22 that would be the number of fish a person  
23 can have. And finally there would be  
24 seasons where take was either allowed or

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1 prohibited of certain species of fish.  
2 Q. Are there any Delaware game  
3 regulations which apply to the Delaware  
4 River?  
5 A. Game regulations would  
6 include waterfowl. Waterfowl would be  
7 the biggest game I could think of that  
8 would be regulated on the waters of the  
9 Delaware River.  
10 Q. And what waterfowl  
11 regulations does Delaware have that you  
12 enforce?  
13 A. Similar to the fishing.  
14 There is seasons for certain species of  
15 waterfowl. There is -- and there is bag  
16 limits as opposed to creel limits. Bag  
17 limits is the number of birds one can  
18 take in a certain amount of time. There  
19 is no size limits as there would be for  
20 fish.  
21 (Recess at 10:21 a.m.)  
22 (Resumed at 10:28 a.m.)  
23 BY MS. CHUDZIK:  
24 Q. Lieutenant, have you ever

<p style="text-align: right;">42</p> <p>1 issued a citation for a violation to 2 someone for activity they have conducted 3 on a pier or wharf attached to the State 4 of New Jersey? 5 <b>A. Not as far as I can</b> 6 <b>remember.</b> 7 <b>Q. Going back to a routine</b> 8 <b>summer patrol by a DNREC officer. Is</b> 9 <b>there a standard route or path they are</b> 10 <b>charged to take to cover the territory</b> 11 <b>out of the New Castle operations?</b> 12 <b>A. We have three enforcement</b> 13 <b>entities under DNREC that have</b> 14 <b>enforcement officers. I can only speak</b> 15 <b>for fish and wildlife enforcement agents.</b> 16 <b>I can't speak for the enforcement agents</b> 17 <b>of parks or the environmental control</b> 18 <b>side.</b> 19 <b>Q. I apologize, just for fish</b> 20 <b>and wildlife officers, is there a path</b> 21 <b>for a routine patrol that they are</b> 22 <b>required to travel to make sure they</b> 23 <b>cover the territory out of the New Castle</b> 24 <b>office?</b></p>	<p style="text-align: right;">44</p> <p>1 <b>Q. In addition to the routine</b> 2 <b>patrols and the special operations that</b> 3 <b>you have described for us already out of</b> 4 <b>the Delaware fish and game DNREC, are</b> 5 <b>there any other activity that your people</b> 6 <b>conduct on the river?</b> 7 <b>A. Yes.</b> 8 <b>Q. Could you describe them for</b> 9 <b>me?</b> 10 <b>A. The other activity we would</b> 11 <b>conduct on the river I hadn't mentioned</b> 12 <b>yet would be assisting other agencies.</b> 13 <b>Q. What kind of assistance are</b> 14 <b>you called upon to do?</b> 15 <b>A. The main one that comes to</b> 16 <b>mind would be response to oil spills.</b> 17 <b>Q. What agency would call your</b> 18 <b>fish and wildlife people in in that</b> 19 <b>instance?</b> 20 <b>A. That would be another branch</b> 21 <b>of DNREC, air and waste or environmental</b> 22 <b>control. I can't remember which they</b> 23 <b>prefer right now.</b> 24 <b>Q. And what kind of activity</b></p>
<p style="text-align: right;">43</p> <p>1 <b>A. No, no. There is no set</b> 2 <b>pattern.</b> 3 <b>Q. Are you able to estimate</b> 4 <b>what percentage of your enforcement</b> 5 <b>actions take place as a result of a</b> 6 <b>complaint that is called in to your</b> 7 <b>offices?</b> 8 <b>A. I'm not sure I understand.</b> 9 <b>Q. What percentage of your</b> 10 <b>activity on the water are a result of</b> 11 <b>complaints called in to your office?</b> 12 <b>A. I couldn't tell you a</b> 13 <b>percentage.</b> 14 <b>Q. Do you frequently get</b> 15 <b>complaints called in to you?</b> 16 <b>A. Yes.</b> 17 <b>Q. Is there any pattern to</b> 18 <b>those complaints, any geographic areas</b> 19 <b>from which you routinely get complaints?</b> 20 <b>A. There is no one specific</b> 21 <b>geographic area. It is the entire county</b> 22 <b>of New Castle and also the State of</b> 23 <b>Delaware the complaints are called in</b> 24 <b>from.</b></p>	<p style="text-align: right;">45</p> <p>1 would a fish and wildlife officer be 2 required to do in response to an oil 3 spill? 4 <b>A. We would -- because we have</b> 5 <b>the boats, we would transport personnel</b> 6 <b>from that division to the area of the</b> 7 <b>spill to conduct surveys, take</b> 8 <b>photographs and possibly take samples.</b> 9 <b>The other agency we would assist, and I'm</b> 10 <b>not sure if it is considered another</b> 11 <b>agency, would be our own division of fish</b> 12 <b>and wildlife, the wildlife section. We</b> 13 <b>would transport biologists, and also I</b> 14 <b>know we have taken people from Tri-State</b> 15 <b>Bird Rescues before, the biologists would</b> 16 <b>be doing their own surveys and taking</b> 17 <b>their own samples, as far as what impact</b> 18 <b>the spill may have on wildlife, migrating</b> 19 <b>birds, fish, crabs.</b> 20 <b>Q. Beyond the oil spills, have</b> 21 <b>there been any other emergencies which</b> 22 <b>DNREC fish and wildlife have been called</b> 23 <b>on to respond to?</b> 24 <b>A. Yes.</b></p>

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1 Q. Could you describe them for  
 2 me.  
 3 A. Emergencies would include  
 4 boating accidents. I didn't stress  
 5 before when you were asking me my  
 6 different duties, as I came up through  
 7 the ranks. I didn't stress enough that  
 8 search and rescue is a big part of our  
 9 responsibilities. So boating  
 10 emergencies, boating accidents would be  
 11 another response we would make.  
 12 MS. CHUDZIK: I have nothing  
 13 further. Thank you for your time.  
 14  
 15 (Witness excused.)  
 16 (Deposition concluded at  
 17 approximately 10:37 a.m.)  
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1 INSTRUCTIONS TO WITNESS  
 2  
 3 Please read your deposition  
 4 over carefully and make any necessary  
 5 corrections. You should state the reason  
 6 in the appropriate space on the errata  
 7 sheet for any corrections that are made.  
 8 After doing so, please sign  
 9 the errata sheet and date it.  
 10 You are signing same subject  
 11 to the changes you have noted on the  
 12 errata sheet, which will be attached to  
 13 your deposition.  
 14 It is imperative that you  
 15 return the original errata sheet to the  
 16 deposing attorney within thirty (30) days  
 17 of receipt of the deposition transcript  
 18 by you. If you fail to do so, the  
 19 deposition transcript may be deemed to be  
 20 accurate and may be used in court.  
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1 CERTIFICATE  
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 3  
 4 I HEREBY CERTIFY that the  
 5 witness was duly sworn by me and that the  
 6 deposition is a true record of the  
 7 testimony given by the witness.  
 8  
 9 It was requested before  
 10 completion of the deposition that the  
 11 witness, DAVID P. BLAASCH, have the  
 12 opportunity to read and sign the  
 13 deposition transcript.  
 14  
 15 \_\_\_\_\_  
 16 DOTTYANN Y. WALSH, a  
 17 Certified Shorthand Reporter and  
 18 Notary Public of the  
 19 State of Delaware  
 20 CSR License Number: 251-RPR  
 21 Notary Number: 20051147009  
 22 Notary expiration: April 14, 2007  
 23 Dated: November 6, 2006  
 24  
 (The foregoing certification  
 of this transcript does not apply to any  
 reproduction of the same by any means,  
 unless under the direct control and/or  
 supervision of the certifying reporter.)

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1 -----  
 2 ERRATA  
 3 -----  
 4 PAGE LINE CHANGE  
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ACKNOWLEDGMENT OF DEPONENT

I, DAVID P. BLAASCH, do hereby certify that I have read the foregoing pages, 1 - 46, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

*[Handwritten signature of David P. Blasch]*

*11-14-2006*

DAVID P. BLAASCH

DATE

MATTHEW F. BOYER  
NOTARIAL OFFICER  
Delaware Attorney No. 2564  
Pursuant to 29 Del. C. §4323(a)(3)

Subscribed and sworn

to before me this

*14<sup>th</sup>* day of *November*, 20*06*.

My commission expires: *N/A*

*Matthew F. Boyer (attorney at law)*  
Notary Public

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IN THE SUPREME COURT  
OF THE UNITED STATES

- - -  
STATE OF NEW JERSEY : NO. 134, Original  
:  
v. :  
:  
STATE OF DELAWARE :

- - -  
OCTOBER 20, 2006  
- - -

Oral deposition of  
PHILIP J. CHERRY taken pursuant to  
notice, was held at the law offices of  
CONNOLLY, BOVE, LODGE & HUTZ, LLP, The  
Nemours Building, 1007 North Orange  
Street, 9th Floor, Wilmington, Delaware  
beginning at 9:34 a.m., on the above  
date, before  
Dottyann Y. Walsh, a Certified Shorthand  
Reporter and Notary Public in the State  
of Delaware.

- - -  
ESQUIRE DEPOSITION SERVICES  
Suite 1210  
1600 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
(215) 988-9191

ESQUIRE DEPOSITION SERVICES

2

1 APPEARANCES:  
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 2 DEPOSITION SUPPORT INDEX  
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 5 Direction to Witness Not to Answer  
 6 Page Line Page Line Page Line  
 7 None  
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 10 Request for Production of Documents  
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 12 None  
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 15 Stipulations  
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 20 Question Marked  
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1  
 2 PHILIP J. CHERRY, after  
 3 having been duly sworn, was  
 4 examined and testified as follows:  
 5  
 6 DIRECT EXAMINATION  
 7  
 8 BY MS. CONKLIN:  
 9 Q. Good morning, Mr. Cherry, my  
 10 name is Barbara Conklin and sitting to my  
 11 left is Rachel Horowitz. We are both  
 12 deputy attorneys general from the State  
 13 of New Jersey and we are here in  
 14 connection with litigation brought by the  
 15 State of New Jersey against the State of  
 16 Delaware concerning certain rights in the  
 17 Delaware River. Have you ever been  
 18 deposed before?  
 19 A. No.  
 20 Q. Let me give you a few  
 21 guidelines to make this proceeding move  
 22 along more easily. I am here to ask you  
 23 questions and I believe you have been put  
 24 under oath.

<p>6</p> <p>1 A. Yes. 2 Q. And the purpose of this is 3 essentially a substitute for being in 4 court. This proceeding can be used in 5 lieu of live testimony so we expect your 6 answers to be as truthful as possible and 7 to the extent of your recollection. I 8 would ask you that if I ask a question 9 that is not clear to you, let me know and 10 I can try to rephrase it or clarify any 11 confusion. The other thing you need to 12 keep in mind is that the court reporter 13 can only take down verbal responses. So 14 we have to try both of us not to speak at 15 the same time. And I will endeavor to do 16 that. I can be guilty of that on several 17 occasions. I will try to allow you to 18 speak completely and fully before I begin 19 another question. 20 The other thing is that try 21 not to do nods of the head, any nonverbal 22 response will not reflect on the record. 23 We don't want that to be the case. Is 24 there any reason today why you would not</p>	<p>8</p> <p>1 Buffalo. And a masters in geology from 2 the University of Delaware in 1983. I 3 have been employed with the State 4 Department of Natural Resources since 5 1983 in various capacities until I took a 6 brief assignment with Governor Carper in 7 1998 for three years before returning to 8 the Department of Natural Resources in 9 2000. 10 Q. Are you trained as a 11 hydrogeologist? 12 A. I am. 13 Q. That is a subspecialty of 14 geology? 15 A. It is. 16 Q. Very, very briefly, what 17 does a hydrogeologist do? 18 A. In my case, study the 19 groundwater resources of a particular 20 area. Groundwater of course resides 21 underground in the rocks and sediment 22 that are here in Delaware, for instance. 23 And the movement of that water, the 24 quality of that water, the availability</p>
<p>7</p> <p>1 be able to give us a full and truthful 2 response to a question, such as 3 medication, that type of thing? 4 A. No. 5 Q. Where are you currently 6 employed? 7 A. With the State Department of 8 Natural Resources and Environmental 9 Control, Delaware. 10 Q. Is that what we could refer 11 to as DNREC, D-N-R-E-C? 12 A. That is correct. 13 Q. What is your current 14 position there? 15 A. I'm the director of policy 16 and planning for that agency. 17 Q. How long have you held that 18 position? 19 A. Since 2000. 20 Q. What is your education and 21 professional training? 22 A. I have a bachelors degree in 23 geology granted in 1978 from the State 24 University of New York College of</p>	<p>9</p> <p>1 of that water for withdrawal and use is 2 something that a hydrologist or a 3 geohydrologist or hydrogeologist, all 4 essentially synonymous terms, would do. 5 Q. Would that exclude the study 6 of surface waters? 7 A. Not necessarily. The 8 landscape that we see is the result of 9 millennia of movement of surface water, 10 landscapes and land forms are formed by 11 surface water. And so that is a 12 geological process as well. Hydrogeology 13 typically focuses on underground 14 resources, but surface resources are 15 considered a part of that science. 16 Q. Would it be fair to say that 17 surface water resources were a secondary 18 focus to your educational efforts and 19 studies? 20 A. Yes. 21 MS. CONKLIN: Let me mark as 22 Exhibit 1 this document. 23 (Exhibit Cherry-1 marked for 24 identification.)</p>

<p style="text-align: right;">10</p> <p>1 BY MS. CONKLIN: 2 Q. Mr. Cherry, does this 3 document look familiar to you? 4 A. It does. 5 Q. Can you tell me what it is? 6 A. It is my affidavit in this 7 case. 8 Q. Right, a copy of it, 9 correct? 10 A. Correct. 11 Q. I just wanted to insert it 12 into the record now in case we needed to 13 refer to it in the next series of 14 questions. As part of your study of 15 geology, did you focus on hydrogeology in 16 the Delaware, in the State of Delaware or 17 were you specializing in another area? 18 A. My thesis as required for my 19 masters was entitled The Hydrogeology of 20 the Smyrna/Clayton Area of Delaware. So 21 yes, I did study the hydrogeology of 22 Delaware. And in my capacity at the 23 Department of Natural Resources earlier 24 on in my career, I studied hydrogeology</p>	<p style="text-align: right;">12</p> <p>1 relating to coastal zones in Delaware? 2 A. No. 3 Q. In your academic years, did 4 you provide any information -- let me 5 rephrase this. In your academic years, 6 did you have any involvement in the 7 submission of applications by private 8 individuals for permits from DNREC? 9 A. I applied for my own permits 10 as a graduate student for well permits, 11 but other than that, no. 12 Q. Let me direct you to 13 Exhibit 1, paragraph 2 which appears to 14 be a recitation of the various positions 15 you have been employed in at DNREC, is 16 that correct? 17 A. It is. 18 Q. Is paragraph 2 an accurate 19 summary of the positions that you have 20 held since 1983 in state government? 21 A. It is. 22 Q. Paragraph 2 indicates that 23 from 1983 to 1990 you were employed by 24 the Division of Water Resources in DNREC,</p>
<p style="text-align: right;">11</p> <p>1 for Delaware. 2 Q. I was focusing more on your 3 educational -- your bachelors and masters 4 years when you were -- 5 A. In my -- 6 Q. -- in your academic career. 7 A. In my academic career as I 8 have so answered, yes. 9 Q. As part of your academic 10 career, did you ever hear of a document 11 called the Compact of 1905? 12 A. No. 13 Q. As part of your academic 14 career, did you ever become aware of the 15 border between New Jersey and Delaware as 16 it runs along the Delaware River? 17 A. No. 18 Q. In your academic career, did 19 you have any involvement in commenting on 20 any of Delaware's coastal zone policies? 21 A. No. 22 Q. During your academic years, 23 did you have any involvement in the 24 drafting or commenting on regulations</p>	<p style="text-align: right;">13</p> <p>1 is that correct? 2 A. It is. 3 Q. Initially as a 4 geohydrologist and again as manager of 5 the water supply branch, is that correct? 6 A. Yes. 7 Q. What were your duties in the 8 1983 to 1990 position? 9 A. Issuing well permits, 10 issuing water allocation permits, 11 advising Delawareans on how to get water, 12 where to get water, the quality of that 13 water, assessing the quality of that 14 water, interacting with various other 15 programs within the agency on water, 16 groundwater related issues, database 17 management, general management of the 18 staff there. 19 Q. And how many -- go ahead. 20 A. That would be about it. 21 Q. And how many staff did you 22 supervise? 23 A. Towards the end of that 24 seven-year period in 1989, 1990 I would</p>

<p style="text-align: right;">14</p> <p>1 say about 10. 2 Q. Did you supervise staff who 3 reviewed applications for leases of 4 Delaware subaqueous lands? 5 A. No, that was a different 6 program. 7 Q. And what program would that 8 be? 9 A. That would be the -- well, I 10 guess the wetland section at the time. 11 Now I believe they call themselves the 12 subaqueous lands program. 13 Q. Did you supervise any staff 14 who reviewed applications for permits to 15 conduct activities on subaqueous lands? 16 A. No. 17 Q. As part of your duties as 18 manager in the Division of Water 19 Resources, did you ever become aware of a 20 document called the Compact of 1905? 21 A. No. 22 Q. Have you ever -- at that 23 time were you aware of a document called 24 the Compact of 1907?</p>	<p style="text-align: right;">16</p> <p>1 direct your attention to paragraph 7 of 2 your affidavit. In that paragraph there 3 is a description of a July 13, 1990 4 application for a status decision by 5 Keystone Cogeneration Systems, is that 6 right? 7 A. That's correct. 8 Q. Would it be fair to say that 9 you have no personal knowledge concerning 10 that particular application? 11 A. That is correct. 12 Q. Going back to your career in 13 DNREC, in 1990 I believe you took a new 14 position, is that correct? 15 A. I did. 16 Q. And was that with what 17 section of DNREC? 18 A. That was in the office of 19 the secretary. 20 Q. Let me just double-check 21 paragraph 1 here, when did you go with 22 the pollution prevention program? 23 A. The pollution prevention 24 program was created in 1990 in the office</p>
<p style="text-align: right;">15</p> <p>1 A. No. 2 Q. During this period of time, 3 did you ever gain an understanding of 4 where the border between New Jersey and 5 Delaware lay with respect to the Delaware 6 River? 7 A. No. 8 Q. It simply wasn't a concern 9 of yours at that time? 10 A. It wasn't. 11 Q. I would direct you to 12 paragraph 5 of your affidavit. In that 13 paragraph there is a reference to a 14 December 1971 proposal submitted by the 15 El Paso Eastern Company to construct a 16 liquified natural gas terminal in New 17 Jersey, is that correct? 18 A. That's correct. 19 Q. Would it be fair to say that 20 you don't have any personal knowledge of 21 that 1971 application? 22 A. It would be fair to say 23 that. 24 Q. And I would also like to</p>	<p style="text-align: right;">17</p> <p>1 of the secretary. 2 Q. And when you say it was 3 created in the office of the secretary, 4 we are talking about the secretary of 5 DNREC? 6 A. That's correct. 7 Q. Which would be I suppose a 8 commissioner perhaps in other states? 9 A. It is equivalent to New 10 Jersey commissioner for instance. 11 Q. And when you say it was 12 created in the office of the secretary, 13 what does that mean to you? 14 A. The Department of Natural 15 Resource, DNREC has five operating 16 divisions. And the office of the 17 secretary is a quasi sixth division 18 overseeing the activity if you will of 19 those five divisions. But there are some 20 programs that reside in the office of the 21 secretary because they are umbrella 22 programs, having applicability across 23 divisional lines as did the pollution 24 prevention program.</p>

<p style="text-align: right;">18</p> <p>1 Q. And what exactly was your 2 position in the pollution prevention 3 program? 4 A. I was the director of the 5 program. 6 Q. How many people were 7 assigned to the pollution prevention 8 program? 9 A. Two. 10 Q. Including yourself? 11 A. Including myself. 12 Q. And what were your duties? 13 A. To develop the program, to 14 launch it, to carry out the statutory 15 requirements in Title 7 Chapter 60, the 16 Pollution Prevention Act of 1990 as 17 passed by the Delaware general assembly. 18 Q. Talking about water 19 pollution? 20 A. Air, water, waste, all forms 21 of pollution. 22 Q. This was a very broad 23 mandate then? 24 A. It was.</p>	<p style="text-align: right;">20</p> <p>1 with adopting source reduction techniques 2 as a tool for dealing with environmental 3 emissions. I had an educational 4 interaction with the staff in the agency, 5 not a lot of programmatic, we were not a 6 regulatory program, we didn't have rules 7 and regulations. We were there again 8 more to educate folks on how -- a 9 different thought process, a different 10 paradigm of dealing with waste generally. 11 Q. And the education function 12 you performed, was this inside the 13 department? 14 A. All -- that was mostly 15 inside the department. 16 Q. Would this -- would it be 17 fair to say that your focus was basically 18 solid waste and hazardous waste? 19 A. No. That was a big part of 20 it. But air emissions was another 21 considerable component. 22 Q. As part of your duties in 23 this program, did you have any 24 supervision of individuals who reviewed</p>
<p style="text-align: right;">19</p> <p>1 Q. And in the course of this 2 particular program assignment, how did 3 you interface or interact with the other 4 divisions in DNREC? 5 A. My goal, my job was to 6 promote the concept of waste reduction, 7 of source reduction as defined in the 8 Federal Pollution Prevention Act. In 9 other words, don't treat the waste after 10 it has been created but find ways to not 11 create it in the first place. Pollution 12 prevention is a term of art. It means 13 source reduction. Reducing the waste 14 generation at the source before it is 15 generated and therefore before you have 16 to deal with it going out the pipe. So 17 my job was to educate folks within the 18 agency on what pollution prevention was, 19 to change their mindset as regulators who 20 might regulate what is coming out of the 21 pipe to promote 22 their -- helping their clients, 23 permittees in Delaware, with 24 understanding what source reduction was,</p>	<p style="text-align: right;">21</p> <p>1 applications for subaqueous leases? 2 A. No. 3 Q. Did you have any involvement 4 in the issuance of permits for activity 5 on subaqueous land? 6 A. No. 7 Q. To what extent did your 8 program have anything to do with water 9 quality in the Delaware River? 10 A. Nothing specific that I 11 recall. 12 Q. Did your program undertake 13 any type of mailings to permittees or to 14 businesses that had received certain 15 types of permits from the State of 16 Delaware? 17 A. I don't recall, possibly. 18 Q. If such mailings or 19 communications had been sent, do you know 20 what type of permittees you would have 21 been reaching out for? 22 A. The focus of the program was 23 on solid and hazardous waste and air 24 emissions primarily.</p>

<p style="text-align: right;">22</p> <p>1 Q. At the time you had that 2 program, were there permit programs in 3 effect for air emissions in Delaware? 4 A. Yes. 5 Q. And were there permit 6 programs in effect for generators and 7 collectors of hazardous waste? 8 A. Yes. 9 Q. And were there permit 10 programs in effect for collectors of 11 solid waste? 12 A. Yes. 13 Q. I believe your affidavit 14 indicates that at some point you left the 15 pollution prevention program in 1993? 16 A. My affidavit says that in 17 1990 I was promoted and served as the 18 pollution prevention director until 1993. 19 That is correct. 20 Q. And then what happened 21 professionally? 22 A. Professionally I went to 23 work in a more direct capacity for the 24 secretary as his executive assistant.</p>	<p style="text-align: right;">24</p> <p>1 yes. 2 Q. And who was the secretary in 3 1993? 4 A. Kristoff Talou, T-A-L-O-U. 5 Q. How long did you function as 6 executive assistant to Secretary Talou? 7 A. Until 1998. May of 1998. 8 Q. And in May of 1998 did you 9 change positions or continue on or what? 10 A. I transferred if you will to 11 work for Governor Carper as his 12 legislative liaison. 13 Q. So at that point when you 14 became legislative liaison for Governor 15 Carper, did you leave DNREC at that 16 point? 17 A. I took a leave of absence 18 under the merit rules of the state of 19 Delaware. 20 Q. As executive assistant to 21 Secretary Talou, did you become aware of 22 a document called the Compact of 1905? 23 A. I did not. 24 Q. Did you read any</p>
<p style="text-align: right;">23</p> <p>1 Q. And did you -- 2 A. Doing different things. 3 Q. When you say different 4 things, did you have a specific brief or 5 assignment in terms of assisting the 6 secretary? 7 A. I was his policy advisor, I 8 was his legislative liaison, I helped him 9 in all executive matters. 10 Q. Did the secretary have 11 another executive assistant in addition 12 to you? 13 A. No. 14 Q. Had this position existed 15 prior to you assuming your role? 16 A. Yes. 17 Q. And who had been your 18 predecessor? 19 A. I don't remember. I don't 20 remember. It was a different cabinet 21 secretary prior to 1993. 22 Q. You mean a different 23 secretary? 24 A. Yes. Cabinet secretary,</p>	<p style="text-align: right;">25</p> <p>1 communications or reports that discussed 2 a document called the Compact of 1905? 3 A. No. 4 Q. Did you read any documents 5 or reports that discussed the Compact of 6 1907? 7 A. No. 8 Q. Did you attend any meetings 9 during your executive assistant years 10 with representatives from federal 11 agencies where New Jersey's authority to 12 issue subaqueous leases or leases of 13 subaqueous land were discussed? 14 A. Not that I recall. 15 Q. Do you recall attending any 16 meetings with representatives from the 17 State of New Jersey when you were an 18 executive assistant where New Jersey 19 authority to issue subaqueous leases in 20 the Delaware River was discussed? 21 A. No. 22 Q. Are you aware of any 23 legislation that was proposed during the 24 time that you were an executive assistant</p>

<p style="text-align: right;">26</p> <p>1 where -- concerning the Compact of 1905? 2 A. No. 3 Q. Do you recall any 4 legislation that was proposed during the 5 time that you were an executive assistant 6 that related to regulation of activities 7 in the Delaware River by the State of 8 Delaware? 9 A. No. 10 Q. When you say you were a 11 legislative liaison for the secretary -- 12 Secretary Talou, what did -- what duties 13 did you perform that made you a 14 legislative liaison? 15 A. In the Delaware General 16 Assembly, there are literally thousands 17 of pieces of legislation introduced every 18 year. My job was to review them, look 19 for ones that impacted the environment or 20 our agency, circulate them for comment 21 within our agency, formulate a position 22 on that piece of legislation, work with 23 the governor's office and the secretary 24 in formulating and articulating that</p>	<p style="text-align: right;">28</p> <p>1 it is in my affidavit. I believe it was 2 late '04. 3 Q. At that time you were in 4 what position in state Government? 5 A. I had returned at that point 6 to the Department of Natural Resources at 7 the director of policy and planning. In 8 2000 I returned and that was the position 9 I was holding at that time and that I 10 still hold. 11 Q. As director of policy and 12 planning, when did you first learn of 13 British Petroleum's plans -- their 14 proposed project to construct a liquified 15 natural gas facility along the Delaware 16 River? 17 A. I believe my affidavit says 18 2002. It does. Paragraph No. 8. 19 Q. At paragraph 8? 20 A. Correct. 21 Q. And how did you learn of the 22 British Petroleum proposed project? 23 A. They called and asked for a 24 meeting.</p>
<p style="text-align: right;">27</p> <p>1 position. And then sharing that, 2 lobbying that, if you will, legislators 3 on that piece of legislation; and there 4 were many. 5 Q. But none of them to your 6 recollection concerned the Compact of 7 1905? 8 A. No. 9 Q. Can you say when the first 10 time was that you learned about the 11 Compact of 1905? 12 A. In this case. 13 Q. And approximately what time 14 was that? 15 A. 200' early '05 maybe. 16 Q. In what context was it 17 raised? 18 A. I believe it was after our 19 coastal zone industrial control board had 20 ruled on the BP application. 21 Q. And at the time -- what 22 day -- what year do you believe that that 23 ruling occurred? 24 A. That ruling was -- I believe</p>	<p style="text-align: right;">29</p> <p>1 Q. And when you say they, who 2 was they? 3 A. They were represented by 4 Dave Swaisey. Not sure what firm he was 5 with at the time. 6 Q. And Dave Swaisey as far as 7 you know was a representative of British 8 Petroleum? 9 A. That is the way he 10 represented himself at our meeting, yes. 11 Q. When you refer to a meeting, 12 when did this meeting occur? 13 A. In 2002. 14 Q. And who was present for this 15 meeting? 16 A. I know Dave Swaisey was 17 there. I remember Lauren Segal, I 18 believe that is how you pronounce her 19 name. Jeff Foulks and obviously myself. 20 There may have been others, I don't 21 recall. 22 Q. Was secretary Hughes present 23 for this meeting for any part of it? 24 A. He was not.</p>

<p style="text-align: right;">30</p> <p>1 Q. Was this the only meeting 2 you had concerning the British Petroleum 3 proposed project that involved BP 4 representatives? 5 A. No. I have relayed the 6 first meeting I had with them. 7 Q. Let's talk about that first 8 meeting. I'm sorry, you said it was in 9 2002? 10 A. I believe so. 11 Q. And what was the purpose of 12 the meeting as you recall? 13 A. Mr. Swaisey was trying to 14 interpret how the coastal zone would 15 impact the proposed BP facility. 16 Q. And can you be a little more 17 specific? 18 MR. SEITZ: Before you 19 answer, I would like to note for 20 the record to the extent you are 21 going to explore the Delaware 22 officials, their contact with BP, 23 we reserve the right to go in and 24 petition the Special Master to do</p>	<p style="text-align: right;">32</p> <p>1 British Petroleum representatives were 2 present as well as yourself and Secretary 3 Hughes? 4 A. Yes. 5 Q. Do you recall the Compact of 6 1905 being discussed in that meeting? 7 A. I do not. 8 Q. Was there any discussion of 9 Delaware authority to regulate the 10 proposed project? 11 A. There was discussion about 12 the applicability of the Coastal Zone Act 13 to this project, yes. 14 Q. Was there a discussion of 15 New Jersey's authority over the proposed 16 project? 17 A. Not specifically that I 18 recall. 19 Q. Did BP representatives 20 assert that New Jersey had regulatory 21 jurisdiction over the proposed project? 22 A. I don't recall. 23 Q. Was there -- are you aware 24 of a legal opinion that was discussed in</p>
<p style="text-align: right;">31</p> <p>1 the same of New Jersey 2 representatives. If you are going 3 to do this, I would like to note 4 for the record, you are opening 5 the door for us to explore the 6 same discussions that BP has had 7 with New Jersey representatives. 8 BY MS. CONKLIN: 9 Q. In this meeting, was there a 10 discussion of the Compact of 1905? 11 A. Not to my recollection. 12 Q. In this meeting, was there a 13 discussion of -- to any extent, New 14 Jersey's jurisdiction over the project? 15 A. No. The question -- 16 Q. That is fine. Was there a 17 subsequent meeting concerning -- with 18 British Petroleum representatives which 19 you attended? 20 A. Yes. 21 Q. And can you tell me when 22 that meeting occurred? 23 A. Not precisely. During 2003. 24 Q. Was there a meeting at which</p>	<p style="text-align: right;">33</p> <p>1 this meeting concerning Delaware 2 authority over the proposed BP project? 3 A. Could you repeat the 4 question? 5 Q. Sure. Was there a legal 6 opinion or memorandum originating from 7 Delaware state offices that was discussed 8 in this meeting which concerned Delaware 9 authority over the proposed BP project? 10 MR. SEITZ: Object to the 11 form of the question. You can 12 answer it. 13 THE WITNESS: No. 14 BY MS. CONKLIN: 15 Q. Was there any legal opinion 16 or advice from Delaware officials 17 discussed at this meeting with BP 18 representatives? 19 A. Not that I recall. 20 Q. Forgive me if I'm repeating 21 myself, but I want to make sure I 22 understand this. Do you recall any 23 discussion of the Compact of 1905 at this 24 second meeting?</p>

<p style="text-align: right;">34</p> <p>1       <b>A. I don't.</b> 2       <b>Q. Was there any discussion of</b> 3 <b>the allocation of regulatory authority</b> 4 <b>between Delaware and New Jersey</b> 5 <b>concerning the proposed BP project?</b> 6       <b>A. I don't believe so.</b> 7       <b>Q. Was there another meeting</b> 8 <b>between -- at which you attended at which</b> 9 <b>BP representatives were present?</b> 10       <b>A. Likely, yes. There was</b> 11 <b>clearly more than one meeting, more than</b> 12 <b>my first, I don't recall them</b> 13 <b>individually. Maybe two or three in</b> 14 <b>toto.</b> 15       <b>Q. And at none of these</b> 16 <b>meetings was the Compact of 1905</b> 17 <b>discussed in any way?</b> 18       <b>A. As I discussed shortly ago,</b> 19 <b>I don't recall the compact being brought</b> 20 <b>up at all in any of those early meetings.</b> 21       <b>Q. Do you recall whether</b> 22 <b>British Petroleum representatives</b> 23 <b>asserted that Delaware did not have</b> 24 <b>regulatory authority over this project,</b></p>	<p style="text-align: right;">36</p> <p>1       <b>Q. Are there attorneys on staff</b> 2 <b>at DNREC?</b> 3       <b>A. There are not.</b> 4       <b>Q. Are there to your knowledge</b> 5 <b>staff members of DNREC who are attorneys</b> 6 <b>but who perform other functions for</b> 7 <b>DNREC?</b> 8       <b>A. Yes.</b> 9       <b>Q. Were any such staff members</b> 10 <b>present for any of the meetings we</b> 11 <b>discussed -- that you described between</b> 12 <b>BP and yourself and other staff members?</b> 13       <b>A. I don't believe so.</b> 14       <b>Q. Do you have any -- can you</b> 15 <b>give me an estimate of the number of</b> 16 <b>subaqueous lands leases that Delaware</b> 17 <b>issues in a given year?</b> 18       <b>A. I have no idea, no.</b> 19       <b>Q. Do you receive written</b> 20 <b>reports from each division of DNREC on</b> 21 <b>some regular basis?</b> 22       <b>A. Each division is required to</b> 23 <b>submit a weekly report to the secretary.</b> 24 <b>They don't include in those the number of</b></p>
<p style="text-align: right;">35</p> <p>1 the proposed project? 2       <b>A. No, I don't recall that.</b> 3       <b>Q. Were there any written</b> 4 <b>communications sent to BP representatives</b> 5 <b>after any of these meetings? I will</b> 6 <b>clarify that. I think that is too broad.</b> 7 <b>Were there any written communications</b> 8 <b>from your office sent to BP</b> 9 <b>representatives following any of these</b> 10 <b>meetings?</b> 11       <b>A. No, likely not.</b> 12       <b>Q. Would there have been any</b> 13 <b>e-mail communications?</b> 14       <b>A. Not that I specifically</b> 15 <b>remember.</b> 16       <b>Q. As executive assistant to</b> 17 <b>the DNREC secretary, do you have legal</b> 18 <b>counsel available to you in the event you</b> 19 <b>need legal advice?</b> 20       <b>A. Yes.</b> 21       <b>Q. And who would that counsel</b> 22 <b>be?</b> 23       <b>A. Through the deputy attorney</b> 24 <b>general's office.</b></p>	<p style="text-align: right;">37</p> <p>1 <b>permits or what have you that they have</b> 2 <b>issued for the week. But yes, this is a</b> 3 <b>weekly report. Doesn't contain a lot of</b> 4 <b>detail.</b> 5       <b>Q. Is there an annual report</b> 6 <b>that would contain that type of</b> 7 <b>information?</b> 8       <b>A. Not that I'm aware of.</b> 9       <b>Q. Does the secretary of DNREC</b> 10 <b>issue an annual report to the legislator?</b> 11       <b>A. He does not, nor would she</b> 12 <b>would there be one.</b> 13       <b>Q. When did Secretary Talou</b> 14 <b>step down?</b> 15       <b>A. That was after I went to the</b> 16 <b>governor's office, I will guess 1999.</b> 17       <b>Q. And the secretary who</b> 18 <b>succeeded Secretary Talou was Secretary</b> 19 <b>Hughes?</b> 20       <b>A. No. Between those two was</b> 21 <b>Secretary Nick DePasquale.</b> 22       <b>Q. When did Secretary</b> 23 <b>DePasquale move on?</b> 24       <b>A. I will guess early 2002,</b></p>

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1 maybe late '01.  
2 Q. So Secretary DePasquale had  
3 no involvement in any of the discussions  
4 you described between British Petroleum  
5 representatives and yourself?  
6 A. No, he was gone then.  
7 MS. CONKLIN: Take a  
8 five-minute break.  
9 (Recess at 10:14 a.m.)  
10 (Resumed at 10:21 a.m.)  
11 BY MS. CONKLIN:  
12 Q. Let me go back and ask a  
13 couple of more questions concerning the  
14 series of meetings with British Petroleum  
15 representatives. The first meeting you  
16 recall was around 2002?  
17 A. Yeah.  
18 Q. And this was a meeting at  
19 which you were present?  
20 A. Yes.  
21 Q. You indicated there were  
22 three representatives from BP that you  
23 recalled?  
24 A. I recalled Lauren Segal and

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1 Jeff Foulks and Dave Swaisey. In my mind  
2 I see another shadow in the room but I  
3 don't recall who that was.  
4 Q. Was there an attorney  
5 present from the attorney general's  
6 office?  
7 A. No.  
8 Q. Was that the shadow?  
9 A. No.  
10 Q. Was Lauren Herr present from  
11 the wetlands section?  
12 A. No.  
13 MR. SEITZ: I think it is  
14 Laura.  
15 BY MS. CONKLIN:  
16 Q. Was there any staff member  
17 present from any of the divisions?  
18 A. No, Mr. Swaisey wanted to  
19 talk about the Coastal Zone Act.  
20 Q. When you say they were  
21 talking about the Coastal Zone Act, you  
22 are talking Delaware's Coastal Zone Act?  
23 A. Yes.  
24 Q. Was there a discussion about

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1 the parts of the BP project that were  
2 applicable -- that were subject to  
3 jurisdiction under the coastal zone  
4 management and parts of the project that  
5 was not?  
6 A. Mr. Swaisey wanted to know  
7 if the part -- if the part of the project  
8 in Delaware's waters would be subject to  
9 a Coastal Zone Act permit or would be  
10 permissible at all under the Delaware  
11 Coastal Zone Act.  
12 Q. And what did BP say was the  
13 portion of the project that was in  
14 Delaware coastal waters?  
15 A. The pier.  
16 Q. And what portion of the  
17 project was not in the coastal waters  
18 according to BP, in the Delaware coastal  
19 waters?  
20 A. There is a land-based  
21 portion of the project, there is the pier  
22 and the docking facility. And they were  
23 inquiring about the pier.  
24 Q. What was your understanding

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1 of where Delaware's jurisdiction began  
2 vis-a-vis the facility on the land and  
3 the end of the pier?  
4 A. The mean low waterline on  
5 the Jersey shore. On territorial waters.  
6 Q. And when did you learn that?  
7 A. I think Mr. Swaisey brought  
8 that up. I have known that since  
9 administering the Coastal Zone Act.  
10 Q. And when did you begin  
11 administering the Coastal Zone Act?  
12 A. When I came back in 2000.  
13 Q. And that was when you were  
14 assistant to Secretary Talou?  
15 A. No. After I returned from  
16 Governor Carper's office in 2000, then  
17 working for Secretary DePasquale.  
18 Q. In what context did you need  
19 to know about the mean low waterline  
20 jurisdictional boundary?  
21 A. Well, Mr. Swaisey very  
22 clearly stated that in his opinion that  
23 the pier would be regulated by the  
24 Delaware Coastal Zone Act and hence

42

1 wanted to know whether -- how it would be  
2 treated by the Coastal Zone Act, whether  
3 it would be prohibited or regulated in  
4 some fashion.  
5 Q. And you said at some point  
6 there was a secondary -- or second  
7 meeting between BP representatives and I  
8 think you also indicated you were  
9 attending as well?  
10 A. Yes.  
11 Q. Can you recall who was  
12 present for that second meeting?  
13 A. I don't recall exactly.  
14 Q. Was it the same crew?  
15 A. It was Lauren Segal, it was  
16 Jeff Foulks and as I said previously I  
17 believe it was even more than one more  
18 meeting. There may have been a total of  
19 three or more. I don't recall  
20 specifically. But others were present at  
21 that latter meeting.  
22 Q. Did the BP representatives  
23 make any presentation in writing to you  
24 in support of their position?

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1 A. These were more exploratory  
2 meetings informing the secretary on what  
3 LNG was, on what the sort of the larger  
4 scheme of the project was. We were not  
5 debating legalities at that point.  
6 Q. At what point in the  
7 discussion did the parties become focused  
8 on whether this was a bulk transfer  
9 facility?  
10 A. Early on the question was is  
11 it a bulk transfer facility or is it a  
12 pier for a single manufacturing use, and  
13 hence exempted from the bulk product  
14 transfer prohibition.  
15 Q. During the course of these  
16 meetings, did BP file any application --  
17 A. No.  
18 Q. -- with DNREC?  
19 A. No, no.  
20 Q. That came afterwards?  
21 A. We encouraged them to do  
22 that.  
23 Q. At any of these meetings do  
24 you recall whether there was a

44

1 representative from the Delaware AG's  
2 office present?  
3 A. I don't recall. Again, it  
4 wasn't a legal matter at that time.  
5 Q. Do you recall whether there  
6 was a representative from the wetlands  
7 and subaqueous section at any of these  
8 meetings?  
9 A. I don't recall.  
10 Q. So it is possible you were  
11 the only person from DNREC there?  
12 A. No. Perhaps at the first  
13 meeting, yes. At the second meeting as I  
14 have suggested and have said, Secretary  
15 Hughes was there, our deputy secretary  
16 may have attended one or more of those  
17 meetings.  
18 Q. And who would that have  
19 been?  
20 A. The deputy secretary?  
21 Q. Yes.  
22 A. David Small.  
23 Q. Do you recall any memorandum  
24 or written communication as a result of

45

1 these meetings summarizing the content of  
2 them?  
3 A. No.  
4 Q. To your recollection, the  
5 Compact of 1905 wasn't raised at all in  
6 any of these meetings?  
7 A. That's correct.  
8 Q. Did anybody discuss a lease  
9 that was issued to Dupont for subaqueous  
10 lands in any of these meetings?  
11 A. Not to my recollection.  
12 Q. Did British Petroleum  
13 representatives indicate any -- describe  
14 any applications that they were filing  
15 with the State of New Jersey with respect  
16 to this proposed project?  
17 A. I don't recall.  
18 Q. Did you or your staff have  
19 any contact as a result of these meetings  
20 with any representatives from the State  
21 of New Jersey?  
22 A. No.  
23 Q. And by representatives, I  
24 mean staff members of the Department of

<p style="text-align: right;">46</p> <p>1 Environmental Protection. 2 A. Not as a result of those 3 meetings. 4 Q. Did you have any -- did you 5 or your staff have any contact with 6 representatives from the State of New 7 Jersey after British Petroleum filed an 8 application with DNREC? 9 A. For coastal zone? 10 Q. For coastal zone 11 applicability or consistency. 12 A. Coastal zone status 13 decision? 14 Q. Right. 15 A. No. 16 Q. And by communications, I 17 mean any written communications or e-mail 18 communications. 19 A. No. 20 Q. What was your involvement 21 with the project after British Petroleum 22 filed their application with DNREC? 23 A. I was supervising the 24 program at the time so I read the</p>	<p style="text-align: right;">48</p> <p>1 Q. Would this be a normal way 2 of processing a request for a status 3 determination? 4 A. Yes. 5 Q. Were all status 6 determinations routed through you? 7 A. All status decision 8 applications go to Dennis and get routed 9 through me. 10 Q. And how long had you been 11 processing these status decision 12 determinations? 13 A. Since I returned in 2000 and 14 had supervisory responsibilities over 15 Dennis and the program. 16 Q. Did you perform any other 17 reviews concerning applications to the 18 wetland and subaqueous lands section? 19 A. I wouldn't review those 20 permits. That is done by that program. 21 Q. So just hypothetically, if a 22 project was deemed consistent -- when I 23 say consistent, but theoretically -- if a 24 project were not prohibited under</p>
<p style="text-align: right;">47</p> <p>1 application, I made sure that it went 2 through all of the appropriate 3 procedures, public notice, reviewed the 4 comments on it and prepared our position 5 for the secretary's review. 6 Q. To what extent did anyone in 7 the wetlands and subaqueous lands section 8 work on the application? 9 A. They wouldn't have worked on 10 the status decision application. 11 Q. Were you the person who 12 worked on the status decision 13 application? 14 A. Myself and Dennis Brown. 15 Q. Dennis Brown? 16 A. Brown. 17 Q. And what is his position? 18 A. He is a planner, he works 19 for me. 20 Q. And when you say he is a 21 planner, does he specialize in a 22 specific -- 23 A. In Coastal Zone Act 24 administration, yes.</p>	<p style="text-align: right;">49</p> <p>1 Delaware regulations, would you have any 2 further involvement in its permitting? 3 A. If a project were not 4 prohibited under Delaware's Coastal Zone 5 Act, it may still have a requirement to 6 seek a permit under the Coastal Zone Act. 7 And in which case, I would have continued 8 that permitting process with a subject 9 facility, with a facility that was 10 seeking a permit. 11 Q. Again we are talking 12 hypothetically, would that permit 13 application be primarily reviewed by 14 someone else in another division, the 15 appropriate division? 16 A. Permit applications for 17 Coastal Zone Act purposes are often times 18 shared around the agency and we seek 19 comment from different program areas on 20 what is being proposed. Less so with 21 status decision applications. 22 Q. And how would you describe 23 your role in that process? Are you the 24 coordinator of basically shepherding that</p>

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1 application to its final determination?  
 2 **A. I'm the supervisor for the**  
 3 **planner who has the responsibility of**  
 4 **doing all the legwork on that permitting**  
 5 **program. He does the mundane things,**  
 6 **gets the permit in, gets the paperwork**  
 7 **flowing. He reports to me, the reports**  
 8 **and the recommendations and ultimately**  
 9 **the permits or the decisions come through**  
 10 **me on the way to the secretary.**  
 11 **Q. So just so I understand, the**  
 12 **planner would then be the chief**  
 13 **coordinator of the applications related**  
 14 **to a specific project?**  
 15 **A. Yeah, he's best described as**  
 16 **a clerk I guess would be a good**  
 17 **description of his duties.**  
 18 **Q. Would the planner then be --**  
 19 **if a hypothetical project needed a**  
 20 **subaqueous lands lease, would the planner**  
 21 **be responsible for determining -- for**  
 22 **issuing that lease?**  
 23 **A. No, no, no. Typically**  
 24 **Coastal Zone Act permits and certainly**

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1 **status decisions come well before permits**  
 2 **might be issued for air, water, waste,**  
 3 **wetlands impact.**  
 4 **Q. And the planner's function**  
 5 **with respect to those earlier**  
 6 **determinations is simply to do what?**  
 7 **A. I'm not sure I follow your**  
 8 **question.**  
 9 **Q. I'm just trying to determine**  
 10 **when you have a hypothetical project that**  
 11 **has gotten a favorable status**  
 12 **determination, in other words it is not**  
 13 **prohibited, and then a request for a**  
 14 **subaqueous land lease or permit is then**  
 15 **filed, what is the planner's involvement**  
 16 **at that point with that project?**  
 17 **A. The planner -- the planner**  
 18 **would have no involvement in reviewing,**  
 19 **commenting on or in any way touching that**  
 20 **subaqueous lands permit or for that**  
 21 **matter an air permit or a waste permit.**  
 22 **That is not what he does.**  
 23 **Q. To what extent are you aware**  
 24 **of the progress of an application for a**

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1 **subaqueous lands lease or a permit for**  
 2 **activities on a subaqueous land?**  
 3 **A. We are typically not.**  
 4 **Again, as I said, the Coastal Zone Act**  
 5 **status decision or permit would be done**  
 6 **well ahead, conceivably months ahead of**  
 7 **any programmatic environmental permits**  
 8 **that would then flow.**  
 9 **Q. Are there circumstances**  
 10 **under which once again, a hypothetical**  
 11 **project is found to be not prohibited**  
 12 **under the coastal zone rules, would you**  
 13 **then -- is it typical for you to then**  
 14 **continue to monitor its progress through**  
 15 **its lease applications and its permit**  
 16 **applications?**  
 17 **A. Typically not. If it is not**  
 18 **prohibited and I will assume it still**  
 19 **needs a coastal zone permit, we would**  
 20 **process the permit. If the permit was**  
 21 **received, that would be the end of our**  
 22 **involvement in that particular project.**  
 23 **They would then go off and deal with the**  
 24 **various programs within the agency and**

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1 **get their respective permits.**  
 2 **Q. Is it part of your job**  
 3 **responsibilities to monitor or be aware**  
 4 **of permit applications for activity on**  
 5 **subaqueous lands in Delaware?**  
 6 **A. No.**  
 7 **Q. Under what circumstances if**  
 8 **any would you monitor or become aware of**  
 9 **such -- of the progress of such**  
 10 **applications?**  
 11 **A. It is hard to speculate. It**  
 12 **is possible in one or more instances I**  
 13 **suppose if it were to come to my**  
 14 **attention. But not normally.**  
 15 **Q. Would you be given a draft**  
 16 **decision on a permit application for**  
 17 **activity on subaqueous land?**  
 18 **A. No, no.**  
 19 **Q. Do you recall ever being**  
 20 **given one to review prior to its**  
 21 **issuance?**  
 22 **A. There was a case in this**  
 23 **case as is seen in my affidavit where a**  
 24 **permit was sought, a subaqueous lands**

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1 permit was sought for some borings in the  
 2 Delaware River with respect to this  
 3 project. Staff in the subaqueous lands  
 4 section knew that this was a project that  
 5 was undergoing coastal zone review and  
 6 did bring that to my attention, yes. But  
 7 normally outside of that case, normally  
 8 not, no.  
 9 Q. To whom do you report  
 10 directly?  
 11 A. Secretary Hughes.  
 12 Q. Anyone else?  
 13 A. David Small, our deputy,  
 14 approves my leave. The secretary would  
 15 rather not deal with those particular  
 16 issues.  
 17 Q. Prior -- in any of your  
 18 previous positions in DNREC, would you  
 19 comment on proposed regulations? DNREC  
 20 regulations of course.  
 21 A. Yes.  
 22 Q. Do you recall commenting on  
 23 any regulations that concerned Delaware  
 24 jurisdiction over projects on the New

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1 Jersey side of the river, the Delaware  
 2 River?  
 3 A. No.  
 4 Q. Do you recall attending any  
 5 staff meetings in DNREC in which the 1905  
 6 Compact was discussed?  
 7 A. No.  
 8 MS. CONKLIN: We are done.  
 9 MR. SEITZ: Thank you.  
 10 (Witness excused.)  
 11 (Deposition concluded at  
 12 approximately 10:44 a.m.)  
 13  
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1 CERTIFICATE  
 2  
 3 I, DOTTYANN Y. WALSH, a  
 4 Notary Public and Certified Shorthand  
 5 Reporter of the State of Delaware, do  
 6 hereby certify that prior to the  
 7 commencement of the examination,  
 8 PHILIP J. CHERRY was duly sworn by me to  
 9 testify to the truth, the whole truth and  
 10 nothing but the truth.  
 11  
 12 I DO FURTHER CERTIFY that  
 13 the foregoing is a verbatim transcript of  
 14 the testimony as taken stenographically  
 15 by and before me at the time, place and  
 16 on the date hereinbefore set forth, to  
 17 the best of my ability.  
 18 I DO FURTHER CERTIFY that I  
 19 am neither a relative nor employee nor  
 20 attorney nor counsel of any of the  
 21 parties to this action, and that I am  
 22 neither a relative nor employee of such  
 23 attorney or counsel, and that I am not  
 24 financially interested in the action.

18 \_\_\_\_\_  
 19 DOTTYANN Y. WALSH, CSR  
 20 Notary Number: 20051147009  
 21 Notary Expiration: April 14, 2007  
 22 CSR Number: 251-RPR  
 23 Dated: November 3, 2006  
 24

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1 LAWYER'S NOTES  
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LAURA M. HERR

2	<p>1 APPEARANCES:</p> <p>2</p> <p>3 NEW JERSEY DIVISION OF LAW &amp; PUBLIC SAFETY BY: BARBARA L. CONKLIN, ESQUIRE Richard J. Hughes Justice Complex 25 Market Street Trenton, NJ 08625 609.984.5065 barbara.conklin@dol.lps.state.nj.us</p> <p>7 -AND-</p> <p>8 NEW JERSEY DIVISION OF LAW &amp; PUBLIC SAFETY BY: RACHEL HOROWITZ, ESQUIRE Richard J. Hughes Justice Complex 25 Market Street Trenton, NJ 08625 609.984.5065 rachel.horowitz@dol.lps.state.nj.us -Representing the Plaintiff(s)</p> <p>14 CONNOLLY BOVE LODGE &amp; HUTZ LLP BY: MAX B. WALTON, ESQUIRE The Nemours Building 1007 North Orange Street Wilmington, DE 19899 302.888.6297 mbw@cblh.com -Representing the Defendant(s)</p>	4
3	<p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 LAURA M. HERR</p> <p>4 BY MS. CONKLIN 6</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 MARKED DESCRIPTION PAGE</p> <p>8 Herr-1 Letter dated 17 8/17/04 to William Moyer 9 from DuPont Chambers Works, 10 with attachments, Bates DUP 0000920-982</p> <p>12 Herr-2 e-mail dated 17 9/20/04 to 13 William Moyer from W. Harding 14 Drane, Jr., Bates DUP 0000717, DE 19422-19431</p> <p>16 Herr-3 Letter dated 19 12/14/05 to Ms. 17 Laura Herr from DuPont, Bates DUP 18 0000001-26, 39-45, 99-102</p> <p>19 Herr-4 Letter dated 29 20 3/1/06 to John D. Strait from Laura 21 M. Herr, with attachment, Bates 22 DUP 0001339-1343</p>	5
2	<p>1 Herr-5 Letter dated 34 9/30/91 to 2 William Moyer from W. Harding 3 Drane, Jr., Bates DE 02197-2198</p> <p>4 Herr-6 Subaqueous Lands 34 5 Lease Granted to Keystone 6 Cogeneration System, Inc., 7 date of issuance: 9/30/91, Bates DE 8 02200-2205</p> <p>9 Herr-7 Letter dated 44 7/25/04 to Ms. 10 Laura M. Herr from Victor J. 11 Schuler, Bates DE 01462-1468</p> <p>12 Herr-8 Memorandum dated 45 13 3/10/05 to John A. Hughes from 14 Laura Herr, Bates DE 01540</p>	4
3	<p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3 Direction to Witness Not to Answer</p> <p>4 Page Line Page Line Page Line</p> <p>5 None</p> <p>6</p> <p>7</p> <p>8 Request for Production of Documents</p> <p>9 Page Line Page Line Page Line</p> <p>10 None</p> <p>11</p> <p>12</p> <p>13 Stipulations</p> <p>14 Page Line Page Line Page Line</p> <p>15 None</p> <p>16</p> <p>17</p> <p>18 Question Marked</p> <p>19 Page Line Page Line Page Line</p> <p>20 None</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	5

ESQUIRE DEPOSITION SERVICES

2 (Pages 2 to 5)

<p>6</p> <p>1 LAURA M. HERR, 2 after having been first duly 3 sworn, was examined and testified 4 as follows: 5 6 EXAMINATION 7 8 BY MS. CONKLIN: 9 Q. Good afternoon, Ms. Herr. 10 A. Yes. 11 Q. My name is Barbara Conklin 12 and the person to my left is Rachel 13 Horowitz also from my office. We're both 14 deputy attorney's general from the state 15 of New Jersey and we represent New Jersey 16 in litigation with the great state of 17 Delaware concerning jurisdiction in 18 certain areas of the Delaware River. 19 This is, of course, just a general 20 description, not intended as a final, 21 final definition of the litigation. 22 You have been placed under 23 oath and this is the same thing as being 24 in court essentially.</p>	<p>8</p> <p>1 the Wetlands and Subaqueous Lands 2 Section. 3 Q. All right. And what are 4 your duties? 5 A. I am the manager in charge 6 of implementing DNREC's wetlands law and 7 regulations, subaqueous lands law and 8 regulations, marina regulations and our 9 401, or the quality certification 10 program. 11 Q. Let me ask you. How many 12 people do you supervise? 13 A. Yes. I supervise six 14 scientists and two support staff and a 15 vacant manager position at the moment. 16 Q. What percentage of your 17 workforce is devoted to subaqueous lands 18 leases and permits? 19 A. All of the staff work on all 20 of the programs, so I think that answers 21 the question. 22 Q. Do you have any perception 23 of what percentage of their time is 24 devoted to subaqueous lands leases and</p>
<p>7</p> <p>1 The court reporter, 2 unfortunately, can only take down oral 3 responses, and I would ask that you make 4 all of your answers orally rather than by 5 a shake of the head or nod. 6 The second rule is that I 7 will try very hard not to speak when you 8 are speaking because the court reporter 9 can only take down one of us at a time. 10 A. Okay. 11 Q. And number three, if you 12 have any confusion about my questions or 13 something is unclear, please let me know 14 and I'll try and rephrase the question. 15 A. Okay. 16 Q. Have you been deposed 17 before? 18 A. No. 19 Q. You have not. 20 Well, good, then we can 21 dispense with all those nasty questions. 22 What is your current title 23 at DNREC? 24 A. I'm a program manager 2 in</p>	<p>9</p> <p>1 programs? 2 A. I would say the subaqueous 3 program occupies probably 60 to 4 65 percent of the time. 5 Q. I see. Do you submit a 6 report each year concerning the 7 subaqueous lands program? 8 A. No. 9 Q. All right. Do you make an 10 accounting at all of the number of leases 11 that you issue on a given year? 12 A. An accounting? 13 Q. Yeah. 14 A. No. No. 15 Q. Do you keep track of the 16 number of leases? 17 A. We keep track, yes. 18 Q. Okay. Is this information 19 conveyed to anybody other than for just 20 your own internal use? 21 A. No, not conveyed to anyone. 22 Q. Do you make an accounting of 23 the income that is derived from leases? 24 A. Yes.</p>

10

1 Q. All right. Is that  
 2 information conveyed to anybody outside  
 3 your own section?  
 4 A. Outside the section, but not  
 5 outside the department. We confer with  
 6 our accounting section regarding the  
 7 lease fees that we collect each year.  
 8 MR. WALTON: Just make sure  
 9 you let her finish the question.  
 10 The court reporter is going to get  
 11 mad at you.  
 12 THE WITNESS: Sorry. Okay.  
 13 BY MS. CONKLIN:  
 14 Q. How long have you held the  
 15 manager's position?  
 16 A. This current position, I  
 17 have been in the position officially  
 18 since July of '05 and was acting manager  
 19 for six months prior.  
 20 Q. So you became acting manager  
 21 approximately January of '05?  
 22 A. Right.  
 23 Q. Okay. Prior to your  
 24 position as acting manager, what was your

11

1 position in DNREC?  
 2 A. I was the lower level  
 3 manager in that same section, the program  
 4 manager I, for approximately ten years.  
 5 Q. For ten years. And to whom  
 6 did you report during those ten years?  
 7 A. To Bill Moyer.  
 8 Q. Okay. All right. And what  
 9 were your duties when you were reporting  
 10 to Bill Moyer?  
 11 A. Essentially implementing  
 12 those same programs, slightly different  
 13 duties in terms of the day-to-day  
 14 permitting operations. And I also had  
 15 delegated signatory authority to sign  
 16 some of the permits that we issued under  
 17 the programs, the various programs.  
 18 Q. You had delegated authority?  
 19 A. Yes, yes.  
 20 Q. All right. During your ten  
 21 years as a lower level manager, what  
 22 percentage of your time would you  
 23 estimate was dedicated to subaqueous  
 24 lands leases and permits?

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1 A. Again, about 60 percent of  
 2 the time. Yeah, sure, 60 to 65 percent.  
 3 Q. As part of your duties, did  
 4 you calculate the amount of fees that  
 5 were due from leases of subaqueous lands?  
 6 A. Yes.  
 7 Q. Okay. And when you had an  
 8 application for a subaqueous lands lease,  
 9 did you review any maps of areas of -- of  
 10 subaqueous areas -- let me ask the  
 11 question again.  
 12 In reviewing applications  
 13 for subaqueous lands leases, did you  
 14 refer to any maps of subaqueous areas  
 15 that were available to you?  
 16 A. All of the applications that  
 17 we received are required to include  
 18 location information, so clearly each  
 19 application would have a very specific  
 20 location. And we would also review the  
 21 potential for cumulative impacts by  
 22 looking at aerial photography of the area  
 23 where the proposed structure is located.  
 24 That would be a typical way of

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1 approaching it.  
 2 Q. Okay. How would you assure  
 3 yourself that the area upon which the  
 4 proposed activities are occurring was  
 5 owned or controlled by the applicant?  
 6 A. In most instances, the area  
 7 is not owned or controlled by the  
 8 applicant. I'm not sure if that answers  
 9 your question.  
 10 Q. Are there types of permits  
 11 that you issue that do not require the  
 12 applicant to own or lease subaqueous  
 13 lands?  
 14 A. Are there types of  
 15 applications -- can you repeat it?  
 16 Q. Do you issue permits for  
 17 activities on subaqueous land?  
 18 A. Yes.  
 19 Q. In circumstances when people  
 20 don't own or lease the subaqueous land in  
 21 question?  
 22 A. Yes.  
 23 Q. Okay. And what types of  
 24 activities are those?

14

1       **A. All of the types that we**  
 2 **permit may or may not occur on public**  
 3 **subaqueous lands; that is, they may or**  
 4 **may not occur off of the property that is**  
 5 **owned by the applicant, and so that would**  
 6 **include things like docks and piers,**  
 7 **utility lines, shoreline stabilization,**  
 8 **dredging, culverts and bridges, you know,**  
 9 **all kinds of structures.**  
 10       **Q. All right. Let me perhaps**  
 11 **try and be more specific. I understand**  
 12 **that the Delaware River is a tidal body**  
 13 **of water?**  
 14       **A. Yes.**  
 15       **Q. All right. Would there be**  
 16 **any circumstance under which an applicant**  
 17 **would not -- would there be a**  
 18 **circumstance under which the applicant**  
 19 **would not need a lease of the subaqueous**  
 20 **land on which an activity is proposed?**  
 21       **A. If the applicant could**  
 22 **demonstrate that the state had**  
 23 **specifically granted that tidal**  
 24 **underwater land to that property owner,**

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1 **to the applicant, if they can provide**  
 2 **documentation of that, it might be**  
 3 **conceivable that we would issue a**  
 4 **construction permit rather than a lease**  
 5 **for that activity. Yes.**  
 6       **Q. But if the applicant for**  
 7 **a -- if a person were to apply to**  
 8 **construct something on subaqueous lands**  
 9 **and did not own or lease them, would you**  
 10 **require them to get a lease?**  
 11       **A. Yes.**  
 12       **Q. Okay. And would they be**  
 13 **making that application for a lease to**  
 14 **you?**  
 15       **A. Yes.**  
 16       **Q. All right. Are there any**  
 17 **maps that you would consult to determine**  
 18 **whether an applicant's claim to own or**  
 19 **lease a subaqueous parcel was true or**  
 20 **not?**  
 21       **A. No, we don't typically get**  
 22 **that information from maps.**  
 23       **Q. Okay. If you received an**  
 24 **application -- if you received an**

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1 application for an activity on a  
 2 subaqueous land and the applicant said, I  
 3 have proof I already own this parcel or  
 4 have leased this parcel already, how  
 5 would you go about determining the truth  
 6 of that allegation?  
 7       **A. We would require that the**  
 8 **applicant submit a copy of their deed and**  
 9 **may require a title search to determine**  
 10 **whether or not, as you trace that deed**  
 11 **back in time, there ever was actually a**  
 12 **specific grant from the state of that**  
 13 **underwater land to the previous or**  
 14 **current property owner.**  
 15       **Q. So am I getting the**  
 16 **impression that the work for that type of**  
 17 **search would be done by the applicant?**  
 18       **A. Yes.**  
 19       **Q. All right. Is it under any**  
 20 **other circumstance done by somebody in**  
 21 **your office instead of the applicant?**  
 22       **A. Not that I can recall.**  
 23       **Q. Okay. In your experience,**  
 24 **have you ever received an application for**

17

1 a permit on subaqueous lands where the  
 2 applicant claimed ownership or control  
 3 based on a document from the state of New  
 4 Jersey?  
 5       **A. Yes.**  
 6       **Q. Okay. Can you recall the**  
 7 **circumstances under which that occurred?**  
 8       **A. I recall that the state of**  
 9 **New Jersey applied for a permit to**  
 10 **rehabilitate the Fort Mott State Park**  
 11 **pier.**  
 12       **Q. Okay. Do you recall any**  
 13 **other circumstance, just sitting here**  
 14 **today?**  
 15       **A. No.**  
 16       **(Whereupon, Deposition**  
 17 **Exhibit No. Herr-1, Letter dated**  
 18 **8/17/04 to William Moyer from**  
 19 **DuPont Chambers Works, with**  
 20 **attachments, Bates DUP**  
 21 **0000920-982, and Exhibit No.**  
 22 **Herr-2, e-mail dated 9/20/04 to**  
 23 **William Moyer from W. Harding**  
 24 **Drane, Jr., Bates DUP 0000717, DE**

<p style="text-align: right;">18</p> <p>1 19422-19431, was marked for 2 identification.) 3 BY MS. CONKLIN: 4 Q. Ms. Herr, I've presented you 5 with exhibits marked as Herr-1 and 6 Herr-2. Herr-1 is a, I'm representing to 7 you, is a draft of a permit presented to 8 or conveyed to Mr. William Moyer on 9 August 17th, 2004 concerning a subaqueous 10 lands permit requested by DuPont Chambers 11 Works facility in Deepwater, New Jersey. 12 And exhibit Herr-2 is an e-mail 13 communication to your supervisor, Mr. 14 William Moyer, from an attorney, W. 15 Harding Drane, Jr., attaching two deeds 16 in the state of New Jersey, which, 17 according to Mr. Drane, grant DuPont the 18 underwater lands associated with the 19 outfall structure that DuPont was 20 apparently proposing to build or improve. 21 Do either of these documents 22 look familiar to you? 23 A. No. 24 Q. Okay. In the course of his</p>	<p style="text-align: right;">20</p> <p>1 39-45, 99-102, was marked for 2 identification.) 3 BY MS. CONKLIN: 4 Q. Let me ask you as a 5 preliminary question, Ms. Herr. 6 Approximately how many applications for 7 subaqueous lands permits do you receive 8 on an annual basis? 9 A. I would estimate -- 10 Q. I'm sorry, that you would 11 personally handle. I'm sorry. 12 A. That I -- I see all of the 13 subaqueous land applications that come 14 through at at least some stage of the 15 process, and that would be approximately 16 300 a year. 17 Q. All right. I'm now showing 18 you Herr-3, which is a cover letter dated 19 December 14, 2005 to Ms. Laura Herr, 20 Section Manager. Would that be you? 21 A. Yes. 22 Q. Okay. And it is from a 23 gentleman, Albert Boettler, 24 B-O-E-T-T-L-E-R, from corporate</p>
<p style="text-align: right;">19</p> <p>1 deposition, I asked Mr. Moyer about the 2 e-mail indicated here, and -- 3 MR. WALTON: That's Herr-2. 4 MS. CONKLIN: Yes, it's 5 Herr-2. 6 BY MS. CONKLIN: 7 Q. -- and Mr. Moyer indicated 8 that he had forwarded it to you for 9 consideration since he was leaving his 10 job very shortly thereafter. And I'm 11 asking you whether you recall receiving 12 this communication? 13 A. I don't recall receiving it. 14 Q. Okay. All right. Do you 15 recall handling the request for a 16 subaqueous lands permit by DuPont? 17 A. No. 18 Q. Okay. All right. 19 MS. CONKLIN: Can we have 20 this marked as Herr-3, please. 21 (Whereupon, Deposition 22 Exhibit No. Herr-3, Letter dated 23 12/14/05 to Ms. Laura Herr from 24 DuPont, Bates DUP 0000001-26,</p>	<p style="text-align: right;">21</p> <p>1 remediation of DuPont conveying a 2 subaqueous lands permit application, and 3 it's numbered DUP 2 through 26. And then 4 on page 39 I included figures from 39 5 through 45. And then there is a cover 6 page from a similar application that 7 apparently was directed to the Army Corps 8 of Engineers. My intent was to include 9 here as much descriptive material as I 10 could. This is certainly not the entire 11 application. 12 A. Yes. 13 Q. Does any of this material 14 refresh your recollection about whether 15 you might have received an application 16 concerning the DuPont Chambers Works 17 improvements? 18 A. Yes. 19 Q. Okay. Would this 20 communication or would this application 21 be the first you had ever heard about 22 this proposed work? 23 A. This specific proposed work, 24 yes.</p>

<p style="text-align: right;">22</p> <p>1 Q. All right. And you have no 2 recollection of a conversation with Mr. 3 Drane, Mr. W. Harding Drane, concerning 4 subaqueous land rights that DuPont was 5 citing? 6 MR. WALTON: Objection. 7 Lack of foundation. 8 You can answer. 9 MS. CONKLIN: Okay. Let me 10 ask this another way. 11 BY MS. CONKLIN: 12 Q. Prior to receipt of this 13 application on December 14th, 2005, did 14 you discuss any subaqueous lands grants 15 or leases that had been issued to DuPont 16 for their Deepwater property? 17 A. Yes. 18 Q. Can you tell me what those 19 conversations entailed. 20 A. I recall one meeting where I 21 was present with Mr. Drane where we 22 discussed an existing outfall which 23 DuPont had which they had modified 24 without having obtained a permit from the</p>	<p style="text-align: right;">24</p> <p>1 understanding -- 2 A. Not to my knowledge. 3 Q. -- between -- 4 A. Sorry. 5 Q. That's all right. 6 And let me be more specific. 7 Was there any correspondence, e-mail or 8 otherwise, that originated from DuPont 9 that memorialized any part of that 10 meeting? 11 A. Not that I recall seeing. 12 Q. Okay. And did your office 13 issue anything in writing that 14 memorialized that meeting? 15 A. Not that I recall. 16 Q. All right. Did you discuss 17 the Compact -- I'm going to ask you. 18 Have you heard of something called the 19 Compact of 1905? 20 A. I've heard of it. 21 Q. Okay. Did you discuss the 22 Compact of 1905 in your meeting with Mr. 23 Drane? 24 A. I don't believe so.</p>
<p style="text-align: right;">23</p> <p>1 department. 2 Q. Did Mr. Drane allege that 3 DuPont owned the land on which the 4 outfall was located? 5 A. My understanding was that he 6 indicated that the state of New Jersey 7 had granted DuPont those underwater lands 8 at that meeting. 9 Q. And what was -- who else was 10 at the meeting aside from you? 11 A. I don't recall. 12 Q. And what was your response? 13 A. I recall that the final 14 disposition of that meeting was that Mr. 15 Drane agreed to make application 16 post-construction for that -- for that 17 outfall. So it was an after-the-fact 18 application would be made to the state of 19 Delaware for that outfall. 20 Q. For a lease? 21 A. For a lease for that 22 outfall, yes. 23 Q. All right. Was there any 24 correspondence that memorialized that</p>	<p style="text-align: right;">25</p> <p>1 Q. On what basis did Mr. Drane 2 allege that his title work or deeds or 3 leases from New Jersey should be accepted 4 by Delaware? 5 A. I don't recall. 6 Q. Did Mr. Drane ask you to 7 discuss this with your supervisors prior 8 to making a decision? 9 A. No. 10 Q. Was this decision made by 11 yourself? 12 A. I'm not sure what decision 13 you're referring to. 14 Q. That was poorly phrased. My 15 mistake. 16 Did you discuss this request 17 from Mr. Drane with any of your other 18 staff members or supervisors prior to 19 making a decision on how DuPont should 20 proceed? 21 A. I don't recall. I only 22 recall the final disposition of the 23 meeting being that when we walked out, 24 the understanding was that DuPont would</p>

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1 be applying for a lease for the structure  
 2 that was already in place.  
 3 Q. Did DuPont, by applying --  
 4 did DuPont indicate that they were  
 5 agreeing to file an application for the  
 6 lease because their title work from New  
 7 Jersey was not valid?  
 8 MR. WALTON: I'm going to  
 9 object to lack of foundation.  
 10 BY MS. CONKLIN:  
 11 Q. Did DuPont indicate that  
 12 they were abandoning their claim that  
 13 their lease from New Jersey was valid for  
 14 the work they were requesting from  
 15 Delaware?  
 16 A. Not that I recall.  
 17 Q. Was an attorney from the  
 18 Delaware attorney general's office  
 19 present for this meeting?  
 20 A. I don't recall.  
 21 Q. Was there a phone conference  
 22 arranged in connection with this meeting?  
 23 A. No.  
 24 Q. As a result of this meeting,

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1 then, you're indicating that DuPont filed  
 2 the application we have as Herr-3,  
 3 exhibit Herr-3, correct?  
 4 A. No. I know that we left the  
 5 meeting believing that DuPont would be  
 6 filing an application, but I don't ever  
 7 recall seeing an application from DuPont  
 8 for that structure.  
 9 Q. Okay. So the application  
 10 for -- that we have identified as Herr-3  
 11 is for a different permit?  
 12 MR. WALTON: This one.  
 13 THE WITNESS: Thank you.  
 14 MR. WALTON: Take your time.  
 15 THE WITNESS: That's  
 16 correct.  
 17 BY MS. CONKLIN:  
 18 Q. So let me backtrack here.  
 19 There was another  
 20 application filed by DuPont as a result  
 21 of the meeting of which we've been  
 22 speaking?  
 23 A. I believe the application in  
 24 Herr-3 is a completely separate project

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1 from what was discussed at the meeting.  
 2 Q. Okay. All right. To your  
 3 recollection, did -- and, again, forgive  
 4 me, it's getting late in the day here --  
 5 DuPont did then file for a permit or a  
 6 lease for this outfall structure?  
 7 A. I never saw any application  
 8 for the outfall structure subsequent to  
 9 the meeting.  
 10 Q. Okay. Is it possible one of  
 11 your other staff handled it?  
 12 A. It would have had to come  
 13 through me to be assigned.  
 14 Q. All right. Do you know  
 15 whether the outfall structure was ever  
 16 repaired?  
 17 A. I don't.  
 18 Q. Okay. All right. The  
 19 application identified as Herr-3, exhibit  
 20 Herr-3, is for a stabilization project.  
 21 There were remedial activities apparently  
 22 related to removal of tainted sediments.  
 23 Is that your understanding of this  
 24 application?

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1 A. Yes.  
 2 Q. All right. And as a result  
 3 of this application, was there a permit  
 4 issued to DuPont for this remedial work?  
 5 A. Yes.  
 6 Q. And let me show you this.  
 7 MS. CONKLIN: Mark this as  
 8 Herr-4.  
 9 (Whereupon, Deposition  
 10 Exhibit No. Herr-4, Letter dated  
 11 3/1/06 to John D. Strait from  
 12 Laura M. Herr, with attachment,  
 13 Bates DUP 0001339-1343, was marked  
 14 for identification.)  
 15 BY MS. CONKLIN:  
 16 Q. Is the exhibit marked  
 17 Herr-4, which is a subaqueous lands  
 18 permit issued to DuPont, the permit that  
 19 was applied for in Herr-3, Exhibit 3, to  
 20 your knowledge?  
 21 A. I believe it is.  
 22 Q. And this is a permit to  
 23 conduct certain remedial activities,  
 24 remove tainted soil and treat it,

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1 correct?  
 2 A. Yes.  
 3 Q. Broadly speaking.  
 4 A. Yes.  
 5 Q. And this was issued March 7  
 6 of 2006?  
 7 A. Yes.  
 8 Q. Okay. I notice there's a  
 9 fee, paragraph 6 under Special  
 10 Conditions, for dredging public  
 11 subaqueous lands.  
 12 A. Yes.  
 13 Q. There was no provision --  
 14 there was no requirement that DuPont  
 15 obtain a lease for the lands it was  
 16 dredging?  
 17 A. That's correct.  
 18 Q. Okay. And is this according  
 19 to normal procedure?  
 20 A. Yes.  
 21 Q. Okay. If they were going to  
 22 be putting any type of structure on the  
 23 land, under normal circumstances, would  
 24 you have required a lease?

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1 A. Yes.  
 2 Q. Okay. As a result of this  
 3 work -- under normal circumstances, when  
 4 someone dredges and removes sediment like  
 5 this, would there not be some sort of  
 6 mitigation requirement associated with  
 7 the project?  
 8 A. There may or may not be a  
 9 mitigation requirement. It's not  
 10 standard for dredging projects.  
 11 Q. Oh, it's not. All right.  
 12 If there was mitigation  
 13 required as a result of this, who would  
 14 be supervising that?  
 15 A. The project scientist.  
 16 Q. And would that be an  
 17 individual in your shop?  
 18 A. Yes.  
 19 Q. Okay.  
 20 (Recess taken from 3:50 p.m.  
 21 to 3:56 p.m.)  
 22 BY MS. CONKLIN:  
 23 Q. Ms. Herr, when did you  
 24 indicate that you started with DNREC?

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1 A. In 1986.  
 2 Q. Oh, okay. 1986.  
 3 And prior to that time, what  
 4 did you do professionally?  
 5 A. I worked for an  
 6 environmental consultant, Ichthyological  
 7 Associates.  
 8 Q. And did your work at the  
 9 Associates concern subaqueous lands --  
 10 A. Yes.  
 11 Q. -- in any way?  
 12 A. Yes.  
 13 Q. And in what aspect or  
 14 respect?  
 15 A. We were studying the benthic  
 16 community, the underwater lands and the  
 17 river water quality in regards to an  
 18 environmental impact statement for a  
 19 cooling tower at the Salem nuclear  
 20 generating station.  
 21 Q. All right. And how long  
 22 were you employed in that capacity?  
 23 A. It was four years.  
 24 Q. Okay. And what is your

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1 professional training and education?  
 2 A. My education, I received a  
 3 bachelor's degree in biology from the  
 4 University of Delaware in 1981 and a  
 5 master's degree from Drexel University in  
 6 environmental science in 1995, came out  
 7 of college into that Ichthyological  
 8 Associates position, and after being laid  
 9 off there was hired shortly thereafter by  
 10 the Department of Natural Resources.  
 11 Q. And you were hired by the  
 12 department in, what, '86?  
 13 A. 1986.  
 14 Q. Are you familiar, this is  
 15 going to be going back a little bit  
 16 earlier into your career, of an  
 17 application for a subaqueous lands permit  
 18 by a Keystone Cogeneration Systems in New  
 19 Jersey?  
 20 A. I'm aware of that file in  
 21 our files.  
 22 Q. Okay.  
 23 MS. CONKLIN: Let us mark  
 24 Herr-5 and 6.

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1 (Whereupon, Deposition  
 2 Exhibit No. Herr-5, Letter dated  
 3 9/30/91 to William Moyer from W.  
 4 Harding Drane, Jr., Bates DE  
 5 02197-2198, and Exhibit No.  
 6 Herr-6, Subaqueous Lands Lease  
 7 Granted to Keystone Cogeneration  
 8 System, Inc., date of issuance:  
 9 9/30/91, Bates DE 02200-2205, was  
 10 marked for identification.)  
 11 BY MS. CONKLIN:  
 12 Q. Ms. Herr, I've provided you  
 13 with two exhibits, Exhibit 5 being a  
 14 letter dated September 30th, 1991 from an  
 15 attorney named W. Harding Drane, Jr., on  
 16 behalf -- submitting on behalf of  
 17 Keystone Cogeneration Systems an  
 18 application to your supervisor, William  
 19 Moyer, for a subaqueous lands permit, and  
 20 Exhibit 6 being a subaqueous lands lease  
 21 issued by the state of Delaware to  
 22 Keystone Cogeneration Systems. Do either  
 23 of these documents look familiar to you?  
 24 A. No.

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1 Q. All right. Do you recall  
 2 Mr. Moyer discussing with you an  
 3 application by Keystone Cogeneration  
 4 Systems for a subaqueous lease?  
 5 A. No.  
 6 Q. And you did not work on this  
 7 file?  
 8 A. Not that I recall.  
 9 Q. All right. Are you aware of  
 10 any conversations -- are you aware of any  
 11 communications between the state of New  
 12 Jersey and your office concerning the  
 13 issuance of a subaqueous lease by the  
 14 state of New Jersey for the same area  
 15 that is conveyed in this lease by  
 16 Delaware?  
 17 A. No.  
 18 Q. All right. Were you aware  
 19 of any meeting between the Delaware  
 20 attorney general's office and officials  
 21 from the state of New Jersey at the New  
 22 Jersey Tidelands -- the Bureau of  
 23 Tidelands Management concerning Keystone  
 24 Cogeneration Systems' subaqueous lease

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1 issued by New Jersey?  
 2 A. No.  
 3 Q. Are you aware of any  
 4 communications concerning New Jersey's  
 5 authority to issue Keystone Cogeneration  
 6 Systems a subaqueous lease? I'm sorry,  
 7 let me withdraw that. I think I left out  
 8 a word.  
 9 Are you aware of any  
 10 communications concerning New Jersey's  
 11 authority to issue Keystone Generation  
 12 Systems a subaqueous lease?  
 13 A. No.  
 14 Q. All right. Are you familiar  
 15 with a person named James Johnson at the  
 16 Bureau of Tidelands in the state of New  
 17 Jersey?  
 18 A. No.  
 19 Q. Okay. Are you familiar with  
 20 a person named William Anderson?  
 21 A. No.  
 22 Q. Again, state of New Jersey.  
 23 A. Yeah.  
 24 Q. Are you familiar with an

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1 area called the 12-mile circle?  
 2 A. Yes.  
 3 Q. Okay. And when did you  
 4 first become aware of this area? When  
 5 did you first become aware of the area  
 6 that was called the 12-mile circle?  
 7 A. I think in college.  
 8 Q. And do you recall how you  
 9 became aware of it, in what context?  
 10 A. My best friend is the  
 11 daughter of the state geologist and so...  
 12 Q. And what was your  
 13 understanding of what the 12-mile circle  
 14 was?  
 15 A. My -- you know, my imperfect  
 16 understanding is that it was an artifact  
 17 of perhaps a 17th century rendering of  
 18 the boundary of the state of Delaware  
 19 relative to, I think, New Castle, the  
 20 city of New Castle.  
 21 Q. In connection with this  
 22 12-mile circle, did you ever hear of the  
 23 term 1905 Compact?  
 24 A. No.

<p style="text-align: right;">38</p> <p>1 Q. All right. Is today the 2 first time you ever heard of the 1905 3 Compact? 4 A. Yes. 5 Q. So the 1905 Compact is not a 6 matter of any type of discussion in your 7 office? 8 A. Not that I'm aware of. 9 Q. All right. When you say 10 you're not familiar with the 1905 11 Compact, then I must ask you, you've 12 never read a document called the 1905 13 Compact? 14 A. No. 15 Q. Have you ever read a 16 document called the 1907 Compact between 17 Delaware and the state of New Jersey? 18 A. No. 19 Q. What is your understanding 20 of the boundary line between Delaware and 21 New Jersey as a result of -- within the 22 12-mile circle? 23 A. My understanding is that 24 Delaware's boundary extends to the</p>	<p style="text-align: right;">40</p> <p>1 drawing relative to the property 2 boundaries of the structure. 3 Q. Do you locate the subaqueous 4 parcel with respect to the upland parcel? 5 Is that how you locate them? 6 A. I'm not sure I quite 7 understand that. 8 Q. Is there a grid or a map 9 that puts lot and block numbers on 10 subaqueous land parcels? 11 A. No. 12 Q. Okay. How do you identify a 13 particular subaqueous land parcel? 14 A. We do not divide the 15 subaqueous lands into parcels. 16 Q. Okay. How do you identify 17 one subaqueous land parcel from another? 18 How do you distinguish them? 19 A. There are -- we don't 20 recognize parcel boundaries within 21 subaqueous lands at all. 22 Q. Okay. 23 A. In public subaqueous lands. 24 I should clarify.</p>
<p style="text-align: right;">39</p> <p>1 eastern side of the Delaware River to the 2 mean low water line against the shore, 3 the New Jersey shore. 4 Q. All right. And in the 5 course of your duties as manager at the 6 Wetlands and Subaqueous Section, if you 7 receive an application for a subaqueous 8 lease, do you make a determination 9 whether the area -- where the area is 10 located precisely inside -- where the 11 area is located? 12 A. Yes. 13 Q. Okay. And how do you make 14 that determination? How do you locate an 15 area that is proposed for lease? 16 A. The application requires 17 that the applicant provide a drawing and 18 location maps to locate the precise -- 19 the specific area where the project is 20 proposed. 21 Q. What type of description of 22 location do you accept or prefer? 23 A. We require a location map, 24 usually a roadmap, as well as a scaled</p>	<p style="text-align: right;">41</p> <p>1 Q. Okay. How do you 2 determine -- how do you distinguish 3 between subaqueous parcels that are 4 leased to private individuals? 5 A. We don't lease parcels. We 6 lease the area that's under the footprint 7 of the structure that's being 8 constructed. 9 Q. All right. And how do you 10 locate that structure vis-a-vis the 11 shoreline? 12 A. Again, the application 13 provides a scaled drawing depicting the 14 proposed structure relative to the deeded 15 upland property boundaries. 16 Q. Oh, all right. When your 17 office issues a subaqueous lease, how 18 is -- how is that lease recorded or 19 identified? How is that area identified 20 for future reference? 21 A. The application drawing in 22 the file is one way. And we also require 23 that the lease be recorded with the 24 county Recorder of Deeds office, so that</p>

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1 should the upland property change hands,  
 2 the new owner will be aware of the lease  
 3 with the state of Delaware.  
 4 Q. If I needed to look up a  
 5 particular subaqueous parcel, how is that  
 6 information filed in your office?  
 7 A. Again, we don't recognize  
 8 subaqueous parcels.  
 9 Q. My mistake.  
 10 If I wanted to locate a  
 11 specific subaqueous parcel that had been  
 12 leased to an upland owner, is this  
 13 information filed in your office at all?  
 14 A. No parcels in subaqueous  
 15 lands. You could locate a structure.  
 16 Q. Okay. And how would I do  
 17 that?  
 18 A. By the applicant's name or  
 19 if you knew the lease number.  
 20 Q. Oh, all right. And the  
 21 lease number is a unique number?  
 22 A. Yes.  
 23 Q. Does it have the year?  
 24 A. Yes.

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1 Q. Does it have a year prefix,  
 2 suffix?  
 3 A. The last two digits of the  
 4 number represent the year in which it  
 5 was --  
 6 Q. It was issued?  
 7 A. It was received actually.  
 8 Q. The application?  
 9 A. Yes.  
 10 Q. All right. Does the number  
 11 convey the year that it expires?  
 12 A. The identification number?  
 13 Q. Yes.  
 14 A. No.  
 15 Q. Is this information on  
 16 computer?  
 17 A. Yes.  
 18 Q. Okay. How far back does  
 19 that information data go?  
 20 A. We have more than one  
 21 database. I believe it goes back into  
 22 the late 1970s.  
 23 Q. So just so I understand,  
 24 your office issues subaqueous -- leases

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1 for subaqueous land only to the upland  
 2 owners, the owners of the upland adjacent  
 3 property?  
 4 MR. WALTON: I'm going to  
 5 object to the form of the  
 6 question.  
 7 You can answer.  
 8 THE WITNESS: Should I  
 9 answer?  
 10 MR. WALTON: If you  
 11 understand it, you can answer.  
 12 BY MS. CONKLIN:  
 13 Q. Will your office issue a  
 14 subaqueous land lease to anyone other  
 15 than a person who owns or controls the  
 16 immediately adjacent uplands?  
 17 A. No.  
 18 MS. CONKLIN: Let me have  
 19 this marked as 7.  
 20 (Whereupon, Deposition  
 21 Exhibit No. Herr-7, Letter dated  
 22 7/25/04 to Ms. Laura M. Herr from  
 23 Victor J. Schuler, Bates DE  
 24 01462-1468, was marked for

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1 identification.)  
 2 MS. CONKLIN: I'm sorry,  
 3 mark this as 8.  
 4 (Whereupon, Deposition  
 5 Exhibit No. Herr-8, Memorandum  
 6 dated 3/10/05 to John A. Hughes  
 7 from Laura Herr, Bates DE 01540,  
 8 was marked for identification.)  
 9 BY MS. CONKLIN:  
 10 Q. Ms. Herr, I have provided  
 11 you Exhibit 7, which is a July 25th, 2004  
 12 application for a permit to refurbish and  
 13 upgrade an existing derelict pier  
 14 submitted on behalf of Fenwick Commons, I  
 15 believe, LLC, by a Victor Schuler,  
 16 S-C-H-U-L-E-R, a bio-environmental  
 17 consultant, and this application, I  
 18 believe, is directed to you, correct?  
 19 A. Yes.  
 20 Q. All right. I have a very  
 21 limited question about this. The re  
 22 section here says -- at the top of the  
 23 page of Exhibit 7, it says "Application  
 24 for Delaware DNREC-WLSL..." What is

<p style="text-align: right;">46</p> <p>1 WLSL? 2 A. That's a typo. It should be 3 WLSL, and that stands for Wetlands and 4 Subaqueous Lands Section. 5 Q. Thank you. 6 "...permit to refurbish and 7 upgrade an existing derelict pier that 8 extends into the Delaware River at Penns 9 Grove, New Jersey but is largely in 10 Delaware jurisdictional waters..." And 11 then it goes out to add outshore moorage, 12 et cetera, et cetera. 13 And I now would like to 14 direct you to exhibit Herr-8. And this 15 exhibit appears to be a memorandum to 16 John Hughes, secretary of DNREC, 17 originally from you, dated March 10th, 18 regarding a reduction in subaqueous lands 19 lease fee for Riverwalk Project in Penns 20 Grove. Now, I don't -- can you tell me 21 whether the Riverwalk Project in Penns 22 Grove is essentially the same project as 23 was described in the Exhibit 7? 24 A. Yes.</p>	<p style="text-align: right;">48</p> <p>1 project was that the pier revitalization 2 for which the application was made was 3 only a small portion of the overall 4 project, which included a riverwalk on 5 the upland in New Jersey and other 6 community redevelopment aspects to the 7 project. Those are the aspects I was 8 referring to in the memorandum in 9 Exhibit 8, that those are the aspects 10 that are substantially within New Jersey, 11 not the pier portion of the project, 12 which is only a minor or, you know, one 13 aspect of the project. 14 Q. When your section determines 15 a lease fee, do you look to the value or, 16 how would I put it, do you look to the 17 nature of the upland development that's 18 associated with the subaqueous lands 19 activity? 20 A. Not usually. 21 Q. Would this be an exception 22 then to the normal rule? 23 A. Yes. 24 Q. Okay. So under normal</p>
<p style="text-align: right;">47</p> <p>1 Q. Okay. And this is a 2 memorandum justifying a reduction in the 3 lease, correct? 4 A. Yes. 5 Q. And my question is, if you 6 read the text, "In recognition of the 7 public nature and community 8 revitalization aspects of the 9 above-referenced project, as well as its 10 location substantially within the State 11 of New Jersey, the Wetlands and 12 Subaqueous Lands Section recommends that 13 you reduce the subaqueous lands 'filled 14 lands' lease fee" to the following 15 amounts. 16 What changed between 17 Exhibit 7 and Exhibit 8 -- well, what 18 changed between July 2004 and March 2005 19 to change the description of this 20 property -- the project as being largely 21 in Delaware jurisdictional waters to 22 being substantially within the state of 23 New Jersey? 24 A. Our understanding of the</p>	<p style="text-align: right;">49</p> <p>1 circumstances, in valuing a subaqueous 2 lands lease, you look only to the 3 activity that is not on the uplands? 4 A. Yes. 5 Q. Is there a formula that is 6 utilized by your office for establishing 7 lease values? 8 A. There are fees that were 9 promulgated by Delaware's general 10 assembly, and we follow those. 11 Q. In the course of your 12 employment at DNREC, have you ever come 13 across -- have you ever seen a lease 14 issued by DNREC which allowed a lessee to 15 postpone payment of a lease of subaqueous 16 lands based on various conditions, any 17 condition? 18 A. Postpone payment? Not that 19 I can recall. 20 Q. Okay. Do you recall any 21 lease being -- again, this is, of course, 22 based on your recollection and your 23 review of the leases that have been 24 presented to you by your employees. Are</p>

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1 you aware of any lease of subaqueous  
 2 lands that made payments to the state  
 3 conditional on certain circumstances?  
 4 A. No.  
 5 Q. Okay. If a lessee were to  
 6 request the insertion of a provision that  
 7 postponed payment of a lease payment or  
 8 made it conditional on certain events,  
 9 could you authorize the insertion of that  
 10 clause in a lease?  
 11 A. I could not.  
 12 Q. Who would be the person to  
 13 authorize that?  
 14 A. The cabinet secretary has  
 15 the authority under our Environmental  
 16 Protection Act to reduce certain fees and  
 17 alter the timing of their payment.  
 18 Q. All right. I'm getting  
 19 tired because I can't recall. Do you  
 20 recall seeing a lease that predated your  
 21 employment at DNREC that excused a lessee  
 22 from payment of lease fees under certain  
 23 current conditions?  
 24 A. I don't recall seeing that,

51

1 no.  
 2 Q. All right. Have you  
 3 attended any meetings with New Jersey  
 4 state officials concerning coordination  
 5 of coastal zone management programs  
 6 between Delaware and New Jersey?  
 7 A. No.  
 8 Q. Have you seen any reports  
 9 from any individuals who allegedly have  
 10 attended such meetings?  
 11 A. No.  
 12 Q. Were you involved in the  
 13 assessment or -- in the review of a  
 14 memorandum of agreement between New  
 15 Jersey and Delaware back in the early  
 16 1990s that would have set criteria for  
 17 coordination of coastal permits?  
 18 A. Not that I recall.  
 19 Q. Okay. Are you aware of any  
 20 agreement between your office and the  
 21 state of New Jersey concerning  
 22 coordination of the issuance of coastal  
 23 zone permits?  
 24 A. No.

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1 Q. If you were to receive an  
 2 application today for a subaqueous lands  
 3 lease in which the applicant -- no, let  
 4 me rephrase that.  
 5 If you were to receive an  
 6 application for a subaqueous lands permit  
 7 from an applicant who alleged that they  
 8 leased the property from the state of New  
 9 Jersey and did not need a lease from the  
 10 state of Delaware, to whom would you take  
 11 that application for review or  
 12 consideration?  
 13 A. If the applicant failed to  
 14 apply for the necessary lease, we would  
 15 refer it to our attorneys at the  
 16 Department of Justice.  
 17 Q. When you say Department of  
 18 Justice, attorney general's office?  
 19 A. Yes.  
 20 Q. Okay. Who are your -- do  
 21 you have specific attorneys assigned to  
 22 your program?  
 23 A. Yes. To our program  
 24 specifically?

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1 Q. Yes.  
 2 A. No.  
 3 Q. Okay. Do you have -- well,  
 4 let me ask you. Do you know the  
 5 attorneys to whom such an inquiry would  
 6 be sent?  
 7 A. Yes.  
 8 Q. Okay. Who would those  
 9 people be?  
 10 A. It would be sent to Kevin  
 11 Maloney.  
 12 Q. I'm sorry?  
 13 A. Kevin Maloney. It would be  
 14 sent to Kevin Maloney.  
 15 Q. All right. And have you  
 16 worked with Mr. Maloney for a number of  
 17 years?  
 18 A. Yes.  
 19 Q. All right. But to your  
 20 knowledge, you don't recall receiving an  
 21 application for a subaqueous lands permit  
 22 in which the applicant was basing a claim  
 23 on an instrument issued by the state of  
 24 New Jersey?

54	<p>1 A. I don't.</p> <p>2 Q. And any other attorneys</p> <p>3 other than Mr. Maloney?</p> <p>4 A. We refer it to Mr. Maloney</p> <p>5 and he designates an attorney to work on</p> <p>6 the case.</p> <p>7 Q. Is an attorney by the name</p> <p>8 of June MacArtor one of the attorneys who</p> <p>9 would handle those types of inquiries?</p> <p>10 A. No.</p> <p>11 Q. Is June MacArtor, do you</p> <p>12 know, still performing legal services for</p> <p>13 DNREC?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Okay. And if I may, who is</p> <p>16 your -- to whom do you report again?</p> <p>17 A. Kevin Donnelly.</p> <p>18 Q. I'm sorry, Kevin Donnelly,</p> <p>19 and he is a division manager?</p> <p>20 A. He is a division director.</p> <p>21 Q. And Mr. Donnelly reports to?</p> <p>22 A. The cabinet secretary.</p> <p>23 Q. Who is these days?</p> <p>24 A. John Hughes.</p>	56	<p>1 BY MS. CONKLIN:</p> <p>2 Q. Page 6 of Exhibit 7.</p> <p>3 MR. WALTON: DE 1467?</p> <p>4 MS. CONKLIN: Yes, that is</p> <p>5 correct. That is correct.</p> <p>6 MR. WALTON: Thank you.</p> <p>7 BY MS. CONKLIN:</p> <p>8 Q. I do not see any address</p> <p>9 here that corresponds to an address in a</p> <p>10 Delaware county. Am I missing it here?</p> <p>11 Perhaps it's here and I don't see it.</p> <p>12 A. You're not missing it.</p> <p>13 Q. Okay. Where would this</p> <p>14 lease be filed in the case of Fenwick</p> <p>15 Commons?</p> <p>16 A. My recollection is that we</p> <p>17 did not require this lease to be recorded</p> <p>18 in accordance with our standard procedure</p> <p>19 for leases issued where the upland</p> <p>20 property is in Delaware.</p> <p>21 Q. All right. And does this</p> <p>22 procedure apply in cases where there's a</p> <p>23 subaqueous lands lease to an upland owner</p> <p>24 in New Jersey?</p>
55	<p>1 Q. John Hughes. Thank you very</p> <p>2 much. That's what I needed to know.</p> <p>3 MS. CONKLIN: I think if you</p> <p>4 give me just two minutes, I think</p> <p>5 we'll be done.</p> <p>6 (Recess taken from 4:25 p.m.</p> <p>7 to 4:31 p.m.)</p> <p>8 BY MS. CONKLIN:</p> <p>9 Q. A couple of quick questions</p> <p>10 here, Ms. Herr. Let me refer you to</p> <p>11 Herr-8, which is a memorandum, March 10,</p> <p>12 2005. And this is -- this concerns a</p> <p>13 subaqueous lands fee. So it would</p> <p>14 obviously be correct to say there was a</p> <p>15 subaqueous lands lease involved here that</p> <p>16 was issued to Fenwick Commons, right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. My question is, based</p> <p>19 on your earlier answer where you said</p> <p>20 that leases are recorded in the county of</p> <p>21 the upland property to which they're</p> <p>22 connected -- now, I'm looking at Herr-7,</p> <p>23 and I am flipping to page 6, page 6 --</p> <p>24 MR. WALTON: And the --</p>	57	<p>1 A. I'm sorry, I didn't follow</p> <p>2 you. Does this --</p> <p>3 Q. No. You indicated that in</p> <p>4 the case of Fenwick Commons, your office</p> <p>5 did not require this lease to be filed in</p> <p>6 a recording office in Delaware?</p> <p>7 A. Yes.</p> <p>8 Q. Why is that?</p> <p>9 A. Because the upland portion</p> <p>10 of the parcel is in New Jersey.</p> <p>11 Q. All right. Would that not</p> <p>12 apply in the case of all other subaqueous</p> <p>13 leases that are issued when the upland</p> <p>14 owner is in -- when the upland parcel is</p> <p>15 in New Jersey?</p> <p>16 A. Yes.</p> <p>17 Q. If I wanted to locate the</p> <p>18 subaqueous lands leases issued by the</p> <p>19 state of Delaware for subaqueous lands</p> <p>20 adjacent to New Jersey uplands, where</p> <p>21 would I go to find that information?</p> <p>22 A. We could query our database</p> <p>23 for -- based on the address of the</p> <p>24 applicant.</p>

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1 Q. Okay. But aside from  
 2 accessing that database, there would be  
 3 no other place to get that information?  
 4 A. Not that I'm aware of.  
 5 Q. Are you aware of any  
 6 objection entered by Fenwick Commons or  
 7 on behalf of Fenwick Commons to the need  
 8 to obtain a lease from Delaware for their  
 9 proposed activities?  
 10 A. I don't recall.  
 11 Q. You don't recall seeing  
 12 anything in writing in which they or  
 13 people on their behalf objected to the  
 14 need to obtain a lease from the state of  
 15 Delaware?  
 16 A. No.  
 17 Q. Subaqueous lands lease?  
 18 A. Right. No.  
 19 Q. Did you have any involvement  
 20 in any subaqueous lease renewals on  
 21 behalf -- subaqueous lease renewals by  
 22 DuPont?  
 23 A. I can't recall offhand.  
 24 You're talking about DuPont's Chambers

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1 Works?  
 2 Q. Uh-huh.  
 3 A. Lease renewals. I just  
 4 don't recall without checking the files.  
 5 Q. And did you have any  
 6 involvement in the issuance of any  
 7 subaqueous leases or permits to Keystone  
 8 Cogeneration --  
 9 MR. WALTON: Asked and  
 10 answered.  
 11 BY MS. CONKLIN:  
 12 Q. -- systems?  
 13 Did we? What did she  
 14 answer?  
 15 MR. WALTON: Exhibits 1 and  
 16 2, I think. The letter from  
 17 Harding Drane.  
 18 MS. CONKLIN: Yes, we did go  
 19 into that. Thank you. You have  
 20 refreshed my own recollection.  
 21 We have no further  
 22 questions. Thank you very much.  
 23 MR. WALTON: We will read  
 24 and sign.

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1 And if I could make a  
 2 request that we have the exhibits  
 3 attached because, as I said  
 4 before, sometimes I lose them if  
 5 they're not attached to the  
 6 transcript.  
 7 (Witness excused.)  
 8 (Whereupon, at 4:38 p.m. the  
 9 proceedings concluded.)  
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1 CERTIFICATE  
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 4 I hereby certify that the  
 5 witness was duly sworn by me and that the  
 6 deposition is a true record of the  
 7 testimony given by the witness.  
 8  
 9 It was requested before  
 10 completion of the deposition that the  
 11 witness, LAURA M. HERR, have the  
 12 opportunity to read and sign the  
 13 deposition transcript.  
 14  
 15 DEBRA J. WEAVER, RPR, CRR, CSR  
 16 NJ CSR License No. XI 01614  
 17 DE Certification No. 183-RPR  
 18 (Expires 1/31/08)  
 19 Dated : November 15, 2006  
 20  
 21 (The foregoing certification  
 22 of this transcript does not apply to any  
 23 reproduction of the same by any means,  
 24 unless under the direct control and/or  
 supervision of the certifying shorthand  
 reporter.)

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<p>1           <b>INSTRUCTIONS TO WITNESS</b></p> <p>2</p> <p>3           Please read your deposition over</p> <p>4 carefully and make any necessary changes.</p> <p>5 You should assign a reason in the</p> <p>6 appropriate column on the errata sheet</p> <p>7 for any change made.</p> <p>8           After making any change which has</p> <p>9 been noted on the following errata sheet,</p> <p>10 along with the reason for any change,</p> <p>11 sign your name to the errata sheet and</p> <p>12 date it.</p> <p>13           You are signing it subject to the</p> <p>14 changes you have made on the errata</p> <p>15 sheet, which will be attached to the</p> <p>16 deposition. You must sign in the space</p> <p>17 provided.</p> <p>18           Return the original errata sheet</p> <p>19 to the deposing attorney within thirty</p> <p>20 (30) days of receipt of the transcript by</p> <p>21 you.</p> <p>22</p> <p>23</p> <p>24</p>	<p>1           <b>ACKNOWLEDGMENT OF DEPONENT</b></p> <p>2</p> <p>3           I, LAURA M. HERR, do hereby</p> <p>4 certify that I have read the foregoing</p> <p>5 pages, 1 - 60, and that the same is a</p> <p>6 correct transcription of the answers</p> <p>7 given by me to the questions therein</p> <p>8 propounded, except for the corrections or</p> <p>9 changes in form or substance, if any,</p> <p>10 noted in the attached Errata Sheet.</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 LAURA M. HERR</p> <p>15</p> <p>16 Subscribed and sworn</p> <p>17 to before me this _____</p> <p>18 day of _____, 20____.</p> <p>19 My commission expires: _____</p> <p>20 _____</p> <p>21 Notary Public</p> <p>22</p> <p>23</p> <p>24</p>

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<p>1           <b>ERRATA</b></p> <p>2           -----</p> <p>3           PAGE LINE CHANGE</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p>	<p>1           <b>LAWYER'S NOTES</b></p> <p>2           PAGE LINE</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p>

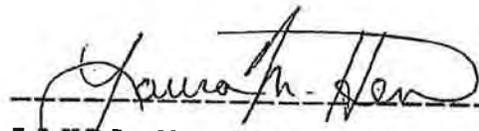


LAURA M. HERR

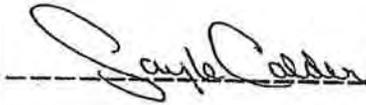
ACKNOWLEDGMENT OF DEPONENT

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I, LAURA M. HERR, do hereby certify that I have read the foregoing pages, 1 - 60, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

  
-----  
LAURA M. HERR

Subscribed and sworn to before me this 29<sup>th</sup> day of November, 2006.  
My commission expires: May 9, 2007

  
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Notary Public

GAYLE H. CALDER  
NOTARY PUBLIC  
STATE OF DELAWARE  
My Commission Expires May 9, 2007



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IN THE SUPREME COURT  
OF THE UNITED STATES

STATE OF NEW JERSEY : NO. 134, Original

v.

STATE OF DELAWARE

OCTOBER 26, 2006

Oral deposition of  
ROBERT W. HUTCHINS taken pursuant to  
notice, was held at the law offices of  
CONNOLLY, BOVE, LODGE & HUTZ, LLP, The  
Nemours Building, 1007 North Orange  
Street, 9th Floor, Wilmington, Delaware  
beginning at 12:26 p.m., on the above  
date, before Dottyann Y. Walsh, a  
Certified Shorthand Reporter and Notary  
Public in the State of Delaware.

ESQUIRE DEPOSITION SERVICES  
Suite 1210  
1600 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
(215) 988-9191

ESQUIRE DEPOSITION SERVICES

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1 APPEARANCES:  
 2  
 3 STATE OF NEW JERSEY  
 4 DEPARTMENT OF LAW & PUBLIC SAFETY  
 5 DIVISION OF LAW  
 6 BY: HELENE P. CHUDZIK, ESQUIRE  
 7 R. J. Hughes Justice Complex  
 8 25 Market Street  
 9 Trenton, New Jersey 08625  
 10 (609) 984-5065  
 11 Representing the Plaintiff  
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Testimony of: ROBERT W. HUTCHINS  
 By Ms. Chudzik 5

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 E X H I B I T S  
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NO.	DESCRIPTION	PAGE
11	Hutchins-1 Definition of the boundary line between DE and NJ	22

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D I R E C T   E X A M I N A T I O N  
 ---

BY MS. CHUDZIK:  
 Q. Hi, Captain Hutchins. My name is Helene Chudzik. I'm a deputy attorneys general --  
 A. Excuse me one second. I have a slight hearing problem, so if you talk up just a little bit.  
 Q. I will try.  
 A. Sorry to interrupt.  
 Q. If it gets too low, remind me.  
 A. That is great there.  
 Q. I will try to maintain it.  
 I'm one of the deputy attorneys general who is working on this case for the State of New Jersey, the ongoing dispute between New Jersey and Delaware with

<p>6</p> <p>1 regard to the border along the Delaware 2 River. Are you familiar with that 3 litigation at all? 4 A. Yes. 5 Q. Before we get started today, 6 have you ever been deposed? 7 A. Yes. 8 Q. Could you tell me when? 9 A. No, I do not remember. 10 Q. Was it some time ago? 11 A. Yes. 12 Q. Let me just refresh your 13 memory about how we do this in the hopes 14 that we will have a clear record. The 15 court reporter here will be taking 16 everything down and it will end up in a 17 booklet. Our goal here is to have it be 18 a clear record of what went on. In order 19 to do that, it is helpful if only one of 20 us speaks at a time. If I'm asking a 21 question, please wait to answer, I will 22 also try and wait until you complete your 23 answer to follow up. Also another thing 24 we have to be careful of is that we</p>	<p>8</p> <p>1 just signal us, we would be happy to 2 break. Do you have any questions about 3 the instructions? 4 A. No, I do not. 5 Q. Is there anything that would 6 prevent you from testifying truthfully 7 and accurately regarding this matter 8 today? 9 A. No. 10 Q. Did you review any documents 11 in preparing for today? 12 A. Yes. 13 Q. What documents did you 14 review? 15 A. Reviewed the documents that 16 I had sent to this law firm. 17 Q. Other than your attorney, 18 did you speak with anybody regarding any 19 aspect of this matter? 20 A. Yes. 21 Q. Who did you speak with? 22 A. Lieutenant Blaasch. 23 Q. What did you speak with him 24 regarding?</p>
<p>7</p> <p>1 communicate verbally. No nods of the 2 head, uh-huhs, hand signals, things like 3 that that we all rely on in 4 communicating. Do you understand that? 5 A. Understood. 6 Q. If I ask a question and your 7 attorney has an objection, he will raise 8 that. Please wait until he's finished 9 and we are finished discussing it if at 10 all before answering it so again we can 11 have a clear record. 12 The other thing I ask is 13 that you don't guess. If you don't 14 remember something, that is fine. Just 15 tell us. If, however, I ask you a 16 question and you can estimate, just tell 17 us so that the record again is clear 18 about your answer. Do you understand 19 that? 20 A. Understood. 21 Q. The other thing is I will 22 give you opportunities for break whenever 23 you need it. If I'm not paying close 24 attention or whatever and you need it,</p>	<p>9</p> <p>1 A. Mainly concerning 2 scheduling. 3 Q. Getting into a little 4 background, can you tell me where you 5 went to high school? 6 A. Smyrna High School. 7 Q. Do you remember when you 8 graduated? 9 A. 1966. 10 Q. And after high school, did 11 you go on to college? 12 A. No, I went into the 13 military, the US Army, went to Vietnam in 14 1968 and 1969. 15 Q. After your tour of duty in 16 Vietnam, did you go on to college? 17 A. I went to college at 18 Delaware Tech in the early '70s. But I 19 did not complete my degree. 20 Q. Other than Delaware Tech, 21 did you attend any other graduate 22 schools? 23 A. Numerous, hundreds, Delaware 24 State Police Academy, 1974, I have a US</p>

<p style="text-align: right;">10</p> <p>1 Coast Guard 100-ton captain's license. 2 I'm a certified rescue diver. And I have 3 attended -- we are required to have a 4 minimum of 40 hours training per year 5 every year, and I have done that for -- I 6 have been on 32 years. So numerous 7 training classes. 8 Q. Can you describe the areas 9 you have been trained in. 10 A. Law enforcement, laws of 11 evidence, laws of arrest, jurisdiction, 12 search and rescue, medical technician, 13 radar, loran, navigation, first aid, 14 homeland security. 15 Q. And can you tell me who 16 provided this training to you, what 17 institution? 18 A. Most of the training was 19 provided by agencies in the State of 20 Delaware. I have been trained by the US 21 Coast Guard, I attended New Jersey State 22 Marine Academy for marine operations back 23 in the '70s. 24 Q. You said earlier you have a</p>	<p style="text-align: right;">12</p> <p>1 fish and wildlife enforcement. 2 Q. And how long have you held 3 that position? 4 A. Since 1988. 5 Q. Prior to 1988, where were 6 you employed? 7 A. From 1974 to 1988 I was a 8 Delaware Marine police officer, patrol 9 officer. 10 Q. Prior to 1974 when you were 11 a marine police officer, where were you 12 employed? 13 A. I was a commercial waterman. 14 Q. Did you become a commercial 15 waterman after the -- 16 A. US Army. 17 Q. What did you do as a 18 commercial waterman? 19 A. Commercial fisherman. 20 Q. Did you work on the boats, 21 did you pilot them? 22 A. I had my own boat and my own 23 nets. 24 Q. Where did you fish?</p>
<p style="text-align: right;">11</p> <p>1 Coast Guard 100-ton captain's license? 2 A. Yes, that license, I have 3 had it for 20 years. The license has 4 recently expired because I will be 58, I 5 didn't want to use it anymore. 6 Q. And did that require annual 7 training to keep you updated? 8 A. It required certification, 9 no annual training, every five years you 10 had to be recertified by a physical, have 11 a certain amount of water hours, actual 12 out on the water -- hours on the water, 13 it was mandated by the Coast Guard in a 14 five-year period. 15 Q. Where are you presently 16 employed? 17 A. I'm employed by the 18 Department of Natural Resources 19 Environmental Control, Division of Fish 20 and Wildlife Enforcement section. 21 Q. What is your position with 22 DNREC? 23 A. I am a captain in charge of 24 supervision for New Castle County for</p>	<p style="text-align: right;">13</p> <p>1 A. Delaware Bay, near Woodland 2 Beach. 3 Q. What were your duties as a 4 Delaware marine police patrol officer? 5 A. We would patrol Delaware 6 waters, I patrolled all three counties -- 7 New Castle, Kent and Sussex. And our 8 duty was to enforce primarily the boating 9 and natural resources laws of boating on 10 the Delaware and engage in search and 11 rescue activities. 12 Q. What are your 13 responsibilities with DNREC as a captain? 14 A. Presently they are primarily 15 administrative duties over the officers 16 that I have in the field in New Castle 17 County, law enforcement and search and 18 rescue. 19 Q. How many officers do you 20 supervise? 21 A. Seven full-time and I have 22 one reserve part-time. 23 Q. In what laws are the 24 division of fish and wildlife enforcement</p>

<p style="text-align: right;">14</p> <p>1 officers charged with enforcing? 2 <b>A. We have the authority to</b> 3 <b>enforce any statute in the Delaware code.</b> 4 <b>That involves the natural resources laws</b> 5 <b>and also the criminal code, traffic code,</b> 6 <b>drug code, we have statewide authority</b> 7 <b>and jurisdiction.</b> 8 <b>Q. Earlier when you talked</b> 9 <b>about your responsibilities now, you said</b> 10 <b>that now they are primarily</b> 11 <b>administrative. Have your</b> 12 <b>responsibilities changed while you have</b> 13 <b>been in the position of captain?</b> 14 <b>A. Yes, to one degree. In the</b> 15 <b>beginning I was more like a patrol</b> 16 <b>captain where I spent probably half of</b> 17 <b>that time on patrol administrative</b> 18 <b>duties, and the last five years have been</b> 19 <b>primarily administrative. But I would</b> 20 <b>respond out to important situations on</b> 21 <b>the water.</b> 22 <b>Q. Can you estimate or</b> 23 <b>characterize how much you are out on the</b> 24 <b>water responding in a year?</b></p>	<p style="text-align: right;">16</p> <p>1 <b>Creek starts, north, to a little bit</b> 2 <b>north of Oldmans Creek on the New Jersey</b> 3 <b>side across from Claymont. If you draw a</b> 4 <b>line across from Claymont. That would go</b> 5 <b>over to the mean low watermark.</b> 6 <b>Q. How do you ascertain where</b> 7 <b>the mean low watermark is on the each</b> 8 <b>side of the river?</b> 9 <b>A. Mean low watermark is where</b> 10 <b>the low water normally is low, not</b> 11 <b>because of an excessive storm or some</b> 12 <b>other event. It is just an average where</b> 13 <b>it is normally low.</b> 14 <b>Q. When you are out on a boat</b> 15 <b>in the river, how can you ascertain where</b> 16 <b>the mean low waterline is?</b> 17 <b>A. From years of experience,</b> 18 <b>you see when the tide goes out, there is</b> 19 <b>in Delaware this is like -- excuse me for</b> 20 <b>a second. There is about a five and a</b> 21 <b>half foot to maybe six foot rise and fall</b> 22 <b>of the tide. And from years of</b> 23 <b>experience, you get to see what, where</b> 24 <b>the low watermark is on a shoreline.</b></p>
<p style="text-align: right;">15</p> <p>1 <b>A. No.</b> 2 <b>Q. As the supervisor of these</b> 3 <b>seven or eight officers, do you schedule</b> 4 <b>their patrols on the water? What exactly</b> 5 <b>do you do?</b> 6 <b>A. I schedule their hours of</b> 7 <b>operation.</b> 8 <b>Q. During a given shift, what</b> 9 <b>are the --</b> 10 <b>A. I also would schedule in</b> 11 <b>conjunction with Lieutenant Blaasch, any</b> 12 <b>special operations or special needs we</b> 13 <b>may have to take care of.</b> 14 <b>Q. Can you tell me your</b> 15 <b>understanding of the location of the</b> 16 <b>Delaware/New Jersey border?</b> 17 <b>A. Yes.</b> 18 <b>Q. Could you?</b> 19 <b>A. It is my understanding that</b> 20 <b>the State of Delaware has jurisdiction in</b> 21 <b>the Delaware River east of the main</b> 22 <b>shipping channel and west of the main</b> 23 <b>shipping channel from the northern tip of</b> 24 <b>Artificial Island, that is where Alloways</b></p>	<p style="text-align: right;">17</p> <p>1 <b>Q. Are there any physical</b> 2 <b>markers of this mean low waterline out</b> 3 <b>there for reference?</b> 4 <b>A. No.</b> 5 <b>Q. Are you familiar with the</b> 6 <b>12-mile circle or what is referred to as</b> 7 <b>the 12-mile circle in terms of the area</b> 8 <b>of the Delaware River that that</b> 9 <b>encompasses?</b> 10 <b>A. Are you referring to 12-mile</b> 11 <b>circle from the City of New Castle?</b> 12 <b>Q. Yes.</b> 13 <b>A. Yes.</b> 14 <b>Q. So if I asked you what</b> 15 <b>Delaware's fish and game enforcement --</b> 16 <b>what program was within the 12-mile</b> 17 <b>circle, would you be able to describe</b> 18 <b>that to me?</b> 19 <b>A. Yes.</b> 20 <b>Q. Please do.</b> 21 <b>A. We enforce all of the</b> 22 <b>commercial fisheries laws, and that would</b> 23 <b>be commercial fin fishing, commercial</b> 24 <b>crabbing, there is no commercial oyster</b></p>

<p style="text-align: right;">18</p> <p>1 industry up in that area. We enforce the 2 boating safety laws. We enforce the 3 hunting and wildlife laws. We would also 4 enforce the criminal, Delaware criminal 5 code, Title 16 which is narcotics, 6 anything that came out of us enforcing 7 the natural resources law that was 8 applicable in the Delaware code, we would 9 enforce those other laws in the Delaware 10 code, 11 Q. For this enforcement program 12 on the river, what equipment do you use? 13 A. What equipment? 14 Q. Yes. 15 A. We have numerous patrol 16 boats from 25 foot on down to 13 foot. 17 Q. Do these patrol boats make 18 routine patrols or trips through the area 19 of Delaware? 20 A. Yes. 21 Q. How often does that happen? 22 A. In the summertime almost 23 every day. 24 Q. And how many patrols on a</p>	<p style="text-align: right;">20</p> <p>1 efforts for the New Castle area, Delaware 2 River part of your responsibility 3 conducted from watercraft? 4 A. No. 5 Q. What other methods do you 6 use? 7 A. We do homeland security. We 8 respond to criminal incidents on the 9 water whether it is a fatal boat 10 accident, an assault on a vessel, for 11 example, which we have done. 12 Q. Do you or your enforcement 13 staff board docks, piers or wharves that 14 are attached to the shores of New Jersey 15 to undertake enforcement actions? 16 A. We have. 17 Q. And when was that? 18 A. I cannot answer that. I do 19 not know exactly. 20 Q. Can you recall as best you 21 can what the incident was that caused you 22 to get on the dock? 23 A. There had been calls from 24 the dock at the Fort Mott facility for</p>
<p style="text-align: right;">19</p> <p>1 given day in the summer would you 2 estimate there are? 3 A. I can't answer that. 4 Q. What would a routine patrol 5 of the area within the New Castle County 6 jurisdiction consist of? 7 A. Routine patrol if there is 8 such a thing, would be leaving Delaware 9 City, we keep two vessels moored at the 10 Delaware City dock. We keep another one 11 moored in Wilmington. We have vessels 12 located down to Augustine Beach which is 13 directly across from the nuclear power 14 plant. They would utilize one of those 15 vessels to go out on patrol. We would be 16 working maybe a special -- checking for 17 boaters under the influence of alcohol, 18 speeding vessels, vessels operating 19 negligently or negligent operations. 20 They are constantly on call and respond 21 to search and rescue calls from the Coast 22 Guard, US Coast Guard and the 911 23 emergency New Castle fire board center. 24 Q. Are all of your enforcement</p>	<p style="text-align: right;">21</p> <p>1 assistance, law enforcement assistance, 2 but I do not remember what the incidents 3 are. 4 Q. Would you have any memory of 5 who might have made the call for 6 assistance? 7 A. No, I do not. 8 Q. Do you know who has general 9 jurisdiction over Fort Mott? 10 A. Fort Mott is in the State of 11 New Jersey. The Fort Mott -- the pier 12 that goes into Fort Mott is in the State 13 of Delaware. The pier is in the river, 14 Delaware River. 15 Q. Can you describe for me the 16 special operations that you are called 17 upon to undertake in the Delaware? 18 A. There may be a US Navy 19 vessel coming through our waters and 20 maybe moored at Wilmington and we will 21 provide security for that vessel. 22 Q. Anything else? 23 A. We have worked with the US 24 Customs and US Coast Guard on drug</p>

22

1 interdiction, narcotics.  
2 MS. CHUDZIK: Can you mark  
3 this.  
4 (Exhibit Hutchins-1 marked  
5 for identification.)  
6 BY MS. CHUDZIK:  
7 Q. Captain Hutchins, I show you  
8 now what has been marked Hutchins-1 for  
9 identification, it is Bates stamp DE29854  
10 and DE29855. I will ask you, are you  
11 familiar with this document?  
12 A. Yes.  
13 Q. Can you tell me what  
14 report -- first of all, the title is  
15 definition of the boundary line between  
16 Delaware and New Jersey from report of  
17 the USC&GS to the State of New Jersey and  
18 Delaware in marking the boundary line.  
19 Can you tell me what report this was  
20 attached to?  
21 A. Yes.  
22 Q. Specifically --  
23 A. Are you asking me which  
24 report?

23

1 Q. Yes.  
2 A. This was attached to a 19 --  
3 a document from a Delaware deputy  
4 attorney general which he reaffirmed --  
5 MR. BOYER: I will caution  
6 you on the basis of  
7 attorney/client privilege. To the  
8 extent this document was authored  
9 by a Delaware deputy attorney  
10 general --  
11 THE WITNESS: That is  
12 correct.  
13 MR. BOYER: -- conveying  
14 legal advice to you, I will  
15 instruct you not to testify as to  
16 the contents or advice of that  
17 communication.  
18 THE WITNESS: It was a memo  
19 from our attorney general, deputy  
20 attorney general.  
21 BY MS. CHUDZIK:  
22 Q. Do you remember the date of  
23 that memo?  
24 A. 1993.

24

1 Q. And have you ever seen the  
2 full report of the US Coast Guard which  
3 this appears to be a part of?  
4 A. No.  
5 Q. Would you have any idea of  
6 the date of authorship of the document  
7 that is Hutchins-1?  
8 A. No.  
9 Q. Do your patrols on the  
10 Delaware patrol or inspect for anything  
11 in addition to the fish and wildlife laws  
12 that you have talked about?  
13 A. When we are on patrol, we  
14 are out looking for anything that may be  
15 unusual or a violation of Delaware code.  
16 If we saw, for example, a new bulkhead,  
17 marina or pier that was being built, we  
18 would notify the appropriate section  
19 within our department.  
20 Q. To your knowledge, have any  
21 such notifications been made by the  
22 people you supervise?  
23 A. Yes.  
24 Q. Could you tell me what you

25

1 recall of that?  
2 A. I do not remember.  
3 Q. Can you estimate was it in  
4 the last five years?  
5 A. No, I cannot.  
6 Q. Could you walk us through a  
7 routine enforcement action by one of your  
8 officers for a boating or boating safety  
9 or related incident on the Delaware.  
10 A. Are we talking about a  
11 hypothetical situation?  
12 Q. Right. If they came upon --  
13 routine inspection which gives rise to  
14 concerns on the water.  
15 A. Most of the time they are  
16 operating a marked patrol boat that  
17 identifies them as a Delaware police  
18 vessel. They are in a police uniform.  
19 They would come alongside and verbally  
20 identify themselves, advise the occupants  
21 of the vessel, why they were stopping  
22 them, and what they were checking for.  
23 And if it happened to be for safety  
24 equipment, they would ask to see life

<p style="text-align: right;">26</p> <p>1 jackets, observing the boat at the time, 2 they would maybe observe registration on 3 the state, boat registration. Checking 4 the occupants to see if they are not 5 under the influence of alcohol, if there 6 are children on board, are the children 7 wearing life jackets. 8 Q. Do your officers write 9 citations or tickets for violations they 10 discover? 11 A. Yes. 12 Q. And if -- where are those 13 violations returnable? What court would 14 hear if that is the appropriate term? 15 A. If they are issued a summons 16 on the water, the subject who was issued 17 the summons is given a copy, and officer 18 would take that summons to the nearest 19 justice of the peace court. 20 Q. And for the New Castle 21 County jurisdiction, where would those 22 justice of the peace courts be? 23 A. Could be justice of the 24 peace court in Middletown and it could be</p>	<p style="text-align: right;">28</p> <p>1 A. On initial stop for OUI, 2 there is field tests. Similar to road 3 tests but they are done in a vessel. 4 PBT, if you are familiar with that, is 5 also utilized. 6 Q. Could you explain what PBT 7 is. 8 A. First test are physical 9 tests of the boat operator. But they are 10 more aimed for you are out on the water 11 in unstable condition. So they are aimed 12 at judging if a person is under the 13 influence. We have portable 14 Breathalyzers which gives a readout, but 15 they are only good for probable cause. 16 Once we establish that there is probable 17 cause for an arrest, we would take the 18 subject to a State Police troop or -- and 19 have him wait there for about 40 or 20 50 minutes and use the intoxilyzer. 21 Q. What would happen to the 22 vessel, where would the vessel be taken? 23 A. The vessel would be 24 impounded.</p>
<p style="text-align: right;">27</p> <p>1 justice of the peace court 11 in New 2 Castle. Could be in Wilmington. 3 Primarily we use New Castle and 4 Middletown justice of the peace courts. 5 Q. And if your officers 6 determine that the boat is unsafe or that 7 the operator is unsafe to operate the 8 boat, what actions do they take? 9 A. That is a twofold question. 10 If -- we have the authority under the 11 Delaware code, if we deem a vessel 12 unseaworthy, to terminate its voyage and 13 take the vessel and its occupants to the 14 nearest safe port. If the operator, for 15 example, is under the influence of 16 alcohol or drugs, he would be given 17 preliminary test for that on scene. And 18 if there was probable cause for arrest 19 for that, he would be arrested on the 20 spot and taken into custody. 21 Q. And where would your 22 officers in the New Castle area take the 23 individual that he had taken into 24 custody?</p>	<p style="text-align: right;">29</p> <p>1 Q. And where would you take an 2 impounded vessel? 3 A. That is a twofold question, 4 too. If the vessel -- if you could 5 contact -- if the vessel was not involved 6 in a criminal act, besides the operator, 7 the vessel could be released to a 8 relative who is willing to remove it from 9 the water on a boat trailer, for example. 10 If the vessel was involved in say a fatal 11 boat collision, the vessel would be 12 removed from the water and stored at our 13 evidence facility in Little Creek. 14 Q. In where? 15 A. Little Creek. 16 Q. Does your staff ever 17 undertake any joint enforcement efforts 18 with other public agencies? 19 A. Yes. 20 Q. Could you describe those for 21 me. 22 A. I believe I explained that 23 we work with US Coast Guard frequently on 24 combatting OUI, search and rescues</p>

<p style="text-align: right;">30</p> <p>1 continuously. After 9/11 we are working 2 with the US Coast Guard, FBI, Customs, we 3 attend monthly meetings on homeland 4 security issues, we work with the US Fish 5 and Wildlife Service. 6 Q. Do you have any joint 7 undertakings with any New Jersey public 8 entities? 9 A. Yes. 10 Q. Could you describe those for 11 me. 12 A. The police department in 13 Pennsville has a Septemberfest in the 14 fall of each year, and we coordinate with 15 them to insure public safety in the 16 waters right off of Pennsville Beach. 17 Q. Could you describe your 18 operations during the Pennsville 19 Septemberfest. 20 A. Yes, we have been doing them 21 at least -- it has been a long time. 22 Initially there was a real problem in the 23 waters right adjacent to the beach at 24 Pennsville, New Jersey, Delaware</p>	<p style="text-align: right;">32</p> <p>1 Killcohook which is in Delaware 2 jurisdiction, in the Delaware River east 3 of the shipping channel which goes into 4 Killcohook Refuge. 5 Q. And what would they be 6 checking the fishermen for? 7 A. Size, limit, so forth, 8 quantity. We also -- we have had fatal 9 boat accidents right near that pier at 10 Killcohook. We interviewed a lot of 11 people that were on that pier to find out 12 if they were witnesses to the fatal boat 13 accident. 14 Q. What kind of game code 15 enforcement activities are you 16 responsible for? 17 A. Pardon me, did you say game? 18 Q. Game. 19 A. We enforce all the wildlife 20 regulations in Delaware, waterfowl, 21 hunting. We are also federal US fish and 22 wildlife agents, have federal authority. 23 Q. How close to the shoreline 24 can your patrols get with their boats?</p>
<p style="text-align: right;">31</p> <p>1 jurisdiction where they would -- during 2 the Septemberfest at nighttime, they 3 shoot off fireworks. Boaters would raft 4 up there and anchor and it would be one 5 very large party with a lot of alcohol 6 consumed and they would shoot fireworks 7 off after dark. We had numerous boat 8 accidents. So we started working that to 9 combat the OUI problem, and it is nothing 10 like it was years ago. 11 Q. If you discover a drunken 12 boater at the Septemberfest off 13 Pennsville, where is the boater taken? 14 A. He is taken to Delaware, 15 processed. 16 Q. Are you aware of any 17 citations being issued by one of your 18 enforcement officers for activity on a 19 pier in New Jersey? 20 A. Not on a pier, no. 21 Q. How about on a wharf or dock 22 or other related item in New Jersey? 23 A. They have checked fishermen, 24 for example, on the small pier off of</p>	<p style="text-align: right;">33</p> <p>1 A. Certain areas, a lot of the 2 areas, we can get right -- are you 3 talking about the portion of the Delaware 4 River east of the shipping channel? 5 Q. Right, the eastern side -- 6 I'm particularly interested in the 7 eastern side. 8 A. The majority of the portion 9 of the area we can get right up to the 10 mean low watermark. 11 Q. Can you characterize that 12 demarcation by a depth of water? 13 A. Shallow at low tide. Our 14 bows may rub into sand, but the outboards 15 have enough water, you could utilize 16 them. 17 Q. What would you consider to 18 be a shallow water? Can you give me a 19 depth in feet? 20 A. Example, Pennsville ramp, 21 the ramp that is located in Pennsville, 22 New Jersey extends out into the Delaware 23 River and at the mean low watermark, the 24 bow of our patrol boats can go right to</p>

34

1 the beginning of the ramp. And they  
 2 would probably be in six inches of water  
 3 or maybe aground on the sand.  
 4 Q. Just to make sure I  
 5 understand this correctly, are you saying  
 6 the end of the water pier in Pennsville  
 7 is at the mean low waterline?  
 8 A. Pennsville is not a pier.  
 9 Pennsville is a boat ramp where they are  
 10 launching boats. And the ramp extends  
 11 out into the Delaware River.  
 12 Q. Does your office receive  
 13 requests for assistance or calls from the  
 14 eastern New Jersey side of the shoreline?  
 15 A. As far as search and rescue  
 16 calls, yes. Again, would you rephrase  
 17 that again, please.  
 18 Q. I'm trying to find out, do  
 19 you respond to calls regarding dangerous  
 20 boating, search and rescue and things  
 21 like that that are received from  
 22 locations on the eastern side of the  
 23 Delaware?  
 24 A. We respond to any and all

35

1 calls in the Delaware River within our  
 2 jurisdiction. And that is the 12-mile  
 3 circle from city of New Castle. We also  
 4 respond to search and rescue outside of  
 5 that.  
 6 Q. How many enforcement  
 7 officers are there in your division at  
 8 DNREC?  
 9 A. 28.  
 10 Q. With regard to the officers  
 11 that you indicated that you supervise,  
 12 are you responsible for their scheduling?  
 13 A. Yes.  
 14 Q. Do you schedule routine  
 15 patrols for them?  
 16 A. Yes.  
 17 Q. Is there a set number of  
 18 hours that each officer has to be in --  
 19 on the water each month?  
 20 A. Normally no. What they are  
 21 required to have is a minimum of 150  
 22 hours underway in police boats per year.  
 23 Q. Do you have any hourly  
 24 requirements for being underway for

36

1 yourself?  
 2 A. No.  
 3 Q. When was the last time you  
 4 personally undertook a patrol of the  
 5 Delaware?  
 6 A. Approximately I think it was  
 7 back in September. I recovered a body  
 8 from a drowning victim. Was involved in  
 9 a boat accident.  
 10 MS. CHUDZIK: I don't have  
 11 anything else for you.  
 12 THE WITNESS: Thank you.  
 13 (Witness excused.)  
 14 (Deposition concluded at  
 15 approximately 1:09 p.m.)  
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 2 CERTIFICATE  
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 5 I HEREBY CERTIFY that the  
 6 witness was duly sworn by me and that the  
 7 deposition is a true record of the  
 8 testimony given by the witness.  
 9  
 10 It was requested before  
 11 completion of the deposition that the  
 12 witness, ROBERT W. HUTCHINS, have the  
 13 opportunity to read and sign the  
 14 deposition transcript.  
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12 DOTTYANN Y. WALSH, a  
 Certified Shorthand Reporter and  
 Notary Public of the  
 State of Delaware  
 CSR License Number: 251-RPR  
 Notary Number: 20051147009  
 Notary expiration: April 14, 2007  
 Dated: November 6, 2006

18 (The foregoing certification  
 of this transcript does not apply to any  
 reproduction of the same by any means,  
 unless under the direct control and/or  
 supervision of the certifying reporter.)

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**INSTRUCTIONS TO WITNESS**

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3        Please read your deposition  
4 over carefully and make any necessary  
5 corrections. You should state the reason  
6 in the appropriate space on the errata  
7 sheet for any corrections that are made.  
8        After doing so, please sign  
9 the errata sheet and date it.  
10       You are signing same subject  
11 to the changes you have noted on the  
12 errata sheet, which will be attached to  
13 your deposition.  
14       It is imperative that you  
15 return the original errata sheet to the  
16 deposing attorney within thirty (30) days  
17 of receipt of the deposition transcript  
18 by you. If you fail to do so, the  
19 deposition transcript may be deemed to be  
20 accurate and may be used in court.  
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**ACKNOWLEDGMENT OF DEPONENT**

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3  
4        I, ROBERT W. HUTCHINS, do  
5 hereby certify that I have read the  
6 foregoing pages, 1 - 36, and that the  
7 same is a correct transcription of the  
8 answers given by me to the questions  
9 therein propounded, except for the  
10 corrections or changes in form or  
11 substance, if any, noted in the attached  
12 Errata Sheet.  
13  
14  
15  
16 ROBERT W. HUTCHINS                      DATE  
17  
18  
19  
20 Subscribed and sworn  
21 to before me this \_\_\_\_\_  
22 day of \_\_\_\_\_, 20\_\_\_\_.  
23 My commission expires: \_\_\_\_\_  
24  
24 Notary Public

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**ERRATA**  
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1  
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3 **PAGE LINE CHANGE**  
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**LAWYER'S NOTES**

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## E R R A T A

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PAGE LINE CHANGE

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~~19~~ ~~16~~ ~~add "operations" after the word special.~~

5

~~19~~ ~~19~~ ~~delete "or negligent operations."~~

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~~19~~ ~~21~~ ~~delete "coast"~~

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~~19~~ ~~22~~ ~~delete "guard"~~

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~~25~~ ~~14~~ ~~add "safety" before the word conceals~~

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~~26~~ ~~2~~ ~~delete "or" and add "of"~~

10

~~27~~ ~~10~~ ~~delete "IF"~~

11

~~28~~ ~~18~~ ~~delete "or" after word troop.~~

12

~~29~~ ~~4~~ ~~delete "if you could"~~

13

~~29~~ ~~5~~ ~~delete "contact"~~

14

~~29~~ ~~5~~ ~~delete "if the vessel"~~

15

~~30~~ ~~21~~ ~~delete "at least"~~

16

~~30~~ ~~21~~ ~~delete "it has been"~~

17

~~31~~ ~~1~~ ~~add "be" after word would.~~

18

~~32~~ ~~8~~ ~~delete "we"~~

19

~~36~~ ~~7~~ ~~delete "September"~~

20

~~36~~ ~~7~~ ~~add "July 18, 2006"~~

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~~Nov. 13, 2006~~

22

~~Robert W. Hutchins~~

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ACKNOWLEDGMENT OF DEPONENT

I, ROBERT W. HUTCHINS, do hereby certify that I have read the foregoing pages, 1 - 36, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

Robert W. Hutchins 11/14/06  
ROBERT W. HUTCHINS DATE

MATTHEW F. BOYER  
NOTARIAL OFFICER  
Delaware Attorney No. 2564  
Pursuant to 29 Del. C. §4323(a)(3)

Subscribed and sworn to before me this 14th day of November, 2006.

My commission expires: N/A

Matthew F. Boyer (attorney at law)  
Notary Public





WILLIAM F. MOYER

2	4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 NEW JERSEY DIVISION OF LAW &amp; PUBLIC SAFETY BY: BARBARA L. CONKLIN, ESQUIRE Richard J. Hughes Justice Complex 25 Market Street Trenton, NJ 08625 609.984.5065 barbara.conklin@dol.lps.state.nj.us</p> <p>7 -AND-</p> <p>8 NEW JERSEY DIVISION OF LAW &amp; PUBLIC SAFETY BY: RACHEL HOROWITZ, ESQUIRE Richard J. Hughes Justice Complex 25 Market Street Trenton, NJ 08625 609.984.5065 rachel.horowitz@dol.lps.state.nj.us</p> <p>12 --Representing the Plaintiff(s)</p> <p>14 CONNOLLY BOVE LODGE &amp; HUTZ LLP BY: MAX B. WALTON, ESQUIRE The Nemours Building 1007 North Orange Street Wilmington, DE 19899 302.888.6297 mbw@cblh.com</p> <p>17 --Representing the Defendant(s)</p>	<p>1 Moyer-6 Letter of 126 Authorization dated 3/18/82 to Lewis A. Caccese, P.E., from William F. Moyer, Bates DE 19371</p> <p>5 Moyer-7 Letter dated 131 2/9/88 to State of Delaware, DNREC, from Reinhold Betschel, with attachment, Bates DUP 0001013-1020</p> <p>9 Moyer-8 Letter dated 145 2/9/88 to Reinhold Betschel from William F. Moyer, Bates DE 19393-19396</p> <p>13 Moyer-9 Letter dated 151 9/30/91 to William Moyer from W. Harding Drane, Jr., Bates DE 02197-2198</p> <p>16 Moyer-10 Subaqueous Lands 151 Lease Granted to Keystone Cogeneration System, Inc., date of issuance: 9/30/91, Bates DE 02200-2205</p> <p>21 Moyer-11 Letter dated 153 8/17/04 to William Moyer from DuPont Chambers Works, with attachments, Bates DUP 0000920-982</p>
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<p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 WILLIAM F. MOYER</p> <p>4 BY MS. CONKLIN 7</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 MARKED DESCRIPTION PAGE</p> <p>8 Moyer-1 Memo dated 9/4/81 91 to Bill Moyer from Mike Malkiewicz, Bates DE 19366</p> <p>11 Moyer-2 Memo dated 91 9/10/81 to Bill Moyer from Mike Malkiewicz, Bates DE 19367</p> <p>14 Moyer-3 Lease Granted to 91 E.I. Du Pont de Nemours and Company dated 9/29/71, Bates DUP 0001256-1261</p> <p>17 Moyer-4 Memo dated 94 1/15/82 to June MacArtor from William Moyer, Bates DE 19368</p> <p>20 Moyer-5 Letter dated 96 10/23/81 to Alan L. Skinner, Esquire, from June D. MacArtor, no Bates stamp</p>	<p>1 Moyer-12 e-mail dated 155 9/20/04 to William Moyer from W. Harding Drane, Jr., Bates DUP 0000717, DE 19422-19431</p> <p>5 Moyer-13 Coastal Zone 165 Management for Delaware, February 18, 1971, Governor's Task Force on Marine and Coastal Affairs, Bates DE 16444-16484</p> <p>11 Moyer-14 The Coastal Zone 166 of Delaware, Governor's Task Force on Marine and Coastal Affairs, no Bates stamp</p> <p>15 Moyer-15 Delaware Bay 177 Report Series, Volume 8, Economic and Social Aspects of Delaware's Coastal Zone, by Joel M. Goodman, Spring 1973, no Bates stamp</p> <p>20 Moyer-16 Memo dated 180 7/27/94 to Peder Hansen, et al., from Sara W. Cooksey, Bates DE 27936-27941</p>

ESQUIRE DEPOSITION SERVICES

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10

1 related to one case?  
 2 A. No.  
 3 Q. All right. Could you just  
 4 briefly describe the litigation for each  
 5 of your depositions?  
 6 A. I cannot.  
 7 Q. Okay.  
 8 A. It's been a while. I don't  
 9 even remember what the cases were.  
 10 Q. All right. Were these  
 11 challenges to decisions made by DNREC?  
 12 A. I can't -- I just don't  
 13 remember.  
 14 Q. Okay. Just forgive me  
 15 because sometimes if I pose a question,  
 16 it might refresh your recollection.  
 17 A. I understand.  
 18 Q. Did this have to do with --  
 19 were you deposed in your official  
 20 capacity?  
 21 A. Yes, yes.  
 22 Q. All right. And at the time  
 23 you were deposed, what were you doing for  
 24 the department?

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1 A. In the same capacity that  
 2 I've been in for the last 30 years, which  
 3 was a section manager for the Wetlands  
 4 and Subaqueous Lands Section.  
 5 Q. All right. And were the  
 6 depositions -- were your depositions then  
 7 related to your work --  
 8 A. Yes.  
 9 Q. -- for the Wetlands Section?  
 10 A. Yes.  
 11 Q. Do you recall whether these  
 12 depositions concerned a specific decision  
 13 that you made?  
 14 A. In some cases, yes.  
 15 Q. All right. And were these  
 16 decisions concerning a permit or license  
 17 that you had issued?  
 18 A. In some cases, yes.  
 19 Q. Okay. Were any of these  
 20 depositions concerning a license or  
 21 permit issued to British petroleum?  
 22 A. No, not that I recall. No.  
 23 Q. Okay. Were any of these  
 24 depositions related to a license or

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1 permit issued to DuPont de Nemours?  
 2 A. No.  
 3 Q. All right. At this point  
 4 you don't recall what those depositions  
 5 were related to?  
 6 A. Well, they would -- they  
 7 would either be related to a permit that  
 8 we had denied that somebody challenged  
 9 that went through our appeal process and  
 10 then somehow got into a court case. That  
 11 probably is what they were all involved  
 12 with. Some rendering of a decision on a  
 13 permit application.  
 14 Q. And in the course of these  
 15 depositions, did you have to explain how  
 16 you went about determining land area for  
 17 a subaqueous license?  
 18 MR. WALTON: Object to the  
 19 form of the question.  
 20 THE WITNESS: Yeah, I'm not  
 21 sure I understand the question.  
 22 BY MS. CONKLIN:  
 23 Q. Okay. In any of these  
 24 depositions, did you have to explain how

13

1 you went about determining the area of a  
 2 subaqueous license?  
 3 A. I don't recall.  
 4 Q. Okay.  
 5 A. I don't recall.  
 6 Q. All right. Very good.  
 7 Did you testify in any  
 8 proceeding after these depositions were  
 9 taken?  
 10 A. I don't recall. As a result  
 11 of the deposition you're saying? No, I  
 12 don't recall.  
 13 Q. Okay. Have you ever  
 14 testified in court before?  
 15 A. Yes.  
 16 Q. Okay. Do you know what  
 17 court you testified in?  
 18 A. Yes.  
 19 Q. Could you describe that  
 20 court for me?  
 21 A. Chancery Court in Sussex  
 22 County, Federal District Court, several  
 23 magistrate court cases, Superior Court  
 24 enforcement cases. A number of vary -- a

14	<p>1 variety of different courts.</p> <p>2 Q. And when you say District</p> <p>3 Court, you're talking Federal District</p> <p>4 Court?</p> <p>5 A. Yes.</p> <p>6 Q. In Wilmington?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And how recent</p> <p>9 was that?</p> <p>10 A. Early 1980s.</p> <p>11 Q. Okay. When was the last</p> <p>12 time you recall testifying in court, how</p> <p>13 recently?</p> <p>14 A. 2002. 2001, 2002.</p> <p>15 Q. Do you recall which of the</p> <p>16 courts you appeared in at that time for</p> <p>17 testimony?</p> <p>18 A. It was Sussex County, I</p> <p>19 believe it was Court of Common Pleas, if</p> <p>20 I'm not mistaken.</p> <p>21 Q. Very good. All right.</p> <p>22 Where are you currently</p> <p>23 employed?</p> <p>24 A. I'm employed part-time at an</p>	16	<p>1 Q. Duffield. I'm sorry.</p> <p>2 A. Yeah. In May of 2005.</p> <p>3 Q. Since May 2005, have you had</p> <p>4 occasion to submit any permit</p> <p>5 applications on behalf of British</p> <p>6 petroleum?</p> <p>7 A. I have not.</p> <p>8 Q. Since 2005, have you had any</p> <p>9 occasion to submit any applications on</p> <p>10 behalf of DuPont?</p> <p>11 A. No.</p> <p>12 Q. Have you submitted any</p> <p>13 applications, same question, for Logan</p> <p>14 Generating?</p> <p>15 A. No.</p> <p>16 Q. All right. You say you also</p> <p>17 give talks --</p> <p>18 A. Yes.</p> <p>19 Q. -- as part of your job?</p> <p>20 A. Yes.</p> <p>21 Q. Could you describe the talks</p> <p>22 that you give as a result of your job?</p> <p>23 A. I gave one talk to Duffield</p> <p>24 employees on the state and federal</p>
15	<p>1 environmental consulting firm called</p> <p>2 Duffield Associates in Wilmington,</p> <p>3 Delaware.</p> <p>4 Q. And what is your position</p> <p>5 there?</p> <p>6 A. I'm a senior consultant.</p> <p>7 Q. Okay. And what are your</p> <p>8 duties?</p> <p>9 A. I work with permit</p> <p>10 applications and reviewing state and</p> <p>11 federal regulations, giving talks and</p> <p>12 obtaining clients for Duffield.</p> <p>13 Q. All right. And when you</p> <p>14 talk about permit applications, could you</p> <p>15 describe them for me?</p> <p>16 A. Yes. I've been involved</p> <p>17 with submitting applications to DNREC for</p> <p>18 subaqueous lands and wetlands permits and</p> <p>19 to the Corps of Engineers for federal</p> <p>20 permits pursuant to the Clean Water Act.</p> <p>21 Q. And when did you -- when did</p> <p>22 you begin your job at -- I'm sorry, is</p> <p>23 it --</p> <p>24 A. Duffield.</p>	17	<p>1 regulatory program. I spoke last week at</p> <p>2 the Delmarva Wetlands Conference. Those</p> <p>3 are probably the two most recent.</p> <p>4 Q. Did you give a formal paper</p> <p>5 at the Delmarva Wetlands Conference?</p> <p>6 A. I would say that it's</p> <p>7 formal. It's not a published paper, but</p> <p>8 it was a formal presentation.</p> <p>9 Q. And what was the subject of</p> <p>10 the presentation?</p> <p>11 A. State and federal</p> <p>12 regulations. Just a review of the state</p> <p>13 and federal regulatory program.</p> <p>14 Q. Okay. And when we talk</p> <p>15 about regulatory program, could you</p> <p>16 describe what you mean?</p> <p>17 A. The Federal 404 Regulatory</p> <p>18 Program and the State Wetlands Program</p> <p>19 specifically on this particular talk.</p> <p>20 Q. Okay. Would the State</p> <p>21 Wetlands Program include regulation of</p> <p>22 subaqueous lands?</p> <p>23 A. No.</p> <p>24 Q. When I use the term</p>

<p style="text-align: right;">18</p> <p>1 subaqueous lands, what is your 2 understanding of that term? 3 <b>A. Subaqueous lands are lands</b> 4 <b>below the mean high water line in the</b> 5 <b>state of Delaware.</b> 6 <b>Q. And put another way, that</b> 7 <b>means they're under water?</b> 8 <b>A. Correct.</b> 9 <b>Q. Okay. Let me ask you, is</b> 10 <b>there a term that is used as a synonym</b> 11 <b>for subaqueous lands or should I just use</b> 12 <b>subaqueous lands for the next few hours?</b> 13 <b>A. Most people use underwater</b> 14 <b>lands.</b> 15 <b>Q. Underwater lands?</b> 16 <b>A. Yes.</b> 17 <b>Q. Very good. I think that</b> 18 <b>will be a little easier on both of us</b> 19 <b>here, underwater lands.</b> 20 <b>But the formal term is</b> 21 <b>subaqueous?</b> 22 <b>A. Yes.</b> 23 <b>Q. In New Jersey it's</b> 24 <b>different. Anything rather than</b></p>	<p style="text-align: right;">20</p> <p>1 reports to? 2 <b>A. Kevin Donnelly, division</b> 3 <b>director, two Ns, two Ls.</b> 4 <b>Q. Okay. Is there another</b> 5 <b>section manager in addition to Ms. Herr</b> 6 <b>in that section?</b> 7 <b>A. Yes.</b> 8 <b>Q. Okay. Do you know who that</b> 9 <b>is?</b> 10 <b>A. There's several. Four or</b> 11 <b>five.</b> 12 <b>Q. There are about four or</b> 13 <b>five?</b> 14 <b>A. Yes. The division is</b> 15 <b>divided into, I believe, five sections.</b> 16 <b>Q. Okay. Just briefly, can you</b> 17 <b>tell me what those sections are?</b> 18 <b>A. I'll try. Water Pollution</b> 19 <b>Control -- I'm sorry. Surface Water</b> 20 <b>Protection, Groundwater Protection, the</b> 21 <b>Laboratory, Watershed Assessment Section</b> 22 <b>and -- I guess that's it. Surface Water,</b> 23 <b>Groundwater, Watershed Assessment and the</b> 24 <b>Laboratory, and Wetlands and Subaqueous</b></p>
<p style="text-align: right;">19</p> <p>1 subaqueous. 2 <b>So would it be fair to say</b> 3 <b>as part of your job for Duffield that you</b> 4 <b>communicate with DNREC staffers as part</b> 5 <b>of your job for -- as part of your</b> 6 <b>involvement in permit applications?</b> 7 <b>A. Yes.</b> 8 <b>Q. Have you since May of '05</b> 9 <b>communicated with Ms. Laura Herr,</b> 10 <b>H-E-R-R?</b> 11 <b>A. Yes.</b> 12 <b>Q. And have those</b> 13 <b>communications been restricted, aside</b> 14 <b>from just social stuff, to the permit</b> 15 <b>application at hand?</b> 16 <b>A. Yes.</b> 17 <b>Q. What is Ms. Herr's position</b> 18 <b>at DNREC; do you know?</b> 19 <b>A. Yes. She's my successor.</b> 20 <b>She's the section manager for the</b> 21 <b>Wetlands and Subaqueous Land Section.</b> 22 <b>Q. She's the section manager?</b> 23 <b>A. Uh-huh.</b> 24 <b>Q. And do you know who she</b></p>	<p style="text-align: right;">21</p> <p>1 <b>Lands.</b> 2 <b>Q. When you say wetlands and</b> 3 <b>subaqueous, are those two areas combined</b> 4 <b>under one manager?</b> 5 <b>A. Yes. Yes.</b> 6 <b>Q. Okay. And to your</b> 7 <b>knowledge, that manager is Ms. Laura</b> 8 <b>Herr?</b> 9 <b>A. Herr.</b> 10 <b>Q. Herr. I'm sorry. All</b> 11 <b>right. Okay.</b> 12 <b>Are you aware of a</b> 13 <b>distinction between a subaqueous license</b> 14 <b>and a subaqueous permit?</b> 15 <b>A. No.</b> 16 <b>Q. Okay. Is there a</b> 17 <b>distinction between a subaqueous license</b> 18 <b>and a subaqueous grant to your knowledge?</b> 19 <b>A. Well, we don't use those</b> 20 <b>terms, so I don't know, at least as it</b> 21 <b>pertains to Delaware.</b> 22 <b>Q. Okay. What types of</b> 23 <b>interests does the state of Delaware give</b> 24 <b>to people to occupy or use subaqueous</b></p>

22	<p>1 lands?</p> <p>2 <b>A. Either a subaqueous lands</b></p> <p>3 <b>permit or subaqueous lands lease, aside</b></p> <p>4 <b>from other minor approvals, like letters</b></p> <p>5 <b>of permission or repair and replace</b></p> <p>6 <b>permissions.</b></p> <p>7 <b>Q. Okay. A subaqueous lands</b></p> <p>8 <b>lease in general does what?</b></p> <p>9 <b>A. Allows people to occupy</b></p> <p>10 <b>subaqueous lands for a period of ten</b></p> <p>11 <b>years subject to the terms and conditions</b></p> <p>12 <b>of the subaqueous lands lease.</b></p> <p>13 <b>Q. To your knowledge, in the</b></p> <p>14 <b>last ten, 20 years, does Delaware or has</b></p> <p>15 <b>Delaware given out grants of subaqueous</b></p> <p>16 <b>land --</b></p> <p>17 <b>A. What was the time?</b></p> <p>18 <b>Q. In other words, have they</b></p> <p>19 <b>given up ownership of subaqueous land in</b></p> <p>20 <b>a document in exchange for money?</b></p> <p>21 <b>A. In what time frame?</b></p> <p>22 <b>Q. In the last 20 years.</b></p> <p>23 <b>A. No.</b></p> <p>24 <b>Q. To your knowledge, does the</b></p>	24	<p>1 <b>Q. Okay.</b></p> <p>2 <b>A. That's still considered</b></p> <p>3 <b>public.</b></p> <p>4 <b>Q. Got it.</b></p> <p>5 <b>And could you describe what</b></p> <p>6 <b>a letter of permission is?</b></p> <p>7 <b>A. There are certain categories</b></p> <p>8 <b>of activity that don't change the size or</b></p> <p>9 <b>dimensions of a structure that's already</b></p> <p>10 <b>been approved, so we allow minor repairs</b></p> <p>11 <b>to be made without going through the full</b></p> <p>12 <b>permit process. It's an abbreviated</b></p> <p>13 <b>permitting process where we don't have to</b></p> <p>14 <b>go to public notice and review the whole</b></p> <p>15 <b>litany of requirements that people have</b></p> <p>16 <b>to meet for the full permit.</b></p> <p>17 <b>Q. All right. Since May of</b></p> <p>18 <b>'05, have you had occasion to submit</b></p> <p>19 <b>applications for a letter of permission?</b></p> <p>20 <b>A. Yes. From Duffield?</b></p> <p>21 <b>Q. On behalf of a client, yes.</b></p> <p>22 <b>A. Yes.</b></p> <p>23 <b>Q. All right. And have you</b></p> <p>24 <b>also had occasion to file an application</b></p>
23	<p>1 state have that authority if they chose</p> <p>2 to do it?</p> <p>3 <b>A. Yes.</b></p> <p>4 <b>Q. Tell me what a subaqueous</b></p> <p>5 <b>permit does.</b></p> <p>6 <b>A. A subaqueous permit is for</b></p> <p>7 <b>activity on private or nonpublic</b></p> <p>8 <b>subaqueous lands.</b></p> <p>9 <b>Q. Okay. When you say</b></p> <p>10 <b>nonpublic subaqueous lands, what do you</b></p> <p>11 <b>mean? What does that term mean?</b></p> <p>12 <b>A. The area between the mean</b></p> <p>13 <b>high and mean low water or in nontidal</b></p> <p>14 <b>lands where the state does not have</b></p> <p>15 <b>ownership of the subaqueous lands. Any</b></p> <p>16 <b>nonpublic subaqueous lands would be</b></p> <p>17 <b>private subaqueous lands, as we use the</b></p> <p>18 <b>term.</b></p> <p>19 <b>Q. When you say the state</b></p> <p>20 <b>doesn't have ownership, would that</b></p> <p>21 <b>include categories where -- categories</b></p> <p>22 <b>where subaqueous land was leased out</b></p> <p>23 <b>already?</b></p> <p>24 <b>A. No.</b></p>	25	<p>1 for a subaqueous permit?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q. All right. And have you had</b></p> <p>4 <b>occasion to file an application for a</b></p> <p>5 <b>subaqueous license?</b></p> <p>6 <b>A. Not license. Lease?</b></p> <p>7 <b>Q. I'm sorry, lease, yes.</b></p> <p>8 <b>A. I have not.</b></p> <p>9 <b>Q. Okay. Are you a member of</b></p> <p>10 <b>any organization or group that concerns</b></p> <p>11 <b>itself with wetlands regulations?</b></p> <p>12 <b>A. I belong to the Association</b></p> <p>13 <b>of State Wetlands Managers.</b></p> <p>14 <b>Q. All right.</b></p> <p>15 <b>A. I was on the board for a</b></p> <p>16 <b>number of years.</b></p> <p>17 <b>Q. Okay.</b></p> <p>18 <b>A. And I'm a certified</b></p> <p>19 <b>environmental professional with the</b></p> <p>20 <b>National Association of Environmental</b></p> <p>21 <b>Professionals, emeritus I might add.</b></p> <p>22 <b>Q. Emeritus.</b></p> <p>23 <b>How long have you been a</b></p> <p>24 <b>member of the association of state</b></p>

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1 wetland managers?  
 2 A. 20 years.  
 3 Q. And does the association  
 4 concern itself to any degree with issues  
 5 related to use of subaqueous lands?  
 6 A. No.  
 7 Q. Does the association concern  
 8 itself with permits for activities on  
 9 subaqueous lands?  
 10 A. No.  
 11 Q. So would it be fair to say  
 12 the organization is concerned solely with  
 13 wetlands issues?  
 14 A. Yes.  
 15 Q. All right. Are you a member  
 16 of any organization or group that has  
 17 commented on regulations relating to  
 18 subaqueous lands?  
 19 A. No.  
 20 Q. Okay. And by regulations,  
 21 I'm talking about either federal or state  
 22 law of any sort.  
 23 A. Right. I've not.  
 24 Q. Okay. Since you have been

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1 employed at Duffield, have you had any  
 2 discussions with any of the staff at  
 3 DNREC concerning applications other than  
 4 those you have filed on behalf of  
 5 clients?  
 6 A. Yes.  
 7 Q. And did any of those  
 8 discussions concern applications for  
 9 subaqueous leases?  
 10 A. I don't recall. I think  
 11 they were mainly permits, subaqueous  
 12 permits.  
 13 Q. And how did these subaqueous  
 14 permit discussions come about?  
 15 A. They were projects that I  
 16 saw that were on public notice, and I  
 17 asked to review the applications. And if  
 18 there was occasion where I felt the  
 19 applications were inadequate or  
 20 incomplete, I submitted a letter to DNREC  
 21 with my comments. I might add that that  
 22 was not as a Duffield employee. That was  
 23 more on my own -- my own personal time.  
 24 Q. Why would you be -- why

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1 would you comment on applications before  
 2 DNREC that did not concern a client of  
 3 yours?  
 4 A. Just because of my concerns  
 5 about whether or not the applications  
 6 were complete and were complying with the  
 7 applicable rules and regulations.  
 8 Q. What would be your status --  
 9 now, let me rephrase this.  
 10 Would you be submitting  
 11 comments simply as a private citizen  
 12 then?  
 13 A. Yes, yes.  
 14 Q. Would your comments indicate  
 15 that you are making comments as a  
 16 consultant on behalf of Duffield?  
 17 A. No, no.  
 18 Q. Okay. And have you been  
 19 submitting these comments on all projects  
 20 that have been advertised since May of  
 21 '05?  
 22 A. No. Just one or two.  
 23 Q. And could you describe the  
 24 applications that you felt were

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1 appropriate to comment on?  
 2 A. One most recently was an  
 3 application adjacent to the port of  
 4 Wilmington, on the Christina River, where  
 5 the applicant proposed to dredge the  
 6 river and build a dock for shipping out  
 7 garbage to recycling locations. I  
 8 reviewed the application and felt that it  
 9 was not complete and submitted my  
 10 comments on what I thought needed to be  
 11 added to make the application complete.  
 12 Q. When you say you reviewed  
 13 the application, how did you -- how did  
 14 you go about reviewing the application?  
 15 A. I had an appointment at  
 16 DNREC and went in and reviewed it from  
 17 their file.  
 18 Q. And why did you choose that  
 19 particular application to review and  
 20 comment on?  
 21 A. Because I knew that that  
 22 area of the Christina River had  
 23 contaminated sediments and there was  
 24 nothing in the public notice that

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1 indicated that they were testing any of  
 2 the sediment before they dredged it. And  
 3 I had a concern with that.  
 4 Q. And do you recall -- I think  
 5 you said there were one or two -- one or  
 6 two applications that you had commented  
 7 on. Do you recall any of the others?  
 8 A. I think one of the other  
 9 ones was requests to change the wetlands  
 10 map that went on public notice. And  
 11 another one was for a minor marina  
 12 somewhere down in lower Delaware in one  
 13 of our inland bays.  
 14 Q. You indicated earlier that  
 15 Ms. Herr, I'll probably never pronounce  
 16 her name correctly, forgive me.  
 17 A. Like the potato chip.  
 18 Q. Herr's. I mispronounce  
 19 that, too. Ms. Herr is a section manager  
 20 among four or five other section  
 21 managers; is that correct?  
 22 A. Yes.  
 23 Q. Okay. Do all the section  
 24 managers report to Mr. Kevin Donnelly?

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1 A. Yes.  
 2 Q. Okay. Who is a division  
 3 director?  
 4 A. Yes.  
 5 Q. All right. And do you know  
 6 to whom Mr. Donnelly reports?  
 7 A. Secretary John Hughes.  
 8 Q. Okay. And when you use the  
 9 term secretary, what's the formal title?  
 10 A. Secretary John Hughes.  
 11 Q. Secretary of what?  
 12 A. Oh, I'm sorry, the  
 13 Department of Natural Resources and  
 14 Environmental Control.  
 15 Q. Which we are referring to as  
 16 DNREC?  
 17 A. DNREC, that's correct.  
 18 Q. How many division directors  
 19 are there that you're aware of?  
 20 A. Five.  
 21 Q. And I'm going to test your  
 22 knowledge here.  
 23 A. I thought you might.  
 24 Q. Could you give me an

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1 overview of the other division directors,  
 2 not their names necessarily, but their  
 3 job titles.  
 4 MR. WALTON: Make sure she  
 5 finishes her question.  
 6 THE WITNESS: Okay.  
 7 You just want the name of  
 8 the divisions?  
 9 BY MS. CONKLIN:  
 10 Q. Yes.  
 11 A. Air Resources.  
 12 Q. Hang on. Yes.  
 13 A. Air and Waste Management.  
 14 Fish and Wildlife. Division of Fish and  
 15 Wildlife. Division of Soil and Water  
 16 Conservation. Division of Recreation.  
 17 Q. And Kevin Donnelly is  
 18 division director of which of those?  
 19 A. Water Resources.  
 20 Q. And just so I understand  
 21 I've got this right, Mr. Donnelly as  
 22 director of Water Resources has under his  
 23 supervision sections related to the Water  
 24 Pollution Control Act, surface water,

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1 groundwater, laboratory section and  
 2 watershed assessment?  
 3 A. That's correct.  
 4 Q. And watershed assessment  
 5 handles wetlands and subaqueous issues?  
 6 A. No.  
 7 Q. Where does the --  
 8 A. Wetlands and subaqueous  
 9 lands handles wetlands and subaqueous  
 10 lands issue. I don't know if you  
 11 mentioned that --  
 12 Q. I'm sorry. Say that again.  
 13 I didn't hear you.  
 14 A. Wetlands and subaqueous  
 15 lands, which is under Mr. Donnelly,  
 16 handles wetlands and subaqueous.  
 17 Q. Okay. It's its own little  
 18 section?  
 19 A. Yes.  
 20 Q. And that is all under Ms.  
 21 Herr?  
 22 A. Yes.  
 23 Q. Thank you.  
 24 A. You're welcome.

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1 Q. When were you first -- let  
 2 me ask you something. What's your  
 3 education and professional training?  
 4 A. How detailed do you want it?  
 5 General degrees and years?  
 6 Q. General degrees and years  
 7 will be fine.  
 8 A. Okay. 1967, bachelor's  
 9 degree, BS, in biology from Dickinson  
 10 College; 1972, Master of Science degree  
 11 in environmental engineering sciences  
 12 from University of Florida; and then some  
 13 postgraduate work and several courses  
 14 that didn't lead to any degrees. Those  
 15 are the two degrees I have.  
 16 Q. When were you first employed  
 17 by the state of Delaware?  
 18 A. March 1st, 1974.  
 19 Q. All right. Prior to that  
 20 time, how were you employed?  
 21 A. June of 19 -- I'm sorry,  
 22 September of 1967 to June of 1970 I was a  
 23 biology teacher at a private boarding  
 24 school in Pennsylvania.

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1 From '70 to '71 I was a  
 2 private schoolteacher at a private day  
 3 school in Jacksonville, Florida.  
 4 And from '72 to, I hope  
 5 these dates all figure out, from '72 to  
 6 '74 I was a regional biologist for the  
 7 then Florida Department of Pollution  
 8 Control in Jacksonville, Florida.  
 9 Q. What was your position when  
 10 you were first employed with the state of  
 11 Delaware?  
 12 A. I worked for one year in the  
 13 National Pollutant Discharge Elimination  
 14 System program, NPDES.  
 15 Q. All right. And what was  
 16 your title?  
 17 A. Resources engineer.  
 18 Q. Okay. And how long did you  
 19 have that position?  
 20 A. One year.  
 21 Q. All right. And what were  
 22 your job duties as a resource engineer?  
 23 A. Review applications for  
 24 discharging of pollutants and preparing

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1 draft permits, putting them on public  
 2 notice, and then forwarding them on to my  
 3 supervisor for signature and issuance.  
 4 Q. And who was your supervisor  
 5 back then?  
 6 A. Lee Beetschen.  
 7 Q. Do you want to try and spell  
 8 that?  
 9 A. Yes. B-E-E-T-S-C-H-E-N.  
 10 Q. To your knowledge, is this  
 11 gentleman still working within the state?  
 12 A. He is not.  
 13 Q. All right. When you were  
 14 resource engineer for approximately one  
 15 year, did your work require you to review  
 16 or look at subaqueous lands leases?  
 17 A. No.  
 18 Q. All right. When you say you  
 19 were the resource engineer for one year,  
 20 are we looking at roughly from March of  
 21 '74 to March of '75, approximately?  
 22 A. Yes, yes.  
 23 Q. And did you take a new  
 24 position in March of '75 with the state

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1 of Delaware?  
 2 A. I did.  
 3 Q. And what position would that  
 4 be?  
 5 A. Manager of the Wetlands and  
 6 Subaqueous Lands Section.  
 7 Q. Okay. As manager of the  
 8 Wetlands and Subaqueous Lands Section,  
 9 how many individuals did you supervise?  
 10 A. At that time?  
 11 Q. Uh-huh.  
 12 A. One clerical -- I'm sorry.  
 13 Two clerical positions. That was it.  
 14 Q. That was it? So you were  
 15 it?  
 16 A. I was the one.  
 17 Q. You were the one.  
 18 Tell me what your duties  
 19 were as being manager of yourself. I'm  
 20 not sure I envy that circumstance.  
 21 A. Still the same as they were  
 22 later on, is to get applications for  
 23 wetlands permits and subaqueous lands  
 24 permits and subaqueous lands leases and

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1 follow the procedures required in our  
 2 department's regulations to issue  
 3 approvals.  
 4 Q. I just want to make sure I'm  
 5 clear on this. When you took the  
 6 position of manager of the Wetlands and  
 7 Subaqueous Lands Section, you were the  
 8 only person doing the substantive  
 9 processing and decisions of applications?  
 10 A. That's correct.  
 11 Q. Okay. May I ask what  
 12 training you received, if any, after you  
 13 took the manager's position as to how to  
 14 process these applications?  
 15 A. On-the-job training. No  
 16 specific -- I attended some -- over the  
 17 period of three or four years, I attended  
 18 some outside training courses and relied  
 19 on my background from my job in Florida,  
 20 where I did similar work to subaqueous  
 21 and wetlands.  
 22 Q. And when you talk about your  
 23 job in Florida, you're talking about your  
 24 position with the Department of Pollution

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1 Control in Jacksonville?  
 2 A. Yes.  
 3 Q. And what experience did you  
 4 have with subaqueous lands down there?  
 5 A. I was in charge of 13  
 6 counties in Northeastern Florida for  
 7 biological monitoring and report-writing,  
 8 but also in charge of the dredge and fill  
 9 program for that section of the state of  
 10 Florida.  
 11 Q. And just briefly, I'm still  
 12 talking about when you were in  
 13 Jacksonville, Florida, the dredging and  
 14 filling program that you supervised, to  
 15 what extent did that require you to focus  
 16 on ownership issues of subaqueous land?  
 17 A. It did not.  
 18 Q. Did you have to at any time  
 19 during this job focus on interpretation  
 20 of maps delineating ownership of  
 21 subaqueous land?  
 22 A. No.  
 23 Q. What experience did you take  
 24 from the job in Florida that assisted you

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1 in your new position in Delaware as  
 2 manager of the wetlands and subaqueous  
 3 lands program?  
 4 A. A general understanding of  
 5 rules and regulations, administrative  
 6 procedures and processes, enforcement  
 7 activity, review of environmental impact  
 8 statements and environmental assessments,  
 9 how to conduct an environmental  
 10 evaluation of impacts of dredging and  
 11 filling. That's about it.  
 12 Q. That's a lot.  
 13 Where did you get your  
 14 training, if any, concerning delineation  
 15 of subaqueous lands?  
 16 A. On-the-job training with  
 17 Florida and the state of Delaware.  
 18 Q. Okay. When you say you had  
 19 on-the-job training in Florida, what  
 20 aspect of your job in Florida concerned  
 21 subaqueous lands issues?  
 22 A. Well, most of the dredging  
 23 that we permitted took place on  
 24 subaqueous lands adjacent to mostly

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1 residential projects, residential  
 2 dredging. So I had to have knowledge of  
 3 what impacts that dredging would have and  
 4 where the people wanted to dredge and  
 5 what the permit process was.  
 6 Q. As part of your job in  
 7 Florida, did you have to learn -- did  
 8 you -- did you correlate the location of  
 9 dredging projects to any type of mapping  
 10 of subaqueous lands?  
 11 A. Not any mapping, no.  
 12 Q. All right. Well, I'm  
 13 just -- all right.  
 14 When you became manager of  
 15 the wetlands subaqueous lands program in  
 16 Delaware, was there any staff member on  
 17 duty when you took the job that had  
 18 performed that title or that function  
 19 before you were employed?  
 20 A. Not on duty, but was  
 21 available to me.  
 22 Q. And who was that person?  
 23 A. John Street.  
 24 Q. Okay. And what position did

42	<p>1 Mr. Street have to your knowledge in 2 DNREC for the state of Delaware? 3 <b>A. He was the previous manager 4 of the Wetlands and Subaqueous Lands 5 Section.</b> 6 <b>Q. Okay. Do you know how long 7 he had been manager?</b> 8 <b>A. I do not.</b> 9 <b>Q. Do you know when the 10 Wetlands and Subaqueous Lands Section was 11 created?</b> 12 <b>A. I do not.</b> 13 <b>Q. When you took the job, to 14 what extent were you in communication 15 with Mr. Street concerning your work 16 involving subaqueous lands?</b> 17 <b>A. How often? Probably once 18 every several months.</b> 19 <b>Q. Okay. From whom did you 20 learn how to read subaqueous lands -- 21 maps of subaqueous lands?</b> 22 <b>A. I'm not sure what you mean 23 when you say maps of -- I'm not sure what 24 maps of subaqueous lands is.</b></p>	44	<p>1 <b>supervisor. Mr. Vasuki was my division 2 director.</b> 3 <b>Q. Got it.</b> 4 <b>Do you know how long Mr. 5 Vasuki had been division director before 6 you came on board?</b> 7 <b>A. Probably five years.</b> 8 <b>Q. Okay. And do you know how 9 long Mr. Beetschen had been in his 10 position when you came on board?</b> 11 <b>A. I do not.</b> 12 <b>Q. Okay. Forgive me, Mr. 13 Vasuki was division director and Lee 14 Beetschen was?</b> 15 <b>A. Manager.</b> 16 <b>Q. Your manager. Okay. All 17 right.</b> 18 <b>And you reported to Mr. 19 Beetschen?</b> 20 <b>A. Right.</b> 21 <b>Q. Forgive me, maybe I'm a 22 little confused here.</b> 23 <b>A. Okay.</b> 24 <b>Q. You were manager of Wetlands</b></p>
43	<p>1 <b>Q. How did you learn to 2 correlate applications for specific 3 activities on subaqueous lands with maps 4 purporting to show ownership of those 5 subaqueous lands?</b> 6 <b>A. Okay. We had a -- we had 7 staff from the attorney general's office 8 assigned to DNREC in our environmental 9 unit. And there were two or three 10 deputies attorney general assigned to 11 that, and I got a lot of my education and 12 background in sessions with them. And 13 also our division director, who 14 supervised John Street, had an excellent 15 knowledge of issues surrounding 16 subaqueous lands.</b> 17 <b>Q. What is the -- what was the 18 name of that division director?</b> 19 <b>A. M.C. Vasuki, V-A-S-U-K-I. 20 M.C. initials.</b> 21 <b>Q. When you took the position 22 of manager, were you reporting to Mr. 23 Vasuki?</b> 24 <b>A. Lee Beetschen was my direct</b></p>	45	<p>1 <b>and Subaqueous?</b> 2 <b>A. Yes.</b> 3 <b>Q. And so you're a manager, and 4 you're reporting to Mr. Beetschen who is 5 also a manager?</b> 6 <b>A. Yes, it was a little 7 confusing because the organization 8 structure was a little different back 9 then because of the size of the 10 organization. I'm not so sure back when 11 I took over I was called a manager. I 12 think Lee Beetschen was a manager of the 13 section. I'm not exactly sure what I was 14 called at that time.</b> 15 <b>Q. Was it a Civil Service 16 position?</b> 17 <b>A. Yes, yes.</b> 18 <b>Q. Okay. So there would 19 probably be a Civil Service record buried 20 somewhere in some office that would have 21 your formal title?</b> 22 <b>A. Yes.</b> 23 <b>Q. All right. At some point -- 24 how long were you manager of the Wetlands</b></p>

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1 and Subaqueous Lands Section?  
 2 A. **29 and a half years.**  
 3 Q. Okay. Now, during that  
 4 time, I assume that the organizational  
 5 structure changed somewhat in DNREC?  
 6 A. **Yes.**  
 7 Q. Okay. How long do you  
 8 recall reporting to Mr. Lee Beetschen?  
 9 A. **Approximately five years.**  
 10 Q. And during that time, were  
 11 you the only person that was processing  
 12 applications for subaqueous lands leases?  
 13 A. **For a period of time, a**  
 14 **short period of time before more staff**  
 15 **was added.**  
 16 Q. Okay. And how many more  
 17 staff were added?  
 18 A. **Over what time period?**  
 19 Q. The five years you reported  
 20 to Mr. Beetschen.  
 21 A. **Two.**  
 22 Q. Two more staff.  
 23 And what did these staff  
 24 members do?

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1 A. **Processed permits.**  
 2 Q. Okay. So you had company?  
 3 A. **I finally got some help,**  
 4 **yes.**  
 5 Q. All right. And were you  
 6 supervising these staff members?  
 7 A. **I was.**  
 8 Q. Okay. And did these staff  
 9 members -- let me ask you.  
 10 As part of your job as  
 11 manager, did you communicate with the  
 12 AG's office concerning individual  
 13 applications for subaqueous leases?  
 14 A. **Yes.**  
 15 Q. Okay. And did these two  
 16 additional staff members also have that  
 17 privilege of communicating directly with  
 18 the AG's office?  
 19 A. **They did not. They**  
 20 **communicated through me.**  
 21 Q. Okay. I see.  
 22 During that five-year period  
 23 when the office expanded dramatically to  
 24 three people, who were your DAGs who

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1 assisted you in your work if you can  
 2 recall?  
 3 A. **If I can recall. Mike**  
 4 **Parkowski, F. Michael Parkowski.**  
 5 Q. Can you spell that last  
 6 name, sir?  
 7 A. **P-A-R-K-O-W-S-K-I.**  
 8 **And June MacArtor.**  
 9 Q. Can you spell her last name?  
 10 A. **M-A-C capital A-R-T-O-R.**  
 11 Q. Anybody else?  
 12 A. **Not that I recall.**  
 13 Q. And what were their formal  
 14 titles?  
 15 A. **Deputy attorney general.**  
 16 Q. To your knowledge, were  
 17 these individuals, it may sound silly,  
 18 but I have my own reasons for asking,  
 19 were they employed by the Office of the  
 20 Attorney General of the state of  
 21 Delaware?  
 22 A. **Yes.**  
 23 Q. Okay. Did you have any  
 24 attorneys available to you for

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1 consultation that were employed by DNREC?  
 2 A. **No.**  
 3 MR. WALTON: Let's take a  
 4 break.  
 5 (Recess taken from  
 6 10:21 a.m. to 10:28 a.m.)  
 7 BY MS. CONKLIN:  
 8 Q. Back on the record.  
 9 A. **Okay.**  
 10 Q. And you realize you're still  
 11 under oath?  
 12 A. **Yes.**  
 13 Q. Thank you. I have to ask.  
 14 I have to say these things.  
 15 A. **That's fine.**  
 16 Q. Let me go back to the  
 17 five-year period -- this five-year period  
 18 of which we are speaking when you  
 19 acquired two staff members to assist you.  
 20 This five-year period commenced in what  
 21 year?  
 22 A. **Oh, gosh.**  
 23 Q. You became manager in  
 24 March -- no. It would have been March of

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1 '75?  
 2 A. Uh-huh.  
 3 I would say within six  
 4 months I hired my first assistant, first  
 5 staff person. And maybe a year after  
 6 that I hired the second one.  
 7 Q. Right.  
 8 A. That's -- that's to the best  
 9 of my recollection.  
 10 Q. And at the end of this  
 11 five-year period, what changed with  
 12 respect to the organizational structure?  
 13 A. None.  
 14 Q. All right. Did you get --  
 15 did you get a new person -- was there  
 16 another person to whom you reported?  
 17 A. Oh, gosh. No. I believe I  
 18 began reporting directly to the division  
 19 director.  
 20 Q. Which would be Mr. Vasuki?  
 21 A. Yes.  
 22 Q. Okay. How long was Mr.  
 23 Vasuki a division director?  
 24 A. I don't recall.

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1 Q. Okay.  
 2 A. I don't recall.  
 3 Q. There might be one quick way  
 4 to approach this. When you left DNREC,  
 5 who were you reporting to?  
 6 A. Kevin Donnelly. When I  
 7 left, when I retired when I left?  
 8 Q. Yes.  
 9 A. Kevin Donnelly.  
 10 Q. All right. Was there  
 11 another division director between Mr.  
 12 Vasuki and Kevin Donnelly?  
 13 A. Oh, gosh, yes. Gosh, yes.  
 14 Q. Like any good state agency.  
 15 A. Well, they're politically  
 16 appointed.  
 17 Q. Are they really? Okay.  
 18 A. Yes.  
 19 Q. And when you say politically  
 20 appointed, and this is probably just gory  
 21 curiosity on my part, but does that mean  
 22 when a new governor comes in, there's  
 23 generally a change of management --  
 24 A. Not always.

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1 Q. -- from one degree to  
 2 another?  
 3 A. Not always.  
 4 Q. So it doesn't necessarily  
 5 correlate to a new governor?  
 6 A. No.  
 7 Q. All right. Do you recall  
 8 who the -- I believe you said that the  
 9 secretary was John Hughes when you first  
 10 came on board?  
 11 A. No.  
 12 Q. I'm sorry.  
 13 A. You asked who I reported to  
 14 when I left. It was John Hughes.  
 15 Q. Oh, I'm sorry. Okay.  
 16 And when you left, you said  
 17 you reported to John Hughes, right?  
 18 A. Right.  
 19 Q. John Hughes was what? What  
 20 was his title?  
 21 A. Cabinet secretary.  
 22 Q. Cabinet secretary. Okay.  
 23 Of DNREC?  
 24 A. Correct.

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1 Q. Okay. So you recall  
 2 reporting to Mr. Vasuki --  
 3 A. Yes.  
 4 Q. -- earlier in your career,  
 5 and you recall also reporting to John  
 6 Hughes. Do you recall anybody else who  
 7 you used to report to?  
 8 A. Yes.  
 9 Q. Could you give me some  
 10 names?  
 11 A. Do you want division  
 12 directors or cabinet secretaries or both?  
 13 Q. Let's start with division  
 14 directors.  
 15 A. Girard Esposito, Austin P.  
 16 Olney, O-L-N-E-Y. Give me a moment.  
 17 Jose Huerta, H-U-E-R-T-A, John Egan,  
 18 E-G-A-N, Wayne Ashbee, A-S-H-B-E-E.  
 19 That's about as best as I can do. I know  
 20 there were two or three others, but I  
 21 just can't pull out their names.  
 22 Q. And the cabinet secretaries,  
 23 your first cabinet secretary was, to whom  
 24 you reported, was?

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1 A. John Bryson.  
 2 Q. Okay. Do you remember what  
 3 years he was secretary?  
 4 A. I do not. He was there when  
 5 I started.  
 6 Q. Okay.  
 7 A. Harry Derrickson, secretary.  
 8 Q. Harry?  
 9 A. Harry Derrickson,  
 10 D-E-R-R-I-C-K-S-O-N. Jack Wilson. Tom  
 11 Eichler. You can also put him down as a  
 12 division director, too. That's one I  
 13 forgot. Austin P. Olney became  
 14 secretary. They're the ones I remember.  
 15 Q. Your memory is good.  
 16 A. Not always.  
 17 Q. And through all of these  
 18 division directors to whom you reported,  
 19 you continued to occupy the position of  
 20 manager --  
 21 A. Yes.  
 22 Q. -- of the Wetlands and  
 23 Subaqueous Section?  
 24 A. Yes. Through somewhat

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1 modified changes in names. It was not  
 2 always called the same thing. But for  
 3 all intents and purposes, it was the  
 4 Subaqueous and Wetlands Section.  
 5 Q. Ultimately, can you tell me  
 6 what the changes in title were?  
 7 A. Wetlands Section, Wetlands  
 8 and Underwater Lands Section, and  
 9 Wetlands and Subaqueous Lands Section,  
 10 which finally it came to be known. I  
 11 think those are probably the three.  
 12 Q. All right. When you first  
 13 came on -- when you first became manager,  
 14 was it known as the Wetlands Section?  
 15 A. Yes.  
 16 Q. And do you recall when it  
 17 became the Wetlands and Underwater Lands  
 18 Section?  
 19 A. I do not.  
 20 Q. Was it sometime after you  
 21 hired your two assistants?  
 22 A. I don't know.  
 23 Q. Okay. All right. When you  
 24 first came on board as manager, were the

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1 attorneys Mike Parkowski and June  
 2 MacArtor on board?  
 3 A. Yes.  
 4 Q. When you came on board as  
 5 manager, you were issuing -- were you  
 6 issuing permits as well as subaqueous  
 7 lands leases?  
 8 A. Yes.  
 9 Q. Okay. As part of your  
 10 duties, did you have to account for the  
 11 revenue that was brought in as a result  
 12 of any subaqueous leases?  
 13 A. Yes.  
 14 Q. Did you make a report of  
 15 that revenue?  
 16 A. Yes.  
 17 Q. Were reports filed on a  
 18 regular basis?  
 19 A. By regular you mean?  
 20 Q. At predictable intervals.  
 21 A. Yes. Yes.  
 22 Q. And what intervals were  
 23 they?  
 24 A. Annually, although, you

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1 know, as we collected them, they went to  
 2 our accounting office and they may have  
 3 kept their own separate records for that.  
 4 But my report was an annual summary of  
 5 all fees collected.  
 6 Q. And to whom was that report  
 7 given?  
 8 A. The division director.  
 9 Q. All right. Do you know, in  
 10 the early years of your tenure at DNREC  
 11 as manager, to what use the lease money  
 12 was put?  
 13 A. I believe that initially it  
 14 went back into the department's budget,  
 15 but at some point it changed and went  
 16 into the general fund.  
 17 Q. Gee, I'm shocked.  
 18 A. Yes.  
 19 Q. In the early years, did your  
 20 office, the Wetlands and Subaqueous --  
 21 the Wetlands Section and the Subaqueous  
 22 Lands Section depend on the revenue for  
 23 its operating budget?  
 24 A. No.

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1 Q. Okay.

2 A. No.

3 Q. All right. Do you have any

4 sense of the number of subaqueous lands

5 leases you were issuing on an annual

6 basis when you and the two employees came

7 on board?

8 A. No, no.

9 Q. When you made your annual

10 report to your division director, do you

11 believe that you might have included that

12 type of information --

13 A. Yes.

14 Q. -- in the report?

15 A. Yes.

16 Q. Okay. And would the report

17 also have included the number of permits

18 for activities on subaqueous lands that

19 you had issued?

20 A. Yes.

21 Q. As part of your job duties

22 as manager, did you monitor any

23 activities on subaqueous lands after a

24 permit was issued?

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1 A. Monitor in what way? If you

2 could --

3 Q. Were -- who determined

4 whether the activity on subaqueous lands

5 was being done in conformance with a

6 permit?

7 A. We would occasionally go

8 back to a site where a subaqueous lands

9 permit had been issued and just check to

10 see if it was in compliance. We also

11 relied on complaints that would come in

12 from people that something had been built

13 and they wanted to know whether it was in

14 compliance, and we would go out and

15 respond to that complaint. So we did

16 have a -- we had a surveillance program

17 that was very spotty, quite spotty.

18 Q. Could you tell me, in your

19 early years when you were there as

20 manager with your two employees, what

21 procedure would you use to process an

22 application for a subaqueous lands lease?

23 A. The application was reviewed

24 and any deficiencies were made known to

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1 the applicant in writing. And once the

2 application was complete, per the

3 regulations, it was placed on public

4 notice for a 20-day period. Any comments

5 that we had were forwarded to the

6 applicant to respond to. If there was a

7 meritorious request for public hearing,

8 we would hold a public hearing.

9 Let me explain the two

10 different routes.

11 If the application was

12 complete and there was no request for a

13 public hearing and the 20 day notice

14 period was up, we would send the lease to

15 the applicant to sign and notarize and

16 then it would come back and at that time

17 it went to the governor for execution.

18 If a public hearing was

19 requested, we prepared a hearing

20 officer's report -- or the hearing

21 officer prepared a report and made a

22 recommendation to me whether the lease

23 should be issued or not, and it was

24 either denied or it was then issued.

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1 Q. At what point in this

2 process did anyone look at a map of the

3 subaqueous area that was the subject of

4 the application?

5 MR. WALTON: I object to the

6 form of the question.

7 BY MS. CONKLIN:

8 Q. Well, let me try and

9 simplify this.

10 Were there maps on file in

11 your office that depicted subaqueous

12 lands that were -- that might be the

13 subject of an application?

14 A. I'm not sure what type of

15 map you're referring to. Are you

16 referring to a highway map, an aerial

17 photo map? There were no regulatory

18 maps.

19 Q. There were no regulatory

20 maps.

21 Back in 1975 or '76, when

22 you received an application for a

23 subaqueous lands lease, how did the

24 department or how did you determine

62	<p>1 whether that land -- how did you                  2 determine who owned the land?                  3 A. The subaqueous land?                  4 Q. Uh-huh.                  5 A. We -- at the direction -- at                  6 the direction of the attorney general's                  7 office, if the land was below the mean                  8 high water line and above -- I mean, I                  9 have to go through nontidal and tidal                  10 areas because we considered subaqueous                  11 lands to be both nontidal and tidal.                  12 In the nontidal stream, it                  13 would depend on what the upland                  14 property's deed said. If their deed said                  15 they owned to the middle of the stream,                  16 that was private subaqueous lands and we                  17 issued a permit for any structural                  18 activities out there. If the permit had                  19 a meets and bounds description on it and                  20 it only went to the edge of the upland                  21 property and there was no deed or                  22 description of the stream, we assumed                  23 that was public subaqueous lands and the                  24 lease would have to be issued beyond that</p>	64	<p>1 visual observations of the high and low                  2 tide mark based on the rack line or the                  3 vegetative line and certain -- certain                  4 geographical or biological features that                  5 would tell -- that could average where                  6 the low tide line was. We did not do a                  7 survey. There were few instances -- I                  8 would say that 99 percent of our                  9 applications were for a dock or a pier to                  10 go out in the water, and those                  11 structures, as I said, 99 percent of the                  12 time would cross over land between the                  13 mean high and mean low water line and                  14 also extend beyond the mean low water                  15 line on the public's subaqueous land.                  16 Q. Do you have an estimate                  17 about the percentage of applications --                  18 no. Let me take that back.                  19 Is the Delaware River                  20 considered a tidal water?                  21 A. Yes.                  22 Q. What --                  23 A. Up to a certain point.                  24 Q. Up to a certain point. What</p>
63	<p>1 person's upland property.                  2 In tidal waters, if -- in                  3 tidal waters, the adjacent riparian owner                  4 owned the subaqueous lands between high                  5 water and low water, and the state of                  6 Delaware owned the subaqueous lands below                  7 the mean low water line.                  8 Q. And were there maps                  9 available to you in the early -- I think                  10 it was '74 or '75 when you first started                  11 as manager. Were there maps available to                  12 you that depicted areas waterward of the                  13 mean low water line in tidal areas?                  14 A. You mean that had the low                  15 water line depicted?                  16 Q. Yes.                  17 A. No.                  18 Q. Okay. How did you go about                  19 determining whether an applicant was                  20 requesting to lease property that was out                  21 shore of the mean low water line?                  22 A. We would go out to the                  23 sites. We visited every site that                  24 applied for a permit. And we would take</p>	65	<p>1 point is that?                  2 A. In Delaware it's all tidal.                  3 Q. Fine. That's what I needed                  4 to know.                  5 Back in the early part of                  6 your tenure as manager, do you have a                  7 sense of what proportion of your                  8 applications for leases concerned tidal                  9 waters as opposed to nontidal?                  10 A. No. No.                  11 Q. I mean, was it rare for you                  12 to get an application for a lease in                  13 tidal waters?                  14 A. Rare?                  15 Q. Yeah.                  16 A. I wouldn't characterize it                  17 as rare, no. No.                  18 Q. Okay. I'm trying to                  19 approach this from a different angle.                  20 A. Yes, yes.                  21 Q. So it would not have been                  22 unusual for you to have gotten                  23 applications requesting leases for tidal                  24 areas in the Delaware River?</p>

66

1     **A. Yes, yes.**  
 2     **Q. Okay. Let me ask you,**  
 3     **how -- when you visited these sites and**  
 4     **determined the high and low water marks,**  
 5     **how did you determine the -- how did**  
 6     **the -- how did you determine the area**  
 7     **that was the subject of the lease?**  
 8     **A. Well, generally, if there**  
 9     **was a lease for a pier, we didn't**  
 10    **distinguish between what part of that**  
 11    **pier was on private subaqueous lands and**  
 12    **what part of that pier was on public**  
 13    **subaqueous lands. We just issued a**  
 14    **subaqueous lands lease for the entire**  
 15    **structure, realizing that part of that**  
 16    **structure probably was over private**  
 17    **subaqueous lands. Again, we received no**  
 18    **objections from the lessees, and that's**  
 19    **the way we handled it.**  
 20    **Q. Who was responsible for**  
 21    **recording the location of lease**  
 22    **boundaries onto a map?**  
 23    **A. No one.**  
 24    **Q. So when you issued a lease**

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1     **or your staff issued a lease of a**  
 2     **subaqueous tidal property, the only thing**  
 3     **you went by was the written meets and**  
 4     **bounds on a lease?**  
 5     **A. I'm not sure what you're**  
 6     **getting at.**  
 7     **Q. What was -- if I wanted to**  
 8     **find out what area was the subject of a**  
 9     **lease that was issued back in 1975 or**  
 10    **'76, where would I go to find out the**  
 11    **meets and bounds of the leased area?**  
 12    **A. There was no meets and**  
 13    **bounds of the leased area. It was -- you**  
 14    **would look at the lease itself and see**  
 15    **what size the structure was, and that's**  
 16    **the area that we leased to the applicant.**  
 17    **Q. Okay. So the footprint of**  
 18    **the structure was the evidence of the**  
 19    **area that was being leased?**  
 20    **A. That's correct, yes.**  
 21    **Q. Okay. And you didn't count**  
 22    **area that was occupied by boats --**  
 23    **A. No. No.**  
 24    **Q. -- that might be using the**

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1     **structure?**  
 2     **A. Right.**  
 3     **Q. All right.**  
 4     **A. I know it varies from state**  
 5     **to state.**  
 6     **Q. Right.**  
 7     **When you issued a subaqueous**  
 8     **lease, did the lease cross-reference**  
 9     **particular drawings?**  
 10    **A. Yes. Yes. The lease --**  
 11    **construction had to be in accordance with**  
 12    **the approved plans that were submitted.**  
 13    **Q. Did you issue -- when you**  
 14    **approved a subaqueous lands lease, did**  
 15    **you always have to have an approved**  
 16    **project submitted along with it in order**  
 17    **to issue that lease?**  
 18    **MR. WALTON: I object to the**  
 19    **form of that question.**  
 20    **BY MS. CONKLIN:**  
 21    **Q. Let me try and make it**  
 22    **simpler.**  
 23    **Did you issue a subaqueous**  
 24    **lands lease just for an area of**

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1     **underwater land without having a proposed**  
 2     **project?**  
 3     **A. By a proposed project, you**  
 4     **mean something on the upland portion?**  
 5     **Q. No. A project for a**  
 6     **specific structure on subaqueous lands.**  
 7     **A. Yes, there had to be an**  
 8     **intended -- they had to tell us what the**  
 9     **intended use and purpose of that pier was**  
 10    **going to be.**  
 11    **Q. And would it be fair to say**  
 12    **you needed a proposed project in order to**  
 13    **know the area that was going to be**  
 14    **leased?**  
 15    **A. Yeah. We needed a drawing**  
 16    **of what the structure was going to be,**  
 17    **yeah. Correct.**  
 18    **Q. All right. Did there come a**  
 19    **time when you had maps of subaqueous**  
 20    **lands available to you to refer to?**  
 21    **A. No.**  
 22    **Q. So is it fair to say that**  
 23    **the procedure you've described to me**  
 24    **about reviewing and approving subaqueous**

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1 lands leases was the procedure that  
 2 applied throughout your tenure at DNREC?  
 3 **A. Well, we did get a little**  
 4 **bit more sophisticated as time went on,**  
 5 **and for some of the larger commercial and**  
 6 **industrial projects, we may have required**  
 7 **the applicant to go out and actually**  
 8 **survey the mean high and mean low water**  
 9 **lines, using NGBD and vertical datums and**  
 10 **that type of thing. But for minor**  
 11 **residential docks and piers, we didn't**  
 12 **require that type of surveying be done.**  
 13 **Q. Let me ask you, early --**  
 14 **well, if you had received an application**  
 15 **for a subaqueous lands permit, in other**  
 16 **words, a permit to conduct activities on**  
 17 **subaqueous lands, and an applicant**  
 18 **submitted to you a preexisting lease or**  
 19 **grant in connection with that permit, how**  
 20 **would you go about determining whether**  
 21 **the activity was occurring on leased or**  
 22 **granted land?**  
 23 **MR. WALTON: I object to the**  
 24 **form of the question, and lack of**

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1 **A. Yes, we did.**  
 2 **Q. All right. How did you go**  
 3 **about determining whether the proposed**  
 4 **activities were actually occurring on**  
 5 **areas that were leased to this person or**  
 6 **this applicant or determining that they**  
 7 **needed to apply for a lease?**  
 8 **MR. WALTON: Again, I object**  
 9 **to the form of the question.**  
 10 **BY MS. CONKLIN:**  
 11 **Q. Do you understand my**  
 12 **question?**  
 13 **A. I'm not sure. I don't think**  
 14 **so.**  
 15 **Q. Okay.**  
 16 **A. It's probably a procedural**  
 17 **thing that -- that type of thing you're**  
 18 **describing is not something that is**  
 19 **familiar to me as to how we would handle**  
 20 **an application -- how the process worked.**  
 21 **Q. All right. Let me ask**  
 22 **you --**  
 23 **A. You need to clarify.**  
 24 **Q. The error is probably mine**

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1 foundation and because it attempts  
 2 to characterize the prior  
 3 testimony of the witness.  
 4 **BY MS. CONKLIN:**  
 5 **Q. Do you understand my**  
 6 **question?**  
 7 **A. No.**  
 8 **Q. In the course of your tenure**  
 9 **as manager, and I'm thinking more of the**  
 10 **early years here, did you ever receive an**  
 11 **application for a subaqueous lands permit**  
 12 **that was -- that the applicant claimed**  
 13 **was going to be occurring on lands that**  
 14 **were already leased to them?**  
 15 **A. Okay.**  
 16 **Q. I mean, did you get such an**  
 17 **application as you recall?**  
 18 **A. Again, I'm confused about --**  
 19 **is it somebody that already has a lease**  
 20 **for a structure on subaqueous lands?**  
 21 **Q. Yes.**  
 22 **A. And they're now applying for**  
 23 **a permit to modify that structure?**  
 24 **Q. Yes.**

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1 and let me try it again.  
 2 **What would you do if you**  
 3 **received an application for a permit that**  
 4 **was going to be -- that was proposed to**  
 5 **occur where -- where the activities were**  
 6 **proposed to occur on land that the**  
 7 **applicant claimed they owned?**  
 8 **A. Oh. Okay. Subaqueous land**  
 9 **that they claim they owned?**  
 10 **Q. Yes. How did you go about**  
 11 **determining whether their ownership was**  
 12 **valid or not?**  
 13 **A. Well, the burden of proof**  
 14 **was on the applicant. Generally we would**  
 15 **refer those types of disputes to the**  
 16 **attorney general's office for their**  
 17 **resolution of that because our**  
 18 **understanding was that anything below the**  
 19 **mean water line, their claim was false,**  
 20 **that they could not claim land below the**  
 21 **mean low water line unless they had a**  
 22 **specific grant from William Penn or**  
 23 **something back in the 16 or 1700s. And**  
 24 **they were referred to the attorney**

74	<p>1 <b>general's office for resolution.</b></p> <p>2 Q. So it was not part of your</p> <p>3 duties to make a final determination in</p> <p>4 those cases?</p> <p>5 A. No.</p> <p>6 Q. Just about the validity of a</p> <p>7 grant claim, it was not your job?</p> <p>8 A. No, no.</p> <p>9 Q. When an issue came up that</p> <p>10 required input from the attorney</p> <p>11 general's office concerning a competing</p> <p>12 claim for subaqueous lands, what</p> <p>13 communication was sent to you that -- how</p> <p>14 were you informed of how that issue was</p> <p>15 resolved? Was there a writing or was it</p> <p>16 done orally?</p> <p>17 MR. WALTON: Objection.</p> <p>18 Compound question. And to the</p> <p>19 extent that you're seeking any</p> <p>20 communications or go beyond how a</p> <p>21 communication, I object on the</p> <p>22 basis of attorney/client</p> <p>23 privilege, but for the manner of</p> <p>24 the mere communication or how you</p>	76	<p>1 A. No.</p> <p>2 Q. All right. Do you know what</p> <p>3 process was used at the attorney</p> <p>4 general's office to evaluate claims for</p> <p>5 subaqueous lands ownership?</p> <p>6 A. Not specifically. We had</p> <p>7 conversations about particular projects,</p> <p>8 but we weren't involved in how they did</p> <p>9 it.</p> <p>10 Q. So you don't know what maps</p> <p>11 or data they consulted in resolving these</p> <p>12 issues of ownership?</p> <p>13 A. No.</p> <p>14 Q. Did that situation change at</p> <p>15 any point in your career?</p> <p>16 A. No.</p> <p>17 Q. Okay. Did there come a time</p> <p>18 in DNREC where there was like GIS</p> <p>19 technology available to DNREC that would</p> <p>20 show subaqueous land lease boundaries?</p> <p>21 A. No.</p> <p>22 Q. Okay. If there were such</p> <p>23 maps or GIS information available, would</p> <p>24 the attorney general's office have it?</p>
75	<p>1 received it, it's fine to answer,</p> <p>2 just not the substance of the</p> <p>3 communication.</p> <p>4 THE WITNESS: It was</p> <p>5 generally a memo from the deputy</p> <p>6 attorney general.</p> <p>7 BY MS. CONKLIN:</p> <p>8 Q. And was this memo informing</p> <p>9 you of a final resolution of a claimed</p> <p>10 ownership for the subaqueous lands?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And you would take</p> <p>13 that at face value and then proceed with</p> <p>14 the application?</p> <p>15 A. At face value? I'm not --</p> <p>16 can you just explain what you mean by --</p> <p>17 Q. Let me ask you something.</p> <p>18 When something was referred to the</p> <p>19 attorney general's office, when there was</p> <p>20 a competing claim -- when someone claimed</p> <p>21 to have subaqueous lands rights, were you</p> <p>22 part of the process at the attorney</p> <p>23 general's office that reviewed that</p> <p>24 claim?</p>	77	<p>1 A. I don't know.</p> <p>2 Q. All right.</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. All right. Who calculated</p> <p>5 the fee to be charged for leases of</p> <p>6 subaqueous land?</p> <p>7 A. My office.</p> <p>8 Q. All right. And was this</p> <p>9 based on a formula?</p> <p>10 A. Yes. It was based on a fee</p> <p>11 schedule.</p> <p>12 Q. Did you have a fee schedule</p> <p>13 back in 1975?</p> <p>14 A. Yes.</p> <p>15 Q. Was it a straight cubic yard</p> <p>16 figure? Oh, I'm sorry. Was it a per</p> <p>17 unit figure?</p> <p>18 A. Yes, yes, it was.</p> <p>19 Q. All right. And what were</p> <p>20 the units?</p> <p>21 A. Square feet of structure and</p> <p>22 cubic yards of material dredged.</p> <p>23 Q. Okay.</p> <p>24 (Recess taken from</p>

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1 11:05 a.m. to 11:13 a.m.)  
 2 BY MS. CONKLIN:  
 3 Q. To your knowledge, does  
 4 DNREC keep a map of the location of all  
 5 the leases it issues?  
 6 A. A separate map showing what  
 7 lands it's leased?  
 8 Q. Uh-huh.  
 9 A. No.  
 10 Q. When you were manager at  
 11 DNREC, did you ever see such a map?  
 12 A. No.  
 13 Q. All right. Did you ever  
 14 talk to anybody at DNREC who claimed to  
 15 have seen that map, any such map?  
 16 A. No.  
 17 Q. Okay. If a member of the  
 18 public wanted to find out what areas of  
 19 subaqueous land had been the subject of a  
 20 lease issued by your section, where would  
 21 they go to find that information out?  
 22 A. Well, they would come to us  
 23 and we would have to search on -- we keep  
 24 a database and that database is kept

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1 alphabetically by year of who leases are  
 2 issued to, and we would have to search  
 3 all those leases and then pull them out  
 4 by hand, showing where those leased lands  
 5 were.  
 6 Q. And when you say  
 7 alphabetically by --  
 8 A. Lessee.  
 9 Q. Lessee name?  
 10 A. Yes.  
 11 Q. Okay. So for each year  
 12 there would be a whole new alphabetical  
 13 listing?  
 14 A. Yes.  
 15 Q. Is there a database that  
 16 shows when leases expire?  
 17 A. Yes.  
 18 Q. Did you have records like  
 19 that available to you in the '70s?  
 20 A. No. No.  
 21 Q. What records did you keep in  
 22 the early years of your career that  
 23 recorded lessee identity?  
 24 A. Just a file, an alphabetical

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1 filing system with the lessees in there  
 2 and then the general -- kind of a  
 3 notebook of what all those leases were.  
 4 It was all done by hand, all manually.  
 5 It was the '70s.  
 6 Q. At some point did this  
 7 become computerized information?  
 8 A. Yes.  
 9 Q. Okay. When was that?  
 10 A. I can't say specifically  
 11 what -- when it was.  
 12 Q. And the computerized  
 13 information was the same information as  
 14 was kept longhand?  
 15 A. Yes. Yes.  
 16 Q. All right. So I would still  
 17 go by year and then within each year an  
 18 alphabetical listing of leaseholders?  
 19 A. Yes, assuming they do it the  
 20 same way now that was done when I was  
 21 there.  
 22 Q. You can only speak to --  
 23 A. Yes.  
 24 Q. You can only speak to how it

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1 was done when you were there?  
 2 A. Yes.  
 3 Q. As manager, was there a lot  
 4 or block number assigned to subaqueous  
 5 leases?  
 6 A. Usually it was by parcel  
 7 number, by the property parcel number  
 8 from each county.  
 9 Q. And when you say from each  
 10 county, what do you mean?  
 11 A. Well, New Castle County has  
 12 their own separate parcel numbers. Kent  
 13 and Sussex each has their own property  
 14 parcel numbers.  
 15 Q. How did you know whether an  
 16 applicant's designation of a parcel  
 17 number was correct?  
 18 A. We had the parcel number  
 19 books in our offices that we checked them  
 20 against.  
 21 Q. How did the counties arrange  
 22 parcels of subaqueous lands?  
 23 A. Well, these were parcels of  
 24 the upland adjacent to the subaqueous

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1 lands. I'm sorry, not parcels of  
 2 subaqueous lands. Sorry if I misled you.  
 3 Q. Okay. How did a parcel  
 4 number of an upland property relate to a  
 5 subaqueous area that was the subject of a  
 6 lease?  
 7 A. It didn't originally, but  
 8 now all leases are recorded. They're  
 9 recorded in the Recorder of Deeds office  
 10 in each county. So those deeds now go  
 11 with the property. If the property is  
 12 sold, one of the documents that goes with  
 13 the property deed is the subaqueous lands  
 14 structure attached to the property.  
 15 Q. Okay. When you would  
 16 consult a county book, did those county  
 17 books parcel out and identify subaqueous  
 18 lands and assign numbers to that  
 19 subaqueous land?  
 20 A. I don't believe so.  
 21 Q. Did the county book impose a  
 22 grid on subaqueous lands and assign  
 23 numbers --  
 24 A. No.

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1 Q. -- to each grid?  
 2 A. Not to my knowledge.  
 3 Q. All right. How did you go  
 4 about assigning a parcel number to a  
 5 subaqueous lease, a particular area?  
 6 MR. WALTON: Object to the  
 7 form of the question.  
 8 BY MS. CONKLIN:  
 9 Q. Okay. Was there an  
 10 identifying number assigned to each  
 11 subaqueous area that was leased by the  
 12 state?  
 13 A. Just -- we put a number on  
 14 the lease, identifying number on the  
 15 lease, and that was what was recorded in  
 16 the Recorder of Deeds office.  
 17 Q. Okay. Was the numbering  
 18 system just sequential based on --  
 19 A. Basically, yes.  
 20 Q. -- date of receipt or  
 21 something?  
 22 A. Yes.  
 23 Q. So, for example, if I have  
 24 a -- if you received -- if you were going

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1 to issue a lease and the application was  
 2 number 1234, 1,234, did 1-2-3-4, that  
 3 number, become assigned to the area that  
 4 was the subject of that subaqueous lease?  
 5 A. I assume so, when it was  
 6 recorded in the Recorder of Deeds office.  
 7 Q. Okay. And the recording in  
 8 the county office began when to your  
 9 knowledge?  
 10 A. Ten years ago. That's a  
 11 best guess.  
 12 Q. Was there any point in time  
 13 in which this numbering system changed?  
 14 A. Yeah, it probably changed  
 15 several times over the 30 years that I  
 16 was there, just the format and how we  
 17 recorded when it came in. It was either  
 18 changed from month, year and then the  
 19 number or a sequential number through the  
 20 year. Yeah, I do believe it changed a  
 21 couple of times.  
 22 Q. At any point in time when  
 23 you were manager, did subaqueous land  
 24 have a lot and block assigned to it?

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1 A. No.  
 2 Q. When you as a consultant now  
 3 file an application for a permit for  
 4 activity on some subaqueous land, do  
 5 those permits refer to a lot and block?  
 6 A. No.  
 7 Q. All right. If as part of  
 8 your consulting duties you have to  
 9 research whether a particular subaqueous  
 10 parcel is owned or leased, how do you go  
 11 about doing that?  
 12 MR. WALTON: And I object to  
 13 the form of the question.  
 14 BY MS. CONKLIN:  
 15 Q. Let me rephrase that.  
 16 Have you ever had occasion  
 17 as a consultant to have to determine  
 18 whether a subaqueous area in the Delaware  
 19 River is the subject of a lease or do you  
 20 ever have to determine who owns a  
 21 subaqueous area? How do you go about  
 22 determining that?  
 23 A. I don't know how to do that  
 24 as a consultant.

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1 Q. Okay. Who would be the  
 2 appropriate person to do that?  
 3 A. I'm not -- I believe it  
 4 would be DNREC, someone in the Wetlands  
 5 and Subaqueous Lands Section.  
 6 Q. When you were manager at  
 7 DNREC, who would do that inquiry? If  
 8 that inquiry needed to be made, who would  
 9 do it?  
 10 A. Of what subaqueous lands was  
 11 leased? I would imagine it would be --  
 12 I'm not sure I understand the question.  
 13 Inquiry from an individual person or a  
 14 consulting firm or --  
 15 Q. If someone, anyone, DNREC  
 16 employee, member of the public, needed to  
 17 know whether a particular subaqueous area  
 18 was the subject of a lease or not, where  
 19 would they go to find out?  
 20 A. They would come to our  
 21 office, Wetlands and Subaqueous Lands  
 22 Section.  
 23 Q. Okay. And where would you  
 24 find that information out?

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1 A. In our records that we kept  
 2 on what land was leased at what location.  
 3 Q. Okay.  
 4 A. Based on the upland property  
 5 owner and the lessee's name.  
 6 Q. Okay.  
 7 A. They would indicate what  
 8 area they would want to search and we  
 9 would find the tax parcels of the people  
 10 that own that upland property and then  
 11 search our database to see whether any of  
 12 those parcel property owners had  
 13 subaqueous lands leases.  
 14 Q. How would the upland  
 15 property location help you in finding out  
 16 whether a subaqueous parcel was leased or  
 17 not?  
 18 A. Because the records are all  
 19 filed by who owns the upland property.  
 20 So if that name is not in our database,  
 21 presumably no subaqueous lands lease has  
 22 been issued for that piece of property.  
 23 Q. Okay. How do you go -- how  
 24 do you track changes in ownership of

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1 upland property?  
 2 A. It's very difficult. But,  
 3 now, since subaqueous land leases have to  
 4 be recorded, when the property changes  
 5 hands, that lease goes with the property,  
 6 so the new property owner, that lease  
 7 would be part of their deed.  
 8 Q. Would it then be the case  
 9 that the only people who would be getting  
 10 leases would be owners of upland  
 11 property?  
 12 MR. WALTON: Object to the  
 13 form of the question.  
 14 BY MS. CONKLIN:  
 15 Q. Would you be -- let me ask  
 16 you. As a manager in DNREC, did you  
 17 issue at any time, when you were  
 18 employed, did you issue a lease for a  
 19 subaqueous parcel to someone who was not  
 20 the owner of the adjacent uplands?  
 21 A. No. Owner or had an  
 22 interest in the property?  
 23 Q. Right.  
 24 A. Yeah. A legal interest in

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1 the property or permission from the  
 2 owner.  
 3 Q. Right. In setting the value  
 4 of a lease area, did you consider the  
 5 value -- did you consider how the  
 6 construction on the subaqueous land  
 7 contributed to the value of the upland  
 8 parcel?  
 9 A. No.  
 10 Q. Okay. In determining the  
 11 value of -- how do I put it -- the fee  
 12 for lease of subaqueous property, did you  
 13 determine -- was the ratio in size  
 14 between the upland and the subaqueous  
 15 development relevant?  
 16 A. No.  
 17 Q. Okay. And in determining  
 18 the fee for a subaqueous lease, you  
 19 indicated that the area that -- you  
 20 considered the area waterward of the mean  
 21 low water as well as what additional  
 22 area?  
 23 A. Between mean high and mean  
 24 low.

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1 Q. And that was also part of  
 2 the area that DNREC charged a lease fee  
 3 for?  
 4 A. Yes.  
 5 Q. Okay. As part of your job  
 6 as manager, was it your responsibility to  
 7 determine -- to ensure that leaseholders  
 8 made their annual fee payments?  
 9 A. Yes.  
 10 Q. Okay. And as part of your  
 11 job at DNREC, did you receive  
 12 applications for renewal of leases of  
 13 subaqueous lands?  
 14 A. Yes.  
 15 Q. Okay. As part of your  
 16 duties as manager, do you recall  
 17 receiving an application for a lease  
 18 renewal of subaqueous lands from DuPont  
 19 de Nemours, otherwise popularly known as  
 20 DuPont?  
 21 A. At what location? I'm not  
 22 sure. There are several DuPont  
 23 facilities.  
 24 (Whereupon, Deposition

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1 Exhibit No. Moyer-1, Memo dated  
 2 9/4/81 to Bill Moyer from Mike  
 3 Malkiewicz, Bates DE 19366, was  
 4 marked for identification.)  
 5 MS. CONKLIN: let me show you  
 6 a document identified as  
 7 Exhibit 1, which will be Moyer-1,  
 8 also referred to by Bates number  
 9 DE 19366.  
 10 (Whereupon, Deposition  
 11 Exhibit No. Moyer-2, Memo dated  
 12 9/10/81 to Bill Moyer from Mike  
 13 Malkiewicz, Bates DE 19367, was  
 14 marked for identification.)  
 15 MS. CONKLIN: And I will  
 16 also provide you a copy of an  
 17 exhibit marked Moyer-2.  
 18 (Whereupon, Deposition  
 19 Exhibit No. Moyer-3, Lease Granted  
 20 to E.I. Du Pont de Nemours and  
 21 Company dated 9/29/71, Bates DUP  
 22 0001256-1261, was marked for  
 23 identification.)  
 24 MS. CONKLIN: And just for

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1 convenience, I will give you a  
 2 copy of an exhibit marked Moyer-3.  
 3 BY MS. CONKLIN:  
 4 Q. Mr. Moyer, I provided you  
 5 with three exhibits. Moyer-1 is a  
 6 memorandum to Bill Moyer from Mike  
 7 Malkiewicz, M-A-L-K-I-E-W-I-C-Z. And  
 8 Moyer-2 is -- Moyer-1 is dated  
 9 September 4, 1981. And then Moyer-2 is  
 10 another memorandum dated September 10,  
 11 1981. And these memoranda purport to be  
 12 regarding renewal of a DuPont Chambers  
 13 Works subaqueous lease.  
 14 Do these memoranda refresh  
 15 your recollection whether you had  
 16 occasion to consider an application for  
 17 renewal of a subaqueous lease by DuPont  
 18 at its Chambers Works facility?  
 19 A. I honestly don't remember.  
 20 This is for the dock. To the best of my  
 21 recollection, based on these -- based on  
 22 these memoranda, I think we received  
 23 application for a renewal, but I can't  
 24 say for sure.

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1 Q. All right. Moyer-3, I'm  
 2 representing to you, is a copy of a lease  
 3 granted to E.I. DuPont on September 29,  
 4 1971, and it is executed by Russell  
 5 Peterson, who I believe was the governor  
 6 of Delaware at that time. And my  
 7 question would be, if this 1971 lease  
 8 needed to be renewed, would that renewal  
 9 application have been filed with your  
 10 office?  
 11 A. Yes.  
 12 Q. All right. Do you recall,  
 13 looking at Moyer-3, which is this lease,  
 14 whether you had occasion to consider the  
 15 renewal of this lease?  
 16 A. I can't remember.  
 17 Q. All right. Do the memoranda  
 18 identified as Moyer-1 and Moyer-2 suggest  
 19 to you that the renewal of this lease was  
 20 in fact submitted to you?  
 21 A. It seems to indicate that we  
 22 had an application for a renewal.  
 23 Q. All right.  
 24 A. And I can only assume that

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1 we issued it, but I don't recall. I  
 2 don't have a vivid memory of whether that  
 3 was actually reissued or not, unless you  
 4 have a copy you can share with me.  
 5 Q. Before you would determine  
 6 whether to renew a lease or not, would  
 7 you routinely check to make sure that a  
 8 lessee had paid all its lease payments  
 9 under the prior lease?  
 10 A. Yes.  
 11 Q. Do you recall checking  
 12 whether DuPont had paid its lease  
 13 obligations under this 1971 lease?  
 14 A. I do not, no.  
 15 MS. CONKLIN: I'd like this  
 16 marked as Moyer-4.  
 17 (Whereupon, Deposition  
 18 Exhibit No. Moyer-4, Memo dated  
 19 1/15/82 to June MacArtor from  
 20 William Moyer, Bates DE 19368, was  
 21 marked for identification.)  
 22 BY MS. CONKLIN:  
 23 Q. Mr. Moyer, I provided you  
 24 with an exhibit marked Moyer-4, which

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1 appears to be a memorandum to June  
 2 MacArtor, M-A-C capital A-R-T-O-R, from  
 3 William Moyer dated January 15, 1982,  
 4 Subject: Subaqueous Lands Lease-DuPont.  
 5 And the memorandum reads, "To date, the  
 6 Wetlands Section has not received the  
 7 lease payment requested in your  
 8 October 23rd, 1981 letter to Mr. Alan  
 9 Skinner.  
 10 "Could you inquire as to the  
 11 reason for the delay and get back with  
 12 me?"  
 13 Does this memorandum refresh  
 14 your recollection whether you had  
 15 occasion to look at the 1971 lease and  
 16 inquire whether lease payments had been  
 17 made?  
 18 A. Yes, I think it's clear that  
 19 I had looked at the lease and was trying  
 20 to determine why the fee had not been  
 21 paid.  
 22 Q. Okay. There's a reference  
 23 here to an October 23rd, 1981 letter  
 24 from -- when you say "your," it must be

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1 June MacArtor; at least I'm thinking  
 2 that's the case. Do you recall being  
 3 given a copy of that letter?  
 4 A. No. Well, yeah, I must have  
 5 had a copy of the letter as indicated in  
 6 this memorandum. At some point when we  
 7 tried to obtain a lease fee from a  
 8 lessee, if they didn't pay it, we'd refer  
 9 it to the deputy attorney general's  
 10 office for further action.  
 11 MS. CONKLIN: I have an  
 12 exhibit for Moyer-5.  
 13 (Whereupon, Deposition  
 14 Exhibit No. Moyer-5, Letter dated  
 15 10/23/81 to Alan L. Skinner,  
 16 Esquire, from June D. MacArtor, no  
 17 Bates stamp, was marked for  
 18 identification.)  
 19 BY MS. CONKLIN:  
 20 Q. Mr. Moyer, I presented you  
 21 with an exhibit marked Moyer-5, which  
 22 appears to be a letter dated  
 23 October 23rd, 1981 from June MacArtor to  
 24 Alan Skinner, Esquire, Legal Department,

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1 E.I. DuPont de Nemours.  
 2 Looking at your memorandum,  
 3 Exhibit Moyer-4, it refers to an  
 4 October 23rd, 1981 letter to Mr. Alan  
 5 Skinner, does it not?  
 6 A. Yes.  
 7 Q. Okay. Do you have any  
 8 reason to believe that Moyer-5, the  
 9 letter I just handed to you, do you have  
 10 reason to believe that this is the letter  
 11 referred to in your memo?  
 12 A. Yes.  
 13 Q. Okay. Sitting here today,  
 14 do you recall having seen this before?  
 15 A. I don't recall it. I did  
 16 see it before, yes.  
 17 Q. All right. Were you aware  
 18 whether Ms. MacArtor received a response  
 19 to her letter?  
 20 A. No.  
 21 Q. All right. Did Ms. MacArtor  
 22 ever advise you about whether you would  
 23 be getting a payment from DuPont for its  
 24 1971 lease obligations?

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1 MR. WALTON: I'm going to  
 2 place an objection on advice from  
 3 Ms. MacArtor to Mr. Moyer because,  
 4 as Mr. Moyer testified, she was  
 5 the attorney for the attorney  
 6 general's office assigned to the  
 7 Department of Natural Resources  
 8 and Environmental Control at that  
 9 time.  
 10 MS. CONKLIN: I understand  
 11 that. And I also understand that  
 12 it's Mr. Moyer's obligation to  
 13 determine whether fee payments  
 14 have been made before he can act  
 15 on a pending application or  
 16 renewal.  
 17 MR. WALTON: Let me make  
 18 that suggestion to sort of resolve  
 19 the impasse. Why don't you ask  
 20 Mr. Moyer about his personal  
 21 knowledge and not what Ms.  
 22 MacArtor advised and that would  
 23 remove my objection on  
 24 attorney/client privilege basis.

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1 BY MS. CONKLIN:  
 2 Q. You sent a memo to -- I'm  
 3 sorry, let me ask you.  
 4 Exhibit Moyer-4 is a memo  
 5 that you sent to June MacArtor asking for  
 6 her to inquire as to the reason for the  
 7 delay in a DuPont payment, right?  
 8 A. Yes.  
 9 Q. And does this exhibit,  
 10 Moyer-4, also ask Ms. MacArtor to get  
 11 back to you on that issue?  
 12 A. Yes.  
 13 Q. Did Ms. MacArtor get back to  
 14 you on that issue?  
 15 MR. WALTON: Answer the  
 16 question, but the substance of the  
 17 testimony is privileged -- or the  
 18 substance of the communication is  
 19 privileged.  
 20 THE WITNESS: Not to my  
 21 knowledge. I don't recall.  
 22 BY MS. CONKLIN:  
 23 Q. You never heard from --  
 24 A. I don't recall receiving a

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1 letter or correspondence back from her.  
 2 Q. Would you have issued a  
 3 renewal of the subaqueous lands lease if  
 4 a lessee had not paid its lease  
 5 obligations under a prior lease?  
 6 A. No.  
 7 Q. And on what basis would  
 8 you -- how would I put it? On what -- is  
 9 that just standard procedure?  
 10 A. Well, the lease -- the  
 11 lease's condition is that if the terms  
 12 and conditions of the lease are not met,  
 13 it's subject to enforcement penalties or  
 14 nonrenewal. I mean, at the end of ten  
 15 years, you revisit the entire application  
 16 again and make a determination again of  
 17 whether there's been compliance. And one  
 18 of the bases for not renewing is  
 19 noncompliance with the permit.  
 20 Q. Did your section ever  
 21 receive any payment from DuPont for the  
 22 1971 lease identified as Moyer-3?  
 23 A. Not that I recall. I don't  
 24 know.

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1 Q. If I wanted to find out  
 2 whether DuPont had paid any -- had  
 3 submitted any payments to the state for  
 4 its obligations under its 1971 lease,  
 5 which is Moyer-3, where would I go to  
 6 find that out?  
 7 A. To the records of the  
 8 Wetlands and Subaqueous Lands Section.  
 9 Q. Okay. To your knowledge,  
 10 was this lease renewed?  
 11 A. My understanding -- my  
 12 understanding is that all structures that  
 13 are beyond the low water line on the  
 14 easterly side of the Delaware River have  
 15 been leased. Those that extend in beyond  
 16 the low water line into Delaware waters  
 17 have the appropriate leases, but I can't  
 18 testify whether this specific one was  
 19 reissued. I don't know whether there was  
 20 a later application or what took place  
 21 after this.  
 22 Q. If there were structures put  
 23 on subaqueous lands that had been leased  
 24 and the lease expired and wasn't renewed,

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1 what was your office's policy about  
 2 keeping the structures on the subaqueous  
 3 land?  
 4 **A. It varied, depending on the**  
 5 **size and impact of the structures. We**  
 6 **would either -- well, we had options of**  
 7 **taking enforcement, reissuing the lease**  
 8 **with the new structure on there and a new**  
 9 **fee, or having the structures removed.**  
 10 **Q. All right. The exhibit**  
 11 **identified as Moyer-3 is entitled "Lease**  
 12 **Granted to E.I. DuPont deNemours &**  
 13 **Company to dredge, construct a bulkhead,**  
 14 **fill behind said bulkhead, construct a**  
 15 **dock and construct a fuel oil storage**  
 16 **tank at its 'Chambers Works' facility**  
 17 **along the Delaware River."**  
 18 **Did you determine whether**  
 19 **any of these improvements had ever been**  
 20 **erected as a result of this lease?**  
 21 **A. No.**  
 22 **Q. And just to make my question**  
 23 **clear, you never -- you never attempted**  
 24 **to determine that?**

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1 **A. Did not.**  
 2 **Q. Okay. And it's your**  
 3 **testimony today that you never found out**  
 4 **whether DuPont paid the state of Delaware**  
 5 **for the lease identified as Moyer-3?**  
 6 **MR. WALTON: Object to the**  
 7 **characterization of the prior**  
 8 **testimony.**  
 9 **BY MS. CONKLIN:**  
 10 **Q. Do you understand my**  
 11 **question?**  
 12 **A. Could you rephrase it or --**  
 13 **Q. Sure. Did you ever find out**  
 14 **whether DuPont paid its obligations under**  
 15 **this 1971 lease?**  
 16 **A. They could have paid it. I**  
 17 **just don't recall it. And I never -- I**  
 18 **don't recall going back and trying to**  
 19 **find out if they had paid it or not. I**  
 20 **just can't recollect that long ago as to**  
 21 **whether that fee was paid or not.**  
 22 **Q. What did you do with the**  
 23 **application that was pending before you**  
 24 **in 1981 for renewal of the DuPont**

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1 Chambers Works subaqueous lease?  
 2 **A. I don't recall.**  
 3 **MS. CONKLIN: Counsel, I'm**  
 4 **going to make a request for you to**  
 5 **search your files and provide a**  
 6 **copy of any renewals of this lease**  
 7 **or to advise us whether there was**  
 8 **no renewal on record. I'll put**  
 9 **all this in writing.**  
 10 **MR. WALTON: I'll have to**  
 11 **look.**  
 12 **BY MS. CONKLIN:**  
 13 **Q. When you received the**  
 14 **application from DuPont Chambers Works**  
 15 **that's referred to in the first two**  
 16 **memos, Moyer-1 and Moyer-2, did you look**  
 17 **at the 1971 lease that they were**  
 18 **requesting to renew?**  
 19 **A. I would assume so, yes.**  
 20 **Q. All right. When you looked**  
 21 **at the lease -- I'm going to direct you**  
 22 **to Moyer-3. If you could turn to page 3,**  
 23 **which is also identified as DUP 0001258**  
 24 **at the bottom of the page.**

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1 **A. Yes.**  
 2 **Q. Okay. There is a paragraph**  
 3 **that's indented, and it sets forth**  
 4 **payment amounts, does it not, for --**  
 5 **A. Yes.**  
 6 **Q. -- lease and dredging of**  
 7 **subaqueous lands? Does the paragraph**  
 8 **provide for a ten-year lease?**  
 9 **A. Yes.**  
 10 **Q. Is that a standard lease**  
 11 **term --**  
 12 **A. Yes.**  
 13 **Q. -- in your section?**  
 14 **A. Uh-huh. Yes.**  
 15 **Q. Okay. All right.**  
 16 **I'd like to look -- let's**  
 17 **see, I will just read into the record a**  
 18 **paragraph that begins about ten sentences**  
 19 **from the bottom. It says 1(a). "Lessee**  
 20 **agrees to pay lessor the amounts, with**  
 21 **6 percent annual interest from the date**  
 22 **of this agreement, as scheduled in the**  
 23 **preceding paragraph in the event that the**  
 24 **disputed title to the subaqueous lands in**

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1 question is resolved in favor of lessor  
 2 at some future date under a final  
 3 judgment of a federal court of competent  
 4 authority. Lessor agrees to defer the  
 5 collection of the fees, herein referred  
 6 to, until the title question is resolved  
 7 as herein agreed."  
 8 Do you recall seeing this  
 9 provision before today?  
 10 A. Yes.  
 11 Q. Okay. And where have you  
 12 seen this provision?  
 13 A. In this lease.  
 14 Q. Okay. And when do you  
 15 recall reviewing this particular portion  
 16 of the lease?  
 17 A. In the draft permit that  
 18 went out to the lessee from my office to  
 19 sign and notarize.  
 20 Q. So there was a draft permit  
 21 that your office issued?  
 22 A. Well, it's not a draft. The  
 23 lease as prepared goes to the applicant  
 24 or lessee for them to sign, notarize and

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1 return to my office.  
 2 Q. And would this lease that  
 3 you're referring to have been sent out  
 4 sometime in 1981 or 1982?  
 5 A. I assume it was sent out in  
 6 1971. Sometime in '71.  
 7 Q. Okay. So this is -- this  
 8 is -- when you say you saw this  
 9 provision, when did you first see this  
 10 provision?  
 11 A. I don't recall.  
 12 Q. Okay. Did you ever see this  
 13 provision in any other lease other than  
 14 this document?  
 15 A. It is a unique condition,  
 16 but I can't say that it wasn't on other  
 17 leases.  
 18 Q. All right. Do you recall  
 19 whether this was on any other lease  
 20 issued to DuPont?  
 21 A. I don't recall.  
 22 Q. But it could have been on  
 23 some other lease issued to some other  
 24 lessee?

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1 A. It's possible, yes.  
 2 Q. Okay. Would you have put  
 3 this provision in a lease on your own  
 4 authority?  
 5 A. No.  
 6 Q. Who would have had to have  
 7 approved the insertion of this type of  
 8 language in a lease document?  
 9 MR. WALTON: I'm going to  
 10 object on the grounds that this  
 11 lease document that we've been  
 12 referring to occurred before Mr.  
 13 Moyer's tenure in the Department  
 14 of Natural Resources,  
 15 Environmental Control.  
 16 BY MS. CONKLIN:  
 17 Q. Mr. Moyer, you've testified  
 18 that this language that I've read into  
 19 the record could have been on one or two  
 20 other leases that were issued by your  
 21 office? Did I hear you correctly?  
 22 A. Yes.  
 23 Q. All right. If this language  
 24 was on one or two other leases issued by

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1 your office, would you have had the  
 2 authority to put this language in the  
 3 lease?  
 4 A. This was -- this was not one  
 5 of the standard conditions that we put in  
 6 leases. I was authorized to put in  
 7 conditions that I felt were necessary to  
 8 comply with state law and regulation, but  
 9 my reading of this condition would  
 10 indicate to me that it had some  
 11 involvement from the attorney general's  
 12 office or someone other than my section.  
 13 Q. Who in DNREC would have had  
 14 authority to -- who in DNREC would have  
 15 had the authority to approve the  
 16 insertion of this language in a  
 17 subaqueous lands lease?  
 18 A. Again, I would assume that  
 19 it would be the attorney general's  
 20 office. It was not something that was  
 21 normally part of my routine lease  
 22 issuance.  
 23 Q. Did the attorney general's  
 24 office review every lease prior to its

110	<p>1 signature by DNREC officials?                  2 A. No.                  3 Q. Who would send a draft lease                  4 to the attorney general's office for                  5 insertion of a paragraph like this?                  6 A. I don't know.                  7 Q. Do you recall when this                  8 request for an application for a lease                  9 renewal was pending for DuPont whether                  10 there was -- let me rephrase this.                  11 At the time when the                  12 question of a renewal of this DuPont                  13 lease was pending in your office, did you                  14 get the impression there was going to be                  15 litigation over this?                  16 A. I don't recall.                  17 Q. Did you meet with the                  18 attorney general's office concerning                  19 DuPont's request for renewal of its                  20 subaqueous lands lease from 1971?                  21 A. Again, I don't recall.                  22 Q. Back when DuPont's request                  23 for a renewal of its subaqueous lands                  24 lease was before you, had you heard of</p>	112	<p>1 boundaries of subaqueous lands that were                  2 under the control of the state of                  3 Delaware?                  4 A. Yes.                  5 Q. Okay. How did you go about                  6 making -- how did you go about learning                  7 that boundary?                  8 A. Several maps that I'd looked                  9 at of Delaware and New Jersey, USGS topo                  10 maps, state highway maps. Just general                  11 surveys of the state boundary line                  12 showing where the state line was.                  13 Q. And could you generally                  14 describe the boundary of the state of                  15 Delaware as it traverses and goes down                  16 the Delaware River?                  17 A. Uh-huh. The 12-mile circle                  18 that you referred to, which goes over to                  19 the easterly side of the Delaware River,                  20 just above the existing Logan power                  21 generating plant, then down to the low                  22 water line of New Jersey to a point just                  23 at the tip of Artificial Island, westerly                  24 across Artificial Island, and then down</p>
111	<p>1 something called the 12-mile circle?                  2 A. I have heard of the 12-mile                  3 circle. I'm not sure where in my tenure                  4 with DNREC I heard of that. I can't -- I                  5 can't testify that it was during this                  6 time -- time frame when we got the                  7 application for renewal.                  8 Q. Back when this request for                  9 DuPont's -- back when DuPont's request                  10 for a subaqueous lands lease was pending                  11 before you, were you aware of something                  12 called the Compact of 1905?                  13 A. No.                  14 Q. When you first became                  15 manager of the subaqueous -- of the                  16 Wetlands and Subaqueous Section, did Mr.                  17 Street ever tell you there was something                  18 called the 1905 Compact?                  19 A. No.                  20 Q. Okay. Were you aware when                  21 you -- in the early -- well, when you                  22 took the job as manager of the Wetlands                  23 and Subaqueous Lands Section, was it part                  24 of your official duties to know the</p>	113	<p>1 through the middle of the Delaware Bay.                  2 And I believe that those locations are                  3 actually monumented where that line is                  4 located.                  5 Q. When you saw the -- when you                  6 observed that the boundary line between                  7 the states departed from the middle of                  8 the channel, did you ever ask why that                  9 was the case?                  10 A. Probably, yes.                  11 Q. And what was your                  12 understanding of why the boundary line                  13 was located at the mean low water line --                  14 the mean low water line on the New Jersey                  15 side as you described?                  16 A. Just general discussions                  17 that I had with probably attorneys or                  18 other staff people at DNREC about the                  19 12-mile circle and how that line was                  20 established from the center of New Castle                  21 and the line was drawn and going back to                  22 the deed of William Penn. Just general                  23 discussions.                  24 Q. Were you aware of any</p>

114	<p>1 connection between the DuPont lease, 2 which we've identified as Moyer-3, and 3 anything related to that boundary that 4 you just described? 5 MR. WALTON: I'm going to 6 object to the form of the 7 question. 8 BY MS. CONKLIN: 9 Q. You indicated that there 10 was -- well, let me ask you. 11 You indicated that there was 12 a boundary between Delaware and New 13 Jersey that was along a mean low water 14 line in parts of the Delaware River, 15 right? Are you aware of any connection 16 between the 1971 lease and its renewal 17 and the setting of that boundary at the 18 mean low water line? 19 A. I don't know of any 20 connection between that lease renewal and 21 the setting of the boundary line because 22 my understanding is that the boundary 23 line was set long before DuPont came in 24 to renew that lease. And I could only</p>	116	<p>1 A. 30 or 40. 2 Q. Just in an average year? 3 A. Approximately, uh-huh. 4 Q. All right. Now, would you 5 be able to distinguish between lease 6 renewals and new leases in that number? 7 A. No, no. 8 Q. Okay. Was this 30 to 40 9 number a number that represented your 10 entire office's efforts on leases? 11 A. Yes, yes. 12 Q. Okay. At its largest size, 13 how many people were processing lease 14 applications in your Wetlands and 15 Subaqueous Section? 16 A. Eight to ten. 17 Q. Not clerical, just -- I'm 18 excluding clerical from that. 19 A. Okay. I'd say six. 20 Q. Would that include you? 21 A. Yes. 22 Q. Okay. All right. As 23 manager of the Wetlands and Subaqueous 24 Section, did you at any time give</p>
115	<p>1 assume, looking at the '71 lease, that 2 there must have been a structure there 3 that went beyond that boundary into 4 Delaware waters or Delaware subaqueous 5 lands. 6 Q. Are you aware of any claims 7 that DuPont made that concerned its 8 failure to pay -- that supported its 9 failure to pay its lease obligations 10 under the 1971 lease? 11 A. I'm not. Or I don't recall. 12 MR. WALTON: Off the record. 13 (Recess taken from 14 12:04 p.m. to 1:10 p.m.) 15 BY MS. CONKLIN: 16 Q. Mr. Moyer, forgive me if I 17 repeat some questions. I don't know if I 18 am; I don't think I am, but I will ask 19 you, do you have a recollection of the 20 number of leases of subaqueous land that 21 you processed in an average year when you 22 were at the -- 23 A. Leases? 24 Q. -- when you were at DNREC?</p>	117	<p>1 instructions to your staff members 2 concerning the 1905 Compact? 3 A. No. 4 Q. Did you give any 5 instructions to your staff members 6 concerning any handling of requests for 7 leases adjacent to the New Jersey side of 8 the Delaware River? 9 MR. WALTON: Object to the 10 characterization of the New Jersey 11 side. Easterly half. 12 MS. CONKLIN: Okay. Let me 13 rephrase it. 14 BY MS. CONKLIN: 15 Q. Did you give any 16 instructions to your staff members 17 concerning any special rules that applied 18 to lease applications for subaqueous land 19 located immediately next to uplands on 20 the New Jersey side of the Delaware 21 River? 22 MR. WALTON: Same objection. 23 MS. CONKLIN: I'm going to 24 ask you to answer.</p>

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1 MR. WALTON: You can answer.  
 2 THE WITNESS: Not special  
 3 instructions, just instructions  
 4 that the subaqueous lands statute  
 5 applied to the mean low water line  
 6 on the easterly side of the  
 7 Delaware River and that, you know,  
 8 the same statute and the same  
 9 regulation applied to that side of  
 10 the river as it did to the  
 11 Delaware side of the river, within  
 12 the boundaries of the state.  
 13 BY MS. CONKLIN:  
 14 Q. Did any of your staff  
 15 members ever discuss with you any lease  
 16 application where the applicant claimed  
 17 to have a title to the subaqueous lands  
 18 given to them from the state of New  
 19 Jersey?  
 20 A. No. Not that I recall.  
 21 Q. Did you ever discuss with  
 22 any of your staff members an application  
 23 for a subaqueous lease that concerned an  
 24 area that had been leased to the

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1 applicant by the state of New Jersey?  
 2 A. Not that I recall, no.  
 3 Q. If you had been -- if you  
 4 had in front of you an application for a  
 5 subaqueous lands lease in which the  
 6 applicant provided a document that showed  
 7 that the applicant had received a lease  
 8 for that same area from the state of New  
 9 Jersey, can you tell me what procedure  
 10 you would have employed to determine or  
 11 process that lease application?  
 12 A. I probably would have  
 13 referred it to our attorney general's  
 14 office for a determination of whether --  
 15 what the status of that particular lease  
 16 was.  
 17 Q. And when you got back --  
 18 A. But I haven't -- that's  
 19 speculative. I wasn't faced with that  
 20 situation that I can recall.  
 21 Q. If you had a question  
 22 concerning -- when you had a question  
 23 that required -- take that back.  
 24 If you had an application

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1 for a subaqueous lands lease that  
 2 presented an issue that required  
 3 resolution by the attorney general, would  
 4 you then process that application as  
 5 instructed by the attorney general?  
 6 A. Yes.  
 7 Q. All right. If there were  
 8 factual determinations that needed to be  
 9 made by the attorney general as to a  
 10 lease claim, for example, would you  
 11 include those factual determinations in a  
 12 written document approving or denying the  
 13 lease application?  
 14 A. Not necessarily, no. Like a  
 15 findings document or something like that  
 16 that the Corps of Engineers does?  
 17 Q. Yes.  
 18 A. No.  
 19 Q. When an applicant files a  
 20 request to renew a lease for subaqueous  
 21 lands, is there any type of public notice  
 22 that is provided when that application is  
 23 filed?  
 24 A. Yes.

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1 Q. And what is that?  
 2 A. 20 day public notice in the  
 3 local newspaper and a newspaper of  
 4 general circulation in the state.  
 5 Q. Is there any publication by  
 6 DNREC that contains notice of  
 7 applications like that?  
 8 A. Only to the extent that it's  
 9 put on our Internet location. There's no  
 10 separate publication. It's a notice in  
 11 the newspaper. And we have a mailing  
 12 list that we send it out to also.  
 13 Q. And when you say a mailing  
 14 list, what do you mean?  
 15 A. The statute requires that  
 16 certain other state offices require a  
 17 copy of the public notice, and then we  
 18 have citizens that write in and say they  
 19 want to be on our mailing list, so we  
 20 send it to them also.  
 21 Q. To your recollection, if an  
 22 applicant filed -- to your recollection,  
 23 was the Office of the Attorney General  
 24 routinely copied by applicants for

<p style="text-align: right;">122</p> <p>1 renewals of leases of subaqueous lands?                  2 A. No.                  3 Q. So under normal conditions,                  4 the only way the attorney general staff                  5 would become involved on a subaqueous                  6 lands lease would be if one of your staff                  7 requested them to look at a particular                  8 issue?                  9 A. That's correct. Requested                  10 through me.                  11 Q. Right.                  12 A. Right.                  13 Q. If a renewal -- if DNREC                  14 issues a renewal of a subaqueous lands                  15 lease, is there public notice of that                  16 action?                  17 A. No.                  18 Q. How does the public know if                  19 an application for a renewal of a                  20 subaqueous lands lease has been granted                  21 or denied?                  22 A. They would have to contact                  23 our office.                  24 Q. To your knowledge, and this</p>	<p style="text-align: right;">124</p> <p>1 circumstances I believe is the language                  2 in that. So there are circumstances                  3 where you can appeal the use of public                  4 subaqueous lands and other places where                  5 you can't.                  6 Q. Is the request for a hearing                  7 directed to the secretary of DNREC?                  8 A. To the Environmental Appeals                  9 Board.                  10 Q. Okay.                  11 A. For an appeal hearing, yes.                  12 Q. Just a hypothesis. If I'm a                  13 neighbor to a property that has just been                  14 leased, that DNREC has issued a                  15 subaqueous lease for, and I wanted to get                  16 my appeal before the board that you                  17 referred to, who would I submit my                  18 request to? The secretary?                  19 A. No. This is a separate --                  20 Q. Go directly to the board?                  21 A. Yes.                  22 Q. Okay. All right.                  23 Getting back to routine                  24 business, when you were manager of the</p>
<p style="text-align: right;">123</p> <p>1 is only based on your knowledge, can                  2 third parties, in other words, people who                  3 did not apply for the lease, can                  4 third parties appeal a DNREC decision                  5 granting or denying a subaqueous lease?                  6 MR. WALTON: I think that                  7 calls for a legal conclusion. I                  8 object.                  9 But you can answer.                  10 BY MS. CONKLIN:                  11 Q. If you know. I mean, is                  12 there such a procedure?                  13 A. There are provisions in the                  14 subaqueous land statute that you can --                  15 there is an Environmental Appeals Board.                  16 And you can appeal -- you can appeal a                  17 denial -- let me make sure I have this                  18 straight. You can appeal the granting of                  19 a subaqueous lands lease, but I believe                  20 it's denial of a lease that can only be                  21 appealed on the grounds that you                  22 received -- that the state has treated                  23 the particular lessee differently than                  24 other -- than other ones like in similar</p>	<p style="text-align: right;">125</p> <p>1 Wetlands and Subaqueous Lands Section, do                  2 you recall how many permits in an average                  3 year you and your staff issued?                  4 A. Subaqueous? Subaqueous and                  5 wetlands?                  6 Q. Permits for activities on                  7 subaqueous lands.                  8 A. 75.                  9 Q. In issuing a permit -- no.                  10 In reviewing an application                  11 for a permit for activity on subaqueous                  12 lands, did you have to make a                  13 determination whether the area that is                  14 the subject of the application, whether                  15 that area was the subject of a prior                  16 lease?                  17 A. Yes. Yes.                  18 Q. Okay. And if it wasn't,                  19 what would you require the applicant to                  20 do?                  21 A. Comply with all the                  22 requirements of the subaqueous lands                  23 application as set forth in their                  24 application. They have to have a</p>

<p style="text-align: right;">126</p> <p>1 complete application fulfilling all the                  2 points of the application.                  3 Q. All right. If somebody --                  4 strike that.                  5 MS. CONKLIN: Moyer-6.                  6 (Whereupon, Deposition                  7 Exhibit No. Moyer-6, Letter of                  8 Authorization dated 3/18/82 to                  9 Lewis A. Caccese, P.E., from                  10 William F. Moyer, Bates DE 19371,                  11 was marked for identification.)                  12 BY MS. CONKLIN:                  13 Q. Mr. Moyer, I'm showing you                  14 something marked as Exhibit 6, which is a                  15 March 18, 1982 letter of authorization                  16 concerning repair and replacement of                  17 something known as a pile cluster,                  18 P-I-L-E, cluster, with filled steel sheet                  19 structures by DuPont at a location -- at                  20 Deepwater, New Jersey. And it is a                  21 letter to Lewis Caccese, C-A-C-C-E-S-E,                  22 of S. T. Hudson Engineers, and it is                  23 signed by William F. Moyer, Manager. Is                  24 that the very Moyer we have in front of</p>	<p style="text-align: right;">129</p> <p>1 object to the form of that                  2 question.                  3 BY MS. CONKLIN:                  4 Q. Can you --                  5 A. What do you mean by                  6 somebody? You said how does somebody                  7 know, meaning --                  8 Q. In other words, is this the                  9 only public record of the approval for                  10 this activity?                  11 A. Yes.                  12 Q. All right.                  13 A. The regulations allow                  14 repairs and modifications without going                  15 through the public notice process.                  16 Q. When was the subaqueous                  17 lands law enacted to your knowledge?                  18 A. To my knowledge, 1967, '68                  19 time frame. There were earlier versions                  20 of that, but that's the one that we refer                  21 back to.                  22 Q. Right. So how -- forgive                  23 me, but how could you grandfather a                  24 structure that was built in 1969 then?</p>
<p style="text-align: right;">127</p> <p>1 us?                  2 A. That is correct.                  3 Q. That is correct.                  4 My question here is, this is                  5 a letter of authorization?                  6 A. Yes.                  7 Q. To issue a letter of                  8 authorization, must the applicant own or                  9 lease the subaqueous lands on which the                  10 activity is proposed?                  11 A. Not necessarily. In the                  12 time frame that this was issued, letters                  13 of authorization could be issued for                  14 structures that had been grandfathered in                  15 before we started acquiring subaqueous                  16 lands leases. And I believe that was the                  17 case with this 36-pile cluster that was                  18 preexisting in 1969.                  19 Q. How would somebody know                  20 whether a letter of authorization was                  21 issued for a grandfathered structure or                  22 would have required a new lease for the                  23 proposed activity?                  24 MR. WALTON: I'm going to</p>	<p style="text-align: right;">129</p> <p>1 A. The regulations didn't take                  2 place until July of -- the administrative                  3 regulations under those statutes didn't                  4 take place until 1969, July of 1969. And                  5 we -- I think we felt that the                  6 regulations didn't -- the statute didn't                  7 become effective until administrative                  8 regulations were adopted.                  9 Q. If I wanted to find out the                  10 location of the work described in this                  11 letter of authorization, how would I go                  12 about doing that?                  13 A. Request to look at the                  14 application that accompanied this                  15 approval -- preceded this approval.                  16 Q. If the application was no                  17 longer on file, in other words, it had                  18 been destroyed as a normal records                  19 retention policy, what other source of                  20 information would there be for me to                  21 locate where this work was done?                  22 A. The only thing I could think                  23 of is the permittee, Mr. Caccese, or                  24 somebody at DuPont would have a copy of</p>

130	<p>1 it.</p> <p>2 Q. Is there any map of which</p> <p>3 you're aware that would reflect the</p> <p>4 location of the work described on this</p> <p>5 Letter of Authorization?</p> <p>6 A. No. Again, unless it's in</p> <p>7 the application, with the application.</p> <p>8 Q. And this Letter of</p> <p>9 Authorization -- do you believe this</p> <p>10 Letter of Authorization pre-dates the</p> <p>11 time that permits and leases were filed</p> <p>12 with the county clerks?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Would Letters of</p> <p>15 Authorization such as this now be filed</p> <p>16 with county clerks?</p> <p>17 A. No. Only leases.</p> <p>18 Q. Only leases.</p> <p>19 A. Only leases.</p> <p>20 Q. Okay. And permits would not</p> <p>21 be, though?</p> <p>22 A. They would not.</p> <p>23 Q. Permits for activities on</p> <p>24 subaqueous lands --</p>	132	<p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. Dated February 9, 1988. And</p> <p>4 it purports to enclose a check for \$100</p> <p>5 as a fee for a Letter of Authorization</p> <p>6 for maintenance dredging of the DuPont</p> <p>7 Chambers Works pier area.</p> <p>8 Do you recall receiving this</p> <p>9 application and this check -- I'm sorry,</p> <p>10 an application such as that?</p> <p>11 A. Vaguely.</p> <p>12 Q. Okay. In processing this</p> <p>13 application for maintenance dredging,</p> <p>14 would you have had to determine whether</p> <p>15 DuPont either owned or leased the</p> <p>16 subaqueous area on which the dredging was</p> <p>17 going to be occurring?</p> <p>18 A. No.</p> <p>19 Q. And why not?</p> <p>20 A. At the time this process was</p> <p>21 in place, the only requirement for</p> <p>22 dredging on public subaqueous lands was</p> <p>23 that there be a fee paid for the amount</p> <p>24 of material removed. And I believe that</p>
131	<p>1 A. Correct.</p> <p>2 Q. -- would not be?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 MS. CONKLIN: Let's mark</p> <p>6 this as Moyer-7.</p> <p>7 (Whereupon, Deposition</p> <p>8 Exhibit No. Moyer-7, Letter dated</p> <p>9 2/9/88 to State of Delaware,</p> <p>10 DNREC, from Reinhold Betschel,</p> <p>11 with attachment, Bates DUP</p> <p>12 0001013-1020, was marked for</p> <p>13 identification.)</p> <p>14 BY MS. CONKLIN:</p> <p>15 Q. Mr. Moyer, I've shown you an</p> <p>16 exhibit marked Moyer-7, which is a</p> <p>17 document identified as DUP 1013 through</p> <p>18 DUP 1014, 1015, 1016, 1017, 1019, and</p> <p>19 then -- oh, no, there it is, 1020. Sorry</p> <p>20 about that. It's at the bottom of the</p> <p>21 page there.</p> <p>22 The top page, DUP 1013, is a</p> <p>23 letter from Mr. Betschel,</p> <p>24 B-E-T-S-C-H-E-L, to yourself; is that</p>	133	<p>1 if it was maintenance dredging, in other</p> <p>2 words, the area had been dredged before,</p> <p>3 I don't believe there was even a fee for</p> <p>4 the amount of material taken out for</p> <p>5 maintenance dredging.</p> <p>6 Q. So if I understand you</p> <p>7 correctly, during this period, which is</p> <p>8 apparently February 1988, a permit to</p> <p>9 dredge could be issued without the</p> <p>10 applicant leasing the subaqueous area</p> <p>11 being dredged?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. Can you tell me on</p> <p>14 what basis that was your understanding?</p> <p>15 A. Just the way the regulations</p> <p>16 were written. You need a permit to</p> <p>17 remove material from public subaqueous</p> <p>18 lands and pay an appropriate fee. There</p> <p>19 was no requirement that you had to lease</p> <p>20 the land from the state to do that.</p> <p>21 Q. How long was that the case?</p> <p>22 A. I think the only thing</p> <p>23 that's changed is you can still do the</p> <p>24 dredging, but I don't believe that there</p>

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1 is a waiver of the fee for the amount of  
 2 material removed. I believe there's a  
 3 fee for both maintenance dredging and new  
 4 dredging from public subaqueous land.  
 5 Q. What's the difference  
 6 between -- forgive me -- but the  
 7 difference between maintenance dredging  
 8 and new dredging?  
 9 A. The maintenance dredging,  
 10 you have to provide documentation that  
 11 the area has been dredged before and that  
 12 what you're going to take out -- what  
 13 you're going to remove is not going to go  
 14 any deeper than the previously authorized  
 15 depth. New dredging is for an area  
 16 that's never been dredged before or  
 17 you're going to go down deeper than the  
 18 previous dredging cycle.  
 19 Q. What was your understanding  
 20 with respect to -- let me rephrase that.  
 21 Was it your understanding  
 22 that a lease would be required for a new  
 23 dredging of subaqueous land?  
 24 A. No. No.

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1 Q. Okay. Has that changed --  
 2 A. No.  
 3 Q. -- to your knowledge?  
 4 A. No. To my knowledge, it has  
 5 not.  
 6 Q. If I direct your attention  
 7 to the second sentence of the letter  
 8 dated February 9, 1988, also known as  
 9 Moyer-7, it says, "Also enclosed is our  
 10 NJDEP approved Waterfront Development  
 11 Permit Number 87-0843-1."  
 12 And if you turn the page to  
 13 DUP 1014, there appears to be a Coastal  
 14 Permit 87-0843-1 dated January 20th, 1988  
 15 issued to Mr. Betschel, B-E-T-S-C-H-E-L,  
 16 as representative of DuPont in Deepwater.  
 17 And my question would be, did you review  
 18 or look at this waterfront development  
 19 permit when it was sent to you?  
 20 A. I would assume that we did,  
 21 yes.  
 22 Q. Did you determine that this  
 23 waterfront development permit was for the  
 24 activity that was also the subject of the

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1 application pending before you?  
 2 MR. WALTON: I'm going to  
 3 object to the form of the  
 4 question.  
 5 THE WITNESS: I would assume  
 6 it was for the same thing since  
 7 they attached it to the letter --  
 8 cover letter to us regarding doing  
 9 the dredging.  
 10 BY MS. CONKLIN:  
 11 Q. Prior to this, had you  
 12 received applications for activities on  
 13 subaqueous lands where the applicant  
 14 provided evidence that the activity had  
 15 also been permitted by the state of New  
 16 Jersey?  
 17 A. Yes.  
 18 Q. Did you discuss any of these  
 19 applications with your legal advisors?  
 20 A. I don't recall.  
 21 Q. What relevance -- no. Take  
 22 that back.  
 23 Why did you believe you had  
 24 authority to issue a permit for the same

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1 activity that the state of New Jersey had  
 2 issued a permit for?  
 3 A. Because it was taking place  
 4 on public subaqueous lands of the state  
 5 of Delaware, below the mean lower line of  
 6 the easterly side of the Delaware River.  
 7 Q. All right. Did you have any  
 8 conversation with any representative from  
 9 the state of New Jersey concerning any  
 10 permit -- no, concerning New Jersey's  
 11 jurisdiction to issue permits for  
 12 activities like that?  
 13 A. Any public officials did you  
 14 say?  
 15 Q. Yes.  
 16 A. Yes.  
 17 Q. Could you tell me when those  
 18 conversations occurred or those  
 19 communications occurred?  
 20 A. At various times during my  
 21 career. I can't tell you any one  
 22 particular date or time.  
 23 Q. Do you recall whether anyone  
 24 else from your department was present

138	<p>1 with you?</p> <p>2 A. I don't recall.</p> <p>3 Q. Do you recall whether the</p> <p>4 1905 Compact was discussed during these</p> <p>5 meetings?</p> <p>6 A. It was not.</p> <p>7 Q. Do you recall whether this</p> <p>8 particular application from DuPont for</p> <p>9 maintenance dredging was discussed at one</p> <p>10 of those meetings?</p> <p>11 A. With New Jersey?</p> <p>12 Q. Uh-huh.</p> <p>13 A. I don't recall.</p> <p>14 MR. WALTON: You're</p> <p>15 referring to Moyer-7?</p> <p>16 MS. CONKLIN: Right. Thank</p> <p>17 you.</p> <p>18 BY MS. CONKLIN:</p> <p>19 Q. Did you ever communicate</p> <p>20 with New Jersey and object to the</p> <p>21 issuance of this waterfront development</p> <p>22 permit referenced in Moyer-7?</p> <p>23 A. No.</p> <p>24 Q. To your knowledge, did</p>	140	<p>1 Deepwater, New Jersey, and the permit</p> <p>2 states, "This permit authorizing</p> <p>3 maintenance dredging and disposal is</p> <p>4 issued in accordance with and solely</p> <p>5 within the area of grants to E.I. DuPont</p> <p>6 deNemours &amp; Company, Incorporated, on</p> <p>7 August 21, 1916, November 20, 1916, and</p> <p>8 July 16, 1917 recorded in Liber v; page</p> <p>9 92, Liber v; page 161 and Liber w; page</p> <p>10 62, respectively.</p> <p>11 "The previous NJDEP</p> <p>12 Waterfront Development Permit 82-0519-1</p> <p>13 authorized dredging and dredge spoil</p> <p>14 disposal at these same locations. The</p> <p>15 spoil disposal site is located on</p> <p>16 Tidelands Map #351-1764."</p> <p>17 I think you indicated, Mr.</p> <p>18 Moyer, that you likely read this permit</p> <p>19 since it was attached to the</p> <p>20 correspondence that was directed to you,</p> <p>21 right?</p> <p>22 A. Yes, yes.</p> <p>23 Q. Okay. My question is</p> <p>24 whether -- on what basis you would have</p>
139	<p>1 anyone else in your office object?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. Would a permit that</p> <p>4 contained -- would an application</p> <p>5 containing a permit authorization from</p> <p>6 another state like this routinely be</p> <p>7 brought to the attorney general's</p> <p>8 attention?</p> <p>9 A. No.</p> <p>10 Q. Would it be fair to say that</p> <p>11 you would process applications such as</p> <p>12 these as if the New Jersey permit hadn't</p> <p>13 been provided to you?</p> <p>14 A. Yes. We would -- we would,</p> <p>15 though, in our approval normally have a</p> <p>16 condition that would say any other permit</p> <p>17 requirements -- state or federal or local</p> <p>18 permit requirements you need to comply</p> <p>19 with.</p> <p>20 Q. Turning to page -- if I</p> <p>21 direct you to Exhibit 7, page DUP 1016, I</p> <p>22 direct you to the first, second, third,</p> <p>23 fourth paragraph of DEP permit 87-0843-1</p> <p>24 issued January 20th, 1988 to DuPont in</p>	141	<p>1 issued your permit for activities on</p> <p>2 subaqueous land if you had received</p> <p>3 information like this that DuPont</p> <p>4 actually owned the property on which the</p> <p>5 activity was proposed?</p> <p>6 MR. WALTON: I'm going to</p> <p>7 object in that it calls for</p> <p>8 speculation.</p> <p>9 MS. CONKLIN: Let me</p> <p>10 rephrase this.</p> <p>11 BY MS. CONKLIN:</p> <p>12 Q. Mr. Moyer, you indicated</p> <p>13 that you read the permit that was</p> <p>14 attached to the application that was</p> <p>15 directed to you. Did you notice that</p> <p>16 there was a recitation by the state of</p> <p>17 New Jersey that DuPont owned the property</p> <p>18 on which the dredging was to occur?</p> <p>19 A. Yes, I read that. Yes.</p> <p>20 Q. Okay. Given that</p> <p>21 allegation, on what basis did you issue a</p> <p>22 permit to DuPont for the maintenance</p> <p>23 dredging?</p> <p>24 A. Probably on the basis that</p>

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1 that grant that New Jersey made probably  
 2 was not a valid grant.  
 3 Q. Okay. And in making that  
 4 determination -- did you make that  
 5 determination yourself?  
 6 A. I would imagine it was based  
 7 on previous discussions with the attorney  
 8 general's office.  
 9 Q. Would those discussions have  
 10 arisen from the controversy arising from  
 11 the 1971 lease to DuPont?  
 12 A. I don't recall.  
 13 Q. Do you recall on what  
 14 occasion, prior to this, you became aware  
 15 of the claim to ownership that rested on  
 16 grants from 1916 from New Jersey to  
 17 DuPont?  
 18 A. Could you repeat that?  
 19 Q. Sure.  
 20 Prior to this -- prior to  
 21 seeing this recitation in the NJDEP  
 22 permit, when did you become aware that  
 23 DuPont -- when did you become aware that  
 24 there was a claim that DuPont -- or an

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1 allegation that DuPont owned property,  
 2 subaqueous property, arising from a deed  
 3 in 1916 from the state of New Jersey?  
 4 A. Well, probably when I read  
 5 this document.  
 6 Q. I'm sorry, I thought you  
 7 said that you had also discussed this in  
 8 previous discussions with the attorney  
 9 general?  
 10 A. Yes. We probably got other  
 11 similar requests from New Jersey with  
 12 this same type of permit from New Jersey,  
 13 and I'm assuming that I had conversations  
 14 with the attorney general's office  
 15 saying -- requesting whether or not these  
 16 grants were valid. I don't remember  
 17 anything in writing. And to my best  
 18 recollection, the response was that New  
 19 Jersey didn't have the authority to grant  
 20 that land because it was public lands of  
 21 the state of Delaware and that we could  
 22 issue approval for maintenance dredging  
 23 whether or not these grants had been  
 24 issued.

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1 Q. And when you -- when this  
 2 advice was given to you, did the  
 3 advice -- did the advice in any way  
 4 concern the 1905 Compact?  
 5 A. Not to my knowledge.  
 6 Q. Did you ever read the 1905  
 7 Compact?  
 8 A. I have not.  
 9 Q. And up until this point in  
 10 time, which is around January of 1988,  
 11 had you ever discussed the 1905 Compact  
 12 with DNREC staff at all?  
 13 A. No.  
 14 Q. Did you receive any  
 15 instructions from your supervisors  
 16 concerning how to -- concerning the 1905  
 17 Compact?  
 18 MR. WALTON: Excluding  
 19 conversations with counsel.  
 20 BY MS. CONKLIN:  
 21 Q. Did you receive any  
 22 instructions from your supervisors  
 23 concerning the 1905 Compact?  
 24 A. No.

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1 Q. Were you aware of any policy  
 2 that DNREC adopted that cited to or  
 3 relied upon the 1905 Compact to your  
 4 knowledge?  
 5 A. No, not to my knowledge.  
 6 MS. CONKLIN: Let's see. I  
 7 think we're up to 8.  
 8 (Whereupon, Deposition  
 9 Exhibit No. Moyer-8, Letter dated  
 10 2/9/88 to Reinhold Betschel from  
 11 William F. Moyer, Bates DE  
 12 19393-19396, was marked for  
 13 identification.)  
 14 THE WITNESS: These are  
 15 different. Okay.  
 16 BY MS. CONKLIN:  
 17 Q. Mr. Moyer, I've handed you  
 18 something marked Exhibit 8, a letter  
 19 dated February 9, 1988 signed by, I  
 20 believe -- is it yourself?  
 21 A. Yes.  
 22 Q. To Mr. Betschel representing  
 23 E.I. DuPont concerning maintenance  
 24 dredging. Is this the letter by which

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1 you approved the application referred to  
 2 in Exhibit 7?  
 3 A. I'm just looking for -- yes,  
 4 it does.  
 5 Q. Okay. And does this  
 6 approval in any way address the issue of  
 7 DuPont's -- or the question of whether  
 8 DuPont owns the area being dredged?  
 9 A. It does not.  
 10 Q. At the time that you were  
 11 issuing these permits, did you copy  
 12 anyone in New Jersey, not DuPont, but any  
 13 staff or official in the state of New  
 14 Jersey with this permit?  
 15 MR. WALTON: Objection.  
 16 Compound question.  
 17 MS. CONKLIN: You can  
 18 answer.  
 19 THE WITNESS: No, we did  
 20 not.  
 21 BY MS. CONKLIN:  
 22 Q. Did you perceive it as a  
 23 problem that New Jersey was issuing  
 24 permits for the same activities that

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1 Delaware was?  
 2 A. No.  
 3 Q. And, again, I'm sorry if I  
 4 asked this question already. I may not  
 5 have. Did you discuss with counsel the  
 6 fact that you were receiving applications  
 7 that contained permits issued by the  
 8 state of New Jersey?  
 9 A. Initially, when we started  
 10 receiving those, yes.  
 11 Q. And what were your  
 12 instructions in terms of how the process  
 13 is done?  
 14 MR. WALTON: Objection.  
 15 That's attorney/client privileged  
 16 because discussions with counsel  
 17 and then you're asking what the  
 18 instructions were given from the  
 19 attorney general's office.  
 20 BY MS. CONKLIN:  
 21 Q. Following your discussions  
 22 with the attorney general's office, how  
 23 did you process these applications?  
 24 A. As if it was just an

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1 application to the state of Delaware, to  
 2 DNREC, regardless of whether Jersey had  
 3 issued a permit.  
 4 Q. Are you aware of any  
 5 communications between the Delaware  
 6 attorney general's office and New Jersey  
 7 officials concerning that circumstance?  
 8 A. I'm not.  
 9 Q. Are you familiar with an  
 10 individual named James Johnson at the New  
 11 Jersey Tidelands Bureau?  
 12 A. I'm not.  
 13 Q. Jim Johnson?  
 14 A. No.  
 15 Q. Okay. Are you familiar with  
 16 a woman named JoAnn Cubberley at the New  
 17 Jersey Tidelands Council?  
 18 A. I'm not. In the past, I've  
 19 spoken to several people with New Jersey  
 20 government, but I just don't recall the  
 21 names.  
 22 MR. WALTON: Barbara, can I  
 23 take two minutes?  
 24 MS. CONKLIN: Sure. Go

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1 right ahead.  
 2 (Recess taken from 1:58 p.m.  
 3 to 2:06 p.m.)  
 4 BY MS. CONKLIN:  
 5 Q. A couple of quick follow-up  
 6 questions concerning the DuPont  
 7 application for dredging, which I believe  
 8 is Exhibit 7, and the approval, which is  
 9 Exhibit 8. Did you discuss that  
 10 application or any aspect of it with the  
 11 Army Corps of Engineers?  
 12 A. I believe I did, yes.  
 13 Q. Okay. And do you recall  
 14 with whom you discussed it at the Army  
 15 Corps of Engineers?  
 16 A. Based on the copy of the  
 17 letter, I believe I discussed it with  
 18 Dick Hassel, the second page of  
 19 Exhibit 8.  
 20 Q. Right, H-A-S-S-E-L.  
 21 All right. Who is Charles  
 22 McNally?  
 23 A. Environmental scientist on  
 24 my staff that handled the applications.

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1 Q. And what was the nature of  
 2 your discussion with Mr. Hassel of the  
 3 Army Corps of Engineers?  
 4 A. **Just that we had received an**  
 5 **application and that they would be**  
 6 **alerting him, as we did routinely, that**  
 7 **they would probably be getting an**  
 8 **application from DuPont to do the**  
 9 **dredging. We hold -- we hold monthly**  
 10 **meetings with the Corps in Dover. We**  
 11 **have basically a joint permit processing**  
 12 **procedure with the Corps.**  
 13 Q. During any of these  
 14 discussions with the Army Corps  
 15 concerning applications pending before  
 16 Delaware, did you discuss the fact that  
 17 you were receiving some applications for  
 18 activities that had already been  
 19 permitted by New Jersey?  
 20 A. I don't believe so.  
 21 Q. Did you have any indication  
 22 that the people you were speaking to at  
 23 the Army Corps of Engineers were aware of  
 24 this at all?

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1 A. No.  
 2 Q. Did you ever discuss the  
 3 Compact of 1905 with any staff or members  
 4 of the Army Corps of Engineers?  
 5 A. No.  
 6 MS. CONKLIN: Let's mark  
 7 this as Moyer 9.  
 8 (Whereupon, Deposition  
 9 Exhibit No. Moyer-9, Letter dated  
 10 9/30/91 to William Moyer from W.  
 11 Harding Drane, Jr., Bates DE  
 12 02197-2198, and Exhibit No.  
 13 Moyer-10, Subaqueous Lands Lease  
 14 Granted to Keystone Cogeneration  
 15 System, Inc., date of issuance:  
 16 9/30/91, Bates DE 02200-2205, were  
 17 marked for identification.)  
 18 BY MS. CONKLIN:  
 19 Q. Mr. Moyer, I provided you  
 20 with two exhibits. Exhibit 9 is a letter  
 21 dated September 30th, 1991 directed to  
 22 you from an attorney named W. Harding,  
 23 H-A-R-D-I-N-G, Drane, D-R-A-N-E, Jr.,  
 24 dated September 30th, '91, and the letter

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1 refers to a subaqueous lands permit and  
 2 lease to Keystone, K-E-Y-S-T-O-N-E,  
 3 Cogeneration Systems, Incorporated.  
 4 And attached as Exhibit 10  
 5 appears to be a subaqueous lands lease  
 6 issued by the state of Delaware,  
 7 September 30th, 1991 to Keystone  
 8 Cogeneration System, Incorporated.  
 9 Can you tell me whether the  
 10 lease referred to in the letter of  
 11 September 30th, '91 is that which is  
 12 attached as Exhibit 10?  
 13 A. Yes, it is.  
 14 Q. And did you issue the lease  
 15 to Keystone?  
 16 A. **We prepared the lease. It**  
 17 **was issued by the secretary of the**  
 18 **department.**  
 19 Q. Did you become aware at any  
 20 time after September 30th, 1991 that the  
 21 state of New Jersey issued a subaqueous  
 22 lease for the same area?  
 23 A. No.  
 24 Q. Were you aware of any

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1 discussions between the attorney  
 2 general's office and staff members at the  
 3 New Jersey Tidelands Bureau concerning  
 4 grants to Keystone?  
 5 A. **Not that I recall.**  
 6 Q. Or licenses, subaqueous  
 7 licenses to Keystone?  
 8 A. **Not that I recall.**  
 9 Q. Did anyone from the state of  
 10 Delaware ever advise you of New Jersey's  
 11 position with respect to issuance of a  
 12 subaqueous lands lease to Keystone?  
 13 A. **A Delaware subaqueous lands**  
 14 **lease?**  
 15 Q. No. New Jersey's.  
 16 A. No.  
 17 Q. All right.  
 18 MS. CONKLIN: And we're up  
 19 to Moyer-11.  
 20 (Whereupon, Deposition  
 21 Exhibit No. Moyer-11, Letter dated  
 22 8/17/04 to William Moyer from  
 23 DuPont Chambers Works, with  
 24 attachments, Bates DUP

154	<p>1 0000920-982, was marked for 2 identification.) 3 BY MS. CONKLIN: 4 Q. Mr. Moyer, I've provided you 5 a copy of Exhibit 11, which is -- which 6 is comprised of a two-page letter dated 7 August 17th, 2004 to yourself from Paul 8 J. Gorzsas, G-O-R-Z-S-A-S, operations 9 manager at DuPont's Chambers Works in 10 Deepwater, New Jersey, conveying a draft 11 permit application for a subaqueous lands 12 permit. And I do not believe that this 13 is the complete permit application. It 14 is comprised of pages DUP 922 through 15 982, I believe. And, again, I am not -- 16 I don't believe that this is the complete 17 draft application. 18 Do you recall receiving this 19 application? No. Take that back. 20 Do you recall receiving a 21 draft of an application from DuPont for 22 activities in subaqueous lands? 23 A. I don't recall. I just 24 can't say for sure. This is not -- it</p>	156	<p>1 structure." 2 A. Could you point that out? 3 Okay. I got it. 4 Q. Got it? 5 A. Uh-huh. 6 Q. Exhibit 12, which I provided 7 to you, appears to be -- I think it's an 8 e-mail communication from W. Harding 9 Drane to william.moyer@state.de.us 10 concerning DuPont. Was this an e-mail to 11 you on September 20th, 2004 -- 12 A. Yes. 13 Q. -- concerning an application 14 at DuPont for a request for a subaqueous 15 lands permit? 16 A. That's correct. 17 Q. Okay. Do you recall getting 18 this e-mail? 19 A. I do. Yes. 20 Q. Okay. Did you read the -- 21 the e-mail says that it's conveying two 22 deeds from the state of New Jersey, a 23 1960 and a 1967 deed, which Mr. Drane 24 alleges grants DuPont underwater lands</p>
155	<p>1 might help me. Of course this isn't 2 signed. We stamp everything that comes 3 into our office. It has no received 4 stamp. It just does not ring a bell. 5 Q. Do you recall having a 6 meeting with any DuPont representative 7 concerning this document which is marked 8 draft? 9 A. No. 10 MS. CONKLIN: Okay. We're 11 up to 12. 12 (Whereupon, Deposition 13 Exhibit No. Moyer-12, e-mail dated 14 9/20/04 to William Moyer from W. 15 Harding Drane, Jr., Bates DUP 16 0000717, DE 19422-19431, was 17 marked for identification.) 18 BY MS. CONKLIN: 19 Q. There is a statement on the 20 August 17th, 2004 letter, Exhibit 11, 21 midway through the second paragraph, 22 "Since 1960, DuPont has owned the 23 riparian rights for the tracts of land in 24 Delaware River housing the outfall</p>	157	<p>1 associated with the Chambers Works 2 outfall structure. Is that on the 3 e-mail? 4 A. Yes. 5 Q. All right. Did you review 6 the deeds that were attached to the 7 e-mail? 8 A. I did. 9 Q. All right. Did you discuss 10 with Mr. -- did you have a discussion 11 with Mr. Harding as a result of this 12 e-mail? 13 A. I remember meeting with 14 Harding now about this, and he said that 15 he would present -- he would get me this 16 information after our meeting. 17 Unfortunately, I left soon after this 18 e-mail was sent. And I think -- I think 19 some correspondence continued after my 20 retirement, and I'm not sure exactly what 21 that was. But this did arise when DuPont 22 was getting involved with processing some 23 nerve gases and a question arose as to 24 whether or not that outfall line had a</p>

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1 lease from the state of Delaware or  
 2 whether they needed one.  
 3 Q. Who was -- you said you had  
 4 a meeting with Mr. Drane?  
 5 A. Yes.  
 6 Q. And who else was present for  
 7 the meeting?  
 8 A. As best I can recall,  
 9 somebody -- an official from DuPont may  
 10 have been in that meeting also.  
 11 Q. Was there anybody from the  
 12 Delaware attorney general's office  
 13 present?  
 14 A. I don't believe so. I don't  
 15 believe so.  
 16 Q. And what was discussed at  
 17 the meeting?  
 18 A. As best I can recall, just  
 19 whether or not DuPont would need any type  
 20 of approval from Delaware to make any  
 21 changes to the end of that outfall pipe.  
 22 I think they wanted to put a diffuser on  
 23 it or change the design in some way.  
 24 Q. Whether DuPont --

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1 A. Whether they would need an  
 2 approval from Delaware to make any  
 3 changes to the end of the pipe.  
 4 Q. Okay. When you say  
 5 approval, do you mean a permit?  
 6 A. Permit or lease.  
 7 Q. All right. Was the content  
 8 of Mr. Harding's e-mail discussed in your  
 9 meeting?  
 10 A. No. This was sent  
 11 subsequent to our meeting. The e-mail  
 12 was sent after the meeting.  
 13 Q. Who requested the meeting?  
 14 A. And it came through our  
 15 division director, Kevin Donnelly.  
 16 Someone had made an inquiry I think  
 17 through our NPDES program related to the  
 18 treatment of this material and whether or  
 19 not the discharge pipe would have to be  
 20 changed to handle that extra discharge  
 21 from the treatment plant. And that's how  
 22 they got into discussions about the  
 23 outfall pipe.  
 24 Q. This e-mail that is

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1 identified as Exhibit 12, however,  
 2 discusses apparently only title issues to  
 3 subaqueous land, right?  
 4 A. Right.  
 5 Q. What, if anything, did you  
 6 do when you received this e-mail?  
 7 A. I don't believe I did  
 8 anything except pass it on to Laura Herr  
 9 in anticipation of her having to deal  
 10 with this issue once I retired.  
 11 Q. And when did you retire?  
 12 A. October 31st, 2004.  
 13 Q. How long had Ms. Herr been  
 14 with the department as of September of  
 15 '04?  
 16 A. Ten to 12 years as best I  
 17 can recall.  
 18 Q. Did you have any  
 19 communication with Ms. Herr or did you  
 20 just forward the e-mail to her?  
 21 A. No, no, no. We discussed  
 22 the situation with her, as I did with a  
 23 number of loose ends that I had.  
 24 Q. And what was your discussion

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1 concerning DuPont's -- concerning  
 2 DuPont's position concerning its title to  
 3 underwater lands referenced in this  
 4 e-mail?  
 5 A. That there needed to be  
 6 further investigation and follow-up on  
 7 the validity of this deed, and I  
 8 suggested that she meet with the -- our  
 9 attorney general's office, to get them  
 10 involved at this point.  
 11 Q. Did you receive anything in  
 12 writing from Mr. Drane as a follow-up of  
 13 this e-mail?  
 14 A. Not while I was there. Not  
 15 to my knowledge, no.  
 16 Q. Did you receive any phone  
 17 calls from Mr. Drane concerning this  
 18 e-mail?  
 19 A. Not to my knowledge. Except  
 20 maybe to confirm I had received it.  
 21 Q. Are you aware of any written  
 22 instructions from the attorney general's  
 23 office concerning the validity of any  
 24 lease or grant issued to DuPont by the

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1 state of New Jersey?  
 2 MR. WALTON: That went to  
 3 third parties or internal -- are  
 4 you asking for internal agency  
 5 communication or communications  
 6 with third parties?  
 7 MS. CONKLIN: No.  
 8 BY MS. CONKLIN:  
 9 Q. I'm asking for any  
 10 conclusions that were conveyed to your  
 11 office for your official action and  
 12 filing that gave you instructions on how  
 13 to interpret any subaqueous lands grant  
 14 or license that was issued to DuPont by  
 15 New Jersey.  
 16 MR. WALTON: And those  
 17 instructions from the attorney  
 18 general's office would be  
 19 attorney --  
 20 MS. CONKLIN: Would be for  
 21 your use and reference.  
 22 MR. WALTON: Right. But  
 23 would be attorney/client  
 24 privileged because they would be

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1 advice given to the department by  
 2 a member of the attorney general's  
 3 office. So, therefore, I'm going  
 4 to object on the grounds of  
 5 attorney/client privilege.  
 6 BY MS. CONKLIN:  
 7 Q. Did you -- but let me ask  
 8 you. Did you receive any -- did you  
 9 receive any communications concerning the  
 10 validity of those grants to which you had  
 11 to refer in determining and reviewing an  
 12 application by DuPont?  
 13 A. No. No.  
 14 Q. Did any of your staff refer  
 15 to such things in reviewing and issuing a  
 16 final decision on an application by  
 17 DuPont?  
 18 A. Not to my knowledge.  
 19 Q. Okay. And just for the sake  
 20 of completeness, did you receive any  
 21 verbal instructions from the attorney  
 22 general's office concerning the  
 23 interpretation of the grant to release  
 24 issued to DuPont from the state of New

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1 Jersey which you used in reviewing and  
 2 deciding an application from DuPont for  
 3 either a lease or a permit for subaqueous  
 4 lands?  
 5 MR. WALTON: You can answer  
 6 the question.  
 7 THE WITNESS: Not to my  
 8 knowledge.  
 9 BY MS. CONKLIN:  
 10 Q. I'm going back into your  
 11 deep, dark past in --  
 12 A. I don't have one.  
 13 Q. -- into your light-filled  
 14 and felicitous past when you were in  
 15 academics. I'm thinking back to 1970 or  
 16 '71. Were you aware of a task force that  
 17 was convened by the governor of Delaware  
 18 to study the Delaware River and like  
 19 coastal areas of Delaware, the state of  
 20 Delaware?  
 21 A. This is before I was hired.  
 22 I have knowledge of it.  
 23 Q. Are you aware of whether the  
 24 task force ever issued like a final

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1 report to the governor about the Delaware  
 2 River and coastal areas of the state?  
 3 A. Yes, I'm familiar with that  
 4 document.  
 5 Q. Okay. Did you contribute to  
 6 it?  
 7 A. I did not.  
 8 Q. Let me ask you one thing.  
 9 Are you aware of whether there were  
 10 preliminary recommendations made by the  
 11 task force to the governor of Delaware?  
 12 A. I believe that there were.  
 13 Q. Okay. But you don't  
 14 recall --  
 15 A. I'm answering based on  
 16 that -- I'm familiar with several of  
 17 these kinds of documents, so I don't know  
 18 what specific one you're referring to.  
 19 MS. CONKLIN: Well, here,  
 20 let's mark these and go forward  
 21 from there. 13 and 14.  
 22 (Whereupon, Deposition  
 23 Exhibit No. Moyer-13, Coastal Zone  
 24 Management for Delaware, February

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1 18, 1971, Governor's Task Force on  
 2 Marine and Coastal Affairs, Bates  
 3 DE 16444-16484, and Exhibit No.  
 4 Moyer-14, The Coastal Zone of  
 5 Delaware, Governor's Task Force on  
 6 Marine and Coastal Affairs, no  
 7 Bates stamp, was marked for  
 8 identification.)  
 9 BY MS. CONKLIN:  
 10 Q. Mr. Moyer, I've provided you  
 11 with an Exhibit 13, the title page of  
 12 which is "Coastal Zone Management for  
 13 Delaware." It's dated February 18, 1971,  
 14 and the bottom says "Governor's Task  
 15 Force on Marine and Coastal Affairs."  
 16 And the cover page is marked DE 16444 and  
 17 the document extends to DE 16484.  
 18 And I direct you to the  
 19 third page, which is DE 16446, which is a  
 20 letter --  
 21 MR. WALTON: I'm sorry,  
 22 16446?  
 23 MS. CONKLIN: Yes.  
 24 BY MS. CONKLIN:

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1 Q. Third sheet of paper in  
 2 dated February 18, 1971, from Chairman  
 3 James Wakelin, Jr., conveying the  
 4 Preliminary Report on the Coastal Zone of  
 5 Delaware to the governor of Delaware as  
 6 prepared by the Task Force on Marine and  
 7 Coastal Affairs. Have you seen this  
 8 report before?  
 9 A. I have, yes.  
 10 Q. All right. Can you tell me  
 11 what the Task Force on Marine and Coastal  
 12 Affairs was and what it was supposed to  
 13 be doing to your knowledge?  
 14 A. To the best of my knowledge,  
 15 it was to examine those environmental  
 16 issues that were problematic in Delaware  
 17 and recommend a course of action for  
 18 correcting those problems.  
 19 Q. Okay. Was this task force  
 20 recommendation kept on file in your  
 21 office?  
 22 A. It was on my bookshelf.  
 23 Q. That's fair.  
 24 It was on your bookshelf?

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1 A. Yes.  
 2 Q. And did it -- was it kept  
 3 there for the duration of your  
 4 employment?  
 5 A. I believe it's still there,  
 6 yes.  
 7 Q. Okay.  
 8 A. I didn't steal it and take  
 9 it home.  
 10 Q. And are you aware whether  
 11 you used this in any way for reference or  
 12 assistance in determining applications  
 13 for subaqueous leases or permits?  
 14 A. No. No, we did not.  
 15 Q. Let me direct your attention  
 16 to Exhibit 14. And I'm going to  
 17 represent to you that this is -- these  
 18 are portions of a much larger book, the  
 19 cover of which, though, is copied here,  
 20 and the book is the "Coastal Zone of  
 21 Delaware," and it is the, as reflected on  
 22 the second page of this exhibit, the  
 23 final report of the Governor's Task Force  
 24 on Marine and Coastal Affairs, April 1970

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1 through October 1971, presented to the  
 2 Honorable Russell Peterson,  
 3 P-E-T-E-R-S-O-N, Governor of the State of  
 4 Delaware, published by the College of  
 5 Marine Studies, University of Delaware.  
 6 MR. WALTON: I'm just going  
 7 to ask a question. Pardon me. I  
 8 don't see any Bates numbers on  
 9 this.  
 10 MS. CONKLIN: No. This was  
 11 referred to in Delaware's Answers  
 12 to Interrogatories as a reference  
 13 book.  
 14 MR. WALTON: Okay. That was  
 15 a reference book.  
 16 MS. CONKLIN: It was a  
 17 reference book, exactly. This is  
 18 the first that we have used it in  
 19 a deposition. This particular  
 20 exhibit is a series of pages and  
 21 I'll be very happy to provide it  
 22 at the close of the deposition.  
 23 BY MS. CONKLIN:  
 24 Q. Let me ask you, Mr. Moyer,

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1 have you seen this task force report  
 2 before?  
 3 **A. I have.**  
 4 **Q. All right. Going to the**  
 5 **back of the -- did you contribute to it?**  
 6 **A. I did not.**  
 7 **Q. In the back of this report**  
 8 **there is a William Moyer who provided**  
 9 **information on climatological material,**  
 10 **some climatological material. That's not**  
 11 **you?**  
 12 **A. Where is that? I've got it.**  
 13 **It's 197.**  
 14 **Q. Is it 197?**  
 15 **A. Yes.**  
 16 **Q. It's in the bibliography at**  
 17 **the end, 197. Moyer, W.J. You're Moyer,**  
 18 **W.F.?**  
 19 **A. That's right.**  
 20 **Q. So you did not provide the**  
 21 **climatological data in this report?**  
 22 **A. I wasn't employed there yet**  
 23 **when this came out.**  
 24 **Q. Correct. When you did**

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1 become employed with DNREC, at what point  
 2 did you become familiar with the  
 3 existence of this task force report?  
 4 **A. Within a year or so.**  
 5 **Q. Was this report circulated**  
 6 **in DNREC when it was issued?**  
 7 **A. I don't know.**  
 8 **Q. That was poorly phrased.**  
 9 **Was this report available**  
 10 **within the department?**  
 11 **A. I would assume, yes.**  
 12 **Q. Because you saw it, right?**  
 13 **A. Exactly.**  
 14 **Q. All right. Did you read the**  
 15 **report?**  
 16 **A. I did.**  
 17 **Q. All right. And were you**  
 18 **responsible for reading this report as**  
 19 **part of your job duties?**  
 20 **A. No.**  
 21 **Q. All right. Did you discuss**  
 22 **this report at all with your supervisor?**  
 23 **A. No.**  
 24 **Q. Did you attend any meetings,**

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1 internal meetings, at DNREC, not legal  
 2 meetings, but staff meetings concerning  
 3 the conclusions in this report?  
 4 **A. No.**  
 5 **Q. At the time you were --**  
 6 **first came on board and you read this**  
 7 **report, were you in the process of**  
 8 **assisting the department in drafting any**  
 9 **regulations?**  
 10 **A. I was involved with**  
 11 **finalizing the wetlands regulations when**  
 12 **I came on board.**  
 13 **Q. Okay. And when we say**  
 14 **wetlands regulations, we're looking at --**  
 15 **we are not discussing anything related to**  
 16 **subaqueous lands?**  
 17 **A. That's correct.**  
 18 **Q. Did you read this -- let me**  
 19 **direct you to -- let me ask you. Did you**  
 20 **read the recommendations in the report?**  
 21 **A. I did.**  
 22 **Q. Would it be fair to say that**  
 23 **there were recommendations at the end of**  
 24 **every chapter of this report to your**

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1 recollection?  
 2 **A. Yes.**  
 3 **Q. I mean, we have the entire**  
 4 **book here.**  
 5 **A. Yes. There appears to be**  
 6 **recommendations at the end of each**  
 7 **chapter.**  
 8 **Q. Right. And as a result of**  
 9 **reading this book, did you become aware**  
 10 **of the 1905 Compact?**  
 11 **A. I did not.**  
 12 **Q. Let me direct you to page --**  
 13 **A. This is not the whole**  
 14 **report, though, right?**  
 15 **Q. Oh, no. No, this is**  
 16 **definitely not the whole report.**  
 17 **A. All right.**  
 18 **Q. And this is -- and I'd be**  
 19 **very happy to do this right now. This is**  
 20 **the acknowledgments section and the table**  
 21 **of contents. It's basically page iii**  
 22 **through 36, xxxvi, and page 337 through**  
 23 **page 464.**  
 24 **MR. WALTON: And while we're**

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1 doing that, I'm just going to  
 2 place an objection for the record  
 3 that this does not have Bates  
 4 stamp on it. I note that on  
 5 certain pages, specifically, it  
 6 says the "Property of New Jersey  
 7 DEP Information Resource Center"  
 8 on page xv, and it does not have  
 9 Bates numbers and has not been  
 10 produced to us.  
 11 MS. CONKLIN: Right.  
 12 MR. WALTON: And so I'm  
 13 going to pose an objection on  
 14 those grounds.  
 15 MS. CONKLIN: And like I  
 16 said, for the record, this was  
 17 provided as a reference document  
 18 by Delaware to New Jersey in  
 19 Answers to Interrogatories, which  
 20 is how we found out about it.  
 21 BY MS. CONKLIN:  
 22 Q. So if I may direct your  
 23 attention to page 242 --  
 24 MR. WALTON: I'm sorry, 242?

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1 MS. CONKLIN: I'm sorry.  
 2 It's 342.  
 3 MR. WALTON: 342. Okay.  
 4 BY MS. CONKLIN:  
 5 Q. And, actually, yeah, 342.  
 6 Oh, I'm terribly sorry. Wrong. 339. My  
 7 mistake. It's Section 8.222. Do you  
 8 recall reading the chapter 8, which is  
 9 segregated by fisheries?  
 10 A. Vaguely. I did read it. I  
 11 don't know how much I recall.  
 12 Q. All right. I'm pointing to  
 13 Section 8.222. There's a reference  
 14 there, is there not, to the Delaware/New  
 15 Jersey Fisheries Compact in 1907. Have  
 16 you ever seen a reference to this compact  
 17 before?  
 18 A. Other than in here?  
 19 Q. Yeah.  
 20 A. No.  
 21 Q. All right. Did anyone in  
 22 DNREC refer to the Compact of 1907 also  
 23 as a Compact of 1905?  
 24 A. Not to my knowledge.

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1 Q. And I'm going to direct you  
 2 to page 343, Section 8.4, the bottom of  
 3 the page. It says, "The task force  
 4 recommends that the Delaware-New Jersey  
 5 Fisheries Compact be nullified." And it  
 6 goes on to make other recommendations as  
 7 well. Do you recall reading that  
 8 recommendation?  
 9 A. Vaguely, yes.  
 10 Q. Did you discuss it with any  
 11 of your staff members?  
 12 A. No.  
 13 Q. Do you have any reason to  
 14 know why the compact in this case of 1907  
 15 is referred to as a fisheries compact?  
 16 A. No.  
 17 Q. Do you know to what use this  
 18 report was put by DNREC?  
 19 A. By DNREC? I do not.  
 20 Q. All right. Did you see  
 21 reference to this report in any policies  
 22 or regulations that were passed or that  
 23 were circulated in your department?  
 24 A. Not regulations, no.

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1 Q. Did you see it in any other  
 2 document?  
 3 A. I believe it was referenced  
 4 as a document in the Coastal Zone Act.  
 5 MS. CONKLIN: And let us do  
 6 that as 15.  
 7 (Whereupon, Deposition  
 8 Exhibit No. Moyer-15, Delaware Bay  
 9 Report Series, Volume 8, Economic  
 10 and Social Aspects of Delaware's  
 11 Coastal Zone, by Joel M. Goodman,  
 12 Spring 1973, no Bates stamp, was  
 13 marked for identification.)  
 14 MR. WALTON: I'm going to  
 15 lodge the exact same objection.  
 16 And I'll just state it again for  
 17 the record, that this appears to  
 18 be a reference, Delaware Bay  
 19 Report Series, and it has a number  
 20 on it, State -- and it's on the  
 21 second page, it says New Jersey  
 22 State Library, and it has not been  
 23 produced to us with Bates numbers.  
 24 To my knowledge, it's also not

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1 been identified by New Jersey, but  
 2 if I'm incorrect on that, I'm sure  
 3 Ms. Conklin will let me know ahead  
 4 of time.  
 5 So I'm going to place an  
 6 objection on those two grounds.  
 7 BY MS. CONKLIN:  
 8 Q. Mr. Moyer, I've shown you an  
 9 exhibit numbered 15, which is a portion  
 10 only of a Delaware Bay Report Series,  
 11 Volume 8, Economic and Social Aspects of  
 12 Delaware's Coastal Zone by Joel M.  
 13 Goodman, and it's dated spring of 1973,  
 14 and it's the College -- and it was  
 15 published by the College of Marine  
 16 Studies, University of Delaware.  
 17 Are you familiar with a  
 18 series of reports called the Delaware Bay  
 19 Report Series?  
 20 A. I'm not.  
 21 Q. Okay. I notice that  
 22 Exhibit 14 is also published by the  
 23 College of Marine Studies, University of  
 24 Delaware. And I was curious if whether

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1 you were aware of any ongoing  
 2 relationship between the University of  
 3 Delaware and the state of Delaware, in  
 4 particular your department, in terms of  
 5 using or benefitting from material and  
 6 research done in this series?  
 7 A. I'm not aware of any. I  
 8 mean, to the extent that these reports  
 9 were done, they were probably used for  
 10 something, but I'm not exactly sure,  
 11 except for this one, Number 14, I'm not  
 12 familiar with how the other reports were  
 13 used.  
 14 Q. Do you know how many were in  
 15 the Delaware Bay Report Series?  
 16 A. I do not.  
 17 Q. Okay. Have you seen them  
 18 available in DNREC offices?  
 19 A. Some of them. Not -- not  
 20 15, I've never seen this one before.  
 21 Q. All right. And just to be  
 22 certain, you didn't utilize any material  
 23 in this Delaware Bay Report Number 8 in  
 24 connection with your work --

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1 A. No.  
 2 Q. -- as manager?  
 3 A. No.  
 4 Q. Okay. Thank you.  
 5 MS. CONKLIN: We have one  
 6 more. This is 16.  
 7 (Whereupon, Deposition  
 8 Exhibit No. Moyer-16, Memo dated  
 9 7/27/94 to Peder Hansen, et al.,  
 10 from Sara W. Cooksey, Bates DE  
 11 27936-27941, was marked for  
 12 identification.)  
 13 BY MS. CONKLIN:  
 14 Q. Mr. Moyer, I've shown you  
 15 Exhibit 16. It's Bates stamped DE 27936  
 16 through 27941. And the front page is a  
 17 memorandum, and I'll just read the typed  
 18 section, to Peder Hansen, H-A-N-S-E-N,  
 19 John Schneider, S-C-H-N-E-I-D-E-R, John  
 20 Hugg, H-U-G-G, Bob Taggart and Bill  
 21 Moyer. Would that be you?  
 22 A. Yes.  
 23 Q. And it's dated July 27th,  
 24 1994 from Sarah Cooksey, C-O-O-K-S-E-Y,

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1 Administrator, and it's on the letterhead  
 2 of State of Delaware, Division of Soil  
 3 and Land Conservation in Dover, and it  
 4 purports to convey an MOA, memorandum of  
 5 understanding, between Delaware and New  
 6 Jersey. Do you recall seeing this  
 7 memorandum and the attached MOA before?  
 8 A. Yes.  
 9 Q. Okay. Can you tell me  
 10 whether the MOA which is in draft form  
 11 attached to this memorandum was ever  
 12 signed and executed between the states?  
 13 A. I don't believe that it was.  
 14 Q. Okay. Is it fair to say  
 15 that this was offered for your comments?  
 16 A. Yes.  
 17 Q. The memorandum was provided  
 18 to you for comment?  
 19 A. That's correct.  
 20 Q. Okay. Looking at the  
 21 handwritten comments on this particular  
 22 exhibit, are any of them yours?  
 23 A. Yes.  
 24 Q. Oh, this is your writing?

182	<p>1 A. Yes.</p> <p>2 Q. Oh, all right.</p> <p>3 A. Not all of it.</p> <p>4 Q. Oh, okay.</p> <p>5 A. Now that I look at some of</p> <p>6 the other pages.</p> <p>7 Q. All right. Which of the</p> <p>8 comments did you provide?</p> <p>9 A. Page 3, I added subaqueous</p> <p>10 lands permits.</p> <p>11 Q. Right. So --</p> <p>12 A. I believe I also added the</p> <p>13 Roman numerals and the letters.</p> <p>14 Q. Okay. From your</p> <p>15 perspective, and let me ask to your</p> <p>16 understanding, what was the purpose of</p> <p>17 this memorandum from Delaware's</p> <p>18 perspective?</p> <p>19 A. I believe at the time, this</p> <p>20 was early in the approval of our Coastal</p> <p>21 Management Program by NOAA, Federal</p> <p>22 Office of Coastal Zone Management, and</p> <p>23 they were just trying to determine</p> <p>24 whether or not it would be possible for</p>	184	<p>1 ability of the state of New Jersey to do</p> <p>2 a consistency finding fit in with the</p> <p>3 purpose and applicability in paragraph 1?</p> <p>4 A. Well, I believe that the</p> <p>5 Coastal -- the federal Coastal Zone --</p> <p>6 federal Coastal Zone Management law</p> <p>7 allows states to enter into agreements</p> <p>8 establishing who does the coastal zone</p> <p>9 consistencies in waters between the two</p> <p>10 states.</p> <p>11 Q. And --</p> <p>12 A. And I believe that Sarah</p> <p>13 Cooksey in this memorandum was exploring</p> <p>14 whether that would be an option for</p> <p>15 Delaware to pursue with New Jersey.</p> <p>16 Q. All right. In connection</p> <p>17 with this memorandum, did anybody</p> <p>18 internally at your shop or in DNREC</p> <p>19 discuss what would happen in the event</p> <p>20 that Delaware denied an application for</p> <p>21 activity on subaqueous lands and New</p> <p>22 Jersey approved an application for the</p> <p>23 same activity on subaqueous lands?</p> <p>24 MR. WALTON: Objection.</p>
183	<p>1 the state of New Jersey to do the</p> <p>2 consistency determinations, coastal zone</p> <p>3 consistency determinations required by</p> <p>4 the federal Coastal Zone Management Act.</p> <p>5 Q. Let me direct to you item 1,</p> <p>6 Purpose and Applicability. And it's on</p> <p>7 DE 27937.</p> <p>8 A. Okay.</p> <p>9 Q. The purpose and</p> <p>10 applicability states, "This Memorandum of</p> <p>11 Agreement between the New Jersey</p> <p>12 Department of Environmental Protection</p> <p>13 and the Delaware Department of Natural</p> <p>14 Resources and Environmental Control</p> <p>15 establishes a framework for coordinating</p> <p>16 the policies and activities of each</p> <p>17 state's Coastal Management Program in the</p> <p>18 area of the Delaware River and Delaware</p> <p>19 Bay transected by the common state</p> <p>20 boundary (as defined in State of New</p> <p>21 Jersey versus State of Delaware 296 US</p> <p>22 694 (1934)."</p> <p>23 To what extent does your</p> <p>24 recollection about the consistency or the</p>	185	<p>1 Lack of foundation.</p> <p>2 MS. CONKLIN: You can</p> <p>3 answer.</p> <p>4 THE WITNESS: Not to my</p> <p>5 knowledge.</p> <p>6 BY MS. CONKLIN:</p> <p>7 Q. Did you submit any other</p> <p>8 comments with respect to this proposed</p> <p>9 memorandum?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did you attend any</p> <p>12 meetings in which this memorandum was</p> <p>13 discussed?</p> <p>14 A. No.</p> <p>15 Q. No meetings with New Jersey</p> <p>16 officials at all?</p> <p>17 A. No, no.</p> <p>18 Q. Let me ask you, you</p> <p>19 indicated that Laura Herr worked with you</p> <p>20 for approximately ten years before you</p> <p>21 left DNREC?</p> <p>22 A. Yes.</p> <p>23 Q. In what capacity did she</p> <p>24 work for you?</p>

<p style="text-align: right;">186</p> <p>1       <b>A. She was a program manager 1.</b>  2       <b>I was a section manager or program</b>  3       <b>manager 2 was our classification.</b>  4       <b>Q. And in the real world, what</b>  5       <b>does that mean?</b>  6       <b>A. She reported to me.</b>  7       <b>Q. Got it. Okay.</b>  8       <b>And what were her job</b>  9       <b>duties?</b>  10       <b>A. She was in charge of</b>  11       <b>overseeing issuance of all permits and</b>  12       <b>leases.</b>  13       <b>Q. All permits and leases?</b>  14       <b>A. Yes.</b>  15       <b>Q. And how many people did she</b>  16       <b>supervise that you recall?</b>  17       <b>A. Now? When I left?</b>  18       <b>Q. Yes.</b>  19       <b>A. Eight.</b>  20       <b>Q. Okay. If an issue needed to</b>  21       <b>be discussed with the attorney general's</b>  22       <b>staff, would she be the person through</b>  23       <b>whom requests to -- would she be the</b>  24       <b>person who would determine whether</b></p>	<p style="text-align: right;">188</p> <p>1       position?  2       <b>A. Eventually, yes.</b>  3       <b>Q. And if she had a question</b>  4       <b>for the attorney general's office, would</b>  5       <b>it have been conveyed in the same</b>  6       <b>fashion, through the director's office?</b>  7       <b>A. I would hope so, yes.</b>  8       <b>Q. I mean, you had no reason to</b>  9       <b>think that the procedure had changed?</b>  10       <b>A. Correct.</b>  11       <b>Q. Have you discussed the --</b>  12       <b>have you discussed anything of the</b>  13       <b>Compact of 1905 with Laura Herr?</b>  14       <b>A. No.</b>  15       <b>MR. WALTON: Outside the</b>  16       <b>presence of counsel.</b>  17       <b>MS. CONKLIN: Outside the</b>  18       <b>presence of counsel.</b>  19       <b>THE WITNESS: No.</b>  20       <b>BY MS. CONKLIN:</b>  21       <b>Q. Let me just direct your</b>  22       <b>attention to page -- on Exhibit 16, DE</b>  23       <b>27940, and at the bottom of that page,</b>  24       <b>there is a section in handwriting that</b></p>
<p style="text-align: right;">187</p> <p>1       requests for advice would be forwarded to  2       the attorney general's office?  3       <b>A. It would generally go</b>  4       <b>through the director's office. He would</b>  5       <b>have the final say. If she had a</b>  6       <b>question of the attorney general's</b>  7       <b>office, it would go through our division</b>  8       <b>director.</b>  9       <b>Q. When you were manager, I</b>  10       <b>thought you said it went through you; in</b>  11       <b>other words, you determined whether</b>  12       <b>something needed to be referred to the</b>  13       <b>attorney general's office when you were</b>  14       <b>there as manager?</b>  15       <b>A. I would determine whether it</b>  16       <b>needed to be referred to the attorney</b>  17       <b>general's office, but then I would send</b>  18       <b>it to them through the director's office.</b>  19       <b>Q. And it would be up to the</b>  20       <b>director to forward that memo?</b>  21       <b>A. Correct.</b>  22       <b>Q. All right. And when Ms.</b>  23       <b>Herr -- I'm sorry. When you left, did</b>  24       <b>Ms. Herr take your job, essentially your</b></p>	<p style="text-align: right;">189</p> <p>1       states -- there's a section in  2       handwriting at the bottom of the page.  3       Is that your handwriting?  4       <b>A. No.</b>  5       <b>Q. Okay. All right.</b>  6       <b>A. Mine is a little bit more</b>  7       <b>legible than that.</b>  8       <b>Q. Were you aware whether you</b>  9       <b>were going to be serving as a point of</b>  10       <b>contact with respect to this MOA if it</b>  11       <b>had been executed?</b>  12       <b>A. I believe there was that</b>  13       <b>potential, yes.</b>  14       <b>Q. Okay. That's why you</b>  15       <b>retired, right?</b>  16       <b>A. This is ten years before.</b>  17       <b>Q. All right. And who would</b>  18       <b>have been your counterpart at New Jersey?</b>  19       <b>Do you know?</b>  20       <b>A. I do not, no. I knew who it</b>  21       <b>was then. We talked fairly regularly.</b>  22       <b>Q. And you say your</b>  23       <b>counterpart, you mean counterpart for,</b>  24       <b>what, subaqueous?</b></p>

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1 A. Yes.  
 2 Q. In New Jersey?  
 3 A. Yes.  
 4 Q. Do you remember this  
 5 person's name?  
 6 A. I do not.  
 7 Q. Even though you talked  
 8 fairly regularly?  
 9 A. That's --  
 10 Q. Was it a man or a woman?  
 11 A. A man.  
 12 Q. It was a man. All right.  
 13 And this would have been --  
 14 A. I had some dealings with Bob  
 15 Tudor.  
 16 Q. T-U-D-O-R?  
 17 A. T-U-D-O-R. I just can't  
 18 pull out the other names.  
 19 Q. Did you have any contact  
 20 with William Anderson?  
 21 A. Not to my recollection.  
 22 Q. Okay. I'm probably going to  
 23 just throw a couple more names out just  
 24 in case. James Johnson does not ring any

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1 bells?  
 2 A. It does not, no.  
 3 Q. Steven Whitney?  
 4 A. No.  
 5 Q. And when you say you had  
 6 some regular contact with your  
 7 counterpart in New Jersey, when you talk  
 8 about counterpart, counterpart in what  
 9 aspect of your job?  
 10 A. The person who would be in  
 11 charge of issuing approvals for work off  
 12 the coast.  
 13 Q. On subaqueous lands?  
 14 A. On subaqueous lands.  
 15 There's another person who I've been at  
 16 submerged land conferences to and I can't  
 17 remember his name.  
 18 Q. And would you discuss issues  
 19 arising from licensing and permits of  
 20 activities in the area off the Salem  
 21 County coast in New Jersey, in what's  
 22 known as the 12-mile circle?  
 23 A. In the Delaware Bay?  
 24 Q. In the Delaware Bay.

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1 A. Yes, yes.  
 2 Q. And when you discussed this  
 3 with this gentleman, was there anybody  
 4 else present? Was it a group discussion?  
 5 A. Not particularly. They were  
 6 just one on one.  
 7 Q. Was there any written  
 8 communication arising from these  
 9 meetings?  
 10 A. Not to my knowledge.  
 11 MS. CONKLIN: Well, if you  
 12 could just give me a couple  
 13 minutes here, if you could just  
 14 stretch your legs here, I think I  
 15 may be done.  
 16 THE WITNESS: Okay.  
 17 (Recess taken from 3:02 p.m.  
 18 to 3:08 p.m.)  
 19 BY MS. CONKLIN:  
 20 Q. One more quick question. If  
 21 I wanted to find out what permits were  
 22 issued by the state of Delaware in  
 23 connection with the construction of the  
 24 Delaware Memorial Bridge, where would I

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1 go?  
 2 A. Do you have a date when the  
 3 Delaware Memorial Bridge was constructed?  
 4 That might help me to --  
 5 Q. Well, there's a one and a  
 6 two. There's the original -- the first  
 7 bridge and then there was a second. And  
 8 I'm thinking the first bridge would have  
 9 been sometime in the '50s, possibly early  
 10 '60s.  
 11 A. I think the best bet would  
 12 be the Delaware River Bay Authority would  
 13 probably have the most complete records  
 14 on that. And, of course, the Wetlands  
 15 and Subaqueous Lands Section could do a  
 16 search under the Delaware River Bay  
 17 Authority.  
 18 Q. The Wetlands and  
 19 Subaqueous -- I'm sorry, it was called  
 20 the Subaqueous Lands Act?  
 21 A. Underwater Lands Act.  
 22 Q. Underwater Lands Act. That  
 23 was the Underwater Lands Act, and I think  
 24 that was in 1961. Am I in the right area

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1 there?  
 2 A. Yes.  
 3 Q. Are you aware personally  
 4 whether the department issued permits  
 5 prior to that -- prior to 1961 for  
 6 activities on subaqueous land?  
 7 A. I believe that there were  
 8 permits issued for subaqueous lands, but  
 9 to my knowledge, it was done by the  
 10 Department of Transportation. Some  
 11 permits were issued by the Department of  
 12 Transportation.  
 13 Q. Would that be the same as  
 14 the highway department, or different?  
 15 A. Yes.  
 16 Q. Same?  
 17 A. Yes.  
 18 Q. Okay. And would these be  
 19 permits just specifically for the bridge,  
 20 for the Memorial Bridge?  
 21 A. Yes.  
 22 Q. Okay. Very good.  
 23 MS. CONKLIN: Thank you very  
 24 much. I believe we're done.

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1 THE WITNESS: You're  
 2 welcome. Thank you.  
 3 MR. WALTON: And we'll read  
 4 and sign.  
 5 (Witness excused.)  
 6 (Whereupon, at 3:10 p.m. the  
 7 proceedings concluded.)  
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196

1 CERTIFICATE  
 2  
 3  
 4 I hereby certify that the  
 5 witness was duly sworn by me and that the  
 6 deposition is a true record of the  
 7 testimony given by the witness.  
 8  
 9 It was requested before  
 10 completion of the deposition that the  
 11 witness, WILLIAM F. MOYER, have the  
 12 opportunity to read and sign the  
 13 deposition transcript.  
 14  
 15 DEBRA J. WEAVER, RPR, CRR, CSR  
 16 NJ CSR License No. XI 01614  
 17 DE Certification No. 183-RPR  
 18 (Expires 1/31/08)  
 19 Dated : November 15, 2006  
 20  
 21 (The foregoing certification  
 22 of this transcript does not apply to any  
 23 reproduction of the same by any means,  
 24 unless under the direct control and/or  
 supervision of the certifying shorthand  
 reporter.)

197

1 INSTRUCTIONS TO WITNESS  
 2  
 3 Please read your deposition over  
 4 carefully and make any necessary changes.  
 5 You should assign a reason in the  
 6 appropriate column on the errata sheet  
 7 for any change made.  
 8 After making any change which has  
 9 been noted on the following errata sheet,  
 10 along with the reason for any change,  
 11 sign your name to the errata sheet and  
 12 date it.  
 13 You are signing it subject to the  
 14 changes you have made on the errata  
 15 sheet, which will be attached to the  
 16 deposition. You must sign in the space  
 17 provided.  
 18 Return the original errata sheet  
 19 to the deposing attorney within thirty  
 20 (30) days of receipt of the transcript by  
 21 you.  
 22  
 23  
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               E R R A T A  
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200

1                           LAWYER'S NOTES  
 2           P A G E   L I N E  
 3 \_\_\_\_\_  
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1           A C K N O W L E D G M E N T   O F   D E P O N E N T  
 2  
 3           I, WILLIAM F. MOYER, do  
 4 hereby certify that I have read the  
 5 foregoing pages, 1 - 196, and that the  
 6 same is a correct transcription of the  
 7 answers given by me to the questions  
 8 therein propounded, except for the  
 9 corrections or changes in form or  
 10 substance, if any, noted in the attached  
 11 Errata Sheet.  
 12  
 13  
 14 \_\_\_\_\_  
 15   WILLIAM F. MOYER  
 16  
 17   Subscribed and sworn  
 18   to before me this  
 19   \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.  
 20   My commission expires: \_\_\_\_\_  
 21 \_\_\_\_\_  
 22   Notary Public  
 23  
 24

WILLIAM F. MOYER

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E R R A T A

PAGE	LINE	CHANGE
32	16	Division of <u>PARKS</u> and Recreation
53	15	GIRARD to GERARD
70	9	NGBD → NGVD

*William F. Moyer*  
11/22/06

WILLIAM F. MOYER

ACKNOWLEDGMENT OF DEPONENT

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I, WILLIAM F. MOYER, do hereby certify that I have read the foregoing pages, 1 - 196, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

*William F. Moyer*

WILLIAM F. MOYER

Subscribed and sworn to before me this

5<sup>th</sup> day of Dec., 2006.

My commission expires: \_\_\_\_\_

*Attorney at Law*

Notary Public



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IN THE SUPREME COURT  
OF THE UNITED STATES

- - -  
STATE OF NEW JERSEY : NO. 134, Original

v.

STATE OF DELAWARE :

- - -  
OCTOBER 5, 2006  
- - -

Oral deposition of  
KURT REUTHER taken pursuant to notice,  
was held at the law offices of CONNOLLY,  
BOVE, LODGE & HUTZ, LLP, The Nemours  
Building, 1007 North Orange Street,  
9th Floor, Wilmington, Delaware beginning  
at 9:29 a.m., on the above date, before  
Dottyann Y. Walsh, a Certified Shorthand  
Reporter and Notary Public in the State  
of Delaware.

- - -  
ESQUIRE DEPOSITION SERVICES  
Suite 1210  
1600 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
(215) 988-9191

2

1 APPEARANCES:  
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 8  
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 11 (302) 658-9141  
 Representing the Defendant  
 12  
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1 ---  
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 5 Direction to Witness Not to Answer  
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 15 Stipulations  
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 17 None  
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 20 Question Marked  
 21 Page Line Page Line Page Line  
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1 ---  
 2 KURT REUTHER, after having  
 3 been duly sworn, was examined and  
 4 testified as follows:  
 5 ---  
 6 DIRECT EXAMINATION  
 7 ---  
 8 BY MS. BALINT:  
 9 Q. Good morning.  
 10 A. Good morning.  
 11 Q. I'm Ellen Barney Balint.  
 12 I'm a deputy attorney general, a lawyer,  
 13 for the State of New Jersey in the New  
 14 Jersey versus Delaware matter that we are  
 15 here to talk about today. Before we get  
 16 going, have you ever been deposed before?  
 17 Have you ever been in a situation like  
 18 today where your deposition testimony has  
 19 been requested?  
 20 A. No.  
 21 Q. It is a little different  
 22 than a regular conversation and there is  
 23 some special rules about how we interact.  
 24 So I would like to go through those

6

1 differences before we get started. The  
2 big difference is that everything that  
3 you and I say and any of the other  
4 attorneys sitting here today is taken  
5 down by the court reporter who is sitting  
6 on your left and before we started she  
7 put you under oath. Do you understand  
8 that everything that goes on today can be  
9 admissible in court at a later date as if  
10 this testimony was given in court?  
11 A. Yes.  
12 Q. Because everything we say is  
13 being taken down and will be made into a  
14 transcript, we need to do a few things  
15 for the clarity of the record, first of  
16 all we try not to speak over each other.  
17 So I'm going to try very hard not to  
18 interrupt you, to let you finish what you  
19 have to say and I would ask that you wait  
20 to hear the end of my question before you  
21 begin answering. Sometimes you feel like  
22 you know where somebody is going at a  
23 conversation, but we don't do that at a  
24 deposition. Do you understand?

7

1 A. Yes, I do.  
2 Q. Part of that going along  
3 with listening to the whole question,  
4 when we read the testimony, we are going  
5 to assume that you understood the  
6 question, so if there is anything that I  
7 say that sounds ambiguous to you or there  
8 is double negatives and you are not sure  
9 which way we are going, or any other  
10 problem with the question, I would ask  
11 you to let me know and I will try to  
12 clarify the question. Is that okay?  
13 A. Yes.  
14 Q. And the other thing that  
15 doesn't work on a transcript is hand  
16 gestures which I do a lot of and uh-huhs  
17 and un-uhs, so I would ask that all of  
18 your responses be verbal and that yes or  
19 no be your response to an affirmative or  
20 negative answer. Understood?  
21 A. Yes.  
22 Q. If you don't know the answer  
23 to a question, that is okay. I would ask  
24 that you not guess on things, but that it

8

1 would be okay to estimate if that is  
2 appropriate in your opinion. For  
3 example, if you can't remember the date  
4 that something happened within a year,  
5 like if you don't remember the exact year  
6 or you don't remember the exact time but  
7 you think it was October or you can  
8 remember that it was definitely in the  
9 '90s, that kind of an estimate is all  
10 right, but I would ask that you let me  
11 know that you are making that kind of an  
12 estimate. Understood?  
13 A. Yes.  
14 Q. Is there any reason that you  
15 feel you wouldn't be able to give  
16 accurate testimony today because of any  
17 medications you are taking, any illness  
18 or any reason that your memory or  
19 perceptions might be affected today?  
20 A. No.  
21 Q. Can you tell me your current  
22 title?  
23 A. I'm the chief enforcement  
24 officer for the Division of Air and Waste

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1 **Management which is within the Department**  
2 **of Natural Resources Environmental**  
3 **Control.**  
4 Q. Before we get more into your  
5 employment, I would like to start with a  
6 little background information. What is  
7 the highest level of education you have  
8 achieved?  
9 A. I have a bachelors degree  
10 from the University of Delaware with  
11 additional credits from University of  
12 Virginia, NC State and West Virginia  
13 University.  
14 Q. Your bachelors from the  
15 University of Delaware, when did you  
16 achieve that degree?  
17 A. 1984.  
18 Q. And what was your major area  
19 of study?  
20 A. Parks management.  
21 Q. Can you tell me a little bit  
22 about what that area of study entails.  
23 A. Certainly. The parks  
24 management degree at the University of

<p style="text-align: right;">10</p> <p>1 Delaware when I was there was geared 2 towards natural resource based facility 3 management, in other words it prepares 4 you to run or operate, maintain state 5 parks in natural areas. 6 Q. Did you have any minor area 7 of study -- 8 A. No. 9 Q. -- at the University of 10 Delaware? What did your studies at the 11 University of Virginia entail? 12 A. That was a parallel program 13 with the FBI Academy and that was based 14 in criminal justice. 15 Q. What years or year was that? 16 A. That was 1998. 17 Q. Did you get a degree or 18 certificate? 19 A. Just a certification that 20 I'm a graduate of the FBI Academy. 21 Q. Was there any environmental 22 aspect of the FBI training that you had 23 at the University of Virginia? 24 A. No.</p>	<p style="text-align: right;">12</p> <p>1 and preventive maintenance planning for 2 outdoor recreational areas. 3 Q. Did you receive any type of 4 degree or certification? 5 A. Certification of completion. 6 Q. And what year was that? 7 A. In the mid '80s, '85, '86. 8 Q. What about your studies at 9 West Virginia University? 10 A. That again was run out of 11 Wheeling, West Virginia, very similar to 12 the NC State credits, that particular 13 field of study focused on the management 14 of aquatic facilities at outdoor 15 recreation areas. 16 Q. Can you give me any examples 17 of those type of facilities? 18 A. Certainly, community 19 swimming pools would be an example, lake 20 side waterfront areas at a larger natural 21 resource area, associated boat ramps, 22 things of that nature. 23 Q. And when did you attend this 24 program at West Virginia University?</p>
<p style="text-align: right;">11</p> <p>1 Q. So it was just the regular 2 training that an FBI agent would get? 3 A. The FBI runs a state 4 program, so it was general criminal 5 justice subject matter -- administrative 6 law, interviewing, physical fitness, 7 public relations, that type of thing. 8 Q. So a different program than 9 an FBI agent? 10 A. Correct. 11 Q. When did you attend the 12 North Carolina State University? 13 A. That was a program run out 14 of Wheeling, West Virginia, and that was 15 in the mid '80s, and that is an estimate. 16 Q. And what was that program? 17 A. That was focused on parks 18 maintenance and management. 19 Q. How was the course of study 20 at North Carolina State different than 21 your bachelors studies at the University 22 of Delaware? 23 A. It was more of an advanced 24 level that discussed operational planning</p>	<p style="text-align: right;">13</p> <p>1 A. That was approximately 1987. 2 Q. Again, did you receive any 3 type of degree or certificate? 4 A. Certificate of completion. 5 Q. You refer to these 6 postgraduate studies as receiving 7 credits, are you working towards any -- 8 towards any type of postgraduate degree? 9 A. No, I'm not. 10 Q. When was your first -- what 11 was your first employment after 12 graduating from the University of 13 Delaware? 14 A. I worked for the Delaware 15 Department of Natural Resources Parks 16 Division. 17 Q. And when did you get that 18 job? 19 A. October of 1984. 20 Q. What was your first job 21 title? 22 A. I was an assistant park 23 superintendent. 24 Q. And what were your duties as</p>

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1 an assistant park superintendent?  
2 **A. As an assistant park**  
3 **superintendent, I attended the Delaware**  
4 **State Police Academy, received my**  
5 **certification in law enforcement for**  
6 **Delaware, so I had ranger and law**  
7 **enforcement style duties as well as**  
8 **operations and maintenance duties.**  
9 **Q. What type of things might**  
10 **you need to do in your ranger and law**  
11 **enforcement role?**  
12 **A. Basically a park ranger in**  
13 **the State of Delaware is responsible for**  
14 **public safety on the park. To make an**  
15 **analogy, it is traditional policing but**  
16 **in a natural resource area.**  
17 **Q. Can you give me a couple of**  
18 **examples that would be typical of that**  
19 **job?**  
20 **A. Certainly, alcohol**  
21 **violations, safety violations with regard**  
22 **to boating, hunting, fishing, some**  
23 **domestic style disputes related to**  
24 **campground activities.**

15

1 **Q. And in the case of such an**  
2 **incident, what would be the consequences**  
3 **to the park goer? Did you give out**  
4 **tickets, did you arrest people?**  
5 **A. In some cases they were**  
6 **issued a physical summons, in other cases**  
7 **they were taken into custody.**  
8 **Q. So a criminal summons would**  
9 **serve like a traffic ticket where you**  
10 **would get a crime and have to appear at**  
11 **some point?**  
12 **A. Correct.**  
13 **Q. What were your park**  
14 **operations duties as an assistant park**  
15 **superintendent?**  
16 **A. I would assist the park**  
17 **superintendent in devising preventive**  
18 **maintenance strategies, budgeting,**  
19 **personnel management.**  
20 **Q. How long did you hold that**  
21 **title as an assistant park**  
22 **superintendent?**  
23 **A. I was promoted to the**  
24 **position of park superintendent in the**

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1 **spring of 1987 as I recall.**  
2 **Q. In the spring of 1987?**  
3 **A. Yes.**  
4 **Q. Backtracking a bit to your**  
5 **first job as an assistant park**  
6 **superintendent, were you working at a**  
7 **single park or were you working at**  
8 **multiple parks?**  
9 **A. Between 1984 and 1987 I was**  
10 **transferred at the need of the division**  
11 **on a couple of different occasions. I**  
12 **worked at Bellview State Park, Carpenter**  
13 **State Park and Lums Pond State Park.**  
14 **Q. Do any of those three parks**  
15 **border the Delaware River?**  
16 **A. No.**  
17 **Q. In the spring of 1987 when**  
18 **you were promoted to park superintendent,**  
19 **what park were you assigned to?**  
20 **A. Brandywine Creek State Park.**  
21 **Q. And what were your duties as**  
22 **the park superintendent?**  
23 **A. Very similar to those of an**  
24 **assistant park superintendent, however,**

17

1 **the park superintendent has overall**  
2 **authority and responsibility for the**  
3 **activity occurring at the area.**  
4 **Q. So you had final**  
5 **decision-making power?**  
6 **A. Yes.**  
7 **Q. -- at that park? And how**  
8 **long did you hold that position?**  
9 **A. I was there until August of**  
10 **1989 as I recall.**  
11 **Q. And what was the next**  
12 **position you held?**  
13 **A. I accepted a promotion to a**  
14 **larger park area.**  
15 **Q. What park was that?**  
16 **A. That was Delaware Seashore**  
17 **State Park.**  
18 **Q. Where is the Delaware**  
19 **Seashore State Park located?**  
20 **A. It is approximately a mile**  
21 **south of Dewey Beach, Delaware on the**  
22 **Atlantic Ocean.**  
23 **Q. Is there any part of**  
24 **Brandywine Creek State Park that borders**

<p style="text-align: right;">18</p> <p>1 the Delaware River? 2 A. No. 3 Q. What were your duties as the 4 superintendent of the Delaware Seashore 5 State Park? 6 A. Similar to those at 7 Brandywine Creek State Park, but at the 8 larger facility I became responsible for 9 the water treatment system, a waste water 10 treatment system, and a greater variety 11 of activities for the park user which 12 included a marina. 13 Q. During this period from 1984 14 to 1989, had you undergone any additional 15 training with the state that we haven't 16 spoken of? 17 A. A variety of in-service 18 training offered through state personnel 19 office, our own agency. 20 Q. Other than the university 21 courses we discussed at the beginning and 22 the Delaware State Police Academy you 23 attended prior to or at the beginning of 24 your employment in 1984, did you</p>	<p style="text-align: right;">20</p> <p>1 Q. Air and waste management 2 enforcement? 3 A. Yes. 4 Q. Has that division retained 5 the same name and organizational 6 structure since that time to the present? 7 A. Yes. 8 Q. What were your duties as a 9 captain in charge of New Castle County 10 for the Division of Air and Waste 11 Management Enforcement? 12 A. I managed a staff of six 13 environmental protection officers, 14 coordinated their activity in enforcement 15 of environmental law. Additionally the 16 enforcement group participates as part of 17 the emergency response team for hazardous 18 materials and oil spill response. 19 Q. What is the mission of the 20 New Castle County office of the Division 21 of Air and Waste Management Enforcement? 22 What was that office charged with doing? 23 A. The mission was not specific 24 to New Castle County operations, we have</p>
<p style="text-align: right;">19</p> <p>1 participate in any other training outside 2 of your department, outside of DNREC? 3 A. Yes. 4 Q. What was that? 5 A. As a result of being 6 transferred to Delaware Seashore State 7 Park, I attended the Delaware Technical 8 and Community College for the purpose of 9 obtaining a waste water treatment 10 operator's license. 11 Q. Do you recall when that was? 12 A. Approximately 1987, '88. 13 Q. How long did you stay the 14 superintendent of the Delaware Seashore 15 State Park? 16 A. Until June of 1992. 17 Q. And what was your next job? 18 A. I was a captain assigned in 19 my current division in charge of 20 operations for New Castle County. 21 Q. So that was a captain of the 22 DNREC Division of Air and Waste 23 Management? 24 A. And enforcement, yes.</p>	<p style="text-align: right;">21</p> <p>1 a statewide unit. So it would be the 2 entire mission. 3 Q. But as the county office, 4 you would be fulfilling that mission 5 within the county? 6 A. Correct. 7 Q. So what is the general 8 mission of the office? 9 A. The mission of the 10 enforcement section is to enforce 11 appropriate environmental law for 12 protection of public safety and the 13 environment. 14 Q. And can you tell me which 15 environmental laws you are charged with 16 enforcing? 17 A. Yes. My unit or the unit 18 enforces all the laws related to air and 19 waste management within the state. 20 Additionally we provide enforcement 21 services for the Division of Water 22 Resources and the Division of Soil and 23 Water Conservation. 24 Q. Enforcement services for</p>

<p style="text-align: right;">22</p> <p>1 which two divisions? 2 <b>A. It is Division of Air and</b> 3 <b>Waste Management.</b> 4 <b>Q. Right.</b> 5 <b>A. Division of Water Resources</b> 6 <b>and Division of Soil and Water</b> 7 <b>Conservation.</b> 8 <b>Q. What policing methods does</b> 9 <b>this office utilize in enforcing these</b> 10 <b>laws?</b> 11 <b>MR. WALTON: Object to the</b> 12 <b>form of the question. It is vague</b> 13 <b>as policing methods.</b> 14 <b>BY MS. BALINT:</b> 15 <b>Q. Do the officers of the New</b> 16 <b>Castle County office of the Division of</b> 17 <b>Air and Waste Management Enforcement have</b> 18 <b>routine patrols?</b> 19 <b>A. Yes.</b> 20 <b>Q. Can you describe those for</b> 21 <b>me?</b> 22 <b>A. Yes. We meet with our</b> 23 <b>program areas of responsibility</b> 24 <b>periodically, identify their needs, their</b></p>	<p style="text-align: right;">24</p> <p>1 when you were promoted to chief of 2 enforcement? 3 <b>A. My duties became more</b> 4 <b>administratively oriented in terms of</b> 5 <b>development of policy, management of</b> 6 <b>budget, setting strategic goals as</b> 7 <b>opposed to operational responsibilities</b> 8 <b>that I had as a captain.</b> 9 <b>Q. Currently how many captains</b> 10 <b>serve under your authority?</b> 11 <b>A. One.</b> 12 <b>Q. And currently how many</b> 13 <b>officers are there below the captain?</b> 14 <b>A. 10.</b> 15 <b>Q. Are there any additional</b> 16 <b>employees of the office?</b> 17 <b>A. One administrative support</b> 18 <b>specialist.</b> 19 <b>Q. Where is the office located,</b> 20 <b>your current office?</b> 21 <b>A. My office is in Dover,</b> 22 <b>Delaware.</b> 23 <b>Q. Is the New Castle County</b> 24 <b>office of the Division of Air and Waste</b></p>
<p style="text-align: right;">23</p> <p>1 <b>concerns and some of the programmatic</b> 2 <b>issues that they deal with. And then we</b> 3 <b>direct patrols geared towards looking for</b> 4 <b>those events that may be occurring in the</b> 5 <b>area.</b> 6 <b>Q. Can you give me some</b> 7 <b>examples of directed patrols?</b> 8 <b>A. Certainly. Open burning of</b> 9 <b>trash and refuse as it relates to air</b> 10 <b>pollution, the transportation of solid</b> 11 <b>and hazardous wastes and looking for</b> 12 <b>appropriate permits on the conveyance,</b> 13 <b>looking for illegal docks, violations of</b> 14 <b>filling wetlands and making sure that</b> 15 <b>contractors that are developing new</b> 16 <b>properties have appropriate soil and</b> 17 <b>erosion controls in place.</b> 18 <b>Q. How long did you serve as</b> 19 <b>captain of the New Castle County office?</b> 20 <b>A. Until August of 2004.</b> 21 <b>Q. And what was your title</b> 22 <b>change at that point?</b> 23 <b>A. Chief of enforcement.</b> 24 <b>Q. How did your duties change</b></p>	<p style="text-align: right;">25</p> <p>1 Management Enforcement located in Dover? 2 <b>A. No.</b> 3 <b>Q. Where is that located?</b> 4 <b>A. New Castle, Delaware.</b> 5 <b>Q. Can you describe the New</b> 6 <b>Castle facility for me, please?</b> 7 <b>A. Yes, the New Castle</b> 8 <b>facilities are located at 715 Grantham</b> 9 <b>Lane. It is a state office building that</b> 10 <b>was reclaimed from a former industrial</b> 11 <b>site and it houses enforcement, a branch</b> 12 <b>of emergency response and most of your</b> 13 <b>engineering and compliance branch for the</b> 14 <b>division -- I'm sorry, for the air</b> 15 <b>resources section.</b> 16 <b>Q. How many and what kind of</b> 17 <b>vehicles are available to the New Castle</b> 18 <b>enforcement office?</b> 19 <b>A. There are five vehicles</b> 20 <b>assigned to the New Castle County group,</b> 21 <b>two of which are sport utility vehicles.</b> 22 <b>The other are Crown Victorias, standard</b> 23 <b>police cars.</b> 24 <b>Q. Does the New Castle</b></p>

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1 enforcement office have any aquatic  
 2 vehicles?  
 3 A. Yes.  
 4 Q. Can you tell me how many and  
 5 what kind?  
 6 A. The unit overall statewide  
 7 has two vessels. One is a 21-foot Boston  
 8 Whaler, and the other is a 19-foot  
 9 Crestliner.  
 10 Q. I'm sorry, 20-foot --  
 11 A. 21-foot Boston Whaler. And  
 12 a 19-foot Crestliner.  
 13 Q. Where are those two boats  
 14 normally stationed?  
 15 A. The 21-foot Boston Whaler is  
 16 normally staged at our New Castle office.  
 17 And the Crestliner is normally staged at  
 18 our Georgetown office.  
 19 Q. What is the normal routine  
 20 or use of the 21-foot Boston Whaler that  
 21 is stationed out of New Castle?  
 22 A. That vessel has two  
 23 missions. First it is used to respond to  
 24 oil spills or events occurring on the

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1 Delaware River. Secondly it is used  
 2 to patrol for some of those subaqueous  
 3 land and wetland issues we discussed a  
 4 few moments ago.  
 5 MS. BALINT: Can you read  
 6 back that last answer.  
 7 (The record is read back.)  
 8 BY MS. BALINT:  
 9 Q. First addressing the  
 10 response to oil spills and other events  
 11 in the Delaware, can you describe for me  
 12 what those responsibilities would  
 13 include?  
 14 A. Yes. In the event that we  
 15 are notified of an oil spill or a  
 16 discharge or release into the Delaware  
 17 River, we will send our vessels out with  
 18 personnel to truth the event.  
 19 Q. I'm sorry, to what?  
 20 A. To truth it. In other words  
 21 to locate it using GPS technology, using  
 22 latitude and longitude, and to actually  
 23 make sure it is truly an event occurring.  
 24 Q. In the event you are

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1 notified of an oil spill or other  
 2 emergency event, what personnel within  
 3 your office take the Boston Whaler out?  
 4 A. Could be anybody on the  
 5 staff, one of the 12 people that I  
 6 mentioned before.  
 7 Q. Are all of your officers  
 8 trained to be able to drive that boat and  
 9 know all of the same response procedures?  
 10 A. Yes.  
 11 Q. When you say your first job  
 12 is to truth the event, you are  
 13 essentially assuring that it wasn't a  
 14 false report?  
 15 A. Correct.  
 16 Q. After the verification and  
 17 location of the accident or spill, what  
 18 is the next thing that your officers  
 19 would do?  
 20 A. Our officers would contact  
 21 the members of our emergency response  
 22 team, ask for their assistance in terms  
 23 of evaluating the spill, defining control  
 24 measures designed to contain the spill

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1 and ultimately develop strategy to  
 2 conduct clean-up and final end point to  
 3 make sure that what is clean is clean.  
 4 Our officers concurrently will  
 5 investigate the source of the spill, try  
 6 to determine how and why it happened and  
 7 who may be responsible for it. With the  
 8 goal to ultimately prosecute those people  
 9 if in fact a crime had been committed.  
 10 Q. You described this first  
 11 possibility of a response as being oil  
 12 spills and other events, what other types  
 13 of events could it be?  
 14 A. There are a number of  
 15 industrial point sources, permitted point  
 16 sources that come out of the Delaware  
 17 River. Industry has a requirement to  
 18 notify us of excursions or problems that  
 19 they have with their outfalls, and upon  
 20 that type of notification, we will go out  
 21 and check those things.  
 22 Q. Do you respond to boating  
 23 accidents or other kinds of emergencies?  
 24 A. Only if there is an oil

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1 spill involved for my unit, boating  
2 accidents.  
3 Q. So if a boating accident  
4 caused a ruptured gas tank, you might be  
5 called out?  
6 A. Yes.  
7 Q. The emergency response team  
8 that you referred to, can you describe  
9 for me what part of the Delaware state  
10 government that team is located in?  
11 MR. WALTON: I will object  
12 to the form of the question. I  
13 don't think I understood it.  
14 BY MS. BALINT:  
15 Q. Is the emergency response  
16 team that you referred to part of DNREC,  
17 or is it a State Police office or where  
18 else might it be located?  
19 A. It crosses a variety of  
20 departmental lines and it is ultimately  
21 managed by the Delaware Emergency  
22 Management Agency.  
23 Q. Is the Delaware Emergency  
24 Management Agency a function of Delaware

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1 State Police or is it an independent  
2 agency?  
3 A. It is contained within the  
4 Department of Safety and Homeland  
5 Security.  
6 Q. Just trying to understand it  
7 from an organizational perspective, is  
8 the State Police department part of the  
9 Department of Safety and Homeland  
10 Security as well?  
11 A. Yes.  
12 Q. So the emergency management  
13 agency is not under the state police but  
14 parallel to it, under the umbrella of the  
15 Department of Safety and Homeland  
16 Security?  
17 A. I would characterize it as a  
18 sister division.  
19 Q. You said that the  
20 responsibility for the emergency response  
21 team crosses department lines, what  
22 departments have some responsibility for  
23 the emergency response team?  
24 A. Of course DNREC, Safety and

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1 Homeland Security through both DEMA and  
2 the Delaware State Police, the Division  
3 of Public Health, Department of  
4 Transportation, Delaware State Fire  
5 School and a few others that I don't  
6 recall off the top of my head.  
7 Q. But those are the major  
8 ones.  
9 A. Yes.  
10 Q. In your tenure working at  
11 the Division of Air and Waste Management  
12 Enforcement since -- is it 1992?  
13 A. Yes.  
14 Q. Can you tell me  
15 approximately how many oil spills your  
16 office has responded to? Oil spills in  
17 the Delaware River.  
18 A. Many, I don't even want to  
19 estimate.  
20 Q. In the last 10 years from  
21 1996 to 2006, can you approximate how  
22 many oil spills in the Delaware River the  
23 Delaware Division of Air and Waste  
24 Management Enforcement might have

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1 responded to?  
2 A. I can't give you a hard  
3 number, but all of those that have been  
4 reported to us we have responded to.  
5 Q. How about in the last  
6 five years from 2001 to 2006, can you  
7 estimate how many oil spills your office  
8 may have responded to?  
9 A. Again, I can't give you a  
10 number, but we have responded to all of  
11 them that have been reported.  
12 Q. How about in the last year,  
13 from October 2005 to today?  
14 A. Again, I don't have a firm  
15 number for you, but if an oil spill  
16 occurs on the Delaware River, our vessel  
17 or our personnel are going out to truth  
18 it and validate it.  
19 Q. Can you give me some idea of  
20 the frequency of oil spills that you may  
21 respond to? Is it once a week, once a  
22 month, twice a month, twice a year, any  
23 idea?  
24 A. I think in terms of

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1 frequency, once a month.  
2 Q. Is there any seasonal --  
3 have you noticed any seasonal trends?  
4 Like are there more in the summer, more  
5 at Christmastime?  
6 A. Haven't noticed a seasonal  
7 trend.  
8 Q. Have you noticed in the 14  
9 years you have been working in the office  
10 an increase or decrease in oil spills  
11 generally?  
12 A. Remains pretty constant.  
13 Q. Of the oil spills that your  
14 office has responded to, would you say  
15 that any of them have been major spills  
16 like the entire load of a tanker?  
17 A. Yes.  
18 Q. And how many major spills do  
19 you think you have had?  
20 A. Two that I can think of off  
21 the top of my head. One was called the  
22 Presidente Rivera spill. And I believe  
23 that occurred in approximately 1989. And  
24 most recently we had the Athos I oil

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1 spill which was November of 2004.  
2 Q. And what was that ship?  
3 A. Athos I, A-T-H-O-S.  
4 Q. Can you describe for me  
5 generally what happened when -- in the  
6 spill of the Presidente Rivera in 1989.  
7 A. As I recall, the ship was  
8 actually north of the Delaware River  
9 border in Pennsylvania at anchorage, it  
10 lost steerage, hit an obstruction. As a  
11 result, released a large quantity of oil  
12 which came down the Delaware River and  
13 impacted our state.  
14 Q. When you say a large  
15 quantity of oil, can you give me any kind  
16 of idea, can you give me a quantum we are  
17 talking about here?  
18 A. I can't give you an exact  
19 figure, but it was six figures and I  
20 believe it was 300,000-gallon range.  
21 Q. Who were the emergency  
22 responders that responded in the de  
23 Rivera?  
24 A. At that time it was the

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1 chief of enforcement, gentleman by the  
2 name of William Hill. And the emergency  
3 response component of our emergency  
4 response team was a gentleman by the name  
5 of John Mormon.  
6 Q. John who?  
7 A. Mormon.  
8 Q. Who were the emergency  
9 response agencies that responded to the  
10 spill of the Presidente Rivera?  
11 A. I don't recall all of them.  
12 I do know the National Guard was  
13 activated.  
14 Q. Was there any Coast Guard  
15 response?  
16 A. Not that I'm aware of. And  
17 I need to clarify, I was working for the  
18 parks division at that point in time,  
19 1989.  
20 Q. Right. Are you aware of  
21 response from the USEPA or FEMA?  
22 A. Not aware.  
23 Q. So you had no personal  
24 involvement in the response to the

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1 Presidente Rivera spill?  
2 A. Not the response at the time  
3 of the incident. However, the follow-up  
4 and some of the other things were in my  
5 tenure in 1992.  
6 Q. So they were still cleaning  
7 up three years later?  
8 A. Yes.  
9 Q. What kind of residual  
10 cleanup duties were there in 1992?  
11 A. Tar balls and other oil  
12 debris that was washing up on shore.  
13 Q. And how would your office  
14 respond to that?  
15 A. We would go check the  
16 different notifications or complaints  
17 that we received of tar balls coming up,  
18 sample the material to analyze it to make  
19 sure it was in fact coming from the  
20 Presidente Rivera and then arrange for  
21 cleanup.  
22 Q. About how long do you think  
23 that residual cleanup lasted? Are you  
24 still hearing about Presidente Rivera

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1 stuff today and still cleaning it up?  
2 **A. On occasion things still**  
3 **float up and we believe came from the**  
4 **Presidente Rivera.**  
5 **Q. And you still identify it**  
6 **that way?**  
7 **A. Most of it has solidified at**  
8 **this point so it would be more**  
9 **detrimental to the environment to clean**  
10 **it than to just leave it there.**  
11 **Q. The second major spill you**  
12 **identified I believe occurred during your**  
13 **tenure, the spill of the Athos I in 2004,**  
14 **is that correct?**  
15 **A. Yes.**  
16 **Q. Can you describe for me the**  
17 **emergency response to the spill of the**  
18 **Athos I.**  
19 **A. Yes, the Athos I was coming**  
20 **into anchorage up in the Philadelphia**  
21 **area. Similar circumstances of the**  
22 **Presidente Rivera, it struck something, a**  
23 **submerged item which caused a rupture in**  
24 **the hull. That rupture in the hull**

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1 **released approximately 230,000 gallons of**  
2 **oil, which ultimately on its downward**  
3 **path impacted Delaware waters.**  
4 **Q. How did the office -- the**  
5 **New Castle office Division of Air and**  
6 **Waste Management Enforcement respond to**  
7 **that emergency?**  
8 **A. That particular event was**  
9 **federalized so at the behest of the Coast**  
10 **Guard, we staffed a unified command area.**  
11 **And working in concert with the Coast**  
12 **Guard, we had field personnel evaluating**  
13 **shorelines, evaluating the quantity of**  
14 **oil in the river, and overseeing cleanup**  
15 **operations.**  
16 **Q. So your office hosted the**  
17 **unified command center?**  
18 **A. No.**  
19 **Q. Where was that set up?**  
20 **A. Philadelphia.**  
21 **Q. But your office participated**  
22 **in responding according to the orders of**  
23 **the unified command center?**  
24 **A. We were a participant in the**

40

1 **unified command center. And then tasked**  
2 **out our field personnel here in Delaware**  
3 **to examine different aspects of the spill**  
4 **and their impact on Delaware.**  
5 **Q. In the federalized response**  
6 **to the spill of the Athos, who were the**  
7 **other emergency responders -- response**  
8 **agencies, federal and state?**  
9 **A. Federal would be the United**  
10 **States Coast Guard, the EPA, US Fish and**  
11 **Wildlife Service, NOAA, and that is all I**  
12 **can recall federally off the top of my**  
13 **head. From the state perspective, there**  
14 **was the State of Delaware, the State of**  
15 **New Jersey, the State of Pennsylvania, it**  
16 **would have been their natural resources**  
17 **agencies, and predominantly their state**  
18 **police agencies.**  
19 **Q. I think you said that the**  
20 **Coast Guard was the lead federal agency**  
21 **for the unified command of the emergency**  
22 **response in this incident?**  
23 **A. Yes.**  
24 **Q. Correct me if I'm using the**

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1 **wrong jargon, and it was a unified**  
2 **command system, not an incident command**  
3 **system?**  
4 **A. Yes.**  
5 **Q. Were the various response**  
6 **agencies assigned different tasks by the**  
7 **Coast Guard, by the unified command?**  
8 **A. Yes.**  
9 **Q. Do you have any -- how would**  
10 **you describe the Coast Guard's role in**  
11 **the emergency response?**  
12 **MR. WALTON: Let me -- for**  
13 **that particular incident?**  
14 **MS. BALINT: Yes. For the**  
15 **Athos.**  
16 **THE WITNESS: For the Athos,**  
17 **the Coast Guard becomes the**  
18 **federal on-scene coordinator. And**  
19 **it is their job at that point,**  
20 **because it is**  
21 **multi-jurisdictional, multi-state,**  
22 **to bring the different**  
23 **representatives from the various**  
24 **jurisdictions in to make sure that**

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1 the interest of the localities,  
 2 the states or local jurisdictions  
 3 are being sufficiently taken care  
 4 of. The Coast Guard also brings  
 5 to bear a variety of resources,  
 6 financial and otherwise, through  
 7 some of their assets to facilitate  
 8 the cleanup. They are also  
 9 responsible for working directly  
 10 with the suspected potential  
 11 responsible party to access things  
 12 such as the Coast Guard spill fund  
 13 or any limits of liability, spill  
 14 contingency funds that the  
 15 potential responsible party has.  
 16 BY MS. BALINT:  
 17 Q. Does the Coast Guard have  
 18 any field responsibilities in that  
 19 cleanup? Are they actually physically  
 20 cleaning up the spill?  
 21 A. They oversee spill cleanup  
 22 management.  
 23 Q. When you mentioned Coast  
 24 Guard assets, are you talking about Coast

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1 Guard vessels, what are you talking  
 2 about?  
 3 A. Both vessels and personnel.  
 4 Q. How would you describe the  
 5 EPA's role in the cleanup to the Athos  
 6 spill?  
 7 A. EPA was supporting the Coast  
 8 Guard with physical assets and personnel,  
 9 science and technology.  
 10 Q. Physically, how is oil  
 11 spilled into a river cleaned up? You  
 12 don't have a street cleaner machine, what  
 13 is it that we do out in the river to  
 14 clean this up?  
 15 A. There are actually a variety  
 16 of techniques that are employed. One  
 17 method for free-floating product is to  
 18 use a skimmer device that can actually  
 19 capture the oil, separate from the water  
 20 and then discharge clean water out the  
 21 back while it captures oil. One  
 22 methodology is to use containment boom so  
 23 the oil is contained into an area and  
 24 then we physically put oil absorbent pads

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1 on the oil and capture it and bring it up  
 2 to land.  
 3 Another technique used in  
 4 that particular incidence was something  
 5 called a VSOR -- sorry but I don't  
 6 remember what that acronym stands for.  
 7 But basically we had submerged oil that  
 8 couldn't be captured with the control  
 9 mechanisms with the pads or the oil  
 10 skimming device, and these were designed  
 11 to go down under the water and use oil  
 12 absorbent material in the pockets, and  
 13 they would be brought up onto a ship and  
 14 up onto land for ultimate disposal.  
 15 There is a variety of methodologies.  
 16 Q. Is there any agency that has  
 17 specialized vehicles for this or were all  
 18 of the agencies contributing?  
 19 MR. WALTON: I object to the  
 20 form of the question.  
 21 MS. BALINT: Answer if you  
 22 can. If you can understand the  
 23 question. The devices and methods  
 24 that you described, are they

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1 performed on and by regular boats  
 2 or are there specialized -- is  
 3 there specialized equipment,  
 4 specialized vehicles?  
 5 THE WITNESS: Specialized  
 6 equipment.  
 7 BY MS. BALINT:  
 8 Q. Specialized equipment that  
 9 you use on a regular boat?  
 10 A. Specialized vessels and  
 11 specialized equipment used on a regular  
 12 boat.  
 13 Q. Who has the specialized  
 14 boats?  
 15 A. Outside contractors.  
 16 Q. What was US Fish and  
 17 Wildlife's role in the cleanup of the  
 18 Athos spill?  
 19 A. They were examining impacts  
 20 to their wildlife areas up and down the  
 21 Delaware River and Bay. Which included  
 22 the wildlife area at Tinicum, some of the  
 23 historical resource areas up in  
 24 Pennsylvania, Delaware River, and Bombay

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1 Hook. In addition to looking at their  
2 land resources and impacts of the oil,  
3 they had a concern also about migratory  
4 birds and the transport of oil material  
5 leaving from water areas to inland areas.  
6 Q. Can you describe for me a  
7 little bit more what Delaware's emergency  
8 response was to the Athos spill. You  
9 said before that you were tasked, that  
10 fuel personnel were tasked to examine  
11 impacts. Can you tell me what that is  
12 and whether there were any other tasks?  
13 A. Yes. One of the things that  
14 we pursued with the assistance of the  
15 Delaware State Police was twice daily  
16 flyovers of the impact areas to basically  
17 track the oil, see where it was going,  
18 where it was heading, and attempting to  
19 get a handle on potential impacts  
20 downstream. We also had people out on  
21 the shoreline walking looking for areas  
22 of impact of oil where it may have made  
23 landfall. And we had some of our  
24 scientific support personnel down in our

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1 Dover office evaluating the type of oil,  
2 potential impacts to the water column,  
3 fisheries, shell fisheries, that type of  
4 thing.  
5 Q. The impact to the water  
6 column?  
7 A. Water column, yes.  
8 Q. What is the water column?  
9 A. The water column is  
10 essentially in a water body, it is  
11 striated, it's got levels to it. So  
12 certain oils may permeate the surface,  
13 certain oils or contaminants may permeate  
14 throughout the entire wedge of water,  
15 some may sink and go directly to the  
16 bottom and not have impact at the top of  
17 the water. So it is basically trying to  
18 get a composite feel for what was  
19 occurring throughout the entire length of  
20 the body of water.  
21 Q. Can you describe for me  
22 generally New Jersey's response to the  
23 Athos spill.  
24 A. New Jersey's response was

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1 very similar to that of the State of  
2 Delaware.  
3 Q. So it is your belief that  
4 New Jersey examined the impact, did  
5 patrols by air and walking the shores and  
6 scientific evaluation of the different  
7 impacts?  
8 A. Yes.  
9 Q. Can you tell me whether the  
10 Athos spill went into the 12-mile circle?  
11 A. Yes.  
12 Q. Can you tell me whether the  
13 spill -- the oil spill in the 12-mile  
14 circle went past the mean low waterline  
15 and onto the New Jersey shore?  
16 A. No.  
17 Q. You don't believe it did?  
18 A. I can't tell you that it  
19 did.  
20 Q. You can't tell me that it  
21 did, okay. Do you have any reason to  
22 believe that the oil spill would have  
23 been contained by the Delaware border  
24 along the mean low waterline of the New

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1 Jersey shore?  
2 MR. WALTON: I object to the  
3 form of the question.  
4 MS. BALINT: Read it back.  
5 (The record is read back.)  
6 BY MS. BALINT:  
7 Q. Do you have any reason to  
8 believe that the oil would have not  
9 crossed that border?  
10 A. No, no.  
11 (Recess at 10:33 a.m.)  
12 (Resumed at 10:41 a.m.)  
13 BY MS. BALINT:  
14 Q. Moving on from oil spills to  
15 you said that your office has two primary  
16 missions for the Boston Whaler, one is  
17 response to oil spills and other events,  
18 and the other is patrol of subaqueous  
19 land issues?  
20 A. Correct.  
21 Q. You had said that the other  
22 event you were talking about would be  
23 excursions at industrial point sources?  
24 A. Correct.

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1 Q. And those wouldn't be  
 2 patrolled on a routine basis but you  
 3 would go if you were called out if  
 4 somebody called in a problem?  
 5 A. Correct.  
 6 Q. Do you have any idea of the  
 7 frequency of response to point source  
 8 excursions?  
 9 A. Again, it is a hard number  
 10 to get a grasp of, but we get called very  
 11 frequently from the industrial users on  
 12 the Delaware.  
 13 Q. Would you say more or less  
 14 frequently than the oil spills which you  
 15 estimated might be once a month?  
 16 A. More frequently.  
 17 Q. Are you aware of your office  
 18 responding to point source excursions at  
 19 facilities located on the New Jersey side  
 20 of the Delaware River?  
 21 A. Yes.  
 22 Q. Can you tell me about the  
 23 incidents that you recall?  
 24 A. I don't recall specific

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1 instances, we maintain a database or a  
 2 record of all calls, excursions that we  
 3 get so we can share them with our  
 4 regulatory partners within the agency.  
 5 I'm aware of some that have come from the  
 6 Chambers Works facility.  
 7 Q. What kinds of excursions are  
 8 you aware of occurring at the Chambers  
 9 Works facility?  
 10 A. Again, I don't know specific  
 11 details about their excursions but it  
 12 generally has to do with something to do  
 13 with their NPDS permit.  
 14 Q. Even though I know N -- NPDS  
 15 standing for?  
 16 A. National Pollutant Discharge  
 17 Elimination System.  
 18 Q. Have you personally  
 19 responded to calls at the Chambers Works  
 20 facility?  
 21 A. No.  
 22 Q. What would Delaware's  
 23 response to an excursion of the NPDS  
 24 permit at the Chambers Works facility

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1 entail?  
 2 A. Our office would make  
 3 contact with the facility or evaluate the  
 4 discharge at the outfall, and then  
 5 generally we turn that over to our  
 6 regulatory groups who would follow up  
 7 with any type of inspection, enforcement  
 8 as -- I should say civil administrative  
 9 enforcement action or corrective action  
 10 that is required. If the release was  
 11 criminal in nature, then it would stay  
 12 with my office.  
 13 Q. Are you aware of any  
 14 instance that resulted in criminal  
 15 actions against the Chambers Works  
 16 facility?  
 17 A. No.  
 18 Q. When you say you would  
 19 contact the facility, is that a telephone  
 20 contact or do you physically go there?  
 21 A. Could be either.  
 22 Q. Are you aware of your office  
 23 responding to point source excursions on  
 24 the New Jersey side of the Delaware at

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1 any other facilities besides the Chambers  
 2 Works facilities?  
 3 MR. WALTON: Object to the  
 4 characterization of the New Jersey  
 5 side of the river.  
 6 BY MS. BALINT:  
 7 Q. When I say the New Jersey  
 8 side of the river, is there any confusion  
 9 in your mind what side of the river I'm  
 10 talking about?  
 11 A. No, to me it means east.  
 12 Q. Would you prefer I say the  
 13 east side of the river?  
 14 A. Yes.  
 15 Q. Other than responding to  
 16 incidents at the Chambers Works facility,  
 17 are you aware that your office responded  
 18 to point source excursions at other  
 19 facilities on the east side of the  
 20 Delaware River?  
 21 A. No.  
 22 Q. You said that the second  
 23 category of responses that the -- that  
 24 your office would attend to with your

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1 Boston Whaler would be subaqueous issues.  
 2 Can you describe for me what subaqueous  
 3 issues your office is concerned with?  
 4 **A. Yes. The subaqueous land**  
 5 **act in Delaware essentially makes it**  
 6 **clear that the state owns the portion of**  
 7 **the land that is underneath the water.**  
 8 **And as a result of that, people or**  
 9 **entities cannot put piers, structures,**  
 10 **things of that nature out over the state**  
 11 **lands that are beneath the water without**  
 12 **the appropriate permits. So our**  
 13 **activities are geared towards checking**  
 14 **areas where those things are likely to be**  
 15 **installed. And if we notice anything out**  
 16 **there, making sure that they have the**  
 17 **appropriate permits.**  
 18 Q. Do you know when Delaware's  
 19 subaqueous land act was enacted?  
 20 **A. No.**  
 21 Q. Was it recently?  
 22 **A. No.**  
 23 Q. So it predated your tenure  
 24 in your office?

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1 **A. Yes.**  
 2 Q. Other than the building of  
 3 piers or other structures on subaqueous  
 4 lands, you had said something about  
 5 wetlands. What are your office's wetland  
 6 issues?  
 7 **A. Very similar to subaqueous**  
 8 **lands. The State of Delaware has**  
 9 **jurisdiction over tidal wetlands in our**  
 10 **jurisdiction. So we are looking for the**  
 11 **illegal fill-in of any wetland area**  
 12 **adjacent to river marine areas or tidal**  
 13 **areas.**  
 14 Q. Are there any other  
 15 subaqueous land issues that your office  
 16 attends to -- pays attention to?  
 17 **A. I'm not quite sure I**  
 18 **understand the question.**  
 19 Q. Beyond looking for new piers  
 20 or structures that don't have proper  
 21 permits, and the possible illegal filling  
 22 of tidal wetland, are there any other  
 23 issues or problems that your office  
 24 watches for with regard to subaqueous

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1 lands?  
 2 **A. No.**  
 3 Q. Are you familiar with  
 4 Killcohook State Park or Killcohook --  
 5 are you familiar with an area called  
 6 Killcohook?  
 7 **A. Yes.**  
 8 Q. Can you tell me where it is?  
 9 **A. It is on the east side of**  
 10 **the river, approximately adjacent --**  
 11 **little bit north of Fort Delaware State**  
 12 **Park or Pea Patch Island.**  
 13 Q. And who owns or controls the  
 14 Killcohook area?  
 15 **A. The Killcohook area is part**  
 16 **of the State of Delaware.**  
 17 Q. Is it a Delaware State Park?  
 18 **A. I don't know.**  
 19 Q. Do you know how the  
 20 Killcohook area got to be in existence?  
 21 **A. No.**  
 22 Q. Are you aware of the Army  
 23 Corps of Engineers' involvement in the  
 24 Killcohook area?

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1 **A. No.**  
 2 Q. How is it that your office  
 3 patrols for subaqueous land issues such  
 4 as unpermitted piers or structures or the  
 5 illegal filling of wetlands? Does your  
 6 office patrol, go out routinely looking  
 7 for new piers or other structures that  
 8 may not have proper licenses and permits?  
 9 **A. Yes.**  
 10 Q. And can you tell me the  
 11 frequency of patrol?  
 12 **A. The New Castle County area**  
 13 **approximately three times per year.**  
 14 Q. And can you describe for me  
 15 what one of those patrols would entail.  
 16 **A. Yes, generally our boat**  
 17 **leaves the Delaware City marina after it**  
 18 **is put there on a ramp. Our staff**  
 19 **members basically go up the west side of**  
 20 **the Delaware River, penetrate any of the**  
 21 **streams, water bodies that they can, head**  
 22 **up to the Pennsylvania line, turn around**  
 23 **and then come down the east side of the**  
 24 **Delaware River doing the same --**

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1 performing the same activity. And then  
 2 generally in the area of Artificial  
 3 Island, they will cut back over to the  
 4 west side and then work down to lower New  
 5 Castle County again penetrating the  
 6 tributaries to the best of their ability.  
 7 Q. When your patrol reaches the  
 8 Pennsylvania line on the west side of the  
 9 river, crosses the river and begins to  
 10 patrol on the eastern side of the river,  
 11 how is the Delaware border identified?  
 12 A. What we do is look for new  
 13 structures on the land that are coming  
 14 out into the water. And then once we  
 15 establish that there is a new structure  
 16 coming out into the water, we have to go  
 17 back to our mapping systems and figure  
 18 out if it is actually in Delaware.  
 19 Q. Would it be correct to say  
 20 that during the patrol, there is no  
 21 attempt to identify the beginning and end  
 22 of the Delaware border on the northern  
 23 aspect of the east side of the Delaware  
 24 River during the patrol, and that that

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1 border issue is investigated after the  
 2 patrol?  
 3 MR. WALTON: Objection.  
 4 Lack of foundation.  
 5 BY MS. BALINT:  
 6 Q. When I asked how the  
 7 northern part of the Delaware border is  
 8 identified by your office's patrol as it  
 9 crosses the Delaware River from the  
 10 western to the eastern coast, your  
 11 response to me was that the patrol looks  
 12 for new structures during its patrol and  
 13 that after the patrol, they go to a map  
 14 to find out if the new structure is in  
 15 Delaware or not. Is that a fair  
 16 characterization?  
 17 A. That is correct.  
 18 Q. From that answer, I  
 19 understand that the patrol personnel  
 20 don't worry about where the border is  
 21 when they are out there patrolling, that  
 22 they are just out there looking for new  
 23 structures, is that correct?  
 24 A. That's correct.

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1 Q. Is a report made when your  
 2 office makes this patrol of the shores of  
 3 the Delaware?  
 4 A. A float plan is filed for  
 5 the mission, a report is generated if  
 6 they identify any new structures.  
 7 MS. BALINT: I would like to  
 8 make a transcript request that the  
 9 float plans and reports, the  
 10 structure reports I guess, that  
 11 the witness has just identified be  
 12 produced. Because I don't believe  
 13 they have been. I have seen  
 14 nothing of this sort.  
 15 MR. WALTON: I don't know  
 16 that it is -- I'm not saying it is  
 17 or isn't, but I don't know that it  
 18 is subject to the document  
 19 request. Certainly if it is  
 20 subject to the document request  
 21 made by New Jersey, we will  
 22 produce it. I don't know sitting  
 23 here. I don't remember what the  
 24 exact requests were.

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1 MS. BALINT: Whether or not  
 2 it is the subject of any prior  
 3 document request, I am currently  
 4 requesting as part of this  
 5 deposition, the document to which  
 6 the witness refers.  
 7 MR. WALTON: To be clear, so  
 8 this would be in addition to your  
 9 document requests.  
 10 MS. BALINT: It is one or  
 11 the other. It is either a  
 12 supplement to the old document  
 13 request or it is a new document  
 14 request following up on the  
 15 deposition testimony.  
 16 MR. WALTON: I'm just trying  
 17 to be clear.  
 18 BY MS. BALINT:  
 19 Q. You say that before -- is  
 20 there a name for this patrol? I keep  
 21 stumbling over what we are talking about.  
 22 What would you call this patrol?  
 23 A. We would call it a special  
 24 operation.

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1 Q. And if you were having like  
 2 an internal meeting with your officers  
 3 and the captain, we are having a special  
 4 operation to what?  
 5 A. **Identify wetland fill-ins**  
 6 **and illegal docks.**  
 7 Q. You said that prior to  
 8 conducting the special operation, there  
 9 would be a float plan filed, is that  
 10 correct?  
 11 A. **That is correct.**  
 12 Q. What is in a float plan?  
 13 A. **Float plan essentially**  
 14 **details the assets that are needed,**  
 15 **anticipated time of departure,**  
 16 **anticipated time of return, the personnel**  
 17 **that are on board and generally**  
 18 **identifies an activity for use of the**  
 19 **boat. It is essentially a safety**  
 20 **document so that we can keep track of our**  
 21 **folks when they are out on the water.**  
 22 Q. And other than the Boston  
 23 Whaler, are there any other assets  
 24 required for this patrol?

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1 A. **Our navigational equipment,**  
 2 **cameras.**  
 3 Q. What kind of personnel would  
 4 participate in such a patrol?  
 5 A. **Someone from our staff,**  
 6 **someone from within the enforcement**  
 7 **group.**  
 8 Q. Just one person?  
 9 A. **Two people on board.**  
 10 Q. And what would their duties  
 11 be on this patrol?  
 12 A. **To captain the boat and one**  
 13 **would be an observer, one would be the**  
 14 **boat operator. And those positions are**  
 15 **interchangeable.**  
 16 Q. Do you have any personal  
 17 knowledge of such subaqueous patrols  
 18 identifying unlicensed or unpermitted  
 19 piers or structures on the eastern side  
 20 of the Delaware River during your tenure?  
 21 A. **Can you restate?**  
 22 MS. BALINT: Could you read  
 23 it.  
 24 (The record is read back.)

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1 THE WITNESS: No.  
 2 BY MS. BALINT:  
 3 Q. If there were unidentified  
 4 or unpermitted piers or structures found  
 5 on any shore of the Delaware, there would  
 6 be a report filed after the patrol?  
 7 A. **Yes.**  
 8 Q. Are you aware of any patrols  
 9 identifying illegal wetland filling on  
 10 the eastern side of the Delaware?  
 11 A. **No.**  
 12 Q. But if there were, again,  
 13 there would be a report filed?  
 14 A. **Yes.**  
 15 Q. You said that these patrols  
 16 occur three times a year, is that a  
 17 regular schedule?  
 18 A. **Seasonal.**  
 19 Q. And what seasons?  
 20 A. **We usually try and hit**  
 21 **spring, summer and fall.**  
 22 Q. Has your office ever  
 23 responded to an emergency on a pier or a  
 24 structure on the eastern side of the

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1 Delaware?  
 2 A. **Not that I'm aware of.**  
 3 Q. If your office had responded  
 4 to an emergency on a pier or structure on  
 5 the eastern side of the Delaware, would  
 6 there be any record of that response?  
 7 A. **Yes.**  
 8 Q. How would one find or  
 9 identify such a record?  
 10 A. **We maintain a database of**  
 11 **all of our activities.**  
 12 Q. Could you search your  
 13 database for responses to piers or  
 14 structures on the eastern side of the  
 15 Delaware?  
 16 A. **Yes.**  
 17 MS. BALINT: I would like to  
 18 make a transcript request --  
 19 MR. WALTON: It has been  
 20 produced.  
 21 MS. BALINT: It has been  
 22 produced?  
 23 MR. WALTON: Yes, ma'am, it  
 24 was produced a long time ago, too.

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1 I can get you the exact date of  
 2 the production if you would like.  
 3 I would like to confer with chief.  
 4 Those are the documents you gave  
 5 me, is that what you are referring  
 6 to?  
 7 THE WITNESS: Yes.  
 8 BY MS. BALINT:  
 9 Q. I will show you documents  
 10 that are Bates stamped DE16974 through  
 11 DE17001 and ask you to identify these  
 12 documents for me.  
 13 A. I cannot identify these  
 14 documents.  
 15 Q. So this would not be a  
 16 printout from your office?  
 17 A. That is correct.  
 18 Q. I will show you a set of  
 19 documents that have been Bates stamped  
 20 DE211750 through DE211794 and ask you to  
 21 identify these documents for me.  
 22 A. I cannot.  
 23 (Recess at 11:09 a.m.)  
 24 (Exhibit Reuther-1 marked

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1 for identification.)  
 2 (Resumed at 11:27 a.m.)  
 3 MR. WALTON: Off the record  
 4 we had a discussion about whether  
 5 a certain document was produced.  
 6 I went up and looked through our  
 7 stuff and provided a copy to  
 8 counsel for New Jersey. And I  
 9 assume you will mark it.  
 10 MS. BALINT: Marked it  
 11 Reuther-1.  
 12 BY MS. BALINT:  
 13 Q. Chief Reuther, can you  
 14 describe for me what exhibit -- what the  
 15 pages Bates stamped DE21808 to DE20' --  
 16 sorry, 801 to 808, what does this  
 17 document represent?  
 18 A. What this document  
 19 represents is a activity list from our  
 20 records database.  
 21 Q. And has this list been  
 22 selected to certain activity or is this  
 23 all of the activities for your office for  
 24 the years represented?

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1 A. No, it is a selected  
 2 portion.  
 3 Q. And what were the selection  
 4 criteria?  
 5 A. Under location, Delaware  
 6 River.  
 7 Q. So this is all of DNREC Air  
 8 and Waste Management complaints for the  
 9 years 1986 through the present?  
 10 MR. WALTON: I object to the  
 11 form of the question. You can  
 12 answer if you can understand it.  
 13 BY MS. BALINT:  
 14 Q. Is this a list of all of  
 15 those complaints for the year 1986 to the  
 16 present? Is Exhibit Reuther-1 a list of  
 17 all of DNREC Air and Waste Management  
 18 complaints for the Delaware River for the  
 19 years 1986 to 2006?  
 20 A. To the best of my knowledge,  
 21 yes.  
 22 Q. Can you tell me why the  
 23 listing begins in 1986?  
 24 A. That is the origin of our

69

1 database.  
 2 Q. And prior to 1986, where  
 3 would similar records be found?  
 4 A. I don't know.  
 5 Q. If you would, could we just  
 6 walk through the first entry on Page  
 7 DE21801 to discuss and describe the  
 8 information that is entered for each  
 9 complaint. Starting with the year  
 10 column, could you describe the different  
 11 information that is listed for that first  
 12 complaint.  
 13 A. Yes. The first entry in the  
 14 column of this report is for the year.  
 15 And the year of this particular complaint  
 16 is 1986. The complaint number is a  
 17 discrete number that is assigned to each  
 18 one of the calls or each one of the  
 19 complaints that we receive in our office,  
 20 and this one was assigned 10068. That  
 21 particular complaint came in on July 12  
 22 of 1986 and it was assigned to  
 23 environmental protection officer 51. The  
 24 location of the incident was at the

70

1 Delaware River and the Branch Canal. The  
 2 nature of the complaint was an oil spill.  
 3 And the suspected object of the complaint  
 4 was Texaco.  
 5 Q. By object, you mean what?  
 6 A. The potential responsible  
 7 party or the suspect. The action comment  
 8 is indicated here as closed. Which means  
 9 that that particular report has been  
 10 closed.  
 11 Q. If I wanted to know more  
 12 about the oil spill that happened on  
 13 July 12, 1986, would there be an  
 14 individual report filed about this  
 15 incident?  
 16 A. Yes.  
 17 Q. And that report would have  
 18 more information, is that correct?  
 19 A. Yes.  
 20 Q. What additional kinds of  
 21 information would be contained on an  
 22 individual report?  
 23 A. Individual reports will show  
 24 the officer assigned, the action taken in

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1 the form of a narrative and to what  
 2 division of our department and section it  
 3 related to in terms of program. And it  
 4 would also indicate the county of the  
 5 complaint.  
 6 Q. After the initial report is  
 7 filed, would there be additional  
 8 paperwork detailing follow-up  
 9 investigation or other consequences?  
 10 A. Possibly.  
 11 Q. So in some instances there  
 12 would be and maybe not in other  
 13 instances?  
 14 A. That's correct.  
 15 Q. Looking at this list, are  
 16 you able to identify incidents which  
 17 occurred on the eastern side of the  
 18 Delaware River?  
 19 A. Yes.  
 20 Q. Can you do that for me.  
 21 A. Yes.  
 22 MR. WALTON: Just for  
 23 clarification, do you need to go  
 24 through every single line on every

72

1 single call?  
 2 MS. BALINT: Well, let's  
 3 talk about that. Where on this  
 4 list would you look to identify  
 5 complaints which originated on the  
 6 eastern side of the Delaware  
 7 River?  
 8 THE WITNESS: Looking under  
 9 the location code, for example,  
 10 entry number one which we  
 11 discussed was Delaware River and  
 12 Branch Canal, I know the Branch  
 13 Canal is in Delaware City so that  
 14 is on the western edge. However,  
 15 Delaware River across from the  
 16 DP&L plant in Edgemoor.  
 17 BY MS. BALINT:  
 18 Q. Where is that located?  
 19 A. Edgemoor plant is just north  
 20 of the Port of Wilmington.  
 21 Q. And would that be on the  
 22 eastern or western side of the river?  
 23 A. The area across from the  
 24 DP&L, Edgemoor site is on the eastern

73

1 side of the river.  
 2 Q. So that is a location on the  
 3 other side of the river that is otherwise  
 4 hard to describe so you describe it by  
 5 something that is located on the western  
 6 side?  
 7 A. Correct.  
 8 Q. Going down this list, how  
 9 about what would be easier for you, would  
 10 you like to scan and identify for me  
 11 things that look like they are on the  
 12 eastern side or should we discuss each  
 13 entry?  
 14 A. Well --  
 15 Q. And you can say whether it  
 16 is eastern or western?  
 17 MR. WALTON: Or you can take  
 18 a minute and highlight them. If  
 19 that is not objectionable to you.  
 20 He can sit here and highlight them  
 21 and then we can read them off.  
 22 MS. BALINT: Off the record.  
 23 (Discussion off the record.)  
 24 THE WITNESS: Some of these

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1 are as you suggest are nebulous --  
 2 are we off the record?  
 3 (Discussion off the record.)  
 4 BY MS. BALINT:  
 5 Q. You have had an opportunity  
 6 to look through the exhibit marked  
 7 Reuther-1 to identify complaints that  
 8 appear from these documents to have  
 9 occurred on the eastern side of the  
 10 Delaware River?  
 11 A. Yes, I have.  
 12 Q. Can we go through the  
 13 document and you point those out to me?  
 14 A. Yes. Starting on Page  
 15 DE21801, complaint year 1986, No. 10687.  
 16 On the same page, year of complaint is  
 17 1989, complaint No. 2145.  
 18 Q. And the location is?  
 19 A. Delaware River off of  
 20 Claymont.  
 21 Q. Okay.  
 22 A. Year is 1990, same page,  
 23 complaint No. 10474. Location is  
 24 Delaware River from Claymont to Delaware

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1 Memorial Bridge. 1990, same page,  
 2 complaint No. 10720. Delaware River  
 3 Dupont Chambers Works.  
 4 Same page, 1991, complaint  
 5 No. 1250, location is Delaware River, PA  
 6 and Delaware border. Same page, year is  
 7 1992, complaint number is 133, location  
 8 is Delaware River off of Pennsville.  
 9 Same page, year is 1993, complaint is  
 10 1463, location is Delaware River from  
 11 Pennsville, New Jersey.  
 12 Same page, 1993, complaint  
 13 No. 1829, location is Delaware River  
 14 three miles north of Memorial Bridge.  
 15 Q. Was that complaint No. 1829?  
 16 A. Correct. Turning the page  
 17 to 21802. Midway through the page, the  
 18 year is 1996, the complaint number is  
 19 209. The location is Delaware River near  
 20 Fox Point in channel. Same page, year is  
 21 1996, complaint No. 3102, location is  
 22 Delaware River, New Jersey side, north of  
 23 Reedy Island, Port Penn.  
 24 Same page, year is 1996,

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1 complaint number 4139, location Delaware  
 2 River, Gloucester, New Jersey.  
 3 Turning to Page 21803. Top  
 4 of the page, year is 1996, complaint  
 5 number is 6490, location is Delaware  
 6 River near Penns Grove, New Jersey.  
 7 Going down to the bottom third, year is  
 8 1998, the complaint number is 2192,  
 9 location is Delaware River, Camden, New  
 10 Jersey.  
 11 Changing pages to 21804,  
 12 near the top of the page, the year is  
 13 1999, the complaint number is 382, the  
 14 location is Delaware River, Gloucester,  
 15 New Jersey. Going to the bottom third of  
 16 the page, the year is 1999, the complaint  
 17 number is 4488, the location is Delaware  
 18 River, Swedesboro, New Jersey, mile  
 19 marker 81.  
 20 Same page, year is 1999,  
 21 complaint number is 4764. The location  
 22 is Delaware River, Deptford, New Jersey.  
 23 Same page, year is 1999, complaint number  
 24 is 5207, location is Delaware River,

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1 Deptford, New Jersey.  
 2 Changing pages to 21805,  
 3 about one third down, the year is 2001,  
 4 the complaint is 204, location Delaware  
 5 River, at PA line. Same page going all  
 6 the way to the bottom, year is 2003,  
 7 complaint number is 4328, location is  
 8 Delaware River at PA state line.  
 9 Changing pages to 21806,  
 10 about a third of the way down the page,  
 11 the year is 2004, the complaint number is  
 12 4741, the location is Delaware River.  
 13 Q. How is it that you identify  
 14 that one as being on the eastern side of  
 15 the river?  
 16 A. Under -- going further over  
 17 on this sheet, the object of the  
 18 complaint is identified as the MV Athos  
 19 I.  
 20 Q. And the MV Athos I is a  
 21 ship?  
 22 A. Correct.  
 23 Q. Is it just your personal  
 24 knowledge that that was on the eastern

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1 side of the river?  
 2 **A. Yes. Same page, complaint**  
 3 **number is 4889, location is Delaware**  
 4 **River, and again that was related to the**  
 5 **Athos I. Same page, the year is 2005,**  
 6 **complaint number is 590, location is**  
 7 **Delaware River at Chambers Works.**  
 8 **Approximately a third down of the same**  
 9 **page, the year is 2005, the complaint**  
 10 **number is 1284, the location is Delaware**  
 11 **River at Paulsboro, New Jersey. And just**  
 12 **at the end of the page the year is 2005,**  
 13 **complaint number is 1888, location is**  
 14 **Delaware River at Paulsboro, New Jersey.**  
 15 **Final listing on that page is 2005,**  
 16 **complaint number 1997, location is**  
 17 **Delaware River, Gloucester County, New**  
 18 **Jersey.**  
 19 **Changing pages to 21807,**  
 20 **first entry, year is 2005, complaint**  
 21 **number is 2123, the location is Delaware**  
 22 **River, Salem, New Jersey. The year is**  
 23 **2005, the complaint number is 3793,**  
 24 **location Delaware River, Salem, New**

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1 **Jersey. The year is 2005, complaint**  
 2 **number is 3928, location is Delaware**  
 3 **River, Paulsboro Beach, Paulsboro, New**  
 4 **Jersey.**  
 5 **Same page, year is 2006,**  
 6 **complaint number is 101, location is**  
 7 **Delaware River at West Deptford, New**  
 8 **Jersey. Same page, year is 2006,**  
 9 **complaint number is 1385, location is**  
 10 **Delaware River at Logan Township, New**  
 11 **Jersey. Year is 2006, complaint number**  
 12 **is 1439, location is Delaware River at**  
 13 **Artificial Island, New Jersey.**  
 14 **Year is 2006, complaint**  
 15 **number is 1490, location Delaware River,**  
 16 **Lower Alloways Township, New Jersey. At**  
 17 **the bottom of the page, second one from**  
 18 **last, year is 2006, complaint number is**  
 19 **2152, location Delaware River, Paulsboro,**  
 20 **New Jersey.**  
 21 **Switching pages to DE21808,**  
 22 **first entry, year is 2005, complaint**  
 23 **number is 2169, location Delaware River,**  
 24 **West Deptford, New Jersey.**

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1 **Q. We discussed earlier that**  
 2 **your office would respond to or be**  
 3 **concerned with two major kinds of**  
 4 **problems on the Delaware River, one being**  
 5 **oil spills and other incidents, and one**  
 6 **being subaqueous issues. Does the list**  
 7 **that we have marked as Reuther-1 appear**  
 8 **to itemize any subaqueous issues or is**  
 9 **this list limited to that first category**  
 10 **of oil spills and other actions?**  
 11 **A. This record appears to be**  
 12 **comprehensive as to all of our activity**  
 13 **on the river. I did identify five that**  
 14 **were outside the realm of a spill.**  
 15 **Q. Can you identify and**  
 16 **describe for me those five non-spill**  
 17 **entries?**  
 18 **A. Yes, on Page DE21804, the**  
 19 **year is 1998, complaint number is 6006,**  
 20 **location is identified as Delaware River**  
 21 **at the Port of Wilmington and nature of**  
 22 **that complaint is erosion control.**  
 23 **The next site is on**  
 24 **Page 21805, about two thirds down the**

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1 **page, complaint number -- year is 2002,**  
 2 **complaint is 6181, location is Delaware**  
 3 **River at Marcus Hook. The nature is**  
 4 **dumping, and based on the object of the**  
 5 **complaint, associated with dredging.**  
 6 **Directing your attention to**  
 7 **Page 21808, first listing, the year is**  
 8 **2006, complaint number is 2169, this was**  
 9 **a miscellaneous investigation, unknown**  
 10 **male in a kayak.**  
 11 **Q. Can you explain to me why**  
 12 **your office would be responding to a**  
 13 **complaint of an unknown male in a kayak?**  
 14 **A. Yes.**  
 15 **Q. Why?**  
 16 **A. In the post 9/11 era, all**  
 17 **agencies that have jurisdiction on the**  
 18 **water or waterborne abilities get**  
 19 **intelligence briefings and notification**  
 20 **from a variety of sources.**  
 21 **Q. So your concern about a male**  
 22 **in a kayak wouldn't be a spill or a**  
 23 **pollution concern per se, it would be**  
 24 **more of a police concern?**

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1       **A. Correct.**  
 2       **Q. Okay.**  
 3       **A. Same page, year is 2006,**  
 4 **complaint No. 2364, location is Delaware**  
 5 **River, Marcus Hook, Pennsylvania, the**  
 6 **nature of this complaint is materials**  
 7 **handling, and materials handling is an**  
 8 **air resources style complaint.**  
 9       **And the final site on**  
 10 **Page 21808 is year 2006, complaint No.**  
 11 **2457, the location is the Delaware River**  
 12 **in New Castle, and we participated in a**  
 13 **response and readiness drill.**  
 14       **Q. In that last entry where you**  
 15 **participated in a response and readiness**  
 16 **drill, what was the type of emergency for**  
 17 **which you were drilling your readiness?**  
 18       **A. I don't know.**  
 19       **Q. What does the information in**  
 20 **the object of complaint name column tell**  
 21 **you about that drill?**  
 22       **A. Someone by the name of**  
 23 **Richard Parks trading as Penn MA was**  
 24 **involved with the drill. Probably the**

83

1 **organizer.**  
 2       **Q. That wouldn't be one of your**  
 3 **employees?**  
 4       **A. That's correct.**  
 5       **Q. Relying on the document**  
 6 **marked as Reuther-1, does your office**  
 7 **have a record of any subaqueous -- a**  
 8 **record of any subaqueous land issue**  
 9 **arising on the eastern side of the**  
 10 **Delaware River between 1986 and the**  
 11 **present?**  
 12       **A. Not that I'm aware of.**  
 13       **Q. Does the information in this**  
 14 **exhibit identify any response your office**  
 15 **may have made to an emergency or other**  
 16 **incident at a pier or other structure on**  
 17 **the eastern side of the Delaware River?**  
 18       **A. Can you repeat the question.**  
 19       **MS. BALINT: We will have it**  
 20 **read back.**  
 21       **(The record is read back.)**  
 22       **THE WITNESS: No.**  
 23       **MS. BALINT: Thank you very**  
 24 **much. I think we are done today.**

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1       **MR. WALTON: Two points of**  
 2 **clarification.**  
 3 **EXAMINATION**  
 4 **BY MR. WALTON:**  
 5       **Q. Chief Reuther, just a couple**  
 6 **of points to clarify your testimony.**  
 7 **When counsel for New Jersey was**  
 8 **questioning you regarding oil spills in**  
 9 **the Delaware River, do you remember that?**  
 10       **A. Yes.**  
 11       **Q. If there was a spill in the**  
 12 **Delaware River, would it be limited to**  
 13 **just oil spills or would it be gasoline**  
 14 **and other hazardous chemicals?**  
 15       **A. Our response would be**  
 16 **precipitated on hazardous materials.**  
 17       **Q. When we say oil spill, that**  
 18 **includes gasoline or trying to think of**  
 19 **other examples.**  
 20       **A. Gasoline, oil, abandoned**  
 21 **drums, floating cylinders, any chemical**  
 22 **discharges that may have occurred.**  
 23       **Q. Thank you for that**  
 24 **clarification. And second, regarding**

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1 **your jurisdiction, if there is a pier**  
 2 **that crosses into Delaware territory, in**  
 3 **the 12-mile circle, and an event occurred**  
 4 **on a pier that would be within your**  
 5 **response, would you respond to that?**  
 6       **A. Yes.**  
 7       **Q. Is it your testimony that it**  
 8 **would be your responsibility to respond**  
 9 **to that?**  
 10       **A. Yes.**  
 11       **Q. Are you aware of any**  
 12 **incidents that occurred on a pier that**  
 13 **you did not respond to?**  
 14       **A. No, I'm not aware of any**  
 15 **instance.**  
 16       **MR. WALTON: That is all I**  
 17 **have.**  
 18       **MS. BALINT: Thank you.**  
 19 **(Witness excused.)**  
 20 **(Deposition concluded at**  
 21 **approximately 12:08 p.m.)**  
 22  
 23  
 24

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1  
2           **CERTIFICATE**  
3  
4  
5           I HEREBY CERTIFY that the  
6 witness was duly sworn by me and that the  
7 deposition is a true record of the  
8 testimony given by the witness.  
9  
10           It was requested before  
11 completion of the deposition that the  
12 witness, KURT REUTHER, have the  
13 opportunity to read and sign the  
14 deposition transcript.  
15  
16           \_\_\_\_\_  
17           DOTTYANN Y. WALSH, a  
18 Certified Shorthand Reporter and  
19 Notary Public of the  
20 State of Delaware  
21 CSR License Number: 251-RPR  
22 Notary Number: 20051147009  
23 Notary expiration: April 14, 2007  
24 Dated: October 16, 2006

(The foregoing certification  
of this transcript does not apply to any  
reproduction of the same by any means,  
unless under the direct control and/or  
supervision of the certifying reporter.)

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1           - - - - -  
2           **ERRATA**  
3           - - - - -  
4           **PAGE LINE CHANGE**  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
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1           **INSTRUCTIONS TO WITNESS**  
2  
3           Please read your deposition  
4 over carefully and make any necessary  
5 corrections. You should state the reason  
6 in the appropriate space on the errata  
7 sheet for any corrections that are made.  
8           After doing so, please sign  
9 the errata sheet and date it.  
10           You are signing same subject  
11 to the changes you have noted on the  
12 errata sheet, which will be attached to  
13 your deposition.  
14           It is imperative that you  
15 return the original errata sheet to the  
16 deposing attorney within thirty (30) days  
17 of receipt of the deposition transcript  
18 by you. If you fail to do so, the  
19 deposition transcript may be deemed to be  
20 accurate and may be used in court.  
21  
22  
23  
24

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1           **ACKNOWLEDGMENT OF DEPONENT**  
2  
3  
4           I, KURT REUTHER, do hereby  
5 certify that I have read the foregoing  
6 pages, 1 - 85, and that the same is a  
7 correct transcription of the answers  
8 given by me to the questions therein  
9 propounded, except for the corrections or  
10 changes in form or substance, if any,  
11 noted in the attached Errata Sheet.  
12  
13  
14  
15           \_\_\_\_\_  
16           KURT REUTHER                      DATE  
17  
18  
19           Subscribed and sworn  
20 to before me this  
21 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
22           My commission expires: \_\_\_\_\_  
23  
24           \_\_\_\_\_  
25           Notary Public

1	LAWYER'S NOTES	
2	PAGE LINE	
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IN THE SUPREME COURT  
OF THE UNITED STATES

- - -

STATE OF NEW JERSEY : NO. 134, Original

:

v.

:

:

STATE OF DELAWARE :

- - -

SEPTEMBER 26, 2006

- - -

Oral deposition of  
WILLIAM F. STREETS, taken pursuant to  
notice, was held at the law offices of  
CONNOLLY, BOVE, LODGE & HUTZ, LLP,  
The Nemours Building, 1007 North Orange  
Street, 9th Floor, Wilmington, Delaware  
beginning at 10:02 a.m., on the above  
date, before Dottyann Y. Walsh, a  
Certified Shorthand Reporter and Notary  
Public in the State of Delaware.

- - -

ESQUIRE DEPOSITION SERVICES  
Suite 1210  
1600 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
(215) 988-9191

2

1 APPEARANCES:  
 2  
 3 STATE OF NEW JERSEY  
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 DIVISION OF LAW  
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 7 Representing the Plaintiff  
 8  
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 10 1007 North Orange Street  
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 11 Representing the Defendant  
 12  
 13  
 14  
 15  
 16  
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4

1  
 2 DEPOSITION SUPPORT INDEX  
 3  
 4  
 5 Direction to Witness Not to Answer  
 6 Page Line Page Line Page Line  
 7 None  
 8  
 9  
 10 Request for Production of Documents  
 11 Page Line Page Line Page Line  
 12 None  
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 14  
 15 Stipulations  
 16 Page Line Page Line Page Line  
 17 None  
 18  
 19  
 20 Question Marked  
 21 Page Line Page Line Page Line  
 22 None  
 23  
 24

3

1  
 2 INDEX  
 3  
 4 Testimony of: WILLIAM F. STREETS  
 5  
 6 By Ms. Balint 5  
 7  
 8 By Mr. Walton 98  
 9  
 10 EXHIBITS  
 11  
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NO.	DESCRIPTION	PAGE
Streets-1	Emergency responses	5
Streets-2	2000, Delaware River incidents	5
Streets-3	1999, Delaware River incidents	5

5

1  
 2 (Exhibits Streets-1,  
 3 Streets-2 and Streets-3 marked for  
 4 identification.)  
 5 WILLIAM F. STREETS, after having  
 6 been duly sworn, was examined and  
 7 testified as follows:  
 8  
 9 DIRECT EXAMINATION  
 10  
 11 BY MS. BALINT:  
 12 Q. Good morning, Mr. Streets.  
 13 A. Good morning.  
 14 Q. My name is Ellen Barney  
 15 Balint. I'm a deputy attorney general  
 16 for the State of New Jersey and we are  
 17 going to be taking your deposition in the  
 18 matter of the State of New Jersey versus  
 19 the State of Delaware which is in the  
 20 Supreme Court of the United States. Are  
 21 you aware of the disagreements that are  
 22 the subject of this action, sir?  
 23 A. Yes.  
 24 Q. Before we get into the meat

<p>6</p> <p>1 of the questions, I need to ask you some 2 general questions about yourself and give 3 you some instructions about the 4 deposition. Do you understand that you 5 are -- the court reporter has asked you 6 to speak under oath today and it is as if 7 you were in court that you have promised 8 to tell the truth? 9 A. Yes. 10 Q. Have you ever been deposed 11 before? 12 A. Yes. 13 Q. When? 14 A. I would say around 1980, 15 involving an automobile accident, a civil 16 suit resulting in somebody being injured 17 in an accident. 18 Q. Was that your only previous 19 deposition or have you been deposed in 20 other matters? 21 A. No, that is the only one. 22 Q. What was your participation 23 in that accident? 24 A. I was the driver of the</p>	<p>8</p> <p>1 questions because I'm going to assume 2 that you understood my questions. So 3 when I ask you a question, make sure that 4 you understand what I'm asking, and if 5 you don't, please ask me to rephrase 6 that. Do you understand? 7 A. Yes. 8 Q. A second special thing about 9 depositions is that the court reporter 10 really can't take down what two people 11 are saying at the same time. Most often 12 in conversation we speak over one 13 another, but we can't do that today. So 14 I would ask that you wait until I'm done 15 answering -- asking my question before 16 you begin to answer. Do you understand 17 that? 18 A. Yes. 19 MR. WALTON: I'm sure the 20 court reporter will remind you if 21 you do that. 22 BY MS. BALINT: 23 Q. Another important thing is 24 that she can only write down what is</p>
<p>7</p> <p>1 vehicle that was involved. 2 Q. And in terms of the 3 litigation, were you the plaintiff or the 4 defendant? 5 A. I was the plaintiff. 6 Q. How was that case resolved? 7 A. I'm not sure, ma'am, I was 8 with the volunteer fire company, I don't 9 know what the outcome of the case was. 10 Q. I know that you have been 11 deposed before, but I would like to take 12 a few minutes to go over the deposition 13 process today just to make sure that you 14 understand the rules here. The court 15 reporter is sitting at the end of the 16 table and she's going to take down every 17 word that is said today, everything that 18 I say, everything that you say. And we 19 will be following a question and answer 20 format. 21 The critical thing about a 22 deposition, the difference between this 23 and a regular conversation is that it is 24 very important that you listen to the</p>	<p>9</p> <p>1 said, not the gestures I'm making with my 2 hands, and indistinct verbalizations like 3 uh-huh and un-uh are really hard to read. 4 You can't tell whether that is a yes or 5 no. So if your response is either yes or 6 no, I would ask that you say yes or no. 7 A. Yes, ma'am. 8 Q. If your attorney objects to 9 any question that I ask, please don't 10 answer until your attorney and I have 11 discussed his objection at which point 12 you will either be asked -- you will 13 either be asked to answer the question or 14 I will attempt to rephrase the question 15 in a way to meet the objection. Do you 16 understand that? 17 A. Understood. 18 Q. Please don't guess at your 19 answers. If you don't know an exact 20 answer, you can certainly estimate, but 21 if you are estimating on something, 22 please say about or probably or whatever. 23 But if you have no idea of an answer, 24 please don't guess.</p>

10

1       **A. Yes, ma'am.**  
 2       **Q. Do you understand? If in**  
 3 **the course of this deposition you**  
 4 **remember something that you didn't**  
 5 **remember at the time that I asked a**  
 6 **question, you can tell me, you can say,**  
 7 **you know, that just reminds me, you were**  
 8 **asking about something else before, and**  
 9 **now I remember where before I didn't. I**  
 10 **would rather you do that if something**  
 11 **occurs to you than to have an incomplete**  
 12 **record. Okay?**  
 13       **A. Understood.**  
 14       **Q. If at any time you need to**  
 15 **take a break, that is fine, just let me**  
 16 **know. Sometimes these things go on for a**  
 17 **long time. We will certainly take a**  
 18 **break if we get to the lunch hour. Do**  
 19 **you have any questions about --**  
 20       **A. No.**  
 21       **Q. -- this proceeding?**  
 22           **MR. WALTON: Off the record.**  
 23           **(Discussion off the record.)**  
 24 **BY MS. BALINT:**

11

1       **Q. Mr. Street, is there**  
 2 **anything that would prevent you from**  
 3 **testifying truthfully or accurately this**  
 4 **morning such as any medications you have**  
 5 **been taking?**  
 6       **A. No, ma'am.**  
 7       **Q. Or any illness you have been**  
 8 **suffering?**  
 9       **A. No, ma'am.**  
 10       **Q. Or any trauma or**  
 11 **bereavement?**  
 12       **A. No, ma'am.**  
 13       **Q. Is there any other reason**  
 14 **you feel you wouldn't be able to**  
 15 **truthfully or accurately testify today?**  
 16       **A. No.**  
 17       **Q. Did you review any documents**  
 18 **in preparing for today's deposition?**  
 19           **MR. WALTON: I will object,**  
 20 **excluding documents reviewed with**  
 21 **counsel.**  
 22           **MS. BALINT: Actually any**  
 23 **documents. I'm not asking about**  
 24 **any communication with counsel,**

12

1       I'm asking about documents he may  
 2       have read.  
 3           **MR. WALTON: To the general**  
 4 **question, you can answer, have you**  
 5 **reviewed any documents in**  
 6 **preparation for deposition.**  
 7           **THE WITNESS: Yes.**  
 8 **BY MS. BALINT:**  
 9       **Q. Can you tell me what**  
 10 **documents you have reviewed?**  
 11           **MR. WALTON: Objection. I'm**  
 12 **going to object to that question**  
 13 **on the grounds of attorney/client**  
 14 **privilege. Which documents were**  
 15 **selected and reviewed with the**  
 16 **witness by counsel constitutes**  
 17 **Work Product.**  
 18 **BY MS. BALINT:**  
 19       **Q. Were there -- excluding any**  
 20 **documents that may have been written to**  
 21 **you by your attorney, such as letters or**  
 22 **memos or e-mails, can you tell me the**  
 23 **other documents that you reviewed in**  
 24 **preparation for today's deposition?**

13

1       **A. The documents that I**  
 2 **provided to Mr. Walton.**  
 3       **Q. And can you tell me what**  
 4 **those are.**  
 5       **A. Computer printouts of data**  
 6 **of emergency responses from New Castle**  
 7 **County.**  
 8       **Q. Mr. Streets, I will show you**  
 9 **three pages of documents that have been**  
 10 **marked Exhibits Streets-1, Streets-2 and**  
 11 **Streets-3. And I will ask you to take a**  
 12 **look at those, please. Mr. Streets, are**  
 13 **those the documents that you gave to your**  
 14 **attorneys?**  
 15       **A. That's correct.**  
 16           **MR. WALTON: I will ask to**  
 17 **go off the record one more time.**  
 18 **(Discussion off the record.)**  
 19           **(Recess at 10:12 a.m.)**  
 20           **(Resumed at 10:32 a.m.)**  
 21 **BY MS. BALINT:**  
 22       **Q. Mr. Streets, can we just**  
 23 **briefly go through these three sets of**  
 24 **documents and have you identify for me**

<p style="text-align: right;">14</p> <p>1 what they represent. Looking at 2 Streets-1, could you describe this list 3 for me. 4 <b>A. This is a computer printout 5 of data starting at 1994. At the top of 6 the page it has run number and first 7 number indicates it is 1994. And the 8 next number is indicating what the 9 activity number for the year is 18,554 10 incidents of the year so far. The next 11 report time was 1994 on 0703 for 12 July 3rd, fire district 1533, there is a 13 water rescue Pea Patch Island on the 14 north end.</b> 15 <b>So reading across left to 16 right, it tells you the year is the first 17 two numbers, the incident case number 18 chronologically by year. The next column 19 is the year in total, and the last four 20 digits indicate the day -- month and day 21 of the month that the incident occurred.</b> 22 <b>Column three indicates the 23 response area that the incident occurred 24 in, representing the fire district, and</b></p>	<p style="text-align: right;">16</p> <p>1 entry time that was entered into our 2 computer system, to generate a response. 3 <b>Second line indicates that we have 4 assigned that a case number for future 5 references. In this case it would be 6 case 1109 -- 1,109 incidents for the 7 year.</b> 8 <b>Next line down control, 9 tells me that station 18 was the primary 10 response that is handled by computer 11 terminal 41. Going down the next line at 12 1799, we station alerted the volunteer 13 fire companies of 18, 20, and 29 to the 14 incident. Next line is 1722, we notified 15 the marine police who also has 16 jurisdiction for this response. At 1722, 17 it also indicates that we notified the 18 Coast Guard of a response in the Delaware 19 River.</b> 20 <b>The next line, 1723 advised 21 marine police will not be responding 22 unless needed, their boat is currently 23 out of the water. Going down to the next 24 line, it has at 1725, dispatch of a unit.</b></p>
<p style="text-align: right;">15</p> <p>1 <b>the last one is the location provided by 2 the caller of the incident.</b> 3 <b>Q. Looking on the first page we 4 start with an incident that was on July 5 3rd, 1994, and the last incident on the 6 last page was on September 18, 2006, is 7 that correct?</b> 8 <b>A. Correct.</b> 9 <b>Q. Moving to Streets-3 -- 10 Streets-2, I'm sorry, can you describe 11 for me what this document set is and how 12 it differs from the first set.</b> 13 <b>A. Document 2 is a more 14 detailed report of document 1 in regards 15 that I printed out the entire responses 16 for calendar year 2000 that were handled 17 by New Castle County. And on Page 2 it 18 is a detailed report of an incident that 19 occurred on the 8th of January in the 20 year 2000, at approximately 1717 hours 21 which military time is 5:17 p.m. This 22 incident is of a river rescue in the 23 Delaware River opposite the Ommelanden 24 Range. Going down the line, 1717 is the</b></p>	<p style="text-align: right;">17</p> <p>1 <b>It is followed by the assist of a unit to 2 the same incident.</b> 3 <b>Q. Is there any indication of 4 what kind of unit that is --</b> 5 <b>A. Yes, ma'am.</b> 6 <b>Q. -- dispatched?</b> 7 <b>A. Looks here like the computer 8 data shifted over, it is 18 marine 1 -- 9 it is 1725, parentheses 77, 18, the 18 10 should be after assist. 18 marine 1 was 11 the unit responding. And they were in 12 route to the 3rd Street boat ramp where 13 they have availability to get into the 14 water from the City of New Castle. At 15 1726 they are showing they are arriving 16 at the 3rd Street boat ramp.</b> 17 <b>Q. Where it says on scene?</b> 18 <b>A. Yes, ma'am, on scene, I'm 19 sorry. 1727 shows that Eric Wagner who 20 is the City of Wilmington cell phone 21 number for future reference if we needed 22 to contact him. At 1728 --</b> 23 <b>Q. Excuse me, on that last 24 line?</b></p>

18

1 A. 1727?  
 2 Q. Yes. Where it says --  
 3 A. Miscellaneous.  
 4 Q. -- miscellaneous, P was Eric  
 5 Wagner. What does P indicate?  
 6 A. Again it looks like it is a  
 7 typo -- not a typo, but looks like the  
 8 computer has shifted off the screen. Put  
 9 in parentheses that they were to contact  
 10 Eric Wagner. And my -- Eric Wagner's  
 11 phone number would have been a contact  
 12 for the response.  
 13 Q. Is he a responder or someone  
 14 at the scene at the time of the incident?  
 15 Can you tell?  
 16 A. No, ma'am, I can't.  
 17 Q. Okay.  
 18 A. Next line is 1728, you see  
 19 in front of the on scene, you see TP,  
 20 TPR, that is our trooper 4 is our  
 21 aviation unit that responded.  
 22 Q. Is that a helicopter?  
 23 A. Yes, ma'am. 1731, it  
 24 indicates an assist that is 29 marine 1

19

1 was the second water rescue vehicle in  
 2 the water. We have another assisting  
 3 unit, marine 2 followed by 1732 location  
 4 is that those units are at the Augustine  
 5 boat ramp, that would be station 29, the  
 6 29 marine 1 unit would be putting off at  
 7 Augustine where they have their boat  
 8 ramp. 1733, 20 marine 1 is at the 7th  
 9 Street, they are assisting and they are  
 10 in route to the 7th Street off ramp.  
 11 That is in the City of Wilmington where  
 12 they have their boats that they put off  
 13 at. 1733, that is their marine units  
 14 also to go to put off at 7th Street. At  
 15 1733, 18 marine 1 indicates they are at  
 16 Delaware City. And the next three  
 17 indications 34 -- 34 and 40, indicates  
 18 respective units have arrived on the  
 19 scene of the vessel.  
 20 The next indication is 1740,  
 21 it is AIQ which stands for available in  
 22 quarters. That is the support unit that  
 23 took the boat to 7th Street, they are  
 24 back in quarters. At 1744, SITCON is the

20

1 acronym for situation's under control.  
 2 It means they have the vessel safely and  
 3 the situation is under control. 1745,  
 4 disposition, TRN, true case, TRN. It is  
 5 the acronym we use for the case was a  
 6 true run, it wasn't a false call. It was  
 7 true. And the next three indications are  
 8 that the respective units are returning  
 9 available on radios, AOR stands for  
 10 available on radio.  
 11 Page 2 of that incident  
 12 again it indicates that the other two  
 13 indications are that the other two units  
 14 are available on radio, and the case was  
 15 closed out.  
 16 Q. This set of documents that  
 17 has been labeled as Streets-2, does it  
 18 represent all of the Delaware River  
 19 incidents handled by who? Who are the  
 20 responders that this represents?  
 21 A. This particular one  
 22 incident.  
 23 Q. No, the entire batch.  
 24 Looking at the front page.

21

1 A. Okay.  
 2 Q. It says Delaware River  
 3 incidents handled by New Castle County  
 4 911 center. Does this set of documents  
 5 represent all of the State of Delaware's  
 6 emergency response on the Delaware River  
 7 for 2000 or is it a smaller subset?  
 8 MR. WALTON: Object to form  
 9 of the question, compound  
 10 question.  
 11 BY MS. BALINT:  
 12 Q. Okay. We will get into  
 13 those questions as we get into your  
 14 duties and responsibilities. Looking at  
 15 Streets-3, would it be correct to assume  
 16 that Streets-3 is the 1999 -- it is  
 17 identical to Streets-2 only it represents  
 18 the incidents in 1999?  
 19 A. Partial. It is not a  
 20 complete year. I stopped it in May.  
 21 Q. You stopped in May?  
 22 A. Yes, it only goes from  
 23 January to May.  
 24 Q. Why is that?

22

1       **A. Time constraints.**  
2       **Q. How were these two documents**  
3 **created, Streets-2 and Streets-3?**  
4       **A. We have backup tapes of all**  
5 **our data stored in archives. To retrieve**  
6 **this data marked Streets-2 and 3 entailed**  
7 **putting approximately 26 data tapes one**  
8 **at a time on our backup driver to extract**  
9 **data from which every year I was**  
10 **requiring information from.**  
11       **Q. Do you know how many years**  
12 **there are data tapes, similar data tapes**  
13 **for this information?**  
14       **A. I have data tapes available**  
15 **for everything that is included in**  
16 **Streets-1 from 1994. Again, Streets-1 is**  
17 **a summary. Streets-2 and 3 is a more**  
18 **detailed.**  
19       **Q. Is there any data available**  
20 **prior to 1994?**  
21       **A. I would say yes.**  
22       **Q. What do you base that answer**  
23 **on?**  
24       **A. We have changed computer**

23

1 **systems since '94, and although the tapes**  
2 **may be available, the method to extract**  
3 **it may not be. I would have to get our**  
4 **IS people to see whether we can extract**  
5 **data from those prior to '94 tapes on our**  
6 **current system.**  
7       **Q. Was there a time prior to**  
8 **1994 when the records were kept on paper**  
9 **rather than computer?**  
10       **A. No. We have been**  
11 **computerized since 1973, New Castle**  
12 **County.**  
13       **Q. So prior to 1973, it would**  
14 **have had to be on paper?**  
15       **A. I can't answer that because**  
16 **I have not been employed there that long.**  
17 **Since my hire, it has all been**  
18 **computerized.**  
19       **Q. Other than Streets-1,**  
20 **Streets-2 and Streets-3, and also**  
21 **excluding any letters, memorandum or**  
22 **e-mail directly to you from your**  
23 **attorneys, did you review any other**  
24 **documents prior to today's deposition?**

24

1       **A. No.**  
2       **Q. Other than your attorney,**  
3 **have you spoken with anyone concerning**  
4 **any aspect of this case?**  
5       **A. My boss who had to know**  
6 **where I was going, what I was leaving the**  
7 **office for.**  
8       **Q. Who is your boss?**  
9       **A. David J. Roberts, he is the**  
10 **chief of communications.**  
11       **Q. Chief of communications for**  
12 **what entity?**  
13       **A. It is New Castle County,**  
14 **Department of Public Safety.**  
15       **Q. Did you talk to Mr. Roberts**  
16 **about any of the information in these**  
17 **documents?**  
18       **A. No, ma'am.**  
19       **Q. Aside from Mr. Roberts, did**  
20 **you talk to anybody about today's**  
21 **deposition or any of the other issues**  
22 **involved in this case?**  
23       **MR. WALTON: Excluding**  
24 **counsel.**

25

1       **MS. BALINT: Excluding**  
2 **counsel.**  
3       **THE WITNESS: No.**  
4 **BY MS. BALINT:**  
5       **Q. Mr. Streets, what is your**  
6 **date of birth?**  
7       **A. June 24, 1946.**  
8       **Q. June 24, 1946?**  
9       **A. Correct.**  
10       **Q. Where do you work?**  
11       **A. I work for New Castle County**  
12 **Government.**  
13       **Q. Any particular branch of**  
14 **that Government?**  
15       **A. Department of Public Safety,**  
16 **emergency communications.**  
17       **Q. Department of Public Safety,**  
18 **emergency communications?**  
19       **A. Emergency communications**  
20 **division, yes, ma'am.**  
21       **Q. How long have you worked for**  
22 **New Castle County Department of Public**  
23 **Safety emergency communications division?**  
24       **A. I'm in my 31st year, ma'am,**

26

1 started February 1975.  
2 Q. What was your job just  
3 before you started working with Delaware  
4 County -- or New Castle County?  
5 A. I worked construction,  
6 ma'am.  
7 Q. And who did you work for?  
8 A. Private company called  
9 County Plumbing and Heating located in  
10 Wilmington.  
11 Q. And when did you work for  
12 County Plumbing and Heating, do you  
13 remember the years?  
14 A. 1967 to 1974.  
15 Q. What was your job at that  
16 employment?  
17 A. I was an apprentice plumber.  
18 Q. Prior to working for County  
19 Plumbing and Heating, who did you work  
20 for?  
21 A. United States Government.  
22 Q. What branch of the United  
23 States Government did you work for?  
24 A. Marine Corp, United States

27

1 Marine Corp.  
2 Q. What were your dates of  
3 service?  
4 A. December '63 to December  
5 of '66.  
6 Q. What was your job title and  
7 rank in the Marine Corp?  
8 A. I was PFC and I was  
9 administrative clerk.  
10 Q. PFC standing for what?  
11 A. Private first class.  
12 Q. While in the Marine Corp  
13 working as an administrative clerk, what  
14 types of duties did you have?  
15 A. Basically recordkeeping.  
16 Q. Prior to working for the  
17 Marine Corp, what was your employment?  
18 A. I was in school.  
19 Q. What was the highest level  
20 of education?  
21 A. I have a high school  
22 equivalent GED and some college.  
23 Q. When did you receive your  
24 GED?

28

1 A. In the Marine Corp, 1964.  
2 Q. And what college?  
3 A. Delaware Technical and  
4 Community College.  
5 Q. When did you attend college  
6 at Delaware Technical and Community  
7 College?  
8 A. 1971 to 1972.  
9 Q. What was your course of  
10 study there?  
11 A. Fire technology.  
12 Q. Can you explain for me  
13 generally what fire technology study  
14 entails?  
15 A. At the time I had just had  
16 joined the local volunteer fire company,  
17 and I was interested in fire suppression  
18 as well as trying to become a career  
19 firefighter with the Wilmington Fire  
20 Department. And part of the application  
21 process was if you had college -- some  
22 college, you had a better chance on  
23 getting on the department, so I started  
24 pursuing those studies.

29

1 Q. What volunteer fire company  
2 did you begin with?  
3 A. I'm still with Aetna,  
4 A-E-T-N-A, Aetna. Full name is Aetna  
5 Hose, Hook and Ladder Company. It is  
6 located in Newark, Delaware.  
7 Q. What county is Newark,  
8 Delaware in?  
9 A. That is New Castle County.  
10 Q. Does the Aetna Hook -- Hose,  
11 Hook and Ladder Company have a numeric  
12 designation?  
13 A. Station 7, 8 and 9. We have  
14 three stations located in Newark.  
15 Q. And would I be right in  
16 thinking that the stations 7, 8 and 9,  
17 refer to a hose truck, hook truck and  
18 ladder truck?  
19 A. No, basically we started out  
20 with one station, and because of the  
21 expanding growth of the town, we put two  
22 substations or basically they are equal  
23 stations. One houses engine and a  
24 specialized piece. We have a rescue, a

30

1 ladder and what they call SCORP (ph), an  
 2 articulating arm truck, that is the  
 3 difference in the three stations. They  
 4 all have engines, ambulances and one  
 5 specialized piece.  
 6 Q. When did you join Aetna  
 7 Hose?  
 8 A. September 1969.  
 9 Q. At that time was Aetna Hose  
 10 an all volunteer company?  
 11 A. Yes, ma'am.  
 12 Q. Does it still volunteer?  
 13 A. No, ma'am, we have crews  
 14 that handle EMS calls, emergency medical  
 15 services or ambulance calls.  
 16 Q. When did that change occur?  
 17 When did the company first hire?  
 18 A. I don't have an answer,  
 19 don't know an exact date when it was. I  
 20 would say within the last 10 years  
 21 because of the growth and the call volume  
 22 pretty much demanded we have a steady  
 23 volunteer services available to handle  
 24 the calls as they are needed.

31

1 Q. Do you currently have paid  
 2 drivers?  
 3 A. Newark has paid career  
 4 staff. What they do is the driver and  
 5 the EMT are both paid, that is to insure  
 6 that the ambulance gets out on the runs.  
 7 In the event a fire happens, they are  
 8 permitted to drive the apparatus.  
 9 Q. So your paid driver drives  
 10 both your ambulance and fire truck?  
 11 A. It is part of their job,  
 12 every piece of apparatus they must drive.  
 13 Q. What is your current  
 14 involvement at Aetna Hose?  
 15 A. I'm a casual member. Age,  
 16 family commitments do not allow me to put  
 17 the time in that I have in the past.  
 18 Q. When would you say -- what  
 19 years would you say you were an active  
 20 member of the company?  
 21 A. An active member? I have  
 22 been very active up until the last  
 23 probably two years.  
 24 Q. So from 1969 when you joined

32

1 to perhaps --  
 2 A. 2004 probably when my  
 3 response started to drop off.  
 4 Q. When you attended Delaware  
 5 Technical and Community College, did you  
 6 attain any degrees or certificates or --  
 7 A. No, ma'am, I was working  
 8 more towards an associates. And to get  
 9 hired by the county and because of the  
 10 shift work, I wasn't able to continue the  
 11 day work school.  
 12 Q. Have you attended any  
 13 continuing education or other college  
 14 level classes since that time?  
 15 A. No, ma'am.  
 16 Q. Have you ever had your  
 17 employment terminated in a non-volunteer  
 18 manner?  
 19 A. Not to my knowledge.  
 20 Q. You are presently employed  
 21 by the New Castle County Department of  
 22 Public Safety emergency communications  
 23 division, correct?  
 24 A. Yes, ma'am.

33

1 Q. Where is your place of  
 2 business located?  
 3 A. 3601 North Dupont Highway.  
 4 It is located in New Castle.  
 5 Q. What Government operations  
 6 are located at that address?  
 7 A. It is the police  
 8 headquarters building. We also have a  
 9 communications section within the police  
 10 as well as emergency medical services.  
 11 Q. Just briefly, can you  
 12 describe for me the structure of the  
 13 policing units in the State of Delaware.  
 14 And I ask because I'm not familiar with  
 15 county police departments.  
 16 MR. WALTON: I will object  
 17 to the form of the question. I  
 18 think there was a couple in there.  
 19 BY MS. BALINT:  
 20 Q. Does the State of Delaware  
 21 have state troopers?  
 22 A. Yes.  
 23 Q. What are the officers who  
 24 work at the county police headquarters,

34

1 what kind of officers are they?  
 2 A. They are county police  
 3 officers.  
 4 Q. Do the municipalities have  
 5 additional police force?  
 6 A. Yes, some municipalities  
 7 have their own police department.  
 8 Q. And some do not?  
 9 A. Most of the incorporated  
 10 areas have their own police department to  
 11 my knowledge.  
 12 Q. What percentage of your  
 13 county would you say is unincorporated?  
 14 A. I wouldn't be able to guess,  
 15 ma'am.  
 16 Q. Is it --  
 17 A. Percentage wise, I don't  
 18 know. The way the jurisdiction agreement  
 19 is drawn up between the State of Delaware  
 20 and the county police force, we handle  
 21 all communities. So if you live in a  
 22 community within New Castle County, New  
 23 Castle County Police have jurisdiction  
 24 over that complaint. All major rivers,

35

1 roadways and railways are state  
 2 jurisdiction, they handle the complaints.  
 3 The town of Newport has their own police  
 4 department that does their corporate  
 5 limits. The City of New Castle has its  
 6 own private police department that  
 7 handles their corporate limit responses.  
 8 The town of Delaware City has its own  
 9 police department. City of Wilmington  
 10 has its own police department. City of  
 11 Newark has its own police department.  
 12 New Castle County we have multiple police  
 13 agencies to provide service to the  
 14 public. It depends geographically where  
 15 you are located whether you are going to  
 16 get a municipal, a Wilmington Police or a  
 17 county police as well as the state.  
 18 Q. When an emergency call goes  
 19 out, how is it determined who is the  
 20 first responder to that call among those  
 21 various departments?  
 22 A. We have a geodatabase in our  
 23 computer that is purified by  
 24 jurisdictional agreement, and

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1 electronically once an address is entered  
 2 into the system, it will give you the  
 3 proper jurisdiction for the police.  
 4 Electronically it is then sent to our  
 5 central dispatch and our 911 center, we  
 6 handle every police agency except for the  
 7 City of Newark and the City of  
 8 Wilmington.  
 9 Q. So all of the counties  
 10 except for Newark --  
 11 A. And Wilmington are  
 12 dispatched out of my center, correct.  
 13 Q. And when you refer to your  
 14 center, what is that?  
 15 A. That is the New Castle  
 16 County 911 center.  
 17 Q. How is emergency response  
 18 dispatched in Newark and Wilmington?  
 19 A. If we were to receive the  
 20 call, the way the system is designed for  
 21 telephones on all the hard-wired phone  
 22 lines, there is an ESN, which stands for  
 23 emergency services number routing. If  
 24 you are located within the jurisdiction

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1 of Newark or Wilmington, when you pick up  
 2 your phone at your home, it would  
 3 automatically go into the Wilmington  
 4 Police Department. Same would happen in  
 5 Newark. If you live in Newark, your  
 6 phone is associated with Newark  
 7 jurisdiction, it would go to directly to  
 8 Newark Police Department. If in the  
 9 process of receiving the call they  
 10 determine it is an ambulance or a fire  
 11 response, it is electronically sent to us  
 12 by a single button transfer through the  
 13 telephone system.  
 14 Q. So the 911 center does  
 15 handle the ambulance and fire calls?  
 16 A. For everybody in New Castle  
 17 County.  
 18 Q. For Newark and Wilmington  
 19 included?  
 20 A. That is exactly, yes.  
 21 Q. What is your current  
 22 position with your employer?  
 23 A. I'm the  
 24 administrator/custodian of records for

38

1 the 911 center.  
2 Q. How long have you been in  
3 this current position?  
4 A. For 17 years.  
5 Q. What are your duties as the  
6 administrator and custodian of records  
7 for the 911 center?  
8 A. I handle all physical  
9 responsibilities for the 911 center,  
10 budgetary, payroll, etcetera, deals with  
11 physical. Also as custodian of records I  
12 maintain all the records for the 911  
13 center, I respond to subpoenas from  
14 various agencies, as well as freedom of  
15 information requests as it relates to 911  
16 calls.  
17 Q. Can you tell me generally  
18 how the 911 center records are  
19 maintained.  
20 A. Our center we have a master  
21 log-in recorder. It records all incoming  
22 and outgoing telephone calls to the  
23 center as well as a computerized system  
24 to track incidents within the county. I

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1 maintain the tapes and the recording  
2 device in my office.  
3 Q. Are these records  
4 transferred to another media at some  
5 point?  
6 A. They have in the past been  
7 transferred to DVD when the file gets too  
8 big for the data recorder tape.  
9 Q. And where are the DVDs?  
10 A. In my office.  
11 Q. Are there any 911 center  
12 records that are not in your office?  
13 A. Well, all the computer data  
14 tapes are housed in our storage office.  
15 It is accessible by key only.  
16 Q. Do you know, sir, what  
17 laws -- law or laws are established that  
18 authorize the operation the 911 center?  
19 Do you know what your statutory authority  
20 is?  
21 MR. WALTON: Objection.  
22 Compound question.  
23 MS. BALINT: Strike the  
24 first one. Do you know what the

40

1 statutory authority for the county  
2 to operate the 911 center is?  
3 THE WITNESS: Not firsthand,  
4 no, ma'am.  
5 BY MS. BALINT:  
6 Q. Do you have -- what staff  
7 works in your office?  
8 A. Just myself.  
9 Q. Do you work in coordination  
10 with the dispatchers? It is the  
11 dispatching process that you record, is  
12 that correct?  
13 A. That's correct.  
14 Q. So do you work with the  
15 dispatchers in any way?  
16 A. I have oversight on them as  
17 far as the tapes and the quality of tapes  
18 and the stuff said on the tapes. It is  
19 part of my review process when I do the  
20 review stuff.  
21 Q. Do the dispatchers report to  
22 you?  
23 A. Operationally my counterpart  
24 handles the operation part of the center,

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1 I do the administrative side.  
2 Q. Who is your counterpart?  
3 A. Dennis Quinn.  
4 Q. How do you spell Quinn?  
5 A. Q-U-I-N-N.  
6 Q. What is Mr. Quinn's title?  
7 A. Team leader. Same as me,  
8 I'm team leader administrative, he's team  
9 leader operational.  
10 Q. Have you received any  
11 special training for your job?  
12 A. Training from the phone  
13 company, training from the logging --  
14 master logging system, training from our  
15 IT people that had to extract data. Yes,  
16 I have routine training.  
17 Q. Within the New Castle County  
18 Police Department, is that what it is  
19 called, first of all?  
20 A. New Castle County Department  
21 of Public Safety. Within that umbrella  
22 we have police, emergency medical  
23 services, communications as well as  
24 office of emergency management, they are

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1 under the same umbrella as the public  
 2 safety department.  
 3 Q. Who is the officer in charge  
 4 of the county police department?  
 5 A. Our director of public  
 6 safety is Ronald Frazier. Ernest is his  
 7 first name, Ernest R. Frazier,  
 8 F-R-A-Z-I-E-R. He oversees the entire  
 9 department.  
 10 Q. Who is the lead officer in  
 11 the police unit that is within the  
 12 Department of Public Safety?  
 13 A. He will be sworn in Friday,  
 14 ma'am. We have a new chief being sworn  
 15 in Friday. I don't know what his full  
 16 title or name is.  
 17 Q. Who is his predecessor?  
 18 A. Lieutenant Colonel Scott  
 19 McLaren, he is currently holding that  
 20 position before he is sworn in Friday.  
 21 Q. Scott --  
 22 A. M-c-L-A-R-E-N.  
 23 Q. And what is Lieutenant  
 24 Colonel Scott McLaren's job title?

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1 A. He is the acting chief of  
 2 police.  
 3 Q. Within the Department of  
 4 Public Safety, who is the most -- the top  
 5 ranking person in the emergency services?  
 6 A. The director oversees the  
 7 entire department, Lieutenant Colonel  
 8 McLaren handles the police, my boss,  
 9 David J. Roberts, has the communication  
 10 section.  
 11 Q. Who heads EMS?  
 12 A. Chief Lawrence Tan, T-A-N.  
 13 Q. Who is in charge of the OEM,  
 14 office of emergency management?  
 15 A. He is in the acting position  
 16 also, his name is David Carpenter,  
 17 Junior.  
 18 Q. What is Mr. Carpenter's job  
 19 title?  
 20 A. A lot of preplanning with  
 21 the industrial sites for disasters, a lot  
 22 of drills and preplanning for the  
 23 citizens, they have a citizens emergency  
 24 response team. He goes out to

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1 communities, provides insight and sets up  
 2 plans how to evacuate if we have a flood  
 3 or natural disaster, as well as he writes  
 4 plans for all of the hazardous sites in  
 5 our jurisdiction.  
 6 Q. Do you know what  
 7 Mr. Carpenter's job title would be, is he  
 8 the chief --  
 9 A. He is the acting coordinator  
 10 of the office of emergency management.  
 11 Q. What is the area of  
 12 jurisdiction that New Castle County 911  
 13 center-covers?  
 14 A. The area of jurisdiction?  
 15 Q. Yes, sir.  
 16 A. Everything north of the  
 17 Smyrna River, that is located just north  
 18 of the town of Smyrna bordered on the  
 19 west by the State of Maryland, by the  
 20 north and northwest by the State of  
 21 Pennsylvania, and by the east at the low  
 22 watermark on New Jersey.  
 23 Q. Mr. Streets, are you aware  
 24 of a document that is called the 1905

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1 Compact?  
 2 A. No idea, ma'am.  
 3 Q. Are you aware of a  
 4 demarcation that is called the 12-mile  
 5 circle?  
 6 A. I have heard of it, yes,  
 7 ma'am.  
 8 Q. What is your understanding  
 9 of the 12-mile circle?  
 10 A. Well, historically it goes  
 11 back to a point in time when they used  
 12 the center of old New Castle as the --  
 13 using the 12-mile boundary, within  
 14 12 miles of the center of New Castle,  
 15 City of New Castle, that was the New  
 16 Castle County jurisdiction.  
 17 Q. So the 12-mile circle went  
 18 365 degrees around the center of old New  
 19 Castle?  
 20 MR. WALTON: Object to the  
 21 form of the question. Also there  
 22 is no foundation for it.  
 23 BY MS. BALINT:  
 24 Q. I thought I understood what

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1 you said to be that the 12-mile circle is  
 2 a historical demarcation that begins in  
 3 the center of old New Castle, is that  
 4 right?  
 5 **A. That is my understanding.**  
 6 **Q. And that it originally**  
 7 **defined New Castle County jurisdiction.**  
 8 **A. That is my understanding.**  
 9 **Q. And that the original**  
 10 **jurisdiction of New Castle County was**  
 11 **limited to that area within a 12-mile**  
 12 **circle of the center of New Castle,**  
 13 **Delaware?**  
 14 **A. That is my understanding.**  
 15 **Q. Is it your understanding**  
 16 **that the circle was indeed a complete**  
 17 **365-degree circle?**  
 18 **A. I'm not exactly sure. I**  
 19 **can't say yes or no for that.**  
 20 **Q. Today's New Castle County**  
 21 **boundaries that you described for me as**  
 22 **being the Smyrna River on the south,**  
 23 **Maryland on the west, Pennsylvania on the**  
 24 **north and northwest and the low watermark**

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1 of New Jersey in the Delaware River on  
 2 the east, do those boundaries coincide  
 3 with the 12-mile circle?  
 4 **A. Without a map, it would be**  
 5 **purely a guess, I have no idea, ma'am.**  
 6 **How far it is from New Castle to Smyrna.**  
 7 **Q. Can you picture in your mind**  
 8 **a map of your county? Is your county**  
 9 **circular?**  
 10 **A. No.**  
 11 **Q. What shape would you say**  
 12 **that your county is?**  
 13 **A. It is more of oblong,**  
 14 **rectangle.**  
 15 **Q. So it is currently not a**  
 16 **circular shaped county?**  
 17 **A. No.**  
 18 **Q. Do you have any idea when**  
 19 **the current borders of New Castle County**  
 20 **were established?**  
 21 **A. No, ma'am.**  
 22 **Q. Thinking about the 12-mile**  
 23 **circle with respect to the Delaware**  
 24 **River, do you know where the 12-mile**

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1 circle enters the Delaware River on the  
 2 north?  
 3 **A. No, no, I don't.**  
 4 **Q. From the Delaware side --**  
 5 **from the State of Delaware going into the**  
 6 **Delaware River, do you know where the**  
 7 **12-mile circle enters the river?**  
 8 **MR. WALTON: I will place an**  
 9 **objection because I don't think I**  
 10 **understand the question.**  
 11 **MS. BALINT: Let's try this**  
 12 **with a map. We are looking at a**  
 13 **map that is called Delaware River**  
 14 **Smyrna River to Wilmington. And**  
 15 **it was provided by the State of**  
 16 **Delaware in discovery and it has**  
 17 **been marked DE18214. Does this**  
 18 **map show the northern and southern**  
 19 **boundaries of New Castle County?**  
 20 **THE WITNESS: Doesn't show**  
 21 **the north. I don't see anything**  
 22 **up towards Claymont or Oldmans**  
 23 **Creek. Looks like it stops around**  
 24 **Edgemoor, north of the City of**

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1 Wilmington.  
 2 **BY MS. BALINT:**  
 3 **Q. Does it show the 12-mile**  
 4 **circle?**  
 5 **A. The only circles I see are**  
 6 **the compasses.**  
 7 **Q. Acknowledging that the**  
 8 **12-mile circle isn't shown on that**  
 9 **navigation map, do you know from your own**  
 10 **personal knowledge where the circle would**  
 11 **be on that map?**  
 12 **A. No, ma'am.**  
 13 **(Recess at 11:20 a.m.)**  
 14 **(Resumed at 11:40 a.m.)**  
 15 **BY MS. BALINT:**  
 16 **Q. Mr. Streets, with respect to**  
 17 **the northern border of New Castle County,**  
 18 **can you tell me where that northern**  
 19 **border intersects the Delaware River?**  
 20 **A. On the Jersey side just**  
 21 **north of Oldmans Creek I think is the**  
 22 **little creek that comes out of there,**  
 23 **comes right up to Claymont.**  
 24 **Q. And on the Delaware side,**

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1 how would you describe that northern --  
2 **A. It is right at the state**  
3 **line, the Pennsylvania/Delaware state**  
4 **line. There is an imaginary line from**  
5 **the curvature over to what do you call**  
6 **that point in the river -- I don't know**  
7 **what word I'm looking to use.**  
8 Q. Is there a place name that  
9 coincides with the Delaware/Pennsylvania  
10 line that we are talking about?  
11 **A. A place name?**  
12 Q. Yes, if I didn't have a map,  
13 where would I go?  
14 **A. I would say go to Claymont,**  
15 **and if you got to Marcus Hook you would**  
16 **be in Pennsylvania.**  
17 Q. So between Claymont and  
18 Marcus Hook?  
19 **A. Right.**  
20 Q. The northern border of  
21 Delaware's jurisdiction on the Jersey  
22 side of the Delaware you said began just  
23 north of Oldmans Creek?  
24 **A. Yes.**

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1 Q. Where is Oldmans Creek with  
2 respect to the Pennsylvania/Delaware line  
3 between Claymont and Marcus Hook on the  
4 other side of the river? Are they  
5 adjacent to one another? Is one east of  
6 the other?  
7 **A. Oldmans Creek is east of**  
8 **Claymont itself. If you are looking at a**  
9 **map, it is looking east towards New**  
10 **Jersey.**  
11 Q. Directly east or would it be  
12 southeast?  
13 **A. I would say it is southeast.**  
14 Q. On the southern end, on the  
15 southern border of New Castle County, can  
16 you tell me where New Castle County ends  
17 on the New Jersey shore?  
18 **A. It is an imaginary line from**  
19 **the Smyrna River east to the low**  
20 **watermark in the Delaware River.**  
21 Q. Do you know whether  
22 Delaware's jurisdiction continues south  
23 of that imaginary line which is east of  
24 the Smyrna River?

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1 **A. No, ma'am, that is not my**  
2 **jurisdiction.**  
3 Q. What county --  
4 **A. Kent County, Maryland.**  
5 Q. Kent County, Maryland --  
6 **A. I'm sorry, Kent County,**  
7 **Delaware, they run alongside each other.**  
8 **Kent County, Maryland and Kent County,**  
9 **Delaware.**  
10 Q. Are you aware of whether  
11 there is a portion of Kent County along  
12 the low waterline of the Jersey shore?  
13 **A. No.**  
14 Q. So as far as you know,  
15 Delaware's jurisdiction ends at the  
16 imaginary line east of the Smyrna River  
17 at the low watermark on the New Jersey  
18 side of the Delaware River?  
19 **A. For New Castle County.**  
20 Q. For New Castle County.  
21 **A. Correct.**  
22 Q. And you are unaware of any  
23 other Delaware jurisdiction on the New  
24 Jersey side?

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1 **A. Not to my knowledge. I know**  
2 **we have had -- I keep pronouncing the**  
3 **name of the place, Killcohook, is that**  
4 **how you pronounce that?**  
5 Q. Uh-huh.  
6 **A. We have had incidents on the**  
7 **Riverside of Killcohook Wildlife Refuge.**  
8 Q. What county would Killcohook  
9 be in?  
10 **A. Well, the portion I'm**  
11 **speaking of is considered to be part of**  
12 **Delaware, it touches the river there.**  
13 Q. What county in Delaware  
14 would Killcohook be?  
15 **A. New Castle County.**  
16 Q. So that is your county?  
17 **A. That's correct.**  
18 Q. On the New Jersey side of  
19 the Delaware River, are you aware of any  
20 Delaware response, emergency response to  
21 incidents that occur south of the Smyrna  
22 River?  
23 **A. I'm not personally, that is**  
24 **Kent County's responsibility.**

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1 Q. Who is your counterpart at  
2 Kent County?  
3 A. **Kevin Sipple, S-I-P-P-L-E.**  
4 Q. S-I' --  
5 A. **'P-P-L-E.**  
6 Q. And Mr. Sipple operates the  
7 911 emergency response --  
8 A. **He is my counterpart in**  
9 **Sussex -- Kent County, yes. He has a**  
10 **boss but he doesn't --**  
11 Q. He is the records custodian  
12 there?  
13 A. **Yes, Kevin and I are**  
14 **counterparts in the respective counties.**  
15 Q. Is there any level of  
16 coordinated operations between Kent  
17 County and New Castle County with regard  
18 to emergency response?  
19 A. **Yes, we have mutual aid with**  
20 **each other.**  
21 Q. Do you have any records of  
22 New Castle County personnel responding to  
23 incidents on the New Jersey side of the  
24 Delaware River south of the Smyrna River?

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1 A. **No.**  
2 Q. Can you describe for me  
3 generally what kind of emergency response  
4 New Castle County performs in the  
5 Delaware River.  
6 A. **River rescues, river service**  
7 **calls, any calls for emergency response**  
8 **in our jurisdiction.**  
9 Q. Are you aware of whether New  
10 Castle County Department of Public Safety  
11 performs routine police patrol of the  
12 Delaware River?  
13 A. **As I said earlier, that is**  
14 **the state employee's jurisdiction.**  
15 Q. So any routine police --  
16 policing of the river would be done by  
17 the state police?  
18 A. **State police or the state**  
19 **marine police, there is two bodies.**  
20 **State police handle major crimes and the**  
21 **marine police under the State of Delaware**  
22 **handle the waterways.**  
23 Q. Does the state police  
24 actually patrol the river or is that the

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1 responsibility of the state marine  
2 police?  
3 A. **Marine police.**  
4 Q. Do you know where the state  
5 marine police are -- where their point of  
6 operation is, where they are  
7 headquartered?  
8 A. **They are statewide. We have**  
9 **a boat ramp in Delaware City.**  
10 Q. Are there any other state  
11 marine police boat ramps in your county?  
12 A. **That is the only one I know**  
13 **of, ma'am.**  
14 Q. Do you know where the state  
15 marine headquarters is?  
16 A. **Dover.**  
17 Q. Do the state marine police  
18 have any facility in Delaware City other  
19 than the boat ramp?  
20 A. **I'm not aware.**  
21 Q. So is it your understanding  
22 that if the marine police were to embark  
23 from the boat ramp in Delaware City, that  
24 they would bring a boat there on a

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1 trailer?  
2 A. **No, they have a boat moored**  
3 **there. They have a large -- I believe it**  
4 **is -- it is a large vessel, I would say**  
5 **21-foot, probably bigger. They have a**  
6 **vessel that is moored there.**  
7 Q. So is it a docking facility  
8 or --  
9 A. **It is a private dock,**  
10 **Delaware City Marina. The marina police**  
11 **and the local fire company both have**  
12 **their vessels there side by side.**  
13 Q. What is the local fire  
14 company for Delaware City?  
15 A. **Delaware City, ma'am.**  
16 Q. Do you know how many fire  
17 boats Delaware City Fire Company has?  
18 A. **They have two. One inland**  
19 **water, it is a small boat, and one large**  
20 **boat for the river.**  
21 Q. When you say large, do you  
22 have any idea how big that boat might be?  
23 A. **No.**  
24 Q. Do the state marine police

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1 operate the 21-foot vessel that is moored  
 2 in Delaware City on a routine basis?  
 3 **A. I wouldn't know what their**  
 4 **schedule is, ma'am.**  
 5 Q. If you wanted to find out,  
 6 who would you ask?  
 7 **A. I'm not sure who is in**  
 8 **charge now, but I would call my**  
 9 **counterpart in Kent County and ask him**  
 10 **who is in charge of the marine police,**  
 11 **captain, or what his rank is there.**  
 12 Q. Why do you think your  
 13 counterpart in Kent County might have a  
 14 better idea about the marine police?  
 15 **A. They are based out of Dover,**  
 16 **which is in Kent County. And our access**  
 17 **to them is a 1-800 number to let them**  
 18 **know we need a response. And it is**  
 19 **answered at the 911 center.**  
 20 Q. Do you know if the state  
 21 marine police conduct police patrols of  
 22 the river or whether their activities are  
 23 limited to emergency response?  
 24 **MR. WALTON: I'm going to**

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1 lodge one objection to this entire  
 2 line of questioning in that  
 3 Mr. Streets is not a police  
 4 officer nor employed by the  
 5 police. So I'm giving you  
 6 latitude and I will allow him to  
 7 answer the question to the best of  
 8 his knowledge. So I don't have to  
 9 object every single time, I will  
 10 lodge one blanket objection to  
 11 this entire line of questioning.  
 12 **BY MS. BALINT:**  
 13 Q. I understand the objection.  
 14 This is the witness that was offered for  
 15 this range of topics.  
 16 **MR. WALTON: He can answer**  
 17 **the question.**  
 18 **MS. BALINT: If we need to**  
 19 **depose additional witnesses, that**  
 20 **is one thing. But I would like to**  
 21 **explore the boundaries of this**  
 22 **witness's knowledge.**  
 23 **MR. WALTON: And that is**  
 24 **fine. I'm lodging my objection**

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1 now to the entire line of  
 2 questioning so we don't have to do  
 3 it repeatedly, okay?  
 4 **BY MS. BALINT:**  
 5 Q. My last question,  
 6 Mr. Streets, was basically whether you  
 7 know the state marine police conduct  
 8 routine patrols or whether their  
 9 operations are limited to emergency  
 10 response.  
 11 **A. No.**  
 12 Q. You don't know?  
 13 **A. I don't know whether they**  
 14 **have police responsibility there or just**  
 15 **responders.**  
 16 **(Recess at 11:52 a.m.)**  
 17 **(Resumed at 1:01 p.m.)**  
 18 **BY MS. BALINT:**  
 19 Q. Good afternoon, Mr. Streets.  
 20 **A. Good afternoon.**  
 21 Q. Other than your role as the  
 22 records custodian for the New Castle  
 23 County Department of Public Safety, do  
 24 you have any other experience with

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1 police, fire and emergency responses in  
 2 the Delaware River within the 12-mile  
 3 circle?  
 4 **A. I was originally hired as**  
 5 **the dispatcher, and I performed that**  
 6 **function for 14 years before I was**  
 7 **promoted.**  
 8 Q. As a dispatcher, can you  
 9 give me some idea of the frequency of  
 10 emergency calls that would come in with  
 11 regard to incidents in the Delaware River  
 12 generally?  
 13 **A. It would vary. It is**  
 14 **seasonal.**  
 15 Q. Can you elaborate on that?  
 16 **A. Obviously in the warmer**  
 17 **weather you would have more boaters out**  
 18 **on the water versus the wintertime when**  
 19 **it is more cold, you would have less**  
 20 **boaters.**  
 21 Q. During the summer, do you  
 22 have any idea of the frequency, do you  
 23 recall the frequency perhaps of emergency  
 24 calls within the Delaware River

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1 generally?  
2 A. This summer?  
3 Q. No, in the 14 years when you  
4 were a dispatcher.  
5 A. I would say they run higher  
6 when the boaters are out on the water.  
7 Q. During the summer months,  
8 what type of frequency are we talking  
9 about, once or twice a day, more than  
10 that, once a week, once a month?  
11 A. Again, it would vary. It  
12 depended how many people were out on the  
13 river. Without looking at documentation,  
14 I couldn't tell you whether it is five  
15 times a week, 10 times a month, it would  
16 vary.  
17 Q. Perhaps during the summer  
18 season it would be something like five  
19 times a week or 10 times a month?  
20 A. It could be.  
21 Q. But more than like once a  
22 month?  
23 MR. WALTON: Objection. It  
24 calls for speculation.

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1 MS. BALINT: No, if he can  
2 recall.  
3 MR. WALTON: He answered the  
4 question.  
5 BY MS. BALINT:  
6 Q. Your recollection is that it  
7 would have been more calls than once a  
8 month?  
9 A. Yes.  
10 Q. And something like five  
11 times a week to 10 times a month?  
12 A. Yes.  
13 Q. During the summer season?  
14 A. Yes.  
15 Q. Is that frequency -- that  
16 was during your 14 years as a dispatcher,  
17 would you say -- do you have any idea if  
18 the frequency is similar, more or less  
19 today?  
20 A. No, ma'am, no idea.  
21 Q. Have you ever personally  
22 participated in emergency responses in  
23 the Delaware River?  
24 A. As a dispatcher?

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1 Q. No.  
2 A. No, I'm not a water person.  
3 Q. What about as in your role  
4 as a volunteer fireman?  
5 A. No, my company has no water  
6 jurisdiction.  
7 Q. Do you have any personal  
8 knowledge of how the police, fire and  
9 emergency personnel would identify the  
10 border between New Jersey and Delaware  
11 when they are out there in the water?  
12 A. My understanding is at the  
13 low watermark on New Jersey, everything  
14 west of that is the jurisdiction of the  
15 State of Delaware, and the emergency  
16 response from New Castle County would  
17 respond for incidents on the river.  
18 Q. Is the low watermark as far  
19 as you understand an identifiable  
20 location that you could find if you went  
21 out there?  
22 A. I don't know of one.  
23 Q. Are you aware of Delaware  
24 providing police, fire or emergency

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1 response to any docks or structures on  
2 the New Jersey side of the Delaware River  
3 within the past 12 months?  
4 A. Without referring to the  
5 records, I wouldn't know if vessels had  
6 run aground on any of those items you are  
7 talking about, without referring to the  
8 documents, I wouldn't know.  
9 Q. Do you have any personal  
10 knowledge of any Delaware emergency  
11 response to incidents on docks or other  
12 structures on the New Jersey side of the  
13 river at any time?  
14 A. Again, I would have to refer  
15 back to the documents to see whether  
16 there is an indication of an incident  
17 that we are talking about.  
18 Q. Did you review the documents  
19 you produced today prior to giving them  
20 to your attorney?  
21 A. The only review was to make  
22 sure they were in chronological order. I  
23 didn't go line for line.  
24 Q. Are you aware of whether

<p style="text-align: right;">66</p> <p>1 Delaware emergency responders are the 2 first responders to incidents at docks 3 and structures on the New Jersey side of 4 the Delaware River? 5 <b>A. No knowledge.</b> 6 <b>Q. In reviewing the documents</b> 7 <b>that you produced today, would you be</b> 8 <b>able to identify who the first responder</b> 9 <b>at an incident would be?</b> 10 <b>A. On the documents I handed to</b> 11 <b>you?</b> 12 <b>Q. Yes.</b> 13 <b>A. It is indicated by the fire</b> 14 <b>grid.</b> 15 <b>Q. The fire grid, on Streets-2</b> 16 <b>and 3?</b> 17 <b>A. Streets Document 1.</b> 18 <b>Q. And how would I determine --</b> 19 <b>A. Third column where it says</b> 20 <b>fire D, that is the dispatch group, 15,</b> 21 <b>15 is the designated number for the</b> 22 <b>Delaware City Fire Company. 29 is</b> 23 <b>designated for Port Penn Fire Department.</b> 24 <b>Q. And the fire district that</b></p>	<p style="text-align: right;">68</p> <p>1 <b>fire D column?</b> 2 <b>Q. The fire D column.</b> 3 <b>A. 15 is station 15. And</b> 4 <b>geographical 33 indicates it is a water</b> 5 <b>response. It is a systematic we have in</b> 6 <b>place, anything with a 3 on it indicates</b> 7 <b>a water response.</b> 8 <b>Q. So 33 means water response?</b> 9 <b>A. 34 is a second grid because</b> 10 <b>Delaware City is such a large grid as</b> 11 <b>well as New Castle, 18, that they have</b> 12 <b>split it in half. What it is is a</b> 13 <b>natural barrier to indicate who the</b> 14 <b>second and third responding company would</b> 15 <b>be.</b> 16 <b>Q. So, for example, the first</b> 17 <b>34 on that list, 1534, it says Delaware</b> 18 <b>River area?</b> 19 <b>A. Yes.</b> 20 <b>Q. What do you know about the</b> 21 <b>responders from those numbers?</b> 22 <b>A. That would indicate -- 34</b> 23 <b>would indicate it is a southern part of</b> 24 <b>their district, and would require a</b></p>
<p style="text-align: right;">67</p> <p>1 is identified on the list on Streets-1 is 2 the first responder to that incident? 3 <b>A. That is your primary</b> 4 <b>response.</b> 5 <b>Q. Reviewing document</b> 6 <b>Streets-1, is it apparent on this</b> 7 <b>document which incidents may have</b> 8 <b>happened on the New Jersey side of the</b> 9 <b>Delaware River?</b> 10 <b>A. No.</b> 11 <b>Q. So today looking at document</b> 12 <b>Streets-1, you can't tell me which of</b> 13 <b>these incidents occurred on the New</b> 14 <b>Jersey side of the Delaware River?</b> 15 <b>A. All these incidents</b> 16 <b>indicated are responses from the Delaware</b> 17 <b>into the river, they all indicate they</b> 18 <b>are Delaware jurisdiction by virtue of</b> 19 <b>their address and their response, fire</b> 20 <b>district.</b> 21 <b>Q. The first two numbers in the</b> 22 <b>fire district code tell you what district</b> 23 <b>responded, is that correct?</b> 24 <b>A. Are you talking about the</b></p>	<p style="text-align: right;">69</p> <p>1 <b>different response as far as the second</b> 2 <b>and third due responding company.</b> 3 <b>Q. So 15 is what district?</b> 4 <b>A. Delaware City.</b> 5 <b>Q. 29?</b> 6 <b>A. Is Port Penn.</b> 7 <b>Q. 11?</b> 8 <b>A. Is Brandywine Hundred.</b> 9 <b>Q. Brandywine 100?</b> 10 <b>A. Brandywine Hundred.</b> 11 <b>Q. Brandywine 100?</b> 12 <b>A. Brandywine Hundred is their</b> 13 <b>company. Brandywine Hundred Fire</b> 14 <b>Company. It is a location of the county,</b> 15 <b>north of the City of Wilmington, area is</b> 16 <b>called Brandywine Hundred so the fire</b> 17 <b>company is named after it.</b> 18 <b>Q. District 18?</b> 19 <b>A. Is Goodwill.</b> 20 <b>Q. Where is that located?</b> 21 <b>A. New Castle.</b> 22 <b>Q. Where is district 20?</b> 23 <b>A. Holloway Terrace which has</b> 24 <b>the responsibility of the twin spans.</b></p>

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1 Q. When you say the twin spans,  
2 are you talking about --  
3 A. **The two Delaware Memorial**  
4 **Bridges.**  
5 Q. Where is district 24?  
6 A. **It is Odessa. It is the**  
7 **southern part of the county, south of**  
8 **Port Penn Fire Company.**  
9 Q. Mr. Streets, there are some  
10 runs that indicate that they go to the  
11 Delaware River under the power lines, can  
12 you tell me where that is?  
13 A. **That is between Delaware**  
14 **City and Goodwill, opposite the Delmarva**  
15 **power plant.**  
16 Q. And do these power lines run  
17 all the way across the river?  
18 A. **Yes, ma'am.**  
19 Q. Do you know where the power  
20 lines end up on the New Jersey side?  
21 A. **No, ma'am.**  
22 Q. Mr. Streets, can you  
23 describe for me the police jurisdiction  
24 on the Delaware Memorial Bridge. Do you

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1 have any understanding about who has  
2 jurisdiction over the bridge?  
3 MR. WALTON: Objection.  
4 That is a compound question.  
5 BY MS. BALINT:  
6 Q. Mr. Streets, do you know  
7 what police authority -- authority or  
8 authorities have jurisdiction over the  
9 Delaware Memorial Bridge?  
10 A. **Delaware River Bay**  
11 **Authority.**  
12 Q. Are there any other police  
13 units that have jurisdiction?  
14 A. **On the bridge?**  
15 Q. Yes.  
16 A. **Not to my knowledge.**  
17 Q. And the Delaware Bridge  
18 authority is an interstate authority  
19 comprised of Delaware and New Jersey or  
20 do you know? Sorry, compound. Is the  
21 Delaware Bridge authority part of the  
22 Delaware state government?  
23 A. **I don't know.**  
24 Q. You don't know about the

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1 organization of that?  
2 A. **No, I don't know of the**  
3 **organization for them.**  
4 Q. Does the Delaware River  
5 bridge authority have its own police  
6 officers?  
7 A. **Yes.**  
8 Q. Do you know how big its  
9 force is?  
10 A. **No, ma'am.**  
11 Q. Do you know if any other  
12 police provide mutual aid to the Delaware  
13 bridge authority?  
14 MR. WALTON: I will just for  
15 clarification of the record, it is  
16 Delaware River Bay Authority.  
17 Delaware River Bay Authority.  
18 DRBA.  
19 THE WITNESS: DRBA.  
20 BY MS. BALINT:  
21 Q. So is it your understanding  
22 that Delaware State Police and/or New  
23 Castle County Police would not respond to  
24 incidents on the bridge itself?

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1 A. **Correct.**  
2 Q. But Delaware does respond to  
3 incidents, water incidents under the  
4 bridge?  
5 A. **Delaware State Police again**  
6 **has jurisdiction over all waterways.**  
7 Q. Do you know if the emergency  
8 responders in New Castle County provide  
9 mutual aid to emergency responders on the  
10 New Jersey side of the Delaware?  
11 A. **There is a mutual aid**  
12 **agreement between both states for first**  
13 **responders.**  
14 Q. What is your understanding  
15 of that mutual aid agreement if any?  
16 A. **It is pretty much they call,**  
17 **we will assist. If we call, they will**  
18 **come and assist us.**  
19 Q. Do you know, sir, if a  
20 boater is on a boat in the middle of the  
21 river and uses his cell phone to call  
22 911, do you know where that call would be  
23 routed?  
24 A. **Depends on the tower which**

<p style="text-align: right;">74</p> <p>1 the cell phone was attached to. 2 Q. What are the possibilities? 3 A. Of them getting us? 4 Q. Well, depending on the cell 5 tower, where could it go? Where could 6 the call go? 7 A. It would depend on the 8 location of the phone as it relates to 9 the location of the tower, by wireless, 10 it will go to the closest tower. It may 11 be setting in Delaware, it may be setting 12 in New Jersey. Depending on where the 13 individual is at when the cell phone call 14 is made. 15 Q. If it is a boater in the 16 12-mile circle and they get -- and they 17 are closest to a Delaware cell tower, 18 where would the call go? 19 A. Comes to my center. 20 Q. And if that boat were closer 21 to a cell tower on the New Jersey side, 22 where would that call go? 23 A. Again, closeness doesn't 24 really determine where the call is going.</p>	<p style="text-align: right;">76</p> <p>1 the call goes to New Jersey? 2 A. Yes, they single button -- 3 they can transfer to our jurisdiction. 4 Q. Do you know if that is the 5 practice? Is that what happens? 6 A. Yes. 7 Q. What if the boat was south 8 of the 12-mile circle in the river and 9 the call was routed through the closest 10 available cell tower which was in New 11 Jersey and went to the New Jersey PSAP, 12 how would the emergency responders know 13 if that was New Jersey or Delaware 14 waters? 15 A. Again, referring back to the 16 document, this indicates that all the 17 responses are in Delaware jurisdiction 18 based on the low watermark. 19 Q. How do the -- in your 911 20 center, if you get a call from the 21 Delaware River -- strike that. South of 22 the 12-mile circle, do you know where the 23 border between New Jersey and Delaware 24 is?</p>
<p style="text-align: right;">75</p> <p>1 All cell sites are designed to take 2 certain calls, and an overload will be 3 pushed off to another tower. There is 4 chances they may hit a New Jersey tower 5 or a Delaware tower. Time of day 6 basically determines the availability of 7 the cell site at those towers. 8 Q. So the first -- the call 9 will go through the closest available 10 tower? 11 A. Correct. 12 Q. And if the closest available 13 tower is on the Delaware side, the call 14 is routed through your center? 15 A. Yes. 16 Q. If the closest available 17 tower is located on the New Jersey side 18 of the river, where is the call routed? 19 A. It would probably go to a 20 New Jersey PSAP, that is Public Safety 21 Access Point, same thing as a 911 center. 22 Q. Is there any agreement or 23 practice about rerouting those calls if 24 they end up going -- if the call -- if</p>	<p style="text-align: right;">77</p> <p>1 A. No. 2 Q. Is any of your district 3 south of the 12-mile circle? 4 A. My district goes all the way 5 to the Smyrna River. If that is 12 miles 6 from New Castle, then all of that is 7 within the 12-mile area. Again, I don't 8 have the ability of looking at a map. My 9 jurisdiction is everything north of the 10 Smyrna River to the Jersey low watermark, 11 north is Delaware -- is our emergency 12 response area. 13 Q. And you are not personally 14 aware of whether the 12-mile circle 15 crosses the Delaware north or south of 16 the Smyrna River? 17 A. No, ma'am. 18 Q. Who is in charge of 19 coordinating emergency responses on the 20 Delaware River in New Castle County? 21 A. Coordinating the responses? 22 Q. Yes. 23 A. The individual fire 24 company's jurisdiction it was in.</p>

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1 Q. How would -- what if it were  
 2 a police matter on the Delaware River,  
 3 who would be in charge of coordinating  
 4 police emergency response?  
 5 A. Police matter?  
 6 Q. Yes.  
 7 A. Can you give me an example  
 8 of what you mean by a police matter?  
 9 Q. A drunken boater.  
 10 A. That would go to the marine  
 11 police would handle it enforcing boats  
 12 being handled carelessly on the river.  
 13 Q. What about the response to  
 14 major emergencies? Who would coordinate  
 15 that?  
 16 A. That would be coordinated  
 17 through the volunteer fire company whose  
 18 jurisdiction it lies in.  
 19 MR. WALTON: Can I ask for a  
 20 clarification on that, when you  
 21 say a major emergency, what do you  
 22 mean by that?  
 23 MS. BALINT: If there were  
 24 an incident such as a tanker crash

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1 that resulted in fire and spill  
 2 with major consequences of the  
 3 spill spreading through the water  
 4 and such, who would coordinate a  
 5 response to such an emergency?  
 6 THE WITNESS: The  
 7 representative district who was  
 8 responding would then -- the Coast  
 9 Guard is automatically notified of  
 10 major incident and US Coast Guard  
 11 has jurisdiction over the local  
 12 authority.  
 13 BY MS. BALINT:  
 14 Q. Does Delaware utilize fire  
 15 towers or any other type of observation  
 16 to guard for emergencies on the Delaware  
 17 River?  
 18 A. No.  
 19 Q. So for Delaware emergency  
 20 responders to go to an incident, that  
 21 would have to be triggered by what?  
 22 A. A call.  
 23 Q. It would have to be  
 24 triggered by a 911 call?

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1 A. Yes.  
 2 Q. Is your 911 center aware of  
 3 or on the same frequency as other  
 4 emergency responders to the Delaware  
 5 River?  
 6 A. The State of Delaware is on  
 7 a 800 megahertz system and it is  
 8 statewide. New Jersey first responders  
 9 are not on the same frequency.  
 10 Q. How is mutual aid  
 11 coordinated?  
 12 A. Mutual aid is coordinated  
 13 through the fire company which provides  
 14 mutual aid in New Jersey with radios on  
 15 the Delaware system.  
 16 Q. So Delaware fire companies  
 17 provide their own Delaware frequency  
 18 radios to New Jersey fire departments?  
 19 A. Those ones that are  
 20 providing mutual aid, yes.  
 21 Q. And is it your understanding  
 22 that the same is true in the inverse?  
 23 A. No, ma'am.  
 24 Q. How are Delaware fire

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1 companies made aware of a need for mutual  
 2 aid in New Jersey?  
 3 A. Their communication center  
 4 would then contact us.  
 5 Q. On via telephone?  
 6 A. Via telephone.  
 7 Q. Looking at the detailed  
 8 incident reports represented on Streets-2  
 9 and 3, would --  
 10 MR. WALTON: Can you give me  
 11 the Bates number?  
 12 MS. BALINT: They are all  
 13 sort of the same form. I'm  
 14 talking about the form of the  
 15 report.  
 16 MR. WALTON: My apologies.  
 17 THE WITNESS: Which page are  
 18 you on? 2680' what?  
 19 BY MS. BALINT:  
 20 Q. We could go to a specific  
 21 one. If you could refer to page marked  
 22 DE 26809, please.  
 23 A. Okay.  
 24 Q. This appears to be a river

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1 rescue at the -- what is that location?  
2 **A. Off of the Salem Nuclear**  
3 **plant.**  
4 **Q. And who were the responders**  
5 **to this incident?**  
6 **A. Lower Alloways, Salem County**  
7 **called, Lower Alloways had requested**  
8 **assistance from us.**  
9 **Q. And where can one discern**  
10 **that on this form?**  
11 **A. Go down to where it says**  
12 **control, P 59. You go past 1609 hours,**  
13 **control.**  
14 **Q. Okay. Control.**  
15 **A. You have 00P and a 59, that**  
16 **indicates that is an out-of-county**  
17 **company. 59 would represent a New Jersey**  
18 **company, Lower Alloway. And you will see**  
19 **it was handled by dispatch terminal 45.**  
20 **Q. And you know from this that**  
21 **there was a phone call from Lower**  
22 **Alloways that triggered this call?**  
23 **A. It indicates Salem County**  
24 **called us via phone and requested**

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1 **assistance. Where you see phone, it has**  
2 **Salem typed in there. That is where we**  
3 **got the call from, Salem County 911**  
4 **center.**  
5 **Q. Are you able to discern from**  
6 **this form who the first responder at this**  
7 **incident was?**  
8 **A. No, because we do not**  
9 **control New Jersey units.**  
10 **Q. So your recordkeeping**  
11 **wouldn't identify New Jersey**  
12 **participation?**  
13 **A. That's correct.**  
14 **Q. On that line that says**  
15 **control P59 and there is an arrow and a**  
16 **45?**  
17 **A. Yes.**  
18 **Q. What does that mean?**  
19 **A. That is our dispatch**  
20 **positions. 45 would go to a specific**  
21 **terminal.**  
22 **Q. And 59 came from Lower**  
23 **Alloways?**  
24 **A. 59, yes.**

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1 **Q. Generally looking at these**  
2 **documents, it seems that the column --**  
3 **well, looking at that control line, there**  
4 **is the column that says control and there**  
5 **is a column of two zeros, and then the**  
6 **last column that says P: 59 to 45.**  
7 **A. Yes.**  
8 **Q. That last column appears to**  
9 **be incomplete. Would that be correct --**  
10 **I mean, if you look at the entry below**  
11 **the P 59, it is ATION S?**  
12 **A. As I say, historically, this**  
13 **is probably moving from the old data to**  
14 **the new, looks like characters jump one**  
15 **left column, that should be station. 20**  
16 **is alerted to the incident. And it**  
17 **indicates our code for what it is, F00,**  
18 **it is a fire response. Year 99. It is**  
19 **on the 16th of April and it is daily case**  
20 **90. If you look at the top of the page,**  
21 **it says incident number, right at the**  
22 **top, below incident history detail, you**  
23 **will see the exact same numbers up there.**  
24 **Once that is time stamped down here, it**

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1 **automatically becomes part of the**  
2 **permanent record.**  
3 **Q. If one wanted to see all of**  
4 **the data from this last column, is there**  
5 **someplace that that information is**  
6 **located today?**  
7 **A. I would say no. Also on**  
8 **this data here and we don't have audio**  
9 **tapes back to 1999 so I could hear**  
10 **exactly what the conversation was.**  
11 **Q. You can't -- can you bring**  
12 **this file up on a computer and scroll to**  
13 **see more information?**  
14 **A. I would have to refer to my**  
15 **IT people, because again, this is old**  
16 **data files that I put on to try to**  
17 **extract the information for you.**  
18 **Q. If you could turn to page**  
19 **Bates stamped DE26813. This appears to**  
20 **be another incident involving Lower**  
21 **Alloway Fire Department and Delaware**  
22 **responders, is that correct?**  
23 **A. Yes.**  
24 **Q. The date of this incident --**

<p style="text-align: right;">86</p> <p>1 what is the date of this incident? 2 A. 22nd of April, 1999. 3 Q. And what was the first 4 communication that Delaware received? 5 A. We received a call from the 6 phone number indicated at 2345. 7 Q. So that would be 11:45 p.m.? 8 A. Yes, uh-huh. 9 Q. And could we just walk 10 through the incident from that point. 11 A. Sure. 12 Q. It says the first entry was 13 at that time, and then ASNCAS, what is 14 that? 15 A. Assigned a case number. 16 Q. And then there are two 17 control entries? 18 A. It looks like it went to one 19 position and then it was transferred to 20 another position within the room. That 21 could have been due to the call volume. 22 Q. So that is talking about the 23 dispatchers? 24 A. Workstations. 41 to 46 are</p>	<p style="text-align: right;">88</p> <p>1 A. In front of that you see U, 2 that would be U 29, utility 29 which 3 would be the utility that pulls the boat. 4 It is in front of the DISP. Before the 5 bracket. It would be U 29 which again it 6 is the utility vehicle that pulls the 7 boat to the ramp. 8 Q. Was dispatched at? 9 A. 2357, right. 10 Q. The next entry would be 11 another station alert -- 12 A. 0001, they alerted Holloway 13 Terrace to also assist. 14 Q. What is the next entry? 15 A. 0005 29 marine 1 was in 16 route. Means that you see 29 before the 17 bracket? 18 Q. Yes. 19 A. It is 29 assist marine 1, 20 that is what the abbreviation stands for, 21 the marine 1 is the marine unit and they 22 are in route to the Delaware River. And 23 it looks the same thing as the utility 24 vessel got there at the same time as the</p>
<p style="text-align: right;">87</p> <p>1 the workstations within as the computer 2 knows them. 3 Q. Then the next entry is 4 STALRT? 5 A. That is station alerted. 6 That would be Port Penn was alerted at 7 2349. 8 Q. And then another one? 9 A. Station 18 was alerted at 10 2352. 11 Q. The next entry is 12 miscellaneous, 99 A? 13 A. I don't know, that is a unit 14 from Port Penn -- that could be a 2299 A 15 means that somebody is responding. If 16 the first number is a 29, it is a unit 17 from Port Penn. 29 would be the station 18 and 9 A would be the unit. 19 Q. So you would guess that it 20 would be 29 A? 21 A. Yeah, something from Port 22 Penn, the station was alerted. 23 Q. The next entry indicates 24 DISPER 9?</p>	<p style="text-align: right;">89</p> <p>1 boat so obviously they were pulling the 2 boat. 0005 indicates U 2 in the bracket 3 and the on scene 9, utility 29 has 4 arrived on scene at the boat ramp with 5 the boat. 6 Q. What about 0007? 7 A. 0007, MRU is marine rescue 8 unit 20 is responding. 0023, 29 marine 1 9 miscellaneous, indicated Lower Alloway 10 10-2 meaning they were with the vessel. 11 You will see the next line 0023 completes 12 that sentence, you see WITH vessel. 13 Q. Okay. 14 A. 0030. MRU 20 has arrived at 15 Augustine Beach where they are going to 16 put off the boat. 17 Q. Where is Augustine Beach? 18 A. U-G-S-T-I-N-E Beach, right 19 off of Port Penn. It is almost right 20 across from the power plant. It is a 21 waterway opposite -- 22 Q. Augustine Beach is on the 23 Delaware side? 24 A. On the Delaware side across</p>

<p style="text-align: right;">90</p> <p>1 from the power plant. Or I guess it is 2 just north of the power plant. 3 Q. And the next one? 4 A. 0037, 20 marine 1 is 5 actually on their way in the river. 6 0045, 20 marine 1 has arrived with the 7 vessel. 8 Q. On scene? 9 A. Yes. And the next 10 indication, AOR looks like at 1:27, 29 11 marine 1 became available, they are 12 returning and available by radio at 1:46. 13 20 marine 1 made themselves available on 14 radio. At 1:56 marine rescue unit 20 15 which pulls the boat advise they are 16 available. In reading it, the boat was 17 back, they finally got the boat on the 18 vehicle to tow it back to the fire 19 station 1:56. And at 2:08, utility 29 20 classified as a two alarm and they were 21 available in quarters, AIQ. Incident was 22 closed at 2:08. 23 Q. And AIQ meaning? 24 A. AIQ is available in</p>	<p style="text-align: right;">92</p> <p>1 Q. Looking to the next incident 2 report on page DE26814, is this a 3 continuation of the last incident? 4 A. No, it is different dates, 5 ma'am. 6 Q. Different dates? 7 A. 25th of April. The one we 8 talked about earlier was the 22nd of 9 April. This is an entirely different 10 incident. 25th of April. 11 Q. So it is two days later and 12 would be separate? 13 A. Correct. 14 Q. What type of assistance 15 might be rendered that would not be 16 documented here? 17 A. What do you mean? 18 Q. I mean, on Bates stamp 19 DE26813, it appears that several 20 emergency river rescue boats responded to 21 a location on the Delaware River, and yet 22 it doesn't -- does it tell you what those 23 responders did? 24 A. No.</p>
<p style="text-align: right;">91</p> <p>1 quarters. 2 Q. This incident is listed as a 3 river rescue emergency. 4 A. Uh-huh. 5 Q. Does that tell you what was 6 wrong in this incident? 7 A. No, it doesn't. Doesn't go 8 into details for exactly what specifics 9 was. Reason for the response. 10 Q. Was there anywhere on here 11 that indicated that the vessel was towed? 12 A. It just -- no, it does not. 13 Q. And is that a single page 14 record, there is no more to it? 15 A. Correct. 16 Q. If the vessel were towed in 17 that incident, would the record 18 necessarily reflect it? 19 A. Yes. If we could go off and 20 I could explain something. 21 MR. WALTON: No, no, no. 22 THE WITNESS: I just wanted 23 to -- okay. 24 BY MS. BALINT:</p>	<p style="text-align: right;">93</p> <p>1 Q. And it doesn't tell you what 2 the problem out there was? 3 A. No. 4 Q. Does it identify who was 5 having the emergency? 6 A. No. 7 Q. Would that indicate that 8 there was a false alarm of some sort? 9 A. No, indicates it is a true 10 alarm by the TRA at the bottom. 11 Q. Does the Delaware 911 center 12 have standard operating procedures 13 regarding what kind of information should 14 be in a report? 15 A. Yes. 16 Q. Pursuant to your standard 17 operating procedures, should the nature 18 of the emergency and the outcome of the 19 incident be identified on the report? 20 A. If we were advised. 21 Q. Is the nature of an 22 emergency a standard part of the 23 information dispensed by a dispatcher? 24 A. Normally, yes.</p>

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1 Q. And if the dispatcher had  
 2 dispensed the information, should it be  
 3 on this report?  
 4 A. Correct.  
 5 Q. Towards the end of the  
 6 report where it indicates that marine  
 7 units 29, 20 MRU 2 are back at quarters,  
 8 AOR?  
 9 A. Available on radio for  
 10 another response.  
 11 Q. Is it standard procedure  
 12 that when a unit is -- becomes available,  
 13 that there would be a report about the  
 14 nature of the incident that is being  
 15 closed out?  
 16 A. That fire company, the  
 17 individual company would have it.  
 18 Q. The fire company would have  
 19 it.  
 20 A. Yes.  
 21 Q. So if one were interested in  
 22 more detail on the incident that occurred  
 23 on April 23, 1999, one would find those  
 24 records where?

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1 A. Contact the local fire  
 2 company.  
 3 Q. So the Port Penn Fire  
 4 Company would have a report?  
 5 A. They should.  
 6 Q. In the event of an emergency  
 7 to which multiple agencies respond, is  
 8 the Delaware, New Castle County 911  
 9 emergency response center involved in any  
 10 way in setting up the command structure  
 11 at that incident?  
 12 A. That is the district fire  
 13 chief.  
 14 Q. In an instance where  
 15 multiple agencies with jurisdiction  
 16 respond to a single incident, are the  
 17 communications conducted through the 911  
 18 emergency -- through your 911 center?  
 19 A. Yes.  
 20 Q. Is a record of those  
 21 multi-agency communications kept?  
 22 A. Audio tapes for three years.  
 23 Nothing beyond three years.  
 24 Q. Are there incidents to which

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1 the Coast Guard is the first responder in  
 2 the Delaware River in New Castle County?  
 3 A. Very infrequently.  
 4 Q. What would cause the Coast  
 5 Guard to be a first responder?  
 6 A. What would?  
 7 Q. Yes.  
 8 A. I'm not aware they are. We  
 9 make notification of all incidents on the  
 10 river, and because of their location,  
 11 whether they are coming out of Gloucester  
 12 or Cape May, our responders are a lot  
 13 closer than the Coast Guard to make an  
 14 effective rescue.  
 15 Q. Are you aware whether or not  
 16 the Coast Guard makes routine patrols of  
 17 the Delaware River within New Castle  
 18 County?  
 19 A. No idea.  
 20 Q. Within New Castle County,  
 21 what part of the Department of Public  
 22 Safety would be concerned with security  
 23 on the Delaware River?  
 24 A. We don't have any

97

1 jurisdiction. Delaware State Police have  
 2 jurisdiction on the river.  
 3 Q. For security issues?  
 4 A. Rephrase that.  
 5 Q. Well, security in the sense  
 6 of post 9/11 kind of security issues of  
 7 what ships are going through.  
 8 A. I don't know the answer.  
 9 Q. In the course of your  
 10 employment, do you have any interaction  
 11 with David Carpenter who is the  
 12 coordinator of New Castle County's office  
 13 of emergency management?  
 14 A. We have conversation at  
 15 times.  
 16 Q. Is there any functional  
 17 interaction between your office and his?  
 18 A. He is a resource for us.  
 19 Q. What do you mean by that?  
 20 A. Large instance, he is a  
 21 resource for Red Cross, if a lot of  
 22 people have been displaced by a fire or a  
 23 flood, he is our initial contact as  
 24 emergency regional management. He would

98

1 have the contact for all those people to  
 2 assist those people that are in need.  
 3 (Recess at 2:08 p.m.)  
 4 (Resumed at 2:09 p.m.)  
 5 MS. BALINT: Thank you so  
 6 much, Mr. Streets. I have no  
 7 further questions for you.  
 8 THE WITNESS: Thank you.  
 9 EXAMINATION  
 10 BY MR. WALTON:  
 11 Q. Mr. Streets, I would like to  
 12 ask you one follow-up question to clarify  
 13 the record. On Streets-1, there are  
 14 descriptions over on the far right-hand  
 15 column?  
 16 A. Right.  
 17 Q. Where it says Pea Patch  
 18 Island. First one says Pea Patch Island  
 19 north end. Do the descriptions in that  
 20 column tell basically where an emergency  
 21 response occurred?  
 22 A. The closest location that  
 23 the caller could provide.  
 24 MR. WALTON: That's all I

99

1 have.  
 2 (Witness excused.)  
 3 (Deposition concluded at  
 4 approximately 2:14 p.m.)  
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100

1 CERTIFICATE  
 2  
 3 I, DOTTYANN Y. WALSH, a  
 4 Notary Public and Certified Shorthand  
 5 Reporter of the State of Delaware, do  
 6 hereby certify that prior to the  
 7 commencement of the examination,  
 8 WILLIAM F. STREETS was duly sworn by me  
 9 to testify to the truth, the whole truth  
 10 and nothing but the truth.  
 11  
 12 I DO FURTHER CERTIFY that  
 13 the foregoing is a verbatim transcript of  
 14 the testimony as taken stenographically  
 15 by and before me at the time, place and  
 16 on the date hereinbefore set forth, to  
 17 the best of my ability.  
 18 I DO FURTHER CERTIFY that I  
 19 am neither a relative nor employee nor  
 20 attorney nor counsel of any of the  
 21 parties to this action, and that I am  
 22 neither a relative nor employee of such  
 23 attorney or counsel, and that I am not  
 24 financially interested in the action.

18 DOTTYANN Y. WALSH, CSR  
 19 Notary Number: 20051147009  
 20 Notary Expiration: April 14, 2007  
 21 CSR Number: 251-RPR  
 22 Dated: October 10, 2006  
 23  
 24

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1 LAWYER'S NOTES  
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IN THE  
SUPREME COURT OF THE UNITED STATES

- - -  
STATE OF NEW JERSEY :  
v. :  
STATE OF DELAWARE :

- - -  
September 27, 2006  
- - -

Oral deposition of Kevin Broderick was held at the Offices of NJDEP, Bureau of Tidelands, 9 Ewing Street, Trenton, New Jersey, commencing at 9:30 a.m., on the above date, before Samantha A. Oakley, Certified Shorthand Reporter and Notary.

- - -  
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2

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 2  
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 8  
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 12 302.888.6278  
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 13  
 14  
 15 Also Present:  
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 16 Connolly Bove Lodge & Hutz, LLP  
 17  
 18  
 19  
 20  
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6

1 Kevin Broderick, after  
 2 having been duly sworn, was  
 3 examined and testified as follows:  
 4 - - -  
 5 ORAL EXAMINATION  
 6 - - -  
 7 BY MR. SEITZ:  
 8 Q. Good morning, Mr. Broderick.  
 9 Thank you for coming this morning. My  
 10 name is C.J. Seitz. I'm an attorney  
 11 representing the State of Delaware in the  
 12 case New Jersey versus Delaware. I  
 13 assume you're familiar with that case  
 14 generally?  
 15 A. Yes.  
 16 Q. Before I begin, I want to go  
 17 over a couple of ground rules so that we  
 18 have an organized deposition. It's  
 19 important for us to speak one at a time.  
 20 Try not to anticipate my question and  
 21 answer it before I finish speaking  
 22 because the court reporter can only take  
 23 down one person talking at a time. If we  
 24 screw it up, we'll try and get it back in

7

1 sync and she'll probably tell us as well.  
 2 But if you would be careful not to  
 3 anticipate the answer to my questions,  
 4 that would be helpful to her.  
 5 If I ask you a question that  
 6 you don't understand, please let me know  
 7 because my job here is to try and ask  
 8 clear questions and I don't want to have  
 9 a misunderstanding between us about what  
 10 it is I'm asking. Is that acceptable?  
 11 A. Yes.  
 12 Q. The other thing is, you have  
 13 to answer verbally. Uh-huh or nods don't  
 14 work for the court reporter as well.  
 15 A. Gotcha.  
 16 Q. It will help her if you use  
 17 yes or no or whatever explanation you  
 18 want to give rather than uh-huh or  
 19 huh-huh.  
 20 A. Okay.  
 21 Q. Thank you. Is there  
 22 anything that you are aware of today that  
 23 would prevent you from testifying  
 24 truthfully?

8

1 A. No.  
 2 Q. Good. In preparation for  
 3 the deposition today, other than  
 4 conversations you have had with attorneys  
 5 for the State of New Jersey, what did you  
 6 do to prepare?  
 7 A. I just re-reviewed the  
 8 certification I previously provided. I  
 9 didn't go back through any other  
 10 additional files or -- just basically  
 11 went over my cert.  
 12 Q. When you say cert, do you  
 13 mean the affidavit that was filed?  
 14 A. Correct.  
 15 Q. Thank you. Did you meet  
 16 with counsel at all to prepare for your  
 17 deposition? Please don't tell me what  
 18 the substance of the meeting was. I just  
 19 want to know whether you met with  
 20 counsel?  
 21 A. Yes.  
 22 Q. When did that occur?  
 23 A. Monday morning.  
 24 Q. Who was there?

9

1 A. Helene Chudzik, Bill  
 2 Anderson and Amy Donlan (ph) I believe  
 3 was her name.  
 4 Q. They're all attorneys for  
 5 New Jersey if I'm correct, right?  
 6 A. Correct.  
 7 Q. Were there any nonattorneys  
 8 present in the room?  
 9 A. No, just me.  
 10 Q. Let's start off with some  
 11 easy stuff, okay?  
 12 A. Okay.  
 13 Q. Could you give me a sketch  
 14 of your educational background?  
 15 A. I have a bachelor's in arts  
 16 in zoology from Rutgers University in  
 17 Newark.  
 18 Q. What year did you get your  
 19 bachelor's degree?  
 20 A. 1979.  
 21 Q. It sounds like there's a  
 22 consistency among people in the room,  
 23 except for Ryan.  
 24 And after you got your

10

1 degree in zoology, did you continue your  
2 education in any way?

3 **A. Other than taking some**  
4 **Weltons courses offered by EPA and some**  
5 **other management courses offered by DEP,**  
6 **there's been no other graduate work if**  
7 **that's the question that you're asking.**

8 Q. Right. Other than  
9 continuing environmental education or  
10 courses like that, you don't have any  
11 additional degrees; is that correct?

12 **A. Correct.**

13 Q. Thank you. What was your  
14 first employment after you received your  
15 degree in zoology in 1979?

16 **A. I was a self-employed house**  
17 **painter from December until --**  
18 **December '79 until I started in November**  
19 **of 1980.**

20 Q. In November of 1980 you  
21 started with DEP?

22 **A. Correct.**

23 Q. And what was your title when  
24 you started in 1980?

11

1 **A. I was an environmental**  
2 **specialist trainee.**

3 Q. What does an environmental  
4 specialist trainee do?

5 **A. Basically a position where**  
6 **you learn what permits the program**  
7 **handles. I mean, you're not really**  
8 **responsible for too many detailed cases.**  
9 **You get basically some of the easier**  
10 **cases that the program handles.**

11 Q. Where were you located?

12 **A. Labor and Industry Building**  
13 **in Trenton.**

14 Q. In Trenton, okay. How long  
15 were you in that position?

16 **A. I believe that was a**  
17 **six-month position.**

18 Q. Where did you go after that?

19 **A. It's probably easier to**  
20 **explain. I have been except for a**  
21 **one-year period, I have been with the**  
22 **Land Use Regulation Program since 1980**  
23 **until present.**

24 Q. Rather than to continue to

12

1 torture you with individual questions,  
2 why don't you just tell me how you  
3 progressed and what your different  
4 positions have been since 1980 with LURP?

5 **A. It's probably easier to**  
6 **track backwards, if that's acceptable.**

7 Q. That's acceptable.

8 **A. I have been bureau manager**  
9 **since I believe it's 2002. The year**  
10 **before that I was a supervising program**  
11 **development specialist working for the**  
12 **assistant commissioner for Natural**  
13 **Resources. The ten year -- no, it would**  
14 **have been from '89 until I guess '02, I**  
15 **was a supervising environmental**  
16 **specialist with Land Use Regulation**  
17 **Program.**

18 **Ten years before that I was**  
19 **a principal environmental specialist with**  
20 **the Land Use Regulation Program. And I**  
21 **guess that brings us to --**

22 Q. To 2002.

23 **A. From '89, the ten years**  
24 **from -- I was supervising environmental**

13

1 **specialist from '89 until I left the**  
2 **program. And then from '89 to '99 I was**  
3 **a principal environmental specialist with**  
4 **the program. And then, I guess, the**  
5 **previous -- I guess it's nine years**  
6 **that's remaining I was either**  
7 **environmental specialist trainee,**  
8 **environmental specialist or senior**  
9 **environmental specialist.**

10 Q. You started off as a  
11 environmental specialist trainee and then  
12 you became a principal --

13 **A. No, senior first.**

14 Q. Then you became a principal  
15 environmental specialist in 1989?

16 **A. I believe that was the time**  
17 **frame, yes.**

18 Q. You held that position  
19 through about '99 when you became a  
20 supervisory --

21 **A. Supervisory environmental**  
22 **specialist.**

23 Q. I think you had said program  
24 specialist before; is that the same

14

1 thing?

2 **A. I was supervising**

3 **environmental specialist from '99 until I**

4 **-- I'm sorry. It would have been '89**

5 **until about 2001 I was a supervising**

6 **environmental specialist. And then I**

7 **left to work for the commissioner of**

8 **Natural Resources for a year, which would**

9 **have brought me to 2002, which is when I**

10 **returned back to the Land Use Program.**

11 **Q. Let's not do all the early**

12 **things and let's jump to the supervising**

13 **program specialist or whatever you want**

14 **to call it. What did you do in that**

15 **position?**

16 **A. I was responsible for the**

17 **five different permits or five different**

18 **statutes that we regulate under for the**

19 **counties of Cape May, Cumberland, Salem,**

20 **Gloucester, part of Ocean and I want to**

21 **say part of Camden as well. The five**

22 **statutes that we implement or were**

23 **charged with is the Coastal Area Facility**

24 **Review Act.**

15

1 **Q. CAFRA?**

2 **A. CAFRA. Coastal Wetlands Law**

3 **of 1970, The Waterfront Development Law,**

4 **the Flood Hazard Area Control Act and the**

5 **Freshwater Wetland Protection.**

6 **Q. You said you went to work**

7 **for the commissioner for a year. What**

8 **did you do for the commissioner?**

9 **A. I was special assistant in**

10 **charge of chasing -- doing referrals and**

11 **other assorted projects. I was also in**

12 **charge of looking at legislation and how**

13 **it impacted or did not impact some of the**

14 **resources of agencies like Fish and**

15 **Wildlife and Parks and Forestry.**

16 **Q. When you say chasing**

17 **referrals, what do you mean by that?**

18 **A. The government as a whole**

19 **receives numerous letters from various**

20 **citizens. Depending upon who they come**

21 **from or who they're addressed to, the**

22 **department is required to either respond**

23 **with a phone call, try to answer the**

24 **constituent's question or if it's a**

16

1 **legislator you have to generate a letter**

2 **response detailing what the department or**

3 **at least the division's position is**

4 **relative to the questions being asked.**

5 **Q. When you became bureau**

6 **manager in 2002, what were your**

7 **responsibilities?**

8 **A. I went back to overseeing**

9 **for the Coast Bureau, the five statutes**

10 **mentioned earlier. But now I had the**

11 **counties that I was -- that I was in**

12 **charge of were Monmouth, Ocean, Atlantic,**

13 **Cape May, Cumberland, Salem, Gloucester,**

14 **Camden and Burlington. So anybody that**

15 **issued a permit within those counties**

16 **worked for me, and my job is to ensure**

17 **and currently is to ensure that the**

18 **permits we do issue are consistent with**

19 **the rules as well as any denials we issue**

20 **are issued on a sound basis.**

21 **Q. So it sounds like your**

22 **jurisdiction expanded from all the way up**

23 **the Delaware River down to Cape May up**

24 **the coast to Monmouth County?**

17

1 **A. Yes.**

2 **Q. I think included within your**

3 **jurisdiction now since 2002, and it**

4 **sounds like earlier than that as a matter**

5 **of fact, are the five municipalities in**

6 **what we call the Twelve Mile Circle; is**

7 **that correct?**

8 **A. Correct.**

9 **Q. Do you understand what I**

10 **mean by the Twelve Mile Circle?**

11 **A. Yes.**

12 **Q. What is your understanding**

13 **of the Twelve Mile Circle?**

14 **A. That it's -- I always want**

15 **to say Wilmington, but it's not**

16 **Wilmington. That is a 12-mile arc from**

17 **New Castle that basically lays out where**

18 **the boundaries are -- Delaware relative**

19 **to the boundaries of New Jersey.**

20 **Q. What do you understand to be**

21 **the boundary line between Delaware and**

22 **New Jersey within the Twelve Mile Circle?**

23 **A. I believe it's the mean low**

24 **water line.**

18

1 Q. When you say mean low water  
 2 mark, do you mean mean low water mark on  
 3 the New Jersey shore?  
 4 A. Correct.  
 5 Q. Within the Twelve Mile  
 6 Circle?  
 7 A. Correct.  
 8 Q. Do you have an understanding  
 9 of where the border goes outside the  
 10 Twelve Mile Circle when you go south of  
 11 the Twelve Mile Circle along the New  
 12 Jersey shoreline?  
 13 A. My understanding is the  
 14 boundary basically to be north of the  
 15 Twelve Mile Circle, it would be the  
 16 middle of the channel. South of the  
 17 Twelve Mile Circle I have never looked at  
 18 the boundary, but I would expect it to be  
 19 the same sort of situation where it would  
 20 be halfway across.  
 21 Q. How did you come to your  
 22 understanding of the boundary between New  
 23 Jersey and Delaware within the Twelve  
 24 Mile Circle?

19

1 A. It does show up on state  
 2 maps. There's also been some exposure  
 3 through prior permit applications where  
 4 the boundary shows up.  
 5 Q. Would it be fair for me to  
 6 say that some of your experience in  
 7 determining where the border is between  
 8 the two states within your job  
 9 responsibilities comes from your  
 10 experience in processing permit  
 11 applications?  
 12 A. In processing and/or  
 13 reviewing, yes.  
 14 Q. I think you spoke earlier  
 15 about the five programs or laws that you  
 16 administer part of your permitting  
 17 responsibility. The first one you  
 18 mentioned was the waterfront development  
 19 act?  
 20 A. Yes.  
 21 Q. I don't want you to be a  
 22 lawyer but I want you to, if you could,  
 23 give me a shorthand explanation of what  
 24 the waterfront development act regulates.

20

1 A. It regulates any work out  
 2 beyond the existing mean high water line  
 3 of tidal waters within the State of New  
 4 Jersey.  
 5 Q. Could you give me some  
 6 examples of what kind of activity would  
 7 fall within the regulatory scheme of the  
 8 waterfront development act?  
 9 A. We would look at the  
 10 construction of marinas. We would look  
 11 at the construction of piers or floating  
 12 docks for private individuals like  
 13 single-family homes. We would look at or  
 14 do look at different dredging activities.  
 15 We look at port construction, those sorts  
 16 of activities.  
 17 Q. Within the statutes in New  
 18 Jersey and otherwise, I have seen a  
 19 reference to piers, wharves and docks.  
 20 Do you draw a distinction between any of  
 21 those three?  
 22 A. Only that when you consider  
 23 a wharf, a wharf is generally -- I would  
 24 consider it an unloading area often

21

1 constructed of solid fill of some sort  
 2 because of the loads that the ships that  
 3 would be depositing there, so you need a  
 4 fairly substantial structure.  
 5 Q. How about a pier?  
 6 A. A pier is pile-supported  
 7 structure. It also can be rather large,  
 8 depending upon what the use is. It may  
 9 -- it could substitute for a wharf. We  
 10 would tend to nowadays be more  
 11 restrictive in our issuance of permits  
 12 for fill. So things that we would permit  
 13 currently would be all-pile supported  
 14 structures as opposed to -- I shouldn't  
 15 say all but the majority of them would be  
 16 pile-supported structures as opposed to  
 17 solid fill.  
 18 Q. How about the difference  
 19 between a pier and a dock? Is there a  
 20 difference?  
 21 A. A dock could have several  
 22 different variations. It could be a  
 23 floating dock, say for a marina or for a  
 24 single-family home. Where you might have

22

1 a pier that comes after off the upland  
2 out to a floating dock would be an  
3 example of the difference.  
4 Q. Otherwise are they the same?  
5 A. Are the names  
6 interchangeable are you asking?  
7 Q. That's a better way to ask.  
8 A. They could be. They could  
9 be interchangeable, yes.  
10 Q. Are you familiar with the  
11 1905 Compact between New Jersey and  
12 Delaware?  
13 A. I have heard about it but  
14 never read it.  
15 Q. Do you have an understanding  
16 what the 1905 Compact, what the subject  
17 matter of that was?  
18 A. Not specifically.  
19 Q. Do you have a general  
20 understanding of what the 1905 Compact  
21 between the states, what the agreement  
22 was?  
23 A. Again, not specifically.  
24 Q. Maybe my question wasn't

23

1 clear. I was asking for a general  
2 recollection rather than a specific  
3 recollection or understanding.  
4 A. Again, without having read  
5 it, I can't -- I really can't answer that  
6 question.  
7 Q. Fair enough. When you  
8 perform your duties as bureau manager,  
9 have you considered the impact of the  
10 1905 Compact upon your regulatory  
11 authority?  
12 A. No.  
13 Q. When New Jersey exercises  
14 its regulatory authority under the Acts  
15 that we're discussing, do you consider  
16 the boundary between the two states?  
17 A. Except for noting that it's  
18 there, it's my understanding that New  
19 Jersey has the right to permit structures  
20 that originate in its waters out to the  
21 extent that the structure is requested.  
22 Q. Have you always had that  
23 understanding?  
24 A. Yes.

24

1 Q. So that's been your  
2 understanding since 19 what -- 1980 when  
3 you joined or when did that first become  
4 your understanding?  
5 A. I would say -- well, I  
6 couldn't tell you when I had my first  
7 permit that that may have been a subject,  
8 but I would say it would be accurate to  
9 say that since the start of my employment  
10 with the program.  
11 Q. And how did you come to that  
12 understanding that, I think as you said  
13 it, that New Jersey can regulate docks or  
14 piers extending from the upland into the  
15 riverbed of the Delaware River within the  
16 Twelve Mile Circle?  
17 A. It would be more of an  
18 understanding that we have the right  
19 under the Waterfront Development Law to  
20 regulate construction in any tidal waters  
21 of the state, not just limited to the  
22 Twelve Mile Circle and would treat permit  
23 applications the same essentially  
24 anywhere within tidal waters associated

25

1 with the State of New Jersey.  
2 Q. So is it your testimony  
3 today that within the Twelve Mile Circle  
4 New Jersey has always taken the position  
5 that it can regulate waters and docks  
6 that extend into Delaware territory?  
7 A. Yes.  
8 Q. And what is the basis of  
9 your understanding of that right with New  
10 Jersey? In other words, how did you come  
11 to that understanding? Did somebody tell  
12 you?  
13 A. No. Again, it would be how  
14 the department interprets the Waterfront  
15 Development Law.  
16 Q. We left off. We talked  
17 about the waterfront development act.  
18 You told me what that was about. I think  
19 the next act is the Wetlands Act,  
20 correct, that you mentioned?  
21 A. That would be one of them,  
22 yes.  
23 Q. Could you give me a general  
24 understanding of what that regulates?

26

1       **A. The Wetlands Act of 1970**  
 2 **addresses coastal wetlands. It's based**  
 3 **on -- what the state did was they**  
 4 **recognized the value -- the environmental**  
 5 **value of coastal marshes and then passed**  
 6 **a law to protect them. What was**  
 7 **happening was that a lot of them were**  
 8 **being filled in and/or dredged for**  
 9 **lagoons and/or housing. A lot of -- when**  
 10 **you look at the science of it, a tidal**  
 11 **marsh is probably one of most -- from a**  
 12 **biomass perspective, is one of the most**  
 13 **productive acre-by-acre ground that the**  
 14 **US has. It provides more biomass than**  
 15 **say an acre of corn in Kansas. It not**  
 16 **only provides nursery stock, it provides**  
 17 **the tridis (ph) that feeds crabs and all**  
 18 **those things and everything else is sort**  
 19 **of built on and that's why the law was**  
 20 **originally passed.**  
 21       **So once the state did all**  
 22 **this aerial photography, they**  
 23 **groundtruthed the lines and then**  
 24 **established a set of regulations laying**

27

1 **out what activities were or were not**  
 2 **acceptable in a map coastal wetland.**  
 3       **Q. Part of your job**  
 4 **responsibilities are to administer the**  
 5 **permitting under that act?**  
 6       **A. Correct.**  
 7       **Q. We talked about CAFRA before**  
 8 **also. Could you give me just a general**  
 9 **description of what that regulates?**  
 10       **A. Sure. The statute was**  
 11 **originally passed in 1973 and was a**  
 12 **facility-based approach where we looked**  
 13 **at industrial plants, large housing**  
 14 **developments, large parking lots,**  
 15 **developments -- and sort of our**  
 16 **residential threshold was 24 units. What**  
 17 **we eventually found, under a great deal**  
 18 **of pressure from the environmental**  
 19 **groups, is that the original statute had**  
 20 **a number of loopholes. So in 1994 the**  
 21 **statute changed from a facility-based**  
 22 **approach to essentially a first adjacent**  
 23 **land use approach. So now we regulate**  
 24 **single-family homes like on beaches or**

28

1 **dunes, those sorts of things. If you**  
 2 **didn't break the 24-unit threshold we**  
 3 **didn't have authority to regulate**  
 4 **placement of hotels or condominiums on**  
 5 **dunes up and down the coast.**  
 6       **We still regulate large**  
 7 **scale developments like Holiday City or**  
 8 **Hotel Casinos, those sorts of things but**  
 9 **when the law changed we went really to a**  
 10 **first-adjacent land use type approach.**  
 11       **Q. I think you mentioned a**  
 12 **flood control regulation as well?**  
 13       **A. Flood Hazard Area Control**  
 14 **Act.**  
 15       **Q. What does that cover?**  
 16       **A. It's otherwise known as an**  
 17 **stream encroachment permit. We look at**  
 18 **any work proposed in flood plains of the**  
 19 **State of New Jersey. These would be**  
 20 **nontidal flood plains. So it would be**  
 21 **things like construction of houses,**  
 22 **construction of outfalls, roads with the**  
 23 **intent being to provide -- or to prevent**  
 24 **flood damage either at the property in**

29

1 **question or downstream property owners.**  
 2       **Q. Was the last one you**  
 3 **mentioned the Clean Water Act?**  
 4       **A. Fresh Water Wetlands**  
 5 **Protection Act.**  
 6       **Q. Can you tell me what that**  
 7 **is, please?**  
 8       **A. That was a law passed in '87**  
 9 **effective in 1988 with an additional**  
 10 **component related to transition areas,**  
 11 **which is an upland portion of the -- an**  
 12 **upland portion of land adjacent to the**  
 13 **freshwater wetlands. The idea being is**  
 14 **what similar to coastal wetlands in that**  
 15 **-- well, freshwater wetlands also provide**  
 16 **for flood storage, provide for threatened**  
 17 **endangered species habitat. The idea**  
 18 **behind the act was to protect what would**  
 19 **be delineated as a freshwater wetland**  
 20 **from development pressures.**  
 21       **Q. Thank you. I'd like to turn**  
 22 **to a little different subject matter**  
 23 **right now, which is New Jersey Coastal**  
 24 **Zone Management Program. Are you**

30

1 familiar with the documents that capture  
2 the Coastal Zone Management Program in  
3 general?  
4 **A. Do you mean the impact**  
5 **statement that was written for -- to get**  
6 **the initial program accepted?**  
7 Q. Yes.  
8 **A. Yes, then I am.**  
9 MR. SEITZ: Let's mark this.  
10 (Whereupon document was marked  
11 Broderick-1 for identification.)  
12 BY MR. SEITZ:  
13 Q. I have handed you what we  
14 have marked as Broderick deposition  
15 Exhibit-1, which is a document starting  
16 with Bates number Delaware 20352 and  
17 ending with Delaware 20616. The document  
18 is not consecutive. The complete  
19 document is about 6 inches thick. So  
20 rather than crate that all the way up  
21 from Wilmington, I just pulled out of  
22 this excerpts I wanted to ask you about,  
23 okay?  
24 **A. Okay.**

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1 Q. Also included is the table  
2 of contents in case you wanted to get  
3 your bearings as well. I did this to  
4 save the trees rather than bring the  
5 whole thing.  
6 Just looking at the cover  
7 page, Mr. Broderick, is this the document  
8 we were just referring to, the  
9 Environmental Impact Statement?  
10 **A. I believe that it is. I**  
11 **think your original copy is orange, or do**  
12 **you just have a copy?**  
13 Q. We just have a copy from New  
14 Jersey. It may be orange; it's hard for  
15 me to tell.  
16 **A. It does look like that.**  
17 Q. I'll represent to you we  
18 copied it from New Jersey's files. Could  
19 you tell me what this document is, this  
20 overall document?  
21 **A. This was the final --**  
22 **basically, a final impact statement that**  
23 **laid out the enforceable rules of New**  
24 **Jersey's Coastal Management Program. It**

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1 **also contained the legal basis by which**  
2 **we can regulate in New Jersey, both for**  
3 **our CAFRA statute, Waterfront Development**  
4 **Law and at that time it was the -- it**  
5 **Waterfront, CAFRA and the Coastal**  
6 **Wetlands Law.**  
7 It also contained -- it was  
8 a comments and response document, because  
9 this came out first in a draft form I  
10 want to say in '78. So when people had a  
11 chance to review it they offered numerous  
12 comments and the comments were also  
13 incorporated into this document.  
14 Q. Would it be fair to say it's  
15 almost like the Bible of the New Jersey  
16 Coastal Management Program?  
17 **A. It was our initial working**  
18 **document to regulate development in the**  
19 **coastal zone.**  
20 Q. Was it an important  
21 document?  
22 **A. Yes.**  
23 Q. And I think, as you said and  
24 correct me if I'm wrong, there were

33

1 certain statements and commitments being  
2 made to the federal government as a part  
3 of this document, correct?  
4 **A. I believe so, yes.**  
5 Q. Was it submitted to the  
6 federal government so that New Jersey  
7 could obtain funding for its Coastal  
8 Management Program?  
9 **A. I believe that it was, yes.**  
10 Q. Would you agree with me that  
11 the statements in here, it was important  
12 for New Jersey to be accurate about what  
13 was contained in the document because it  
14 was being used by the federal government  
15 as a funding consideration?  
16 **A. Yes.**  
17 Q. If you will turn past the  
18 table of contents, Mr. Broderick, to what  
19 is labeled page 19 of the document and is  
20 Bates number DE 20381. When I refer to  
21 the Bates number that's the numbering  
22 that the lawyers have put on the document  
23 in the corner.  
24 **A. Okay.**

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1 Q. But it's otherwise page 19  
 2 of the document. This is chapter 2 and  
 3 it's entitled Boundary, do you see that?  
 4 A. Yes.  
 5 Q. You're welcome to take as  
 6 much time as you would like to read the  
 7 next two pages. Why don't you do that  
 8 and then I'm going to ask you a question  
 9 about the very last part of the second  
 10 page, okay?  
 11 A. Okay.  
 12 Q. Take your time to review the  
 13 document so you're familiar with it.  
 14 A. (Witness reading.)  
 15 Q. Okay?  
 16 A. Yes.  
 17 Q. Turning to 20382, which is  
 18 otherwise page 20 of the document,  
 19 there's a section entitled, Seaward and  
 20 Interstate Boundaries; do you see that?  
 21 A. Yes.  
 22 Q. The second paragraph of that  
 23 section says -- and I'm going to quote it  
 24 so that we have it in the record. "In

35

1 most of Salem County..." -- by the way,  
 2 that's the county that you have had  
 3 supervisory responsibility for, correct?  
 4 A. Correct.  
 5 Q. "...the Delaware-New Jersey  
 6 state boundary is the mean low water line  
 7 on the eastern (New Jersey) shore of the  
 8 Delaware River. The New Jersey and  
 9 Delaware Coastal Management agencies have  
 10 discussed this issue and have concluded  
 11 that any New Jersey project extending  
 12 beyond mean low water must obtain coastal  
 13 permits from both states, New Jersey and  
 14 Delaware, therefore, will coordinate  
 15 reviews of any proposed development that  
 16 would span the interstate boundary to  
 17 ensure that no development is constructed  
 18 unless it would be consistent with both  
 19 state coastal management programs."  
 20 Do you see that?  
 21 A. Yes.  
 22 Q. Does that refresh your  
 23 recollection or maybe change your earlier  
 24 opinion that you expressed that

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1 regulation of docks and wharves that  
 2 extended into Delaware territory within  
 3 the Twelve Mile Circle from New Jersey  
 4 would be regulated exclusively by New  
 5 Jersey?  
 6 A. I don't believe that I said  
 7 that they would be regulated exclusively  
 8 by New Jersey but that we had the ability  
 9 to regulate construction emanating from  
 10 New Jersey waters out into the -- from  
 11 New Jersey that went out into this area.  
 12 I didn't know that this particular  
 13 language was here.  
 14 Q. What do you understand this  
 15 language to mean?  
 16 MS. CHUDZIK: I'm going to  
 17 object to the form as calling for  
 18 an improper opinion. I'm not sure  
 19 he has any personal knowledge of  
 20 the meaning of this.  
 21 MR. SEITZ: When I asked him  
 22 at the beginning whether he was  
 23 familiar with the document he said  
 24 he was.

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1 MS. CHUDZIK: He can answer.  
 2 THE WITNESS: Could you  
 3 restate the question?  
 4 BY MR. SEITZ:  
 5 Q. My question was, what is  
 6 your understanding of the language that I  
 7 just quoted in the document that you  
 8 earlier said you were familiar with?  
 9 A. It essentially says that any  
 10 development that crosses beyond the mean  
 11 low water line would require -- it says  
 12 that no development would be constructed  
 13 unless it would be consistent with both  
 14 states' coastal management programs.  
 15 Q. In fact, Mr. Broderick,  
 16 isn't it the case that for certain  
 17 projects that have occurred within the  
 18 Twelve Mile Circle on your watch the  
 19 states have coordinated their coastal  
 20 management programs?  
 21 A. I have never personally  
 22 coordinated with Delaware on  
 23 applications, no.  
 24 Q. Were you ever involved in

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1 the Keystone project?  
2 **A. It was a permit that we**  
3 **issued, yes.**  
4 Q. Were you involved with that  
5 project?  
6 **A. The person that issued the**  
7 **permit worked for me at that time, so**  
8 **yes.**  
9 Q. How about Fort Mott, were  
10 you involved with that project?  
11 **A. Yes.**  
12 Q. Didn't New Jersey coordinate  
13 with Delaware on that project?  
14 **A. Which one?**  
15 Q. Fort Mott.  
16 **A. Fort Mott, as I remember it,**  
17 **was the rehabilitation of an existing**  
18 **pier and/or wharf with the intended use**  
19 **being the reestablishment of a ferry**  
20 **service between Fort Mott and Pea Patch**  
21 **Island.**  
22 Q. My question was a little  
23 broader, though. Did New Jersey  
24 coordinate with Delaware for the Fort

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1 Mott pier application?  
2 **A. Only because of the -- it**  
3 **was a project that was spanning into both**  
4 **states. Are you asking did we coordinate**  
5 **with Delaware on if the rehabilitation of**  
6 **the pier and the limits in the**  
7 **rehabilitation were acceptable?**  
8 Q. I'm just asking whether you  
9 coordinated with Delaware. That was my  
10 question, which seems to be a yes or no  
11 answer if you can. Did New Jersey  
12 coordinate with Delaware, yes or no, for  
13 the Fort Mott pier?  
14 **A. Coordinate to what extent?**  
15 Q. Coordinate in processing the  
16 application to build a pier or  
17 rehabilitate the pier?  
18 **A. Not that I remember.**  
19 Q. We'll get into that in a  
20 little more detail later. So your  
21 understanding of this language is that no  
22 development would be constructed unless a  
23 project that spanned on to Delaware soil  
24 within the Twelve Mile Circle was also

40

1 consistent with its state Coastal  
2 Management Program, correct?  
3 **A. That's what it says, yes.**  
4 Q. Is it your testimony today  
5 that New Jersey did not follow this, or  
6 you don't know?  
7 **A. I would say that in most**  
8 **instances it has not been followed.**  
9 Q. Do you know why not?  
10 **A. No.**  
11 Q. As we said earlier, Mr.  
12 Broderick, this was a document that was  
13 submitted to the federal government to  
14 obtain funding for New Jersey's program.  
15 Wouldn't you agree with me that a  
16 statement about coordinating with  
17 Delaware's program would be important for  
18 the federal government to understand what  
19 was going to be the case?  
20 **A. I would believe so, yes.**  
21 Q. Could you turn to the next  
22 page of this document, please, which is  
23 Delaware 20614, that's the Bates number.  
24 It's page 253 of the document. It's

41

1 titled, Energy Production and  
2 Transmission; do you see that?  
3 **A. Yes.**  
4 Q. I don't plan to ask you any  
5 questions about that page. I do plan to  
6 ask you questions starting on the bottom  
7 of the next page under liquified natural  
8 gas and carrying over to the next page,  
9 but I wanted to give you an opportunity  
10 to review this section and when you have  
11 had an opportunity to look through it let  
12 me know and then we'll ask the questions.  
13 **A. Okay. (Witness reading.)**  
14 **Stopping at recreation?**  
15 Q. Stopping at recreation, yes.  
16 **A. Okay. All set.**  
17 Q. Thank you. If you will turn  
18 to page 20615, which is otherwise page  
19 254 of the document of Broderick-1,  
20 there's a section entitled, Liquified  
21 Natural Gas, do you see that?  
22 **A. Yes.**  
23 Q. Then there's a quote from  
24 the National Energy Plan with statements

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1 that are applicable to New Jersey. And  
 2 then in this document New Jersey goes on  
 3 to say, and I'm going to put this in the  
 4 record as well, "The New Jersey Coastal  
 5 Program states that LNG terminals are  
 6 discouraged unless they are constructed  
 7 so as to neither unduly endanger human  
 8 life nor property nor otherwise impair  
 9 the public health, safety and welfare and  
 10 comply with the Coastal Resource and  
 11 Development Policies. Because the  
 12 tankering of LNG could pose potential  
 13 risk to life and property adjacent to New  
 14 Jersey's waterways which also serve as  
 15 boundaries with the states of  
 16 Pennsylvania and Delaware along the  
 17 Delaware River and the state of New York  
 18 and the Port of New York and New Jersey,  
 19 the state considers decisions concerning  
 20 the siting of LNG terminals to be an  
 21 interstate matter." Do you see that  
 22 language?  
 23 **A. Correct.**  
 24 **Q. Again, this was a document**

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1 submitted to the federal government for  
 2 New Jersey to obtain funding for its  
 3 Coastal Management Program, correct?  
 4 **A. Correct.**  
 5 **Q. And the statements in here,**  
 6 **I think you already testified, were**  
 7 **important because the federal government**  
 8 **would be relying on them in making their**  
 9 **decision whether to fund New Jersey's**  
 10 **program, correct?**  
 11 **A. I believe so, yes.**  
 12 **Q. It's the case, is it not,**  
 13 **that New Jersey told the federal**  
 14 **government that when it came to siting**  
 15 **LNG facilities along the Delaware River**  
 16 **that it was an interstate matter, meaning**  
 17 **that Delaware would be involved in the**  
 18 **decision making, correct?**  
 19 **A. Well, as written in 1980,**  
 20 **yes.**  
 21 **Q. So that in 1980 that was**  
 22 **correct, right?**  
 23 **A. That's what it says.**  
 24 **Q. Have you had any discussions**

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1 with anyone about what New Jersey's  
 2 obligations were under the Coastal  
 3 Management Program in 1980 regarding  
 4 siting of LNG terminals along the  
 5 Delaware River?  
 6 **A. No.**  
 7 **Q. Do you have a view on**  
 8 **whether LNG terminals could pose a**  
 9 **potential risk to life and property**  
 10 **adjacent to the New Jersey and Delaware**  
 11 **shores?**  
 12 **A. Could we go off the record**  
 13 **for a second?**  
 14 **Q. Do you want to confer with**  
 15 **your counsel?**  
 16 **A. Yes.**  
 17 **Q. Certainly.**  
 18 **MS. CHUDZIK: Sure.**  
 19 **(Whereupon a break was taken.)**  
 20 **(Whereupon the last question was read**  
 21 **back.)**  
 22 **THE WITNESS: The answer**  
 23 **would be yes.**  
 24 **BY MR. SEITZ:**

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1 **Q. And what is your view of**  
 2 **that?**  
 3 **A. Well, any large**  
 4 **industrial-type development if not**  
 5 **operated properly could have a risk to**  
 6 **citizens and/or the environment**  
 7 **irregardless of wherever it was placed,**  
 8 **but that if operated correctly it's my**  
 9 **opinion that these -- they are and can be**  
 10 **safely-run facilities.**  
 11 **Q. Do you agree with the**  
 12 **statement that New Jersey made in 1980**  
 13 **that tankering of LNG could pose**  
 14 **potential risk to life and property**  
 15 **adjacent to New Jersey's waterways?**  
 16 **A. Again, it would be my**  
 17 **opinion that in 1980 the technology for**  
 18 **this sort of industry, while it existed,**  
 19 **was perhaps not perfected and that since**  
 20 **then the technology has gotten better**  
 21 **like almost in any subject that we talk**  
 22 **about from computers to oil and gas**  
 23 **industry. That's currently a safe -- if**  
 24 **run correctly is a safe facility.**

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1 MR. SEITZ: I'll ask the  
2 court reporter to read back the  
3 question because I'm not sure you  
4 answered my question.  
5 (Whereupon the last question was  
6 read back.)  
7 THE WITNESS: Actually, I  
8 believe that I did answer that  
9 question because I think in 1980  
10 when this was written the  
11 technology for running these type  
12 facilities, while it existed, may  
13 have not been perfected in that  
14 over -- since 1980 the industry  
15 has gotten better at what they do.  
16 BY MR. SEITZ:  
17 Q. So your answer is yes, you  
18 agree with the statement in 1980 that was  
19 just read?  
20 MS. CHUDZIK: I think  
21 perhaps we need you to clarify.  
22 Are you saying he --  
23 MR. SEITZ: I have asked him  
24 whether he agreed or disagreed

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1 with the statement that was read.  
2 MS. CHUDZIK: Does he  
3 presently agree it's accurate or  
4 would he agree in 1980 it was  
5 accurate?  
6 BY MR. SEITZ:  
7 Q. I qualified it, do you agree  
8 with the statement that New Jersey made  
9 in 1980 that the tankering of LNG could  
10 pose potential risk to life and property  
11 adjacent to New Jersey's waterways? Do  
12 you agree in 1980 when New Jersey made  
13 that statement, it was a correct  
14 statement?  
15 A. To be honest, I don't know  
16 enough about the industry to say if it  
17 was a correct statement or not.  
18 Q. You just gave us an opinion  
19 today --  
20 A. Yes, that's my opinion but I  
21 didn't write this document.  
22 Q. I understand that but you  
23 just offered an opinion, you said that it  
24 was safe and now you're saying you don't

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1 have enough knowledge to know whether it  
2 was safe in 1980 but you do now.  
3 A. I don't know how to answer.  
4 Q. Would you agree with the  
5 statement that New Jersey made in 1980  
6 that, "The state considers decisions  
7 concerning the siting of LNG terminals to  
8 be an interstate matter?"  
9 A. That's the plain language of  
10 the document.  
11 Q. I'm asking you in your  
12 position of authority with the State of  
13 New Jersey whether you agree with that  
14 statement, siting of LNG terminals should  
15 be an interstate matter?  
16 A. I believe that New Jersey  
17 should -- has the ability to safely place  
18 facilities within its borders, and I  
19 don't know what else to tell you.  
20 Q. Do you disagree it's an  
21 interstate matter?  
22 A. I believe -- I mean, our  
23 position has been that we have the right  
24 to regulate structures either onshore or

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1 outshore of the State of New Jersey and  
2 do take into consideration various safety  
3 aspects.  
4 Q. Mr. Broderick, you said it's  
5 always been New Jersey's position?  
6 A. Correct.  
7 Q. If it's always been New  
8 Jersey's position, then why in 1980 did  
9 New Jersey write in this document that  
10 Delaware Coastal Zone Management Program  
11 would apply to Delaware soil for  
12 structures extending beyond the New  
13 Jersey coastline and why did New Jersey  
14 say in this paragraph that the siting of  
15 LNG facilities is an interstate matter if  
16 that's always been New Jersey's position?  
17 MS. CHUDZIK: I'm going to  
18 object to form. I think it's a  
19 compound question. I'm not sure  
20 we have the foundation for him  
21 explaining this writing. I  
22 believe he testified he didn't  
23 write it.  
24 THE WITNESS: But I should

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1 attempt to answer?  
2 MS. CHUDZIK: If you can.  
3 THE WITNESS: For starters,  
4 again, I didn't -- this came out  
5 in August of 1980 before I was  
6 hired. It would have been  
7 language potentially drafted in  
8 1978 as part of the draft  
9 environmental impact statement.  
10 Why did it say -- again, I was not  
11 involved in any of the -- didn't  
12 read it before I started, so I  
13 have no idea why they would have  
14 said that.  
15 BY MR. SEITZ:  
16 Q. You would agree with me that  
17 it's inconsistent with the opinion you  
18 expressed that New Jersey has the right  
19 to regulate structures on Delaware soil  
20 within the Twelve Mile Circle extending  
21 from the New Jersey shoreline?  
22 A. It would appear to be  
23 inconsistent, yes.  
24 Q. Let me know when you want

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1 take a break.  
2 A. Okay, now would be good.  
3 (Whereupon a break was taken.)  
4 BY MR. SEITZ:  
5 Q. We're going to put that one  
6 aside.  
7 A. And I give this to...  
8 Q. The court reporter.  
9 (Whereupon document was marked  
10 Broderick-2 for identification.)  
11 BY MR. SEITZ:  
12 Q. Mr. Broderick, the court  
13 reporter has handed you what we have  
14 marked is Broderick-2, which as an  
15 affidavit that you filed in this case.  
16 Do you recognize it?  
17 A. Yes.  
18 Q. Paragraph 1 of the  
19 affidavit, and stop me if you need to  
20 time to read; I don't want to go too  
21 fast. I'm assuming you're familiar with  
22 it. There's a sentence in paragraph 1  
23 that says, "I have knowledge of the  
24 matters set forth herein, based upon my

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1 personal knowledge and upon my review of  
2 the NJDEP files in this matter." Do you  
3 see that statement?  
4 A. Yes.  
5 Q. Which of the matters do you  
6 have personal knowledge of and which are  
7 based on your review of files? Is there  
8 a way for you to segregate that out so  
9 that I can understand what you have  
10 personal knowledge of versus looking at  
11 files?  
12 A. So I can just go through the  
13 affidavit and say which sections are --  
14 Q. Sure.  
15 A. Paragraph 12 would have been  
16 a file -- based on a file review.  
17 Paragraph 13 would be personal knowledge.  
18 Paragraph 14 would be personal knowledge.  
19 Paragraph 15 would have been an  
20 application issued during my tenure as  
21 supervisor, but I don't specifically  
22 remember it and this would come up as  
23 part of the file review, as would the  
24 same would apply to paragraph 16.

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1 Q. Thank you. I want to  
2 understand what exactly you did to  
3 prepare this affidavit. You have an  
4 explanation in paragraph 9. Do you see  
5 paragraph 9?  
6 A. Yes.  
7 Q. As I understand it, and  
8 correct me if I'm wrong, there were  
9 certain records that were in database and  
10 other records were in boxes; is that  
11 correct?  
12 A. It's probably better  
13 described as our databases are currently  
14 electronic. Prior to going electronic we  
15 used to keep handwritten listings of the  
16 permit applications. All of our  
17 applications end up -- basically after  
18 the expiration date end up in boxes in  
19 the warehouse.  
20 Q. Even today?  
21 A. Even today.  
22 Q. Rather than me ask you 20  
23 questions, why don't you tell me what you  
24 did to assemble the information that's in

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1 this affidavit?  
2 **A. Okay. We went through what**  
3 **I asked Mark Fedorowicz to do was -- what**  
4 **he could from electronic database**  
5 **generate a listing for applications**  
6 **within those five municipalities. Then**  
7 **we also looked at the written listing for**  
8 **the time period that we had, again, for**  
9 **the five municipalities. Once we had**  
10 **that list we went and looked at the**  
11 **individual ones. Because the Waterfront**  
12 **Development Statute has an upland**  
13 **component and an in-water component that**  
14 **are different, we would have eliminated**  
15 **all the ones that had just an upland**  
16 **component. Then we would have had to**  
17 **look at -- and once we got down to that**  
18 **number, we would have had to actually**  
19 **look at the files to see what**  
20 **applications actually involved work**  
21 **beyond the mean low water line that may**  
22 **have been applicable to what was**  
23 **basically the information request.**  
24 **Q. I need you to help me**

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1 understand what the universe of documents  
2 was that you looked at, so bear with me  
3 while I try to walk through this so I  
4 understand it.  
5 **A. Sure.**  
6 **Q. There's a computerized**  
7 **permitting tracking system; is that fair**  
8 **to say?**  
9 **A. Correct.**  
10 **Q. And what years does the**  
11 **database of that permitting tracking**  
12 **system encompass?**  
13 **A. Our current system only goes**  
14 **back as far as 2001. It's NJEMS. It's**  
15 **like New Jersey Environmental Management**  
16 **System. The department uses it on a**  
17 **fairly wide basis. Before that we had a**  
18 **program called Paradox, and I want to say**  
19 **those applications go back to '88 plus or**  
20 **minus maybe, '87. And then prior to that**  
21 **it would have been handwritten records.**  
22 **Q. So in your search, did you**  
23 **search the Paradox system as well?**  
24 **A. Yes.**

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1 **Q. So you searched --**  
2 **A. I'm sorry. I didn't**  
3 **personally search it. I asked that our**  
4 **records custodian do the search.**  
5 **Q. Who is Mr. --**  
6 **A. Fedorowicz.**  
7 **Q. So Mr. Fedorowicz went and**  
8 **he looked at the EMS system for -- what**  
9 **did he look for specifically? What was**  
10 **he searching for?**  
11 **A. Initial direction was to --**  
12 **the easiest way to search is give me all**  
13 **waterfront development permits that were**  
14 **decided on by the department or by the**  
15 **program for the five municipalities.**  
16 **That would give you a real large list,**  
17 **again, remembering there's an upland**  
18 **component that wouldn't apply to this**  
19 **particular case.**  
20 **Q. Why does it not apply?**  
21 **A. It doesn't involve any work**  
22 **in the water. Under the Waterfront**  
23 **Development Statute we would have and we**  
24 **have always had the ability to look at**

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1 **single-family homes. Since our**  
2 **jurisdiction is limited to a minimum of**  
3 **100 feet up to a maximum of 500 feet,**  
4 **we've looked at a lot more things than we**  
5 **did initially under CAFRA.**  
6 **Q. So Mr. Fedorowicz looked in**  
7 **the EMS database which takes us from 2001**  
8 **to current?**  
9 **A. Correct.**  
10 **Q. And he looked in the Paradox**  
11 **database which takes us from 2001 back to**  
12 **19 --**  
13 **A. I want to say '88.**  
14 **Q. We'll say that's a rough**  
15 **break point. And then Mr. Fedorowicz**  
16 **looked at written records back how far?**  
17 **A. I want to say that goes back**  
18 **to like '82 perhaps.**  
19 **Q. For all of those databases**  
20 **-- for the databases and the written**  
21 **records he was looking for waterfront**  
22 **development act permits, correct?**  
23 **A. Correct.**  
24 **Q. We know that the waterfront**

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1 development act was enacted in 1914 I  
 2 believe, correct?  
 3 **A. Correct.**  
 4 **Q. Was there an attempt made to**  
 5 **look back for written records earlier**  
 6 **than roughly 1988?**  
 7 **A. Prior to 1988?**  
 8 **Q. Yes.**  
 9 **A. Only -- yes, but they would**  
 10 **have been on the written list**  
 11 **essentially.**  
 12 **Q. I apologize for being**  
 13 **confused. So Mr. Fedorowicz did look for**  
 14 **any waterfront development permits from**  
 15 **the 1900's all the way up to present day?**  
 16 **A. No. He would not have had**  
 17 **access to any databases prior to**  
 18 **approximately '82.**  
 19 **Q. Why is that?**  
 20 **A. We just -- well, why is**  
 21 **that?**  
 22 **Q. Do the records still exist?**  
 23 **A. I believe that they -- there**  
 24 **are some records, but we just don't have**

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1 **access to them. We looked at everything**  
 2 **that we had some sort of information on**  
 3 **it that we could track.**  
 4 **Q. I'm not trying to be tricky**  
 5 **here. I'm just trying to understand why**  
 6 **didn't you look prior to 1982? In other**  
 7 **words, why 1982?**  
 8 **A. That was the sources of**  
 9 **information we had available.**  
 10 **Q. But there is some**  
 11 **information prior to 1982 that's around**  
 12 **but you just didn't have access to it; is**  
 13 **that correct?**  
 14 **A. I don't know that there's a**  
 15 **database that exists that we could pull**  
 16 **the information from whether written**  
 17 **or --**  
 18 **Q. Help me out here. Where are**  
 19 **the records prior to 1982 dealing with**  
 20 **the waterfront development act permits?**  
 21 **A. Specifically, I don't know.**  
 22 **Q. Did Mr. Fedorowicz go and**  
 23 **try and find them, do you know?**  
 24 **A. I don't know.**

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1 **Q. Sitting here today, you**  
 2 **don't know why those weren't looked for**  
 3 **or examined?**  
 4 **A. No.**  
 5 **Q. Okay. So we got the written**  
 6 **records from 1982 to 1989. And then we**  
 7 **have the -- excuse me -- to '89 and then**  
 8 **EMS from '89 to '98. I got that right?**  
 9 **A. It would be Paradox from**  
 10 **approximately '88.**  
 11 **Q. And then EMS '98?**  
 12 **A. Right.**  
 13 **Q. You searched those sources**  
 14 **for waterfront development permit**  
 15 **applications, correct?**  
 16 **A. Correct.**  
 17 **Q. After your review of, I**  
 18 **think you describe it as 350 boxes and**  
 19 **the Paradox and EMS databases you came up**  
 20 **with 58 hits essentially, correct?**  
 21 **A. Correct.**  
 22 **Q. Of those 58 hits you pulled**  
 23 **out 14 applications -- of 58, 14 of those**  
 24 **came from the warehouse, right?**

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1 **A. Correct.**  
 2 **Q. And 22 came from the**  
 3 **database, right?**  
 4 **A. Yes.**  
 5 **Q. So you have 22 from the**  
 6 **database, 14 from the application files.**  
 7 **What accounts for the difference between**  
 8 **the 58 and the 36?**  
 9 **A. I don't specifically know.**  
 10 **Q. If I had to guess, I'm**  
 11 **thinking it was permits from 2001 forward**  
 12 **because they're not referred to, but I**  
 13 **don't know and I'm just trying to figure**  
 14 **out. When you started with 58 we got 36**  
 15 **accounted for but we've got some missing**  
 16 **in between. I just didn't know what**  
 17 **happened to them.**  
 18 **A. What I can tell you is that**  
 19 **we did as extensive a search as we could.**  
 20 **Q. I'm not questioning that.**  
 21 **A. We're not trying to hold**  
 22 **back any information, good or bad.**  
 23 **Q. I'm not questioning your**  
 24 **integrity. I'm trying to figure out --**

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1 the numbers don't add up and I'm trying  
2 to understand why they don't add up. Is  
3 that something that you could find out so  
4 that we do n't have to spend time on this  
5 now?  
6 **A. Yes, we can clarify that**  
7 **information, sure.**  
8 **Q. Is that something you can do**  
9 **at a break today or is that going to take**  
10 **you more time?**  
11 **A. I don't know that Mr.**  
12 **Fedorowicz is in today but...**  
13 **Q. Maybe we can give it a try.**  
14 **A. We can try, sure.**  
15 **Q. So we have 350 boxes. We**  
16 **have two databases which is distilled**  
17 **down to 58 development applications and**  
18 **of those 58 you have identified five that**  
19 **you believe are relevant to this lawsuit,**  
20 **correct?**  
21 **A. Correct.**  
22 **Q. Because if you look at**  
23 **Paragraph 11 of your affidavit, you make**  
24 **the statement that the program has issued**

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1 a number of permits. And I just wanted  
2 to make sure that the five were the total  
3 number rather than some other permits  
4 that were not included in the affidavit.  
5 Do you see my point of clarification  
6 there?  
7 **A. Actually, yes.**  
8 **Q. Could you clarify for me**  
9 **when you make the statement a number of**  
10 **permits in Paragraph 11 that you are**  
11 **referring to the five that you identify**  
12 **in paragraphs 12 through 16?**  
13 **A. I believe that the five that**  
14 **were listed were the ones that appeared,**  
15 **based on a file review, to pertain to**  
16 **this case.**  
17 **Q. Let me try my question**  
18 **because I must not be asking it very**  
19 **well. Paragraph 11 you refer to the**  
20 **program has issued a number of permits.**  
21 **A number could be zero or it could be one**  
22 **or it could be 1,000, right?**  
23 **A. It could be five.**  
24 **Q. It could be five. That's**

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1 what I'm trying to ask you. Is it the  
2 five or are there others?  
3 **A. I think it's the five. In**  
4 **preparing the affidavit, I think that's**  
5 **the number.**  
6 **Q. So the number referred to in**  
7 **Paragraph 11 is 5?**  
8 **A. I believe it is.**  
9 **Q. Will you tell me or let me**  
10 **know if it's anything different or let**  
11 **your attorneys know?**  
12 **A. Absolutely.**  
13 **Q. You said I believe, which**  
14 **leads me to believe you're 90 percent but**  
15 **not 100 percent. If there's some doubt**  
16 **will you let us know?**  
17 **A. Yes.**  
18 **Q. Just to summarize again,**  
19 **350 boxes, two databases were looked at**  
20 **over a 25-year period which resulted in**  
21 **58 development applications. Of those 58**  
22 **you came up with five that identified**  
23 **crossings in the Delaware subaqueous**  
24 **land, correct?**

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1 **A. Correct.**  
2 **Q. Let's look at the first one,**  
3 **which is DuPont, Chambers Works, okay.**  
4 **Before we look at the exhibits, could you**  
5 **tell me whether you had any involvement**  
6 **with any of the permits for the DuPont**  
7 **Chambers Works?**  
8 **A. No.**  
9 **Q. So is your knowledge --**  
10 **A. As listed here?**  
11 **Q. Yes.**  
12 **A. No.**  
13 **Q. So this would not fall**  
14 **within the category of your personal**  
15 **knowledge, correct?**  
16 **A. Correct.**  
17 **Q. You were just repeating in**  
18 **your affidavit the information that Mr.**  
19 **Fedorowicz gave you, correct?**  
20 **A. Correct.**  
21 **Q. I'm going to show you a few**  
22 **documents.**  
23 **Off the record.**  
24 **(Whereupon documents were marked**

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1 Broderick-3 through Broderick-10 for  
 2 identification.)  
 3 BY MR. SEITZ:  
 4 Q. Mr. Broderick, we have put  
 5 before what has been marked as  
 6 Broderick-3 which is a letter bearing  
 7 Bates number 19301 to 19302. Do you have  
 8 that in front of you?  
 9 A. Yes.  
 10 Q. This letter is a letter to  
 11 the Army Corps of Engineers from a staff  
 12 hydrologist at what was the predecessor  
 13 to the Delaware Natural Resources  
 14 Environmental Control, and it deals with  
 15 constructing a bulkhead and a fuel oil  
 16 storage tank in the Delaware River at  
 17 Chambers Works. Do you see that in the  
 18 first paragraph?  
 19 A. Yes.  
 20 Q. The Chambers Works facility,  
 21 what do you understand where that is  
 22 located?  
 23 A. It's just north of the  
 24 Delaware Memorial Bridge.

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1 Q. It's within the Twelve Mile  
 2 Circle, correct?  
 3 A. Correct.  
 4 Q. The border between New  
 5 Jersey and Delaware at that point in time  
 6 extends north -- even now extends over to  
 7 the mean low water mark on the New Jersey  
 8 shore, correct?  
 9 A. Correct.  
 10 Q. Do you see in this letter  
 11 there's some discussion about there was a  
 12 moratorium placed on subaqueous lands  
 13 projects in the Delaware River and Bay by  
 14 the Delaware legislature?  
 15 A. Yes.  
 16 Q. Do you know anything about  
 17 that?  
 18 A. Nothing at all.  
 19 Q. Do you have any personal  
 20 knowledge of the DuPont Deepwater  
 21 facility's request to build this  
 22 bulkhead?  
 23 A. No.  
 24 Q. Let's turn to what has been

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1 marked as deposition Exhibit-4, which is  
 2 a document bearing Bates numbers Delaware  
 3 19304 to Delaware 19305, which is a  
 4 February 19, 1971 letter from John  
 5 Bryson, B-R-Y-S-O-N, director of the  
 6 Division of Environmental Control to the  
 7 Honorable Laird Stabler who was then  
 8 Attorney General of the State of  
 9 Delaware. Do you have that in front of  
 10 you?  
 11 A. Yes.  
 12 Q. Do you see in this letter on  
 13 the second page, the second paragraph  
 14 from the top that there was some question  
 15 about the 1905 treaty and the Supreme  
 16 Court decision of 1933 in Delaware's  
 17 jurisdiction to regulate that project at  
 18 Deepwater. Do you see that language?  
 19 A. Yes.  
 20 Q. Does that refresh your  
 21 recollection at all about any dispute of  
 22 the Deepwater project about whether  
 23 Delaware had regulatory authority?  
 24 A. I'm not sure I understand

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1 the question.  
 2 Q. Does it help you recall  
 3 anything or any knowledge you might have  
 4 about what happened at the Deepwater  
 5 authority -- excuse me -- the Deepwater  
 6 DuPont location and installing bulkheads?  
 7 A. 1971 would have been  
 8 before -- it would have been nine years  
 9 before my time. So as I stated earlier,  
 10 I never read, I believe it was, the 1905  
 11 compact.  
 12 Q. Right.  
 13 A. So other than the language  
 14 stated here, that's the only  
 15 clarification as otherwise provided.  
 16 Q. My question was simpler than  
 17 that. It was just, in your position that  
 18 you have held or the positions you have  
 19 held since 1980 in any discussions you  
 20 have had about the Deepwater facility, do  
 21 you recall any discussions about any  
 22 position that Delaware took on the 1905  
 23 treaty back in the 1970s?  
 24 A. No.

<p style="text-align: right;">70</p> <p>1 Q. Broderick-5 is an April 5, 2 1971 letter bearing Bates Delaware 19309 3 to 310. It's a letter from a Staff 4 Geohydrologist at DNREC or predecessor to 5 DNREC to the Army Corps. Do you see in 6 paragraph 1 there's a reference to an 7 opinion from the Attorney General of the 8 State of Delaware? 9 A. Yes. 10 Q. That Delaware has no 11 jurisdiction between the mean high and 12 mean low water marks on the New Jersey 13 shore and that the moratorium did not 14 apply to the New Jersey shore. Do you 15 see that? 16 A. Yes. 17 Q. Do you also see the 18 following paragraph where the Attorney 19 General concluded that any proper 20 proposed work in the Delaware River which 21 will extend below the mean low water mark 22 is in Delaware waters and would require a 23 permit from the State of Delaware. Do 24 you see that?</p>	<p style="text-align: right;">72</p> <p>1 waters will require a permit from 2 Delaware; do you see that? 3 A. Yes. 4 Q. But you don't have any of 5 personal knowledge of this application; 6 is that correct, for an LNG terminal back 7 in the early '70s? 8 A. No. 9 Q. Now let's go to number 6, 10 which is an October 15, 1982 letter 11 bearing a DuPont Bates stamp of 0001021. 12 Do you see that? 13 A. Yes. 14 Q. This is a letter to DuPont 15 from DNREC, do you see that? 16 A. Yes. 17 Q. It deals with approval of 18 maintenance dredging, do you see that in 19 the first paragraph? 20 A. Yes. 21 Q. Do you recall any discussion 22 within New Jersey about Delaware's 23 ability to regulate dredging for the 24 Chambers Works facility?</p>
<p style="text-align: right;">71</p> <p>1 A. Yes. 2 Q. Does that refresh your 3 recollection about discussing Delaware's 4 authority over the Chambers Works project 5 anytime during your tenure in the 6 positions you have had with New Jersey? 7 A. I don't believe that we have 8 ever discussed it. 9 Q. Looking at bullet point 2, 10 liquified natural gas terminal near 11 Oldmans Creek, New Jersey. Do you see 12 that? 13 A. Yes. 14 Q. Were you aware that there 15 was a proposal back in the early '70s for 16 an LNG terminal near Oldmans Creek in New 17 Jersey? 18 A. No. 19 Q. Is this the first time you 20 heard about that? 21 A. Absolutely. 22 Q. If you turn the page, do you 23 see that Delaware took the position in 24 this letter that any work within Delaware</p>	<p style="text-align: right;">73</p> <p>1 A. No. 2 Q. Exhibit Broderick-7 is a 3 document bearing Delaware Bates 4 number 19645 to 19649. It's subaqueous 5 lands permit granted to DuPont Chambers 6 Works for dredging and backfilling and to 7 install a sheet pipe wall near Deepwater, 8 New Jersey. Do you see that? 9 A. Yes. 10 Q. Were you or are you -- 11 either were or are you aware of any 12 riparian subaqueous land permits that 13 Delaware issued for the Chambers Works 14 facility? 15 A. No. 16 Q. So in your affidavit when 17 you're referring to the Chambers Works 18 facility at paragraph 12 of your 19 affidavit, you refer to a permit that New 20 Jersey issued for dredging, correct? 21 A. Yes. 22 Q. But you were unaware or are 23 you unaware that Delaware also issued 24 permits for dredging?</p>

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1       **A. I did not know that, no.**  
2       **Q. So you weren't aware that**  
3 **what is the subaqueous lands permit of**  
4 **Exhibit-7 was issued to DuPont, correct?**  
5       **A. Correct.**  
6       **Q. Let's look at what has been**  
7 **marked as Broderick-8, which is an**  
8 **April 7, 2004 letter bearing Delaware**  
9 **Bates number 25932 to 25933. It's a**  
10 **letter on letterhead by both the State of**  
11 **Delaware and the State of New Jersey**  
12 **signed by both governors. Do you see**  
13 **that?**  
14       **A. Yes.**  
15       **MS.CHUDZIK: Did we skip**  
16 **another one?**  
17       **MR. SEITZ: Off the record.**  
18 **(Whereupon a discussion was held**  
19 **off the record.)**  
20 **BY MR. SEITZ:**  
21       **Q. I cleared up my mistake.**  
22 **You have the letter from the two**  
23 **governors?**  
24       **A. Yes.**

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1       **Q. Have you been involved at**  
2 **all in the VX nerve gas disposal issue at**  
3 **Chambers Works?**  
4       **A. No.**  
5       **Q. Were you aware that DuPont**  
6 **has a proposal to dispose of VX nerve gas**  
7 **residue at the Chambers Works facility**  
8 **and discharge some residue into the**  
9 **Delaware River?**  
10       **A. Only through the newspapers.**  
11       **Q. So no personal knowledge?**  
12       **A. Correct.**  
13       **Q. Let's look at Broderick-9,**  
14 **which is an agenda dated March 10, 2004**  
15 **bearing Delaware Bates number 25974 to**  
16 **25979. This, again, deals with disposal**  
17 **of neutralized VX; do you see that?**  
18       **A. Yes.**  
19       **Q. Would the same answer you**  
20 **just gave me to deposition Exhibit-8**  
21 **apply that you don't have any personal**  
22 **knowledge of VX disposal review by both**  
23 **New Jersey and Delaware?**  
24       **A. Correct.**

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1       **Q. Exhibit Broderick-10 is a**  
2 **letter bearing DuPont Bates number 1339**  
3 **to 1343, which is a letter dated March 1,**  
4 **2006 from Laura Herr of DNREC to DuPont**  
5 **representatives. Do you see that?**  
6       **A. Yes.**  
7       **Q. Do you understand that this**  
8 **is a subaqueous lands permit that was**  
9 **granted by the state of Delaware to**  
10 **DuPont for a location at Carney's Point,**  
11 **Salem County, New Jersey which is the**  
12 **Chambers Works facility?**  
13       **A. Yes.**  
14       **Q. Were you aware that Delaware**  
15 **as recently as March 7, 2006 granted a**  
16 **subaqueous lands permit to DuPont?**  
17       **A. No.**  
18       **Q. After reviewing these, Mr.**  
19 **Broderick, is it fair to say that for the**  
20 **DuPont Chambers Works facility for both**  
21 **dredging and building bulkheads and**  
22 **things like that that it appears that**  
23 **both Delaware and New Jersey were**  
24 **exercising regulatory authority over that**

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1 **project, that facility?**  
2       **A. It would appear they're**  
3 **exercising joint permit review, yes.**  
4       **Q. Let's turn to the Keystone**  
5 **project which I think you said you have**  
6 **personal knowledge of, correct?**  
7       **A. Correct.**  
8       **MR. SEITZ: Let's go off to**  
9 **mark these.**  
10 **(Whereupon documents were marked**  
11 **Broderick-11 through Broderick-19**  
12 **for identification.)**  
13 **BY MR. SEITZ:**  
14       **Q. Mr. Broderick, we're going**  
15 **to turn our attention now to the project**  
16 **known as Keystone. Can you tell us**  
17 **generally what that project is?**  
18       **A. The permit that was before**  
19 **the department was for, as I remember it,**  
20 **a coal-fired power plant/cogeneration**  
21 **facility that contained or I should say**  
22 **included a pier ran into the Delaware**  
23 **River where coal would be delivered and**  
24 **then shipped to the upland.**

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1 Q. What was your involvement in  
2 that permitting process?  
3 A. The person that actually did  
4 the review of the permit applications  
5 worked for me at the time and it would  
6 have been, as we discussed earlier,  
7 making sure that the review being done  
8 was consistent with your rules and the  
9 approval issued was in compliance.  
10 Q. Could you tell me  
11 specifically what you did with regard to  
12 this project? Did you review the  
13 paperwork coming from the person you  
14 identified as being on the scene or how  
15 did it work?  
16 A. Okay. Generally, depending  
17 upon who had signature authority, if I  
18 had signature authority for that  
19 particular permit the project manager  
20 would review the material, give it to me  
21 for signature. I would read through the  
22 analysis and make sure that I agreed with  
23 the analysis presented and sign the  
24 eventual permit.

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1 In 1990, I don't know that I  
2 would have had signature authority for  
3 the final permit. So the project manager  
4 would have prepared the analysis. I  
5 would have gone through it to make sure,  
6 again, that it was consistent, made any  
7 changes necessary to make it consistent  
8 and then I would have passed it on to the  
9 bureau manager, who would most likely  
10 have had signature authority.  
11 Q. When you were involved with  
12 the New Jersey permitting process for  
13 Keystone, were you aware that Delaware  
14 was also involved in permitting the  
15 project?  
16 A. I believe that I was, yes.  
17 Q. What do you recall about  
18 Delaware's involvement in the permitting  
19 of the Keystone project?  
20 A. As I remember, that it was  
21 occurring on a separate tract.  
22 Q. What do you mean by that?  
23 A. Just that it had been  
24 submitted concurrently with our

80

1 application. Applicants in their --  
2 especially for large scale developments  
3 during -- they're required to do  
4 essential due diligence process, find out  
5 what needs to be done and whether it's  
6 local approval, state approval, Army  
7 Corps approval and if they do a good job  
8 they submit them all at the same time so  
9 that the reviews can occur and hopefully  
10 they get to the end of one they're close  
11 to the end of all the others. That's how  
12 I believe that this overall project was  
13 approached.  
14 Q. Did you have any interaction  
15 with the people at Delaware?  
16 A. Not that I remember, no.  
17 Q. I think you testified  
18 earlier that it had always been your  
19 understanding that New Jersey had  
20 regulatory authority over such things as  
21 piers extending out into the Delaware  
22 River within the Twelve Mile Circle from  
23 the New Jersey shore, correct?  
24 A. Correct.

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1 Q. This project had a pier  
2 extending out into the Delaware River  
3 from the New Jersey shore within the  
4 Twelve Mile Circle, correct?  
5 A. Correct.  
6 Q. And it was Delaware, in  
7 fact, that regulated the pier; isn't that  
8 correct?  
9 A. I believe that our permit  
10 addresses construction of the pier.  
11 Q. Do you have an understanding  
12 of what Delaware's permitting addresses?  
13 A. At the time, no.  
14 Q. Did you think it was odd  
15 that Delaware was also involved with the  
16 project?  
17 A. I don't specifically  
18 remember.  
19 Q. Do you remember it being an  
20 issue of why Delaware would be involved  
21 with regulating the project?  
22 A. No.  
23 Q. Do you remember anybody else  
24 discussing whether Delaware had

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1 regulatory authority over the project?  
 2 **A. Other than knowing it was**  
 3 **occurring, we were proceeding on our own**  
 4 **permit path line to review potential**  
 5 **impacts and see if the use was**  
 6 **acceptable. Once determining that the**  
 7 **use was acceptable, make sure that**  
 8 **impacts were minimized and then issued a**  
 9 **permit.**  
 10 Q. As far as you're aware, did  
 11 New Jersey issue a license or a riparian  
 12 grant for the Keystone project?  
 13 **A. I don't remember**  
 14 **specifically.**  
 15 Q. Do you know if Delaware did?  
 16 **A. I don't remember that**  
 17 **either.**  
 18 Q. Did it occur to you when you  
 19 were processing the New Jersey permit to  
 20 address with the applicant whether they  
 21 had to obtain Delaware approvals or not?  
 22 **A. Relative to?**  
 23 Q. The pier, the dock.  
 24 **A. No, in that we already knew**

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1 **that they had applied.**  
 2 Q. So what were you thinking  
 3 about that at the time or were you not  
 4 thinking about it? In other words, you  
 5 said it's always been New Jersey's  
 6 position it would regulate the pier at  
 7 this location. Why wasn't it said about  
 8 the fact that Delaware was demanding the  
 9 ability to regulate the pier as well?  
 10 **A. We often -- I mean, we deal**  
 11 **with the Army Corps of Engineers a lot**  
 12 **who also have dual jurisdiction. They**  
 13 **proceed along their own permit timeline.**  
 14 **We would have considered it basically the**  
 15 **same -- in the same fashion. I don't**  
 16 **remember that there were any objections**  
 17 **raised by Delaware to this facility, so**  
 18 **there was no reason to ask.**  
 19 Q. So if I understand your  
 20 answer then that the thinking may have  
 21 been with New Jersey that it wasn't  
 22 unlike where both jurisdictions have, as  
 23 you said, dual permitting authority,  
 24 correct?

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1 **A. Right.**  
 2 Q. Can you think of any other  
 3 instances where Delaware might have  
 4 exercised what you've termed dual  
 5 permitting authority?  
 6 **A. The only other specific case**  
 7 **where I know there was at least some sort**  
 8 **of coordination and/or permitting**  
 9 **requirements was in the Fort Mott case.**  
 10 Q. We have seen today, have we  
 11 not, that it also was in the DuPont case  
 12 that there were some dual permitting  
 13 going on at the Chambers Works facility  
 14 in New Jersey, correct?  
 15 **A. Based on information**  
 16 **provided, the answer would be yes.**  
 17 Q. Let's take a look at exhibit  
 18 Broderick-11, which is a document bearing  
 19 Delaware Bates number 2180. It's a  
 20 November 19, 1990 letter from Toby Clark,  
 21 who is the secretary of DNREC to Richard  
 22 Ciliberti at Keystone. Do you have that  
 23 in front of you?  
 24 **A. Yes.**

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1 Q. Do you see in this letter  
 2 that there was a determination by Mr.  
 3 Clark that the proposed pier is not a  
 4 prohibited offshore bulk product transfer  
 5 facility. Do you see that?  
 6 **A. Yes.**  
 7 Q. Do you have an understanding  
 8 that Delaware has a Coastal Zone Act?  
 9 **A. Yes.**  
 10 Q. Do you also understand that  
 11 offshore bulk product transfer facilities  
 12 are not permitted in Delaware's coastal  
 13 zone?  
 14 **A. I have never read what's**  
 15 **allowed or not allowed under Delaware CCM**  
 16 **program.**  
 17 Q. You know there's a program  
 18 but you're not sure of what the details  
 19 of it are?  
 20 **A. Correct.**  
 21 Q. Let's turn to the next  
 22 exhibit which is Exhibit-12, which is a  
 23 document bearing Delaware Bates  
 24 number 2200 to 2242. It's titled a

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1 Subaqueous Lands Lease Granted to  
2 Keystone for the Construction of an  
3 Industrial Pier on Public Subaqueous  
4 Lands and to Conduct Dredging in the  
5 Delaware River at Logan Township, and the  
6 date of this grant is September 30, 1991.  
7 Do you see that?  
8 A. Yes.  
9 Q. I think I asked you earlier  
10 whether you were aware of any New Jersey  
11 riparian licenses or grants for the  
12 Keystone project and I think your answer  
13 was you're not sure; is that right?  
14 A. I don't remember, correct.  
15 Q. Here is a Delaware  
16 subaqueous lands lease for the Keystone  
17 pier. Do you see that?  
18 A. Yes.  
19 Q. Would you agree with me then  
20 that from this document that both New  
21 Jersey and Delaware were exercising joint  
22 regulatory authority over the Keystone  
23 project?  
24 A. Based on this information,

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1 yes.  
2 Q. Let's turn to Exhibit-13  
3 please, which is a document bearing  
4 Delaware Bates number 2377 to 2378. It's  
5 a Supplemental Approval granted to  
6 Keystone to amend the subaqueous lands  
7 lease to build the pier in the Delaware  
8 River. Do you see that?  
9 A. Yes.  
10 Q. And, again, you would agree  
11 with me that this is further confirmation  
12 based on this document that Delaware was  
13 exercising regulatory authority over the  
14 pier that was extending into the Delaware  
15 River from the Keystone project, correct?  
16 A. Yes.  
17 Q. Turn to Exhibit-14, please,  
18 which bears Delaware Bates numbers 2289  
19 to 2290. This is another supplemental  
20 approval granted to Keystone for the pier  
21 and to conduct dredging. Do you see  
22 that?  
23 A. Yes.  
24 Q. Would you agree with me that

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1 as of the date of this approval, which is  
2 May 28 of 1993 that Delaware was  
3 continuing to exercise regulatory  
4 authority over the pier and dredging  
5 activities at Keystone?  
6 A. Yes.  
7 Q. Looking at Exhibit  
8 Number-15, which bears Delaware Bates  
9 number 16855 to 16857. It's a  
10 September 2, 1994 letter from DNREC to  
11 Keystone. Do you see that?  
12 A. Yes.  
13 Q. And do you see that DNREC  
14 granted approval for operation of a coal  
15 unloading facility on the coal pier which  
16 is part of the Keystone project. Do you  
17 see that?  
18 A. Yes.  
19 Q. Wouldn't you agree with me  
20 that as of 1994 Delaware was continuing  
21 to exercise regulatory authority over the  
22 pier on the Keystone project?  
23 A. Correct.  
24 Q. Exhibit Broderick-16. If

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1 I'm going too fast slow me down.  
2 A. I'm good.  
3 Q. 16 is a document bearing  
4 Delaware Bates number 2407 to 2408. It's  
5 another supplemental approval granted to  
6 Keystone by DNREC to amend the subaqueous  
7 lands lease for constructing the pier on  
8 Delaware land, and this one is dated  
9 January 6, 1995. So we see in 1995  
10 Delaware was continuing to exercise its  
11 regulatory authority over the Keystone  
12 pier extending into the Delaware River  
13 within the Twelve Mile Circle, correct?  
14 A. Are we on 16?  
15 Q. Yes.  
16 A. I'm looking for the date.  
17 Q. Look at the body of the  
18 first paragraph.  
19 A. Because if I look at the end  
20 it says December 1994.  
21 Q. Right. Look at the  
22 effective date in the first paragraph.  
23 A. Okay.  
24 Q. Do you see it handwritten in

90

1 there?  
2 **A. Yes.**  
3 **Q.** So is the answer to my  
4 question yes, I don't have TO repeat the  
5 whole thing again?  
6 **A. Yes.**  
7 **Q.** Exhibit-17 is a document  
8 bearing Delaware Bates number 2294, which  
9 is a letter to Logan Generating Company  
10 from DNREC where DNREC grants a one-year  
11 extension of the subaqueous lands permit  
12 to dredge. Do you see that?  
13 **A. Yes.**  
14 **Q.** So as of 1995 DNREC was  
15 exercising regulatory authority over  
16 dredging operations at the Logan  
17 facility, the Keystone facility, correct?  
18 **A. Yes.**  
19 **Q.** Exhibit-18 is document  
20 bearing Delaware Bates number 2308 to  
21 2311. It's a letter from DNREC to Logan,  
22 otherwise known as Keystone, for  
23 maintenance dredging at the Logan  
24 Keystone plant. Do you see that?

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1 **A. Yes.**  
2 **Q.** So as of '97 Delaware was  
3 continuing to exercise regulatory  
4 authority over dredging operations at  
5 Keystone, correct?  
6 **A. Yes.**  
7 **Q.** Exhibit-19 is a document  
8 bearing Delaware Bates numbers 2409  
9 through 2413, which is another subaqueous  
10 lands lease granted to Logan, otherwise  
11 known as Keystone, to build two 25 foot  
12 by 25 foot Mooring dolphins, six 16 foot  
13 by 16 foot breasting dolphins, a 70 foot  
14 by 105 foot dock, a 22 foot by 450 foot  
15 pier, four 4 foot by 109 foot dock  
16 sections, two 4 foot by 104.5 foot dock  
17 sections, two 2 foot by 4 foot dock  
18 sections and a 10 foot by 10 foot loading  
19 platform at the Keystone facility, dated  
20 November 9, 2001. Do you see that?  
21 **A. Yes.**  
22 **Q.** As of 2001, Delaware had  
23 continued to issue subaqueous lands  
24 leases to the Keystone facility, correct?

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1 **A. Yes.**  
2 **Q.** Do you know if Keystone also  
3 applied to New Jersey for riparian grant  
4 or license for this same area?  
5 **A. No, I wouldn't know that.**  
6 **Q.** Would that be something Mr.  
7 Castagna would know?  
8 **A. I would believe so, yes.**  
9 **Q.** Are you not involved in the  
10 riparian grants and license process?  
11 **A. Basically, no.**  
12 **Q.** So when someone comes with a  
13 waterfront development act permit  
14 application, do those permit applications  
15 sometimes involve riparian grants or  
16 licenses?  
17 **A. Yes.**  
18 **Q.** That's not something that  
19 you would handle, that's handled by  
20 someone else?  
21 **A. It would be handled by the**  
22 **Bureau of Tidelands.**  
23 **Q.** Mr. Castagna is with the  
24 Bureau of Tidelands, correct?

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1 **A. Correct.**  
2 **Q.** So Mr. Broderick, just to  
3 put a point on this as far as the  
4 Keystone project is concerned, and I  
5 think to use your words, New Jersey and  
6 Delaware exercised joint regulatory  
7 authority over the overall project,  
8 correct?  
9 **A. It would appear that way,**  
10 **yes.**  
11 **Q.** As far as the pier is  
12 concerned, it appears that Delaware was  
13 exercising regulatory authority over the  
14 pier and dredging operations, correct?  
15 **A. In addition to the State of**  
16 **New Jersey.**  
17 **Q.** Right. I think if you look  
18 through the New Jersey documents you  
19 won't see a lot of approvals for the pier  
20 or continuing approvals for the pier or  
21 dredging operations or riparian leases or  
22 grants. So I want to understand your  
23 qualification to my question. I think  
24 you're saying that when New Jersey

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1 approved the project as a whole it  
 2 approved the pier as well?  
 3 **A. Yes.**  
 4 **Q. Typically when New Jersey**  
 5 **has a project which involves both the**  
 6 **uplands and a portion of it extending**  
 7 **into the river, does it approve that**  
 8 **under one permit or does it have separate**  
 9 **permits under the Waterfront Development**  
 10 **Act and other acts?**  
 11 **A. In almost all instances**  
 12 **where we can issue one document we would**  
 13 **issue just one document.**  
 14 **Q. Do you know what document**  
 15 **was issued for Keystone?**  
 16 **A. I believe it was a stream**  
 17 **encroachment, freshwater wetlands and a**  
 18 **waterfront development permit with both**  
 19 **upland and in-water components.**  
 20 **Q. I'm sorry I didn't bring**  
 21 **that with me. I'll look at that as well.**  
 22 **Do you want to take five minutes?**  
 23 **MR. SEITZ: Off the record.**  
 24 **(Whereupon a break was taken.)**

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1 **(Whereupon documents were marked**  
 2 **Broderick-20 through Broderick**  
 3 **Broderick-28 for identification.)**  
 4 **BY MR. SEITZ:**  
 5 **Q. We left off at Fort Mott, I**  
 6 **believe. We have been going through the**  
 7 **projects that were contained in your**  
 8 **affidavit, the five permit applications**  
 9 **that you identified in your affidavit and**  
 10 **now we're up to Fort Mott. We have**  
 11 **premarked a bunch of exhibits, which**  
 12 **we're going to go through but before we**  
 13 **get to the exhibits I want to ask you a**  
 14 **couple general questions. First, Fort**  
 15 **Mott is where?**  
 16 **A. It's like the southwest**  
 17 **corner of New Jersey above -- I guess**  
 18 **it's a spot in the state where they could**  
 19 **actually defend by canon, river traffic.**  
 20 **Q. And it's within the Twelve**  
 21 **Mile Circle, correct?**  
 22 **A. I believe that it is, yes.**  
 23 **Q. What was your involvement**  
 24 **with the permitting for the refurbishment**

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1 of the wharf at Fort Mott State Park?  
 2 **A. I would have been**  
 3 **responsible for making sure that the**  
 4 **proposed use was acceptable and that when**  
 5 **it did go through the rehabilitation**  
 6 **process that it minimized impacts to a**  
 7 **maximum extent practical, as well as make**  
 8 **sure that there -- we also knew there was**  
 9 **a historic structure, so we had to**  
 10 **coordinate with our own historic people**  
 11 **to make sure that any I'll call it an**  
 12 **adaptive reuse and/or rehabilitation met**  
 13 **their standards as well.**  
 14 **Q. Did you personally have any**  
 15 **conversations with any Delaware**  
 16 **representatives about their regulatory**  
 17 **authority over the Fort Mott**  
 18 **refurbishment?**  
 19 **A. Not that I remember, no.**  
 20 **Q. Do you recall discussing the**  
 21 **issue of Delaware's jurisdiction**  
 22 **internally at New Jersey regarding**  
 23 **refurbishment of the pier?**  
 24 **A. We knew of it was a joint**

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1 **project -- the goal of the project was at**  
 2 **the end to reinstitute ferry service**  
 3 **between the Fort and Pea Patch Island,**  
 4 **which I think was wholly within Delaware**  
 5 **waters. So we were aware of it, yes.**  
 6 **Q. Was there any discussion**  
 7 **about what jurisdiction Delaware had over**  
 8 **a refurbishment of the pier in New**  
 9 **Jersey?**  
 10 **A. No.**  
 11 **Q. It just kind of happened or**  
 12 **what's your recollection?**  
 13 **A. I don't know that they ever**  
 14 **really commented on the specific**  
 15 **refurbishment. Again, we would have**  
 16 **taken our own permit path to look at is**  
 17 **the use acceptable and have they**  
 18 **minimized impacts to the maximum extent**  
 19 **that they could.**  
 20 **Q. When you say they --**  
 21 **A. When I say they, I always**  
 22 **refer to the applicant, which in this**  
 23 **instance would have been Parks and**  
 24 **Forestry.**

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1 Q. We should then take a look  
 2 at some of the documents and maybe that  
 3 will then draw some more information out  
 4 of you about what happened. Looking at  
 5 Broderick-20, which is in front of you,  
 6 it's a document with Bates number  
 7 Delaware 1817 to 1818, and it's  
 8 memorandum, January 8, 1995 with a big  
 9 smudge in the middle of it. This must  
 10 have been the best we could have done in  
 11 the files. First of all, do you know who  
 12 Gregory Marshall is, who is the recipient  
 13 of the memo?

14 A. At the time he was director  
 15 of Division of Parks and Forestry.

16 Q. Who was Dan Saunders?

17 A. Dan Sanders was one of their  
 18 project managers under the state  
 19 historical office.

20 MS. CHUDZIK: State Historic  
 21 Preservation Office.  
 22 BY MR. SEITZ:

23 Q. Thank you. Mr. Broderick,  
 24 this is a memorandum of agreement. Do

99

1 you see that it's titled that?

2 A. Yes.

3 Q. It says it's a draft. This  
 4 is a draft memorandum of agreement  
 5 between the historical interests and the  
 6 parks or can you tell me who are the  
 7 parties to this agreement?

8 MS. CHUDZIK: I'm going to  
 9 object to the characterization of  
 10 the document. I think it  
 11 discusses the agreement; it's not  
 12 the agreement itself.

13 MR. SEITZ: Thank you for  
 14 clearing that up for me.  
 15 BY MR. SEITZ:

16 Q. It discusses a draft  
 17 memorandum of agreement. Who was the  
 18 memorandum of agreement between, do you  
 19 remember or who would it have been  
 20 between?

21 A. It looks from the  
 22 information here it would be between  
 23 Delaware Historic Preservation and the  
 24 New Jersey Office of Historic

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1 Preservation.

2 Q. Were you involved in the  
 3 preparation of this memorandum of  
 4 agreement that's referred to?

5 A. No.

6 Q. If you look down at the  
 7 paragraph that has the smudge, the second  
 8 paragraph, why don't you read that to  
 9 yourself the best you can, okay. Then  
 10 I'll ask you some questions about it.

11 A. (Witness reading.) Okay.

12 Q. I know it's a little hard to  
 13 read, but would you agree with me that  
 14 the gist of it is that New Jersey  
 15 operated under, as it says here, a  
 16 working assumption that because part of  
 17 the structure that was being  
 18 rehabilitated would be in Delaware waters  
 19 that Delaware would regulate that portion  
 20 of the project?

21 A. I would read it to say that  
 22 pier and/or wharf was constructed prior  
 23 to any Supreme Court decision  
 24 establishing where the state line was and

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1 that the only portion of the  
 2 rehabilitation that would actually be in  
 3 Delaware waters would be the Newark that  
 4 would surround the existing pier.

5 Q. Right. So would you agree  
 6 that the last sentence says, "...the new  
 7 structure will therefore be in the State  
 8 of Delaware?" Do you see that?

9 A. I do read that.

10 Q. As I understand it, maybe  
 11 you can correct me if I'm wrong but there  
 12 was an existing structure but a new one  
 13 was going to be built around the old  
 14 structure, correct?

15 A. As I remember, it was just  
 16 basically reinforcement work around the  
 17 outside of the existing historic  
 18 structure. It's like building of a  
 19 bulkhead -- remember we talked about  
 20 wharves earlier, this is something that I  
 21 would call a wharf because it's a  
 22 filled-type structure.

23 Q. It says here, the  
 24 rehabilitation of the pier will be

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1 accomplished by building new structure  
2 around the existing pier and that's what  
3 you're talking about, right?  
4 **A. Correct.**  
5 **Q.** The new structure will,  
6 therefore, be in the State of Delaware.  
7 Did you understand that to be the case  
8 when you were processing this permit  
9 application, mainly that part of this  
10 would be in the State of Delaware?  
11 **A.** I knew that there was a  
12 portion of the overall project that was  
13 going to be in waters in the State of  
14 Delaware. I don't know that this  
15 particular memo, since it wasn't copied  
16 to Land Use Regulation, would have been  
17 in our permit file. So I can't say. I  
18 mean, I can say I don't know -- I would  
19 have known it was going to be in Delaware  
20 waters except like in the other projects  
21 we reviewed, we would have taken a  
22 position that we had the ability to issue  
23 waterfront development permits for  
24 structures outshore of our shoreline.

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1 **And I believe that the whole**  
2 **rehabilitation was subject to our**  
3 **jurisdiction.**  
4 **Q.** Let me clarify that a little  
5 bit. When you say subject to your  
6 jurisdiction, are you saying that it was  
7 exclusive to New Jersey or that Delaware  
8 might also have jurisdiction?  
9 **A.** We knew that Delaware --  
10 there's a difference between the project  
11 and the pier. So we knew that there was  
12 Delaware jurisdiction over portions of  
13 the project because there was also  
14 rehabilitation work on Pea Patch Island  
15 but I would not have taken the position  
16 -- it's not -- I can't say for sure.  
17 It's not likely I would have taken the  
18 position that Delaware also had the  
19 authority to approve this particular work  
20 or needed to approve this particular  
21 work.  
22 **Q.** Let's look at Exhibit-21,  
23 which is a DEP Land Use Regulation  
24 Program application form, okay?

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1 **A. Okay.**  
2 **Q.** The applicant name is New  
3 Jersey DEP, Division of Parks and  
4 Forestry. This is a document bearing New  
5 Jersey Bates number 5423 to 5439, okay?  
6 **A. Yes.**  
7 **Q.** If you look, this is an  
8 application by DEP for the Fort Mott  
9 State Park project, correct?  
10 **A. Correct.**  
11 **Q.** It talks about  
12 rehabilitation of the pier, right?  
13 **A. Yes.**  
14 **Q.** That was the goal of the  
15 project. Then if you turn to the second  
16 page under permit modification, are you  
17 with me?  
18 **A. Yes.**  
19 **Q.** It says, State - Delaware  
20 Department of Natural Resources and  
21 Environmental Control. Then it also  
22 refers to US Army Corps?  
23 **A. Correct.**  
24 **Q.** So I think you said earlier

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1 that it wouldn't have been your  
2 understanding that Delaware had any  
3 jurisdiction but here we have a form  
4 where DEP is saying as part of the permit  
5 modification that the State of Delaware  
6 is part of the process, correct, for the  
7 pier?  
8 **A.** It says there are other  
9 permits -- well, for clarification for  
10 starters, this wouldn't be under permit  
11 modification. It would be under the  
12 section with where -- I mean, the section  
13 of LURP form is for people tell us what  
14 other permits that they know are going to  
15 be necessary.  
16 **Q.** Okay.  
17 **A.** So it's not permit  
18 modification. It would be other where  
19 they then specify the Army Corps of  
20 Engineers and specify the State  
21 Department of Natural Resources for  
22 Delaware.  
23 **Q.** Correct.  
24 **A.** But it doesn't necessarily

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1 specify since we already knew that  
2 portions of the project as referenced on  
3 the first page were on Pea Patch Island,  
4 it wouldn't necessarily be clear to me by  
5 reading it that this was for the pier and  
6 not for Pea Patch Island, without looking  
7 at some other supporting documentation.  
8 Q. Do you know whether there  
9 were any approvals necessary from  
10 Delaware for what was going on on Pea  
11 Patch Island?  
12 A. If there was -- well --  
13 Q. Because this is talking  
14 about the pier.  
15 A. It's unspecified as to any  
16 improvements that may have been occurring  
17 on Pea Patch Island or at Fort DuPont.  
18 Q. There's a fee calculation  
19 here, right?  
20 A. Correct.  
21 Q. What's that fee calculation  
22 based on?  
23 A. Waterfront Development  
24 Permit applications are based on a

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1 percentage of what the total project  
2 costs are.  
3 Q. Do you know whether the  
4 total project costs included any  
5 component for what was going to happen on  
6 Pea Patch Island?  
7 A. As part of our fee  
8 calculations, we generally get a sheet  
9 where the applicant specifies how the fee  
10 was calculated. So by looking at that  
11 particular number, I couldn't tell you.  
12 Q. I want to understand your  
13 testimony, though because we're going to  
14 get into some later documents that it's  
15 your testimony that as far as you were  
16 concerned New Jersey had exclusive  
17 regulatory authority over the pier being  
18 built as part of the Fort Mott project?  
19 A. Correct.  
20 Q. Let's look at deposition  
21 Exhibit-22, which is a document bearing  
22 Delaware Bates number 1797 to 1798.  
23 A. Okay.  
24 Q. This is a letter to Mr.

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1 Cianfrani, who is with the Corps from an  
2 archeologist at the State of Delaware,  
3 okay?  
4 A. Yes.  
5 Q. In here Delaware took the  
6 position, would you agree, that because  
7 the pier is located within the State of  
8 Delaware they were participating in the  
9 review process for the Army Corps  
10 permits?  
11 A. That is the position.  
12 Q. Turning to the next exhibit,  
13 which is 23, which is a document bearing  
14 Delaware Bates number 1801, we have a  
15 letter from DNREC William Moyers who is  
16 the program manager of Wetlands and  
17 Subaqueous Land Section to New Jersey DEP  
18 where the State of Delaware waives the  
19 water quality certification. Do you see  
20 that?  
21 A. Correct.  
22 Q. Why was Delaware waiving the  
23 water quality certification if it had no  
24 regulatory authority over this project?

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1 MS. CHUDZIK: Again, I'll  
2 object on the basis of foundation.  
3 I'm not sure he has the ability to  
4 testify to this.  
5 THE WITNESS: It would  
6 appear from reading the letter  
7 that this -- this is generated in  
8 response to a question raised by  
9 the Army Corps of Engineers who  
10 would need a water quality  
11 certificate to allow the work to  
12 go forward.  
13 BY MR. SEITZ:  
14 Q. Why wouldn't they ask New  
15 Jersey for that?  
16 MS. CHUDZIK: Same  
17 objection.  
18 THE WITNESS: Our permit  
19 that we would have issued would  
20 have automatically included the  
21 work quality certificate as part  
22 of that.  
23 BY MR. SEITZ:  
24 Q. I apologize for being

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1 confused a little bit, but if New Jersey  
2 issued the water quality certificate --  
3 **A. Correct.**  
4 **Q. -- why was the Army Corps of**  
5 **Engineers asking Delaware for a waiver?**  
6 **MS. CHUDZIK: Again, object**  
7 **based upon foundation. I'm not**  
8 **sure he's competent to testify to**  
9 **that.**  
10 **THE WITNESS: I don't know.**  
11 **BY MR. SEITZ:**  
12 **Q. Let's look at Exhibit-24**  
13 **please, which is a document bearing**  
14 **Delaware Bates number 1802 to 1808, which**  
15 **contains a Subaqueous Lands Lease granted**  
16 **by the State of Delaware to New Jersey**  
17 **Department of Environmental Protection.**  
18 **Do you see that?**  
19 **A. Yes.**  
20 **Q. If New Jersey had exclusive**  
21 **regulatory jurisdiction, why was New**  
22 **Jersey asking Delaware for a subaqueous**  
23 **lands lease?**  
24 **A. I believe the lease not only**

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1 **addresses reconstruction of the pier but**  
2 **an additional area outside of the pier**  
3 **structure.**  
4 **Q. Let's look at the title of**  
5 **the lease. For the reconstruction of a**  
6 **pier to include a placement of a barge**  
7 **30 feet by 100 feet and a pile-supported**  
8 **platform 10 feet by 10 feet on the**  
9 **Delaware River in New Castle County**  
10 **adjacent to New Jersey Fort Mott State**  
11 **Park. So that lease includes the pier,**  
12 **does it not?**  
13 **A. It would appear to, yes.**  
14 **Q. Back to my question, why is**  
15 **New Jersey DEP asking Delaware for a**  
16 **subaqueous lands lease if New Jersey**  
17 **takes the position that it has exclusive**  
18 **regulatory jurisdiction over this**  
19 **project?**  
20 **A. I don't know.**  
21 **Q. So does that cause you to**  
22 **question your statement that New Jersey**  
23 **was, in fact, asserting exclusive**  
24 **jurisdiction over the pier as part of the**

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1 Fort Mott project?  
2 **A. No.**  
3 **Q. This contradicts that**  
4 **opinion, does it not?**  
5 **A. It would appear to.**  
6 **Q. Do you know who at New**  
7 **Jersey DEP made the request for a**  
8 **subaqueous lands lease?**  
9 **A. No, only that it came from**  
10 **the Division of Parks and Forestry and**  
11 **probably would have -- it would appear to**  
12 **have been Department Director Carl**  
13 **Nordstrom based on the signature on page**  
14 **1808.**  
15 **Q. Who is Carl Nordstrom?**  
16 **A. At the time he was Deputy**  
17 **Director of the Division of Parks and**  
18 **Forestry.**  
19 **Q. Do you know whether it was**  
20 **the policy of DEP to have documents like**  
21 **this reviewed by legal counsel before**  
22 **they were executed by representatives of**  
23 **the state?**  
24 **A. We have a lot of documents**

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1 **that we generate reviewed by counsel**  
2 **prior to issuance, but I couldn't tell**  
3 **you, because it's a different division,**  
4 **whether it was their standard operating**  
5 **procedure to have it looked at prior to**  
6 **signing.**  
7 **Q. I'm going to skip 25 for now**  
8 **and move to 26. Exhibit-26 is a document**  
9 **bearing Bates number DE1885 to 1886,**  
10 **which is a letter from New Jersey DEP to**  
11 **a representative at the Delaware River**  
12 **and Bay Authority. Do you have that?**  
13 **A. Yes.**  
14 **Q. This is a 1997 letter. This**  
15 **is Carl Nordstrom again, the deputy**  
16 **director we were just referring to,**  
17 **correct, who wrote this document?**  
18 **A. Correct.**  
19 **Q. In the first paragraph it**  
20 **says that he has reviewed the land lease**  
21 **and then goes on to talk about the**  
22 **licenses that apply to this project. Do**  
23 **you see that?**  
24 **A. I believe so, yes.**

114

1 Q. He first refers to a  
 2 tidelands resource license and you know  
 3 what that is, right?  
 4 A. Yes.  
 5 Q. That would be a license  
 6 issued by New Jersey, correct?  
 7 A. Yes.  
 8 Q. Then it refers to the  
 9 Delaware subaqueous lease on the second  
 10 page. Mr. Nordstrom says, the division  
 11 also accepts full responsibility for the  
 12 renewal of this lease for the initial and  
 13 renewal term of our proposed agreement.  
 14 Do you see that?  
 15 A. Yes.  
 16 Q. Would you agree with me that  
 17 this, once again, is inconsistent with  
 18 your opinion that New Jersey had  
 19 exclusive regulatory authority over the  
 20 pier at Fort Mott?  
 21 A. **It would be appear to be**  
 22 **inconsistent with my position, yes.**  
 23 Q. Looking at Exhibit-27, which  
 24 is a document bearing Bates number DE1976

115

1 to 1980, Mr. Broderick, this is  
 2 subaqueous lands lease granted to New  
 3 Jersey DEP for the reconstruction of the  
 4 pier granted February 7, 1996. Do you  
 5 see that?  
 6 A. Yes.  
 7 Q. The question I would ask you  
 8 again is, is this document also  
 9 inconsistent with your opinion that  
 10 Delaware had exclusive regulatory  
 11 jurisdiction over the Fort Mott project?  
 12 MS. CHUDZIK: Just for  
 13 purposes of the record, I think  
 14 you might have meant New Jersey in  
 15 that question.  
 16 MR. SEITZ: Thank you for  
 17 clearing it up if I got it wrong.  
 18 BY MR. SEITZ:  
 19 Q. Does this document, is it  
 20 inconsistent with your opinion that New  
 21 Jersey has exclusive regulatory  
 22 jurisdiction over the Fort Mott project?  
 23 A. Again, it would appear that  
 24 way, yes.

116

1 MR. SEITZ: I'm going to  
 2 skip Exhibit-28 as well. Everyone  
 3 is going to be confused. I want  
 4 the record to be clear, that I did  
 5 not use Exhibit 28 or 25.  
 6 BY MR. SEITZ:  
 7 Q. Let's turn next to the boat  
 8 ramp.  
 9 (Whereupon document was marked  
 10 Broderick-29 for identification.)  
 11 BY MR. SEITZ:  
 12 Q. Mr. Broderick, we have put  
 13 before you Broderick-29, which bears New  
 14 Jersey Bates number 4413 to 4415. I  
 15 believe this is the boat ramp  
 16 rehabilitation that's referred to in your  
 17 affidavit, correct?  
 18 A. Yes.  
 19 Q. And refresh my memory, did  
 20 you have personal knowledge of this or  
 21 you don't?  
 22 A. **I believe this was one of**  
 23 **the ones where it was the time frame I**  
 24 **was involved in the review but did not**

117

1 **have or don't have -- didn't remember it**  
 2 **until the file review.**  
 3 Q. Do you have your affidavit  
 4 there?  
 5 A. Yes.  
 6 Q. Paragraph 15, that's the  
 7 boat ramp that we're referring to in  
 8 Exhibit-29, correct?  
 9 A. Correct.  
 10 Q. There's a statement in your  
 11 affidavit, at the boat ramp location mean  
 12 low water is approximately 60 feet from  
 13 the bulkhead and the ramp extends at  
 14 least 30 feet beyond the mean low water  
 15 line within the Twelve Mile Circle. Did  
 16 you measure that?  
 17 A. **Physically measure it?**  
 18 Q. Yes.  
 19 A. **I wouldn't have, no.**  
 20 Q. Where did the information --  
 21 is that what somebody told you it was?  
 22 A. **No. It would have been**  
 23 **information that would have been pulled**  
 24 **from the permit file.**

118

1 Q. Does the permit file mark  
 2 the mean low water line?  
 3 A. Yes.  
 4 Q. And did you look at the  
 5 permit file and make this determination  
 6 that the boat ramp location mean low  
 7 water was about 60 feet from the  
 8 bulkhead?  
 9 A. **That would have been where**  
 10 **the statement came from, yes.**  
 11 Q. Did you do that or did  
 12 someone else do that?  
 13 A. **No, I would have looked at**  
 14 **it.**  
 15 Q. How did you figure out it  
 16 was 30 feet beyond the mean low water  
 17 line?  
 18 A. **Well, at this point I don't**  
 19 **have access to the plans, so I couldn't**  
 20 **describe how we arrived at the**  
 21 **description.**  
 22 Q. Do you recall personally  
 23 measuring it or how did it happen?  
 24 A. **All the plans we receive**

119

1 **with permit applications are scalable.**  
 2 **It's simple enough to throw a scale on**  
 3 **the plan and see what the distances are.**  
 4 Q. Looking at Exhibit-29, do  
 5 you remember what or could you describe  
 6 for me what was being done?  
 7 A. **It was essentially**  
 8 **rehabilitation of an existing -- what**  
 9 **would have been at the time a**  
 10 **deteriorated concrete boat ramp?**  
 11 Q. And the boat ramp extended  
 12 from above the high water mark to 30 feet  
 13 beyond the mean low water mark?  
 14 A. **Correct, but it also had an**  
 15 **upland component and it was proposing**  
 16 **construction of parking spaces to promote**  
 17 **usage of the rehabilitated boat ramp.**  
 18 Q. Do you know what was  
 19 involved? Was the old concrete taken out  
 20 and new concrete poured or how did it  
 21 occur?  
 22 A. **Generally that is what**  
 23 **happens, they take out the old and put in**  
 24 **-- it doesn't say expand it, so based on**

120

1 **this particular permit it would appear**  
 2 **that they pulled it out and put it back**  
 3 **into the same spot.**  
 4 Q. Do you know how long that  
 5 concrete boat ramp had existed at that  
 6 location?  
 7 A. **No.**  
 8 Q. If you look in Exhibit-29,  
 9 it appears that there is a riparian  
 10 instrument that would accompany it; is  
 11 that right?  
 12 A. **Correct.**  
 13 Q. Does that tell you that  
 14 there was a riparian grant that  
 15 accompanied the first construction of the  
 16 ramp or is that too hard to tell?  
 17 A. **You wouldn't be able to tell**  
 18 **by reading this how extensive the**  
 19 **riparian instrument was.**  
 20 Q. Do you know whether anyone  
 21 at Delaware whether at DNREC or otherwise  
 22 was aware that this work was being done?  
 23 A. **Not that I know of.**  
 24 Q. As far as you're aware, no

121

1 one within your department had informed  
 2 Delaware that this permit was being  
 3 requested, correct?  
 4 A. **Not that I know of, no.**  
 5 Q. Let's turn to the next  
 6 exhibit, please?  
 7 (Whereupon document was marked  
 8 Broderick-30 for identification.)  
 9 BY MR. SEITZ:  
 10 Q. Mr. Broderick, we have  
 11 marked as Exhibit-30 a document bearing  
 12 New Jersey Bates number 4416 to 4418,  
 13 which is a permit which is referred to in  
 14 the last paragraph of your affidavit,  
 15 correct?  
 16 A. **Correct.**  
 17 Q. And could you tell me --  
 18 first of all, I think you said you did  
 19 not have personal knowledge of this  
 20 installation; am I correct?  
 21 A. **Correct. It would have come**  
 22 **from review of the file.**  
 23 Q. And it looks like there was  
 24 113 linear feet of 30-inch PVC storm

122

1 water force main pipes with a 30-inch  
2 steel goose neck for discharge into the  
3 Delaware River?  
4 **A. Correct.**  
5 Q. Then it also looks like  
6 there was rip-rap between beneath the  
7 proposed goose neck on an intertidal  
8 beach area?  
9 **A. Correct.**  
10 Q. Do you know whether the  
11 intertidal beach area for this permit  
12 application is above or below the mean  
13 water line?  
14 **A. It's not specified in this**  
15 **document. We wouldn't be able to tell**  
16 **without looking at the development plans**  
17 **for the case.**  
18 Q. In your affidavit there's a  
19 statement that the improvements through  
20 the intertidal beach area extend  
21 approximately 9 feet beyond the mean low  
22 tide line within the Twelve Mile Circle.  
23 Do you see that?  
24 **A. Yes.**

123

1 Q. Do you recall how you would  
2 have come up with that 9 feet?  
3 **A. One of our standard**  
4 **requirements for submission of a**  
5 **waterfront development permit is that the**  
6 **plans need to contain a certain set of**  
7 **information. We generally ask for mean**  
8 **low water line, the mean high water line,**  
9 **limits riparian conveyance, generally**  
10 **structures on adjacent properties, those**  
11 **sorts of things. So in just simply being**  
12 **able -- if you received a plan that**  
13 **satisfied all those say even those**  
14 **limited requirements, then you would be**  
15 **able to tell how far it extended out**  
16 **beyond the mean low water line.**  
17 Q. Is it fair to say that this  
18 is extension of storm water pipes for  
19 drainage into the Delaware River?  
20 **A. Yes.**  
21 Q. So just stepping back from  
22 this project for a second, in your  
23 affidavit from all of the documents that  
24 you reviewed, including the computerized

124

1 database from 1980 to present, you have  
2 come up with five examples of projects  
3 that originate with the New Jersey shore  
4 and extend past the mean low water line  
5 into Delaware territory within the Twelve  
6 Mile Circle, correct?  
7 **A. That is true.**  
8 Q. And of those five we have  
9 discussed three of them -- DuPont,  
10 Keystone and Fort Mott, whereas we have  
11 seen today through the documents Delaware  
12 also exercised some kind of joint  
13 jurisdiction with New Jersey over those  
14 projects, correct?  
15 **A. That is true.**  
16 Q. So the remaining two  
17 projects where we don't appear to have  
18 any Delaware connection are a replacement  
19 of concrete boat ramp and a 9-foot  
20 encroachment of a storm water pipe into  
21 the Delaware River, correct?  
22 **A. Correct.**  
23 Q. For the 9-foot encroachment  
24 into the Delaware River, are you aware of

125

1 anyone in New Jersey informing Delaware  
2 that the project was being undertaken?  
3 **A. No.**  
4 Q. Let's turn to the Crown  
5 Landing project for a second before we  
6 conclude here. What has been your  
7 involvement, if any, with the Crown  
8 Landing application to build the LNG  
9 terminal?  
10 **A. I would say my involvement**  
11 **to date has been very limited.**  
12 Q. What's your limited  
13 involvement?  
14 **A. The way that the department**  
15 **is currently structured, applications**  
16 **that require dredging and/or are**  
17 **considered port development are handled**  
18 **by the office of Dredging and Sediment**  
19 **Technology. They mostly arose -- it used**  
20 **to be all the waterfront development**  
21 **permits used to be handled by our office,**  
22 **but after -- or as we were going through**  
23 **some of the dredging problems up in**  
24 **Newark Bay and on the Hudson River for**

126

1 port continuance it was felt that the  
2 dredging function was better handled  
3 and/or associated with site remediation  
4 program. So there was a small breakout  
5 group that was pulled and placed under  
6 what's called the Office of Dredging and  
7 Sediment Technology. They report to the  
8 director of Site Remediation. But also  
9 associated with Crown Landing project are  
10 several gas lines to take the gas away  
11 from the proposed LNG site. That's been  
12 my primary area of focus in that right  
13 now the project -- or those permits have  
14 been withdrawn because it was my position  
15 that the permits were really not right  
16 for consideration since we didn't know  
17 first of all the result of this court  
18 case and as a result whether or not that  
19 project would ever actually move forward.  
20 So it didn't make sense from a management  
21 perspective to assign staff to a permit  
22 that would take a lot of work for the gas  
23 lines if it was never going to happen.  
24 So that's been my area of involvement.

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1 Q. Are you talking about gas  
2 lines on the land or under the water?  
3 A. This would be gas lines  
4 coming from the eventual LNG site itself.  
5 So it would be -- there would be upland  
6 waterfront development jurisdiction.  
7 There would be Freshwater Wetland  
8 Protection Act jurisdiction. There might  
9 be some Flood Hazard Area Control Act  
10 permits required, but it would be  
11 basically from the inland -- from the  
12 facility. If this is the water, the  
13 crack in the table is the water, here's  
14 the facility would be the pipes coming  
15 from the facility moving eastward  
16 (witness indicating).  
17 Q. In other words, when you  
18 were point to your example on the table,  
19 basically all the activity on the upland  
20 side which might include some wetlands?  
21 A. Correct.  
22 Q. So it doesn't deal with any  
23 issue of dredging in Delaware waters,  
24 correct, or Delaware soil?

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1 A. No.  
2 Q. Other than that involvement,  
3 have you had any other involvement with  
4 the Crown Landing project? You did this  
5 affidavit, obviously?  
6 A. Right. This doesn't  
7 necessarily address Crown Landing.  
8 It's -- I know the department is  
9 reviewing it. I have not looked at the  
10 impact statements associated with it. A  
11 lot of the information that I know was  
12 being submitted is all propriety because  
13 of Homeland Security, so they're keeping  
14 a fairly close lid on it.  
15 Q. What regulatory approvals  
16 would have to go through you, I think you  
17 said your involvement was with the  
18 dredging aspect of it; is that correct?  
19 MS. CHUDZIK: I'm going to  
20 object on relevance. I believe  
21 there is limiting language in the  
22 Order of the Special Master with  
23 regard to discovery permits  
24 regarding this project.

129

1 THE WITNESS: I would not be  
2 involved. That's the other  
3 office. That's the Office of  
4 Dredging and Sediment Technology  
5 that's involved with the dredging.  
6 BY MR. SEITZ:  
7 Q. Permits for this project  
8 don't go through you for the Crown  
9 Landing project don't go through you?  
10 A. Other than the gas lines.  
11 Q. Other than what you already  
12 said?  
13 A. Right.  
14 Q. Have you been involved in  
15 any discussions with anyone about the  
16 impact of the 1905 Compact on the ability  
17 of the Crown Landing project to proceed,  
18 other than with your attorneys?  
19 A. No.  
20 Q. You haven't been to any  
21 meetings with anybody at DEP discussing  
22 how the Compact has impacted the Crown  
23 Landing project?  
24 A. No discussions other than

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1 some that have occurred with counsel.  
2 Q. Are you aware of any  
3 examples where New Jersey objected to  
4 Delaware exercising concurrent  
5 jurisdiction with New Jersey for projects  
6 within the Twelve Mile Circle?  
7 A. I can't remember any  
8 objections from either side.  
9 MR. SEITZ: Give me a couple  
10 of minutes.  
11 (Whereupon a break was taken.)  
12 BY MR. SEITZ:  
13 Q. Mr. Broderick, I brought  
14 with me, through great personal trouble,  
15 a bunch of maps. These bear Bates number  
16 DE28987 through 28992, okay. These maps  
17 are titled 1934 Mean Low Water Line  
18 Delaware-New Jersey. They are in  
19 sections which you will see cover the  
20 Twelve Mile Circle sections 1 through 6.  
21 And on these charts or these maps I'll  
22 represent to you there's a yellow line  
23 that's drawn here. The purpose of that  
24 yellow line is to mark the 1934 mean low

131

1 water line. It's essentially an overlay  
2 of that onto the shoreline as of 2005,  
3 okay?  
4 A. Okay.  
5 Q. So since you're an expert on  
6 every inch of this coastline going down  
7 the Delaware River and up the coast,  
8 let's look at the Delaware River section  
9 here. I wonder if you could, we're  
10 looking at section 1 and I'm pretty sure,  
11 correct me if I'm wrong, that what we see  
12 the dock extends out on section 1 right  
13 below the tanker that appears to be  
14 anchored out in the middle of the  
15 Delaware River, that's the Keystone  
16 project; is that correct?  
17 A. That's what it appears to  
18 be, yes.  
19 Q. And then if we go further  
20 south, what I really need you to do or to  
21 help me with is to identify where the  
22 boat ramp is and where the outfall pipe  
23 projects, if you can, on these maps.  
24 A. This is Pennsgrove so I

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1 think we're still further south.  
2 Pennsville, I think is still south of  
3 here.  
4 Q. Correct. The Delaware  
5 Memorial Bridge is section 3, correct.  
6 A. Correct.  
7 Q. We're looking at section 4  
8 now below the middle of it --  
9 A. This would be Fort Mott.  
10 Q. -- we're looking at a pier  
11 that extends out in the bottom half of  
12 the map which is probably Fort Mott.  
13 That probably is farther south than the  
14 two we're looking for, right, the boat  
15 ramp and the pipe?  
16 A. Right. Can I see --  
17 Q. Take look a section 3?  
18 A. Yes.  
19 Q. I think you're looking at  
20 the town of Pennsville south of the  
21 Delaware Memorial Bridge there. The  
22 first thing you see along the Jersey  
23 shoreline appears to be a jetty of some  
24 sort and there appears to be some kind of

133

1 dock structure here, bottom left-hand  
2 corner.  
3 A. You really can't tell from  
4 this particular photography where those  
5 projects are located.  
6 Q. Here's my attempt at a  
7 point, okay?  
8 A. Yes.  
9 Q. These maps try to recreate  
10 the 1934 mean low water line by the  
11 yellow line that follows the Jersey  
12 coastline.  
13 A. Okay.  
14 Q. And when in your affidavit  
15 you made the point that the outfall pipe  
16 went 9 feet past the mean low water line  
17 and the boat ramp I think of you made the  
18 point that it extended 30 feet past the  
19 mean water low line. Do you know when  
20 the mean low water line was calculated or  
21 when it was established that was used in  
22 your affidavit?  
23 A. Unless it was contained --  
24 well, we require that people use existing

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1 conditions when they apply for permits.  
 2 When you look at the mean high water line  
 3 it's a 19-year average compiled by the  
 4 Army Corps -- of elevation changes. It  
 5 ends up being set at a certain elevation  
 6 that then you can tie back into local  
 7 land benchmarks to determine where the  
 8 mean high and the mean low water line is.  
 9 Without looking at the development plan  
 10 for those projects, you wouldn't -- I  
 11 couldn't tell you what datum points were  
 12 used or whether they're even accurate.  
 13 Q. So is it fair to say that  
 14 for all of the projects, all of the five  
 15 projects you identified, that it's  
 16 uncertain whether -- let me try it again.  
 17 For all of the five projects  
 18 that you identified it's unclear whether  
 19 any of those projects extended beyond the  
 20 mean low water line as it existed in  
 21 1934?  
 22 A. That would be an unknown.  
 23 Q. You didn't mean to convey  
 24 that in your affidavit? You weren't

135

1 tying it to 1934, you were tying it to  
 2 existing conditions or a 19-year average  
 3 or whatever the people used as part of  
 4 their submission, the datum, to determine  
 5 mean low water line, correct?  
 6 A. Correct.  
 7 Q. So it wouldn't be correct to  
 8 rely upon those figures for extension  
 9 beyond mean low water line if the low  
 10 water line reference point was 1934 mean  
 11 low water line, correct?  
 12 A. I don't know that we would  
 13 use a 1934 mean low water line.  
 14 Q. That's a legal issue which  
 15 the lawyers will fight over what the  
 16 appropriate mean low water line is. I'm  
 17 trying to establish as a factual matter  
 18 you did not intend to represent to The  
 19 Court in your affidavit that those  
 20 distances beyond the mean low water line  
 21 were tied to a 1934 establishment of the  
 22 border, correct?  
 23 A. No, that the was not meant  
 24 to happen.

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1 MR. SEITZ: Thank you. I  
 2 think that's all I have.  
 3 We're going to mark as  
 4 Broderick deposition Exhibit-31  
 5 the maps we were just referring  
 6 to, which are sections 1 through 6  
 7 of maps entitled 1934 Mean Low  
 8 Water Line Delaware-New Jersey,  
 9 prepared by W.S. Schenck on  
 10 August 3, 2005. Thank you very  
 11 much, Mr. Broderick.  
 12 (Whereupon document was marked  
 13 Broderick-31 for identification.)  
 14 (Witness excused.)  
 15 (Deposition concluded at  
 16 approximately 1:45 p.m.)  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

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1  
 2 CERTIFICATE  
 3  
 4  
 5 I HEREBY CERTIFY that the  
 6 witness was duly sworn by me and that the  
 7 deposition is a true record of the  
 8 testimony given by the witness.  
 9  
 10  
 11  
 12 Samantha A. Oakley  
 Certified Shorthand Reporter  
 Date: September 27, 2006  
 13  
 14  
 15  
 16  
 17  
 18 (The foregoing certification  
 19 of this transcript does not apply to any  
 20 reproduction of the same by any means,  
 21 unless under the direct control and/or  
 22 supervision of the certifying reporter.)  
 23  
 24

1	LAWYER'S NOTES	
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IN THE SUPREME COURT  
OF THE UNITED STATES

- - -  
STATE OF NEW JERSEY :

v. :

STATE OF DELAWARE : NO. 134, Original

- - -  
October 24, 2006  
- - -

Oral deposition of RICHARD G.  
CASTAGNA, held at Richard J. Hughes  
Justice Complex, 25 Market Street,  
Trenton, New Jersey, 08625 commencing at  
9:45 a.m. on the above date, before  
Teresa M. Beaver, a Registered  
Professional Reporter and a Notary Public  
in the Commonwealth of Pennsylvania.

- - -  
ESQUIRE DEPOSITION SERVICES  
Four Penn Center  
1600 JFK Boulevard  
12th Floor  
Philadelphia, Pennsylvania 19103  
(215) 988-9191

2

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2

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13 Counsel for the Plaintiff

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1 - - -

2 EXHIBITS (CONTINUED)

3 - - -

4 NO. DESCRIPTION PAGE NO.

5

6 11 Agenda Technical

7 Briefing Meeting 107

8 12 State of New Jersey

9 Coastal Management

10 Program - Bay and Ocean

11 Shore Segment dated

12 May 1978 115

13 13 State of New Jersey

14 Coastal Management

15 Program - Bay and Ocean

16 Shore Segment and Final

17 Environmental Impact

18 Statement 115

19 14 Options for New Jersey's

20 Development Coast -

21 March 1979 120

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23

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2 INDEX

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4 WITNESS PAGE NO.

5 RICHARD G. CASTAGNA

6 By Mr. Attaway 5

7 - - -

8 EXHIBITS

9 - - -

10 NO. DESCRIPTION PAGE NO.

11

12 1 Affidavit of Richard G.

13 Castagna 13

14 2 Affidavit of Richard G.

15 Castagna 59

16 3 1905 Compact 95

17 4 Letter dated 1/29/71 107

18 5 Letter dated 2/19/71 107

19 6 Letter dated 4/5/71 107

20 7 Letter dated 10/15/82 107

21 8 Subaqueous Lands Permit 107

22 9 Letter dated 3/1/06 107

23 10 Letter dated 4/7/04 107

24

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2 EXHIBITS (CONTINUED)

3 - - -

4 NO. DESCRIPTION PAGE NO.

5

6 15 Proposed New Jersey

7 Coastal Management

8 Program and Draft

9 Environmental Impact

10 Statement 127

11 16 New Jersey Coastal

12 Management Program -

13 August 1980 127

14 17 Permit - Issuance date

15 September 24, 1991 145

16 18 Memo dated 8/28/91 159

17 19 Summary Analysis

18 dated 9/24/91 159

19 20 Memo daed 7/7/94 171

20 21 Permit - Issuance date

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22 22 New Jersey's Responses

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24 Requests for Admissions 183

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2           EXHIBITS (CONTINUED)

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8

1           - - -

2           RICHARD G. CASTAGNA, after

3           having been duly sworn, was

4           examined and testified as follows:

5           - - -

6           EXAMINATION

7           - - -

8           BY MR. ATTAWAY:

9           Q. Good morning, Mr. Castagna.

10          A. Good morning.

11          Q. My name is Scott Attaway and

12          I represent the State of Delaware in this

13          case, New Jersey versus Delaware, filed

14          in the Supreme Court of the United

15          States. The docket number is Original

16          Number 134.

17          Before we begin, I just want

18          to establish a few ground rules. First,

19          if you don't hear a question, please let

20          me know and I'll repeat it.

21          If you don't understand a

22          question, let me know and I'll try to

23          rephrase it.

24          And let me finish my

7

1           - - -

2           DEPOSITION SUPPORT INDEX

3           - - -

4			
5	Direction to Witness Not to Answer		
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9

1           question before you begin your answer and

2           likewise, I will try to let you finish

3           speaking before I continue, so the court

4           reporter only has to take down one person

5           at a time. Do you understand all these

6           instructions?

7           A. Yes, I do.

8           Q. Is there any reason that

9           might impede your ability to testify

10          truthfully today; medication, for

11          example?

12          A. No.

13          Q. Before we get started, I

14          just want to note for the record at the

15          request of Mr. Andersen, that I was just

16          handed about ten minutes ago some

17          documents Bates stamped New Jersey 7744

18          through -- sorry -- I reordered them by

19          date. The sequential number is 7709

20          through 7744.

21          Is that correct,

22          Mr. Andersen? Okay.

23          And these pertain to the

24          Keystone project.

10	<p>1 BY MR. ATTAWAY:                  2 Q. Other than conversations                  3 with counsel, Mr. Castagna, and -- am I                  4 pronouncing your name correctly?                  5 A. That's correct, yes.                  6 Q. That's what I heard from                  7 others. I always like to ask.                  8 What did you do to prepare                  9 for your deposition other than speak with                  10 counsel?                  11 A. I just reviewed my                  12 affidavit.                  13 Q. Okay.                  14 A. And that's what I did.                  15 Q. Any other documents?                  16 A. Any other documents? Just                  17 my affidavit and -- yeah, that's what I                  18 reviewed.                  19 Q. Okay. How many times did                  20 you meet with counsel to prepare? Again,                  21 I don't want to know the substance of                  22 what you talked about with your counsel.                  23 A. I believe three times.                  24 Q. Do you remember the dates?</p>	12
11	<p>1 A. Last Thursday and last                  2 Friday.                  3 Q. Okay.                  4 A. And there was one prior date                  5 the week before. I don't recall.                  6 Q. With whom did you meet?                  7 A. With Mr. Andersen.                  8 Q. Anyone else?                  9 A. No.                  10 Q. Was --                  11 A. Well, I did also meet at                  12 this office here at an earlier date. And                  13 I believe Barbara was there.                  14 Q. Okay.                  15 A. And I also -- yeah, Barbara                  16 and Bill were both there.                  17 Q. Okay. Anyone else walk in                  18 the room while you were talking?                  19 A. That's all I recall.                  20 Q. Okay. Have you read the                  21 initial pleadings in this case?                  22 A. The initial pleadings?                  23 Briefly I looked them over, yes.                  24 Q. You submitted an affidavit?</p>	13
10	<p>1 A. Yes.                  2 Q. Filed with those initial                  3 pleadings; correct?                  4 A. Yes.                  5 Q. Did you read the other                  6 affidavits that were submitted?                  7 A. No.                  8 Q. You just read yours?                  9 A. Yes.                  10 Q. You didn't read Stephen                  11 Whitney's affidavit?                  12 A. No.                  13 Q. Okay. Did you ever read an                  14 affidavit submitted subsequently by                  15 Mr. Andersen?                  16 A. Submitted by Mr. Andersen,                  17 no.                  18 Q. Have you read any of the                  19 transcripts of any of the depositions                  20 taken in this case to date?                  21 A. No.                  22 Q. Have you talked to anyone                  23 other than counsel in preparation for                  24 this deposition?</p>	13

14

1 the Bureau of Tidelands Management in the  
 2 New Jersey DEP, which stands for  
 3 Department of Environmental Protection.  
 4 Is that still your position?  
 5 A. No.  
 6 Q. What happened since the  
 7 filing of this affidavit?  
 8 A. In October of 2005, I was  
 9 appointed the acting manager.  
 10 Q. Who did you replace?  
 11 A. Jo Ann Cubberley.  
 12 Q. How long was she the --  
 13 well, I take it she was the manager of  
 14 the Bureau of Tidelands?  
 15 A. That's correct.  
 16 Q. Is there anyone above her in  
 17 the Bureau of Tidelands?  
 18 A. No.  
 19 Q. To whom did she report?  
 20 A. She reported to Mark  
 21 Mauriello.  
 22 Q. What's his position?  
 23 A. At that time he was the  
 24 director.

15

1 Q. Of what?  
 2 A. Division of Land Use  
 3 Regulation.  
 4 Q. So the Bureau of Tidelands  
 5 is within the Division of Land use  
 6 Regulation?  
 7 A. Yes.  
 8 Q. Let's just go up the chain  
 9 from the manager of the Bureau of  
 10 Tidelands to the commissioner.  
 11 So, Ms. Cubberley then and  
 12 now yourself as acting manager report to  
 13 the -- I don't know if it's still Mark  
 14 Mauriello but you said his title was  
 15 director of --  
 16 A. At the time, he was the  
 17 director. But he now is -- since that  
 18 time, he has now become the assistant  
 19 commissioner.  
 20 Q. For --  
 21 A. For Land Use Regulation.  
 22 Q. Does the assistant  
 23 commissioner for Land Use Regulation  
 24 oversee the Bureau of Tidelands?

16

1 A. Yes.  
 2 Q. And also -- I thought there  
 3 was a Land Use Regulation Division. I  
 4 might have the terminology wrong. But  
 5 maybe you can clarify my confusion here.  
 6 A. There are a number of  
 7 assistant commissioners.  
 8 Q. Right.  
 9 A. And I know that Mark  
 10 Mauriello oversees the Bureau of  
 11 Tidelands.  
 12 Q. Okay.  
 13 A. Okay. I'm not certain of  
 14 his exact division, but I believe it's  
 15 the land use -- assistant commissioner of  
 16 Land Use Regulation. But that might not  
 17 be the exact terminology.  
 18 Q. And Mr. Mauriello or whoever  
 19 is in his position as director of Land  
 20 Use Regulation, then reports directly to  
 21 the commissioner?  
 22 A. At the present time,  
 23 Mr. Mauriello, yes, reports directly to  
 24 the commissioner, yes.

17

1 Q. Is Mr. Mauriello also the  
 2 assistant commissioner for the Coastal  
 3 Management Bureau?  
 4 A. I'm not certain. I'm not  
 5 certain.  
 6 Q. Do you know, is there a flow  
 7 chart outlining the layers and the  
 8 structure of the DEP that would set out  
 9 these positions?  
 10 A. I don't know, but there  
 11 could be.  
 12 Q. You haven't seen one?  
 13 A. I haven't seen one.  
 14 Q. All right. And you occupy  
 15 the top spot in the Bureau of Tidelands?  
 16 A. That's correct.  
 17 Q. And then Paragraph 1 goes on  
 18 to say that for 16 years before 1993, you  
 19 were several types of environmental  
 20 specialist.  
 21 When did you begin with the  
 22 Bureau of Tidelands or at the DEP if you  
 23 started somewhere else?  
 24 A. Began with the DEP in May of

18

1 1977.  
 2 Q. What was your position at  
 3 that time?  
 4 A. Senior environmental  
 5 specialist.  
 6 Q. So, that's encompassed  
 7 within this sentence that begins for 16  
 8 years before that?  
 9 A. Yes.  
 10 Q. Before that, did you work  
 11 somewhere after college?  
 12 A. I was in graduate school. I  
 13 was a graduate assistant and I taught  
 14 earth science.  
 15 Q. And what was your graduate  
 16 school degree in?  
 17 A. Geography.  
 18 Q. Geography. And  
 19 undergraduate?  
 20 A. Geography.  
 21 Q. Okay. You must like maps.  
 22 A. I do.  
 23 Q. I just want to go briefly  
 24 through your position, starting in May of

19

1 1977 and just establish what your job  
 2 duties were and who you reported to.  
 3 A. Uh-huh.  
 4 Q. And I'd like some detail but  
 5 I also don't want to belabor it. We'll  
 6 strike a middle balance.  
 7 A. Okay.  
 8 Q. Maybe I'll just start out  
 9 and you can give me a narrative, starting  
 10 in May of '77 and if I ask specific  
 11 questions, then I'll ask them.  
 12 A. Okay. Beginning in 1977 I  
 13 worked for the Office of Environmental  
 14 Analysis, within the New Jersey  
 15 Department of Environmental Protection.  
 16 I -- using aerial  
 17 photography and maps, I delineated New  
 18 Jersey's tidelands claims to lands now or  
 19 formerly flowed by the mean high tide.  
 20 Q. Starting in '77 --  
 21 A. Until 1977 I was promoted to  
 22 principal environmental specialist.  
 23 Q. Okay.  
 24 A. Where I supervised the team

20

1 who was charged with using aerial  
 2 photography and maps to delineate the  
 3 states tideland claims to lands now or  
 4 formerly tide flowed by mean high water.  
 5 Q. You went from supervising to  
 6 principal environmental specialist pretty  
 7 soon?  
 8 A. Senior in 1977 to principal.  
 9 Q. Okay. I misspoke.  
 10 A. In 1979.  
 11 Q. In '79. Okay.  
 12 A. Yes.  
 13 Q. I thought I heard '77.  
 14 A. I started in '77.  
 15 Q. Right. So, in 19 --  
 16 starting in 1979, it sounds like you were  
 17 doing pretty much the same thing you were  
 18 doing to begin with, with the maps and  
 19 photography, aerial photography, but in  
 20 the capacity of also supervising other  
 21 folks doing the same thing?  
 22 A. Yes. Yes. That's true.  
 23 Q. And how long did that  
 24 continue before you were promoted to

21

1 supervising environmental specialist?  
 2 A. Well, in 1987, I came over  
 3 to the Bureau of Tidelands management and  
 4 my title was the same; principal  
 5 environmental specialist.  
 6 Q. Okay.  
 7 A. And my role at the Bureau of  
 8 Tidelands at this time was to assist the  
 9 Attorney General's office and the  
 10 Tidelands resource counsel in assessing  
 11 the strength and validity of tidelands  
 12 claims.  
 13 Q. What does it mean to assess  
 14 the strength and validity of tidelands  
 15 claims?  
 16 A. To determine the accuracy of  
 17 the line, to provide support for the  
 18 Attorney General's office. To certain  
 19 the validity of the line.  
 20 Q. And the line is -- what sort  
 21 of line?  
 22 A. The State of New Jersey has  
 23 mapped all of its tidelands. And it was  
 24 my role, when there was concern as to the

22

1 placement of that line, as to its  
 2 accuracy. I would, viewing photography  
 3 and maps, I would support the states -- I  
 4 was able to support the state's position.  
 5 Q. And what would the line  
 6 delineate?  
 7 A. Lands now or formerly flowed  
 8 by the mean high tide.  
 9 Q. Is it the case then that you  
 10 would determine where the high tide line  
 11 existed?  
 12 A. The mean high tide line,  
 13 yes.  
 14 Q. Mean high tide line?  
 15 A. Yes; that's what we did.  
 16 Q. And that is -- is there any  
 17 other sort of line that's included within  
 18 the line that you were talking about?  
 19 A. No.  
 20 Q. So, just --  
 21 A. Just the mean high tide  
 22 line.  
 23 Q. Just figuring out the line  
 24 on the shore?

23

1 A. Yes.  
 2 Q. This mean high tide?  
 3 A. Yes.  
 4 Q. And I gather you look at  
 5 averages over a certain number of years  
 6 and vegetation marks and things like that  
 7 to determine that?  
 8 A. We would look at historical  
 9 maps and we would look at aerial  
 10 photography.  
 11 Q. Okay. So, these maps that  
 12 you started working on, from 1977 through  
 13 at least 1987, and perhaps beyond, but we  
 14 haven't gone that far yet, those were all  
 15 concerns, only with the mean high tide  
 16 line?  
 17 A. Yes. Yes.  
 18 Q. And once you joined the  
 19 Bureau of Tidelands in 1987, then just  
 20 tell me for more of your job history  
 21 there?  
 22 A. Well, in, again, in 1987, I  
 23 joined the Bureau of Tidelands. In 1990,  
 24 I was promoted to a supervisor;

24

1 supervising environmental specialist.  
 2 Q. How did that change your job  
 3 duties?  
 4 A. It did not change my duties.  
 5 It was a promotion for my work.  
 6 Q. Okay. Did you have more  
 7 people to supervise?  
 8 A. At that time, no.  
 9 Q. And between 1990 and 1993 --  
 10 A. In 1993, Joe Ann Cubberley  
 11 became the manager. At that time, I was  
 12 asked to supervise the -- she  
 13 regionalized the bureau. I was asked to  
 14 be the supervisor of the Southern Region.  
 15 Q. Okay.  
 16 A. Of the Bureau of Tidelands.  
 17 Q. So, prior to that time, the  
 18 bureau was not regionalized?  
 19 A. Yes.  
 20 Q. That was a new thing that  
 21 she implemented?  
 22 A. Yes.  
 23 Q. And then she asked you to be  
 24 the supervisor of the Southern Region?

25

1 A. Yes, that's correct.  
 2 Q. And you kept that position  
 3 until it was last year when you were  
 4 promoted?  
 5 A. Yes.  
 6 Q. In 1977, who did you report  
 7 to?  
 8 A. At the time, the chief of  
 9 the office was a gentleman by the name of  
 10 Roland Yuhans.  
 11 Q. Could you spell that? Was  
 12 it Roland?  
 13 A. Roland.  
 14 Q. Younghans?  
 15 A. Yeah. Y-U-H-A-N-S or  
 16 something. I'm not certain.  
 17 Q. Just like it sounds?  
 18 A. Yeah.  
 19 Q. Okay. What was his  
 20 position?  
 21 A. He was the bureau chief.  
 22 Q. Of --  
 23 A. The Office of Environmental  
 24 Analysis.

26	<p>1 Q. Was that connected with the 2 Bureau of Tidelands in any way? 3 A. <b>There were two separate 4 offices. We were the matching arm of the 5 Bureau of Tidelands Management. We 6 prepared the maps that the Bureau of 7 Tidelands used to assert claims.</b> 8 Q. Okay. Did other bureaus 9 within the DEP also use the maps that you 10 created during that time? 11 A. <b>I don't believe so, no.</b> 12 Q. Okay. At least not to any 13 large degree? 14 A. <b>No.</b> 15 Q. So, is it fair to say that 16 at that time, the Office of Environmental 17 Analysis was a division within the Bureau 18 of Tidelands? 19 A. <b>Could you repeat that 20 question?</b> 21 Q. You said that it was an arm 22 of the Bureau of Tidelands. I just 23 wanted to get a little more clarity on 24 what that meant. I was just asking if it</p>	28	<p>1 Q. So, you moved to Bureau of 2 Tidelands in 1987, before the Office of 3 Environmental Analysis was disbanded? 4 A. <b>It was disbanding.</b> 5 Q. Disbanding at that time? 6 A. <b>At that time. But the 7 remains of the office, I believe, were 8 still there for a year, a year or two 9 afterwards.</b> 10 Q. Okay. How long did you 11 report to Mr. Younghans and to whom did 12 you report after that? 13 A. <b>I reported to Mr. Younghans 14 from 1977 until Mr. Younghans' retirement 15 in 1987. That's the same year I 16 transferred.</b> 17 Q. Okay. And who did you 18 report to when you transferred to the 19 Bureau of Tidelands? 20 A. <b>James Johnson.</b> 21 Q. Did he have the same 22 position that Joann Cubberley had and 23 that you now have? 24 A. <b>Yes.</b></p>
27	<p>1 was fair to say that the Office of 2 Environmental Analysis, at that time, was 3 within the Bureau of Tidelands or was it 4 separate? 5 A. <b>It was separate. It was 6 separate.</b> 7 Q. But your job was -- your 8 work supported the work of the Bureau of 9 Tidelands? 10 A. <b>Yes.</b> 11 Q. Supplied the maps -- 12 A. <b>That they used.</b> 13 Q. Okay. Did there come a time 14 when the Office of Environmental Analysis 15 was either done away with or -- 16 A. <b>Yes.</b> 17 Q. -- or changed? 18 A. <b>Yes. The office was 19 disbanded.</b> 20 Q. Disbanded. That's the word 21 I was looking for. 22 Do you remember about when 23 that happened? 24 A. <b>About 1990.</b></p>	29	<p>1 Q. And that would be manager of 2 the Bureau of Tidelands? 3 A. <b>Mr. Johnson was the manager 4 at the time.</b> 5 Q. Okay. 6 A. <b>I'm not certain if that was 7 his exact title, but he was the person in 8 charge.</b> 9 Q. Okay. There was no one 10 higher in the Bureau of Tidelands than 11 Mr. Johnson? 12 A. <b>No.</b> 13 Q. Do you remember to whom 14 Mr. Johnson reported? Is there an 15 assistant commissioner or a bureau chief? 16 A. <b>I'm not certain. It might 17 have been John Weingart, but I'm not 18 certain of that.</b> 19 Q. Do you recall what 20 Mr. Weingart's title and/or job 21 responsibilities were at that time? 22 A. <b>Director of coastal 23 resources.</b> 24 Q. And who would Mr. Weingart</p>

30	<p>1 have reported to?</p> <p>2 <b>A. I don't know.</b></p> <p>3 <b>Q. Was he close to the top?</b></p> <p>4 <b>Was it possible he reported directly to</b></p> <p>5 <b>an assistant commissioner?</b></p> <p>6 <b>A. It's possible; but I'm not</b></p> <p>7 <b>certain of that.</b></p> <p>8 <b>Q. So, there probably weren't</b></p> <p>9 <b>many people, if any, between him and the</b></p> <p>10 <b>assistant commissioner?</b></p> <p>11 <b>A. I don't know.</b></p> <p>12 <b>Q. For how long did you report</b></p> <p>13 <b>to Mr. Johnson?</b></p> <p>14 <b>A. Until 1993, when he retired.</b></p> <p>15 <b>Q. And Ms. Cubberley took over?</b></p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q. What were your</b></p> <p>18 <b>responsibilities between 1987 and 1990?</b></p> <p>19 <b>Or did we already go over that? You were</b></p> <p>20 <b>still doing the map and you were</b></p> <p>21 <b>supervising other people; right?</b></p> <p>22 <b>A. Uh-huh.</b></p> <p>23 <b>Q. Anything to add?</b></p> <p>24 <b>A. Between 1987 and 1990? I</b></p>	32	<p>1 delineating the high tide line?</p> <p>2 <b>A. Well, the mapping was</b></p> <p>3 <b>completed by that time.</b></p> <p>4 <b>Q. Okay.</b></p> <p>5 <b>A. But I can -- yeah, it was</b></p> <p>6 <b>completed by that time.</b></p> <p>7 <b>Q. As of what point in time did</b></p> <p>8 <b>the maps you created establish the mean</b></p> <p>9 <b>high tide line?</b></p> <p>10 <b>A. Could you repeat the</b></p> <p>11 <b>question?</b></p> <p>12 <b>Q. It was not the clearest</b></p> <p>13 <b>question.</b></p> <p>14 <b>My understanding is that the</b></p> <p>15 <b>mean high tide can change over decades.</b></p> <p>16 <b>So, as of what point in time</b></p> <p>17 <b>did you -- did you attempt in your maps</b></p> <p>18 <b>to depict the mean high tide line?</b></p> <p>19 <b>A. We used a base map from 1977</b></p> <p>20 <b>and we -- in areas where we showed the</b></p> <p>21 <b>mean high water line, those were -- that</b></p> <p>22 <b>was the mean high water line at that</b></p> <p>23 <b>time.</b></p> <p>24 <b>Q. And -- in the '70s? Did you</b></p>
31	<p>1 <b>think we went over that.</b></p> <p>2 <b>Q. Okay.</b></p> <p>3 <b>A. And then in 1993, we</b></p> <p>4 <b>regionalized.</b></p> <p>5 <b>Q. Right. How did your duties</b></p> <p>6 <b>change in 1993 when you became the</b></p> <p>7 <b>supervisor of the Southern Region?</b></p> <p>8 <b>A. I was a supervisor of the</b></p> <p>9 <b>region, Southern Region and we reviewed</b></p> <p>10 <b>applications, tidelands applications and</b></p> <p>11 <b>prepared those applications for review by</b></p> <p>12 <b>the Tidelands Resource Council.</b></p> <p>13 <b>Q. Okay. That was starting in</b></p> <p>14 <b>'93?</b></p> <p>15 <b>A. Yes.</b></p> <p>16 <b>Q. Prior to 1993, had you</b></p> <p>17 <b>reviewed any tidelands applications?</b></p> <p>18 <b>A. No.</b></p> <p>19 <b>Q. So, that was a pretty</b></p> <p>20 <b>significant change in job duties;</b></p> <p>21 <b>correct?</b></p> <p>22 <b>A. Yes.</b></p> <p>23 <b>Q. Did you still have</b></p> <p>24 <b>responsibility for creating the maps,</b></p>	33	<p>1 say '77?</p> <p>2 <b>A. '77 or it could have been</b></p> <p>3 <b>early '80s; when the mapping was done.</b></p> <p>4 <b>Q. Okay. Okay.</b></p> <p>5 <b>A. Or mid '80s; whenever that</b></p> <p>6 <b>mapping was done, that was the line that</b></p> <p>7 <b>was used.</b></p> <p>8 <b>Q. And geographically, did you</b></p> <p>9 <b>create the high tide, the mean high tide</b></p> <p>10 <b>maps on the Delaware River?</b></p> <p>11 <b>A. Did I personally?</b></p> <p>12 <b>Q. Or did you oversee?</b></p> <p>13 <b>A. I'm not certain.</b></p> <p>14 <b>Q. Okay.</b></p> <p>15 <b>A. I would have to look to see.</b></p> <p>16 <b>I don't recall.</b></p> <p>17 <b>Q. How many maps did you create</b></p> <p>18 <b>or cause to be created during the portion</b></p> <p>19 <b>of your career where you were dealing</b></p> <p>20 <b>with maps, which I understand is 1977</b></p> <p>21 <b>through 1993?</b></p> <p>22 <b>A. Well, there are 1,620 maps.</b></p> <p>23 <b>And I would have had a hand in a few</b></p> <p>24 <b>hundred of them. A few hundred of them.</b></p>

34

1 Q. Who would have done the  
 2 others?  
 3 A. A list of all the employees,  
 4 you mean? Is that what you are asking?  
 5 Q. You can generalize.  
 6 I thought you said you  
 7 supervised, was it -- how many people did  
 8 you say you supervised?  
 9 A. During the mapping program?  
 10 Q. Yes.  
 11 A. Two.  
 12 Q. And that's between 1977  
 13 through '93? Although I realize in the  
 14 beginning you weren't supervising  
 15 anybody.  
 16 A. Well, there were four teams.  
 17 I supervised one of the teams, if that  
 18 would clarify.  
 19 Q. There were three people on  
 20 your team including yourself?  
 21 A. Yes.  
 22 Q. So, if the other teams had  
 23 three people, that would be nine other  
 24 people doing those?

35

1 A. That's correct.  
 2 Q. So, when you say you had  
 3 your hand in a few hundred, it might be  
 4 fair to say that you did close to 25  
 5 percent, if you were one of four teams?  
 6 A. That's quite possible, yes.  
 7 Q. I'm not asking for exact.  
 8 A. I don't know an exact  
 9 number. I've never counted how many I've  
 10 done.  
 11 Q. Do you remember whether  
 12 those maps focused on a contiguous area  
 13 of the coastline of New Jersey; such that  
 14 they were focused in a particular  
 15 geographic region or were they spread out  
 16 in a more random manner?  
 17 A. They were more random.  
 18 Q. You might be doing one one  
 19 way in the Hudson River and the next one  
 20 the next day in the Delaware River?  
 21 A. That's correct.  
 22 Q. When you became supervisor  
 23 of the Southern Region, you said you  
 24 reviewed tidelands applications.

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1 Did you have any other  
 2 duties?  
 3 A. I continued to assist the  
 4 Attorney General's Office and the  
 5 Tidelands Resource Council in assessing  
 6 the strength and validity of our claims.  
 7 Q. Just so I make sure I  
 8 understand, when you are assessing the  
 9 validity of your claims, you are talking  
 10 about the fact of where the mean high  
 11 tide line exists?  
 12 A. Well, more in terms of  
 13 formally tidelands; did they fill by  
 14 natural means or artificial means.  
 15 I would review historical  
 16 maps and aerial photography in an attempt  
 17 to make a determination how those lands  
 18 changed.  
 19 Q. And was that to delineate  
 20 lands that were owned by the state versus  
 21 lands that were owned by private parties?  
 22 A. I don't follow your  
 23 question.  
 24 Q. What was the significance

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1 of -- why was it necessary to determine  
 2 where the high tide line exists?  
 3 A. Well, an applicant or a  
 4 person would come before the counsel or  
 5 say the state doesn't have any interest  
 6 in my property. My property filled by  
 7 natural means; not by artificial means.  
 8 Just as an example.  
 9 Q. Please go ahead.  
 10 A. And by reviewing aerial  
 11 photography and maps over a period of  
 12 time, I can make a determination of how  
 13 that property was filled.  
 14 Q. Okay. What is your  
 15 understanding of who would own the lands  
 16 if they had been previously flowed by the  
 17 tide but filled in at some point?  
 18 A. If they were artificially  
 19 filled in, the state would still own  
 20 those lands unless they were previously  
 21 granted.  
 22 Q. Is that because the state is  
 23 deemed to own lands that are flowed by  
 24 the tide?

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1       **A. Yes.**  
 2       **Q. So, the state owns beginning**  
 3 **at the mean high water line?**  
 4       **A. Yes.**  
 5       **Q. What was the process,**  
 6 **starting in 1993, through today, that you**  
 7 **would go through as a general matter, in**  
 8 **reviewing tidelands applications?**  
 9       **A. Application would come in.**  
 10 **We would note any deficiencies on the**  
 11 **application. If there's a -- if the**  
 12 **applicant failed to submit paperwork, we**  
 13 **would let the applicant know; if they**  
 14 **failed to submit an appraisal or if he**  
 15 **failed to submit a survey or if the**  
 16 **documentation, we would write to the**  
 17 **applicant and let them know.**  
 18       **If it was a grant**  
 19 **application, we would expect to have a**  
 20 **narrative appraisal. If an appraisal was**  
 21 **not with the application, we would**  
 22 **request an appraisal.**  
 23       **Q. All right.**  
 24       **A. For a license application,**

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1 **no applications can be brought to the**  
 2 **counsel until we have an approved**  
 3 **waterfront development permit.**  
 4       **So, there was a process of a**  
 5 **checklist of going through to see if**  
 6 **everything is administratively complete.**  
 7       **When it is complete, we can**  
 8 **proceed to present the application to the**  
 9 **tidelands counsel for their review.**  
 10       **Q. In Paragraph 1, there's a**  
 11 **sentence, and it's on Page 26A, if you**  
 12 **look at the page number at the top. I**  
 13 **believe it's Page 2 of your affidavit but**  
 14 **the numbering is from the appendix that**  
 15 **New Jersey filed and there were other**  
 16 **documents before this?**  
 17       **A. Uh-huh.**  
 18       **Q. It says, "The Bureau of**  
 19 **Tidelands serves as staff to the**  
 20 **Tidelands Resource Council in the**  
 21 **Department of Environmental Protection in**  
 22 **the State of New Jersey."**  
 23       **And then there's a site to**  
 24 **the New Jersey statute.**

40

1       **What does it mean to say**  
 2 **that the Bureau of Tidelands serves as**  
 3 **staff to the Tidelands Resource Council?**  
 4       **A. That's essentially what we**  
 5 **do. We serve as their staff. We make**  
 6 **the applications ready for their review.**  
 7       **Q. What is the Tidelands**  
 8 **Resource Council?**  
 9       **A. It's a 12 member voluntary**  
 10 **board, appointed by the governor, but**  
 11 **makes the initial decisions on whether or**  
 12 **not to approve tidelands applications.**  
 13       **Q. Are they paid?**  
 14       **A. No.**  
 15       **Q. Hence the word volunteer.**  
 16       **A. Yes.**  
 17       **Q. Do you know how long they**  
 18 **serve?**  
 19       **A. They serve, they have a term**  
 20 **but it can be renewed.**  
 21       **Q. What is the standard term?**  
 22       **A. I believe -- I'm not certain**  
 23 **but I believe it's four years.**  
 24       **Q. What sort of -- I'm sorry.**

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1 **You've probably answered that already.**  
 2       **You mentioned the permits**  
 3 **that waterfront development permits and**  
 4 **other permits are required before you can**  
 5 **issue a tidelands grant or lease.**  
 6       **Do you give the Tidelands**  
 7 **Resource Council information on whether**  
 8 **those permits have been approved in order**  
 9 **to enable them to make their decision?**  
 10       **A. The application cannot go to**  
 11 **the council unless the permit is**  
 12 **approved.**  
 13       **Q. Okay.**  
 14       **A. So, it is understood, if the**  
 15 **application is before them, that the**  
 16 **permit has been approved.**  
 17       **Q. Okay. So, in doing your**  
 18 **job, at the Bureau of Tidelands as staff**  
 19 **to the resource council, you would be**  
 20 **required to make sure that the waterfront**  
 21 **development and other environmental**  
 22 **permits had been granted by the other**  
 23 **divisions in the DEP before you could**  
 24 **forward the application to the Resource**

42	<p>1 Council; correct?</p> <p>2 <b>A. The waterfront development</b></p> <p>3 <b>department is what we're looking for.</b></p> <p>4 <b>Q. What about the acronym</b></p> <p>5 <b>CAFRA; do the CAFRA permits have to be</b></p> <p>6 <b>approved before the riparian conveyance</b></p> <p>7 <b>can occur?</b></p> <p>8 <b>A. If it's a condition of the</b></p> <p>9 <b>waterfront development permit, then yes.</b></p> <p>10 <b>So, we look for that</b></p> <p>11 <b>waterfront development permit which may</b></p> <p>12 <b>have other conditions.</b></p> <p>13 <b>Q. And you make sure whatever</b></p> <p>14 <b>those conditions are --</b></p> <p>15 <b>A. We're looking for that</b></p> <p>16 <b>permit; whatever that waterfront permit</b></p> <p>17 <b>is.</b></p> <p>18 <b>Q. Do you then forward the</b></p> <p>19 <b>actual permit to the Tidelands Resource</b></p> <p>20 <b>Council?</b></p> <p>21 <b>A. No.</b></p> <p>22 <b>Q. But you look at the permit</b></p> <p>23 <b>yourself?</b></p> <p>24 <b>A. We do look at the permit,</b></p>	44	<p>1 <b>We're conveying land.</b></p> <p>2 <b>Q. Is a grant not a sale of</b></p> <p>3 <b>land?</b></p> <p>4 <b>A. Well, what I'm saying is a</b></p> <p>5 <b>grant is a deed. It's a sale of land.</b></p> <p>6 <b>Q. Okay. So, a grant and</b></p> <p>7 <b>conveyance --</b></p> <p>8 <b>A. Can be used.</b></p> <p>9 <b>Q. Are synonyms?</b></p> <p>10 <b>A. Yes.</b></p> <p>11 <b>Q. Is there any context you can</b></p> <p>12 <b>think of where they would have different</b></p> <p>13 <b>meanings?</b></p> <p>14 <b>A. Not at this time.</b></p> <p>15 <b>Q. State riparian lands is a</b></p> <p>16 <b>phrase that you use here.</b></p> <p>17 <b>What is your understanding</b></p> <p>18 <b>of the meaning of state riparian lands?</b></p> <p>19 <b>A. Again, lands that are now or</b></p> <p>20 <b>formerly flowed by the tide.</b></p> <p>21 <b>Q. Does New Jersey still grant</b></p> <p>22 <b>or convey lands, state riparian lands as</b></p> <p>23 <b>you called them here?</b></p> <p>24 <b>A. Yes. The state does still</b></p>
43	<p>1 <b>yes.</b></p> <p>2 <b>Q. Further down in the</b></p> <p>3 <b>Paragraph 1, the last sentence says</b></p> <p>4 <b>"Since 1869 the council and its</b></p> <p>5 <b>predecessors has been the agency</b></p> <p>6 <b>initially responsible for determining</b></p> <p>7 <b>whether the state should make any grant,</b></p> <p>8 <b>lease or conveyance of state riparian</b></p> <p>9 <b>lands and rights under the laws of New</b></p> <p>10 <b>Jersey."</b></p> <p>11 <b>There's a phrase grant,</b></p> <p>12 <b>lease or conveyance.</b></p> <p>13 <b>What is your understanding</b></p> <p>14 <b>of the meaning of those three terms?</b></p> <p>15 <b>A. Well, a grant is the deed</b></p> <p>16 <b>for the state's riparian interest in a</b></p> <p>17 <b>property.</b></p> <p>18 <b>A lease is a rental</b></p> <p>19 <b>agreement for the state's riparian</b></p> <p>20 <b>interest in a property.</b></p> <p>21 <b>Q. Does a conveyance have a</b></p> <p>22 <b>distinct meaning?</b></p> <p>23 <b>A. Well, a conveyance is a</b></p> <p>24 <b>sale. It more relates to a grant.</b></p>	45	<p>1 <b>grant riparian lands.</b></p> <p>2 <b>Q. How many such grants, leases</b></p> <p>3 <b>or conveyances have you worked on in your</b></p> <p>4 <b>tenure at DEP?</b></p> <p>5 <b>A. I cannot -- I don't know.</b></p> <p>6 <b>Q. A lot?</b></p> <p>7 <b>A. Yes, a lot. I -- I don't</b></p> <p>8 <b>know the number.</b></p> <p>9 <b>Q. In the hundreds? In the</b></p> <p>10 <b>thousands?</b></p> <p>11 <b>A. How many grants, leases or</b></p> <p>12 <b>licenses? I would say in the thousands.</b></p> <p>13 <b>Q. Around 1,000, give or take?</b></p> <p>14 <b>You don't have to be exact. I just want</b></p> <p>15 <b>to get a ballpark.</b></p> <p>16 <b>A. Since my tenure with DEP? I</b></p> <p>17 <b>would say a few thousand.</b></p> <p>18 <b>Q. A few thousand. All right.</b></p> <p>19 <b>And that's all in the</b></p> <p>20 <b>Southern Region?</b></p> <p>21 <b>A. Yes.</b></p> <p>22 <b>Q. Where does the Southern</b></p> <p>23 <b>Region turn into what I would assume</b></p> <p>24 <b>would be the Northern Region?</b></p>

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1       **A. If we begin on the Atlantic**  
 2 **coast and we begin with Atlantic County,**  
 3 **we move south to Cape May County, over**  
 4 **the Cumberland County and then proceed**  
 5 **north along the Delaware up to Mercy**  
 6 **County here in Trenton.**  
 7       **Q. So, everything from Atlantic**  
 8 **City more or less is the Northern Region?**  
 9       **A. From Atlantic City --**  
 10       **Q. Or wherever Atlantic County**  
 11 **ends?**  
 12       **A. Yes.**  
 13       **Q. Somewhere north of Atlantic**  
 14 **City but probably not too terribly far?**  
 15       **A. Uh-huh.**  
 16       **Q. Do you have any idea -- I**  
 17 **mean -- well, let's see. You said you**  
 18 **worked on a few thousand riparian grants,**  
 19 **leases or conveyances between -- would**  
 20 **that be between 1993 and today?**  
 21       **A. Yes.**  
 22       **Q. What I meant to ask, and my**  
 23 **question was not specific, but I was --**  
 24 **in -- had in mind the time when you were**

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1       **A. Since 1869?**  
 2       **Q. Right.**  
 3       **A. I could not begin to know.**  
 4 **I mean thousands.**  
 5       **Q. Thousands and thousands?**  
 6       **A. Thousands.**  
 7       **Q. In the Northern Region,**  
 8 **those counties tend to be a lot more**  
 9 **populus than the counties in the Southern**  
 10 **Region, I would imagine; is that correct?**  
 11       **A. I'm not -- I can't say that**  
 12 **for certain. I mean there was some --**  
 13       **Q. I'm thinking since it**  
 14 **includes the Newark area, the**  
 15 **Metropolitan area, the Hudson River?**  
 16       **A. If you're asking if more**  
 17 **people live in North Jersey than South**  
 18 **Jersey, I would say yes.**  
 19       **Q. Fair enough.**  
 20       **A. That's a fair statement.**  
 21       **Q. Fair enough.**  
 22               **Do you have any knowledge**  
 23 **about approximately how many even, you**  
 24 **know, just talking again in the**

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1 reviewing tidelands applications as  
 2 opposed to creating the maps for others  
 3 to use.  
 4       So, is it -- so, that few  
 5 thousand number is basically from 1993 to  
 6 2006?  
 7       **A. Yes.**  
 8       **Q. Do you have any idea, within**  
 9 **the Southern Region, how many such grants**  
 10 **have been issued, beginning in the mid**  
 11 **1800s?**  
 12       **A. That's in my affidavit.**  
 13       **There's a record in my**  
 14 **affidavit, which speaks to that.**  
 15       **Q. Are you talking about**  
 16 **Paragraph 8, that goes through the**  
 17 **specific grants? I'm talking much more**  
 18 **broadly; like how many grants has the**  
 19 **bureau -- the Tidelands Resource Council**  
 20 **and its predecessors issued in the**  
 21 **Southern Region?**  
 22       **A. Oh, in the entire Southern**  
 23 **Region?**  
 24       **Q. Right.**

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1 thousands, how many riparian grants,  
 2 leases or conveyances have been issued by  
 3 the Tidelands Resource Council throughout  
 4 its history in the Northern Region?  
 5       **A. Again, thousands.**  
 6       **Q. Would the Tidelands Resource**  
 7 **Council have issued a lot more such**  
 8 **grants in the Northern Region than in the**  
 9 **Southern Region, throughout its roughly**  
 10 **150 year history?**  
 11       **A. I'm not certain of that.**  
 12       **Q. What does a grant, lease or**  
 13 **conveyance of state riparian lands permit**  
 14 **the grantee or do or lessee, as the case**  
 15 **may be?**  
 16       **A. Could we break that question**  
 17 **up? You asked me -- could you ask that**  
 18 **again?**  
 19       **Q. When someone obtains a**  
 20 **grant, lease or conveyance of state**  
 21 **riparian lands, which I'm taking that**  
 22 **language from the end of Paragraph 1 of**  
 23 **your affidavit, what are they permitted**  
 24 **to do, once they have that?**

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1       **A. The grant is a sale of land.**  
 2 **And when you say what they were permitted**  
 3 **to do, that is more focused on what the**  
 4 **permit says.**  
 5       **We are -- the Bureau of**  
 6 **Tidelands, when they grant land, it's a**  
 7 **sale of land.**  
 8       **Q. Okay. So, it doesn't**  
 9 **authorize any particular activity to**  
 10 **occur on those lands; is that correct?**  
 11       **A. Well, for example, if -- if**  
 12 **we were talking about a lease, for**  
 13 **example, and a person wants to build a**  
 14 **pier. It's kind of inherent, in building**  
 15 **a pier, that the person would be able to**  
 16 **access the pier with a boat.**  
 17       **But as far as any**  
 18 **particular -- are you asking -- whether**  
 19 **are they permitted to do certain things?**  
 20       **Q. Are they permitted to load**  
 21 **and unload particular types of cargo as a**  
 22 **result of the -- let's say somebody built**  
 23 **a pier on lands that were granted or**  
 24 **leased and they wanted to unload**

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1 pesticides, for example.  
 2       Does the grant authorize  
 3 them to do that?  
 4       **A. No. That's a permit.**  
 5       **Q. Okay.**  
 6       **A. But it's inherent in any**  
 7 **construction of a pier that there will be**  
 8 **some unloading and off loading of cargo;**  
 9 **in order for the person to be able to**  
 10 **access the channel.**  
 11       **But as far as what they are**  
 12 **permitted to do, that's the focus of a**  
 13 **permit.**  
 14       **Q. Okay. So, that's a**  
 15 **completely different issue?**  
 16       **A. Yes.**  
 17       **Q. From the riparian grant**  
 18 **lease?**  
 19       **A. Yes.**  
 20       **Q. In Paragraph 2 starts off**  
 21 **"Is the staff of the bureau is the**  
 22 **custodian of the records of the actions**  
 23 **of the council and its predecessor**  
 24 **agencies."**

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1       Do I understand from that  
 2 that the bureau keeps all the records of  
 3 the actions of the council from its  
 4 origination?  
 5       **A. We keep all of the records**  
 6 **from about the 1870s.**  
 7       **Q. And did you review all those**  
 8 **records in preparing your affidavit?**  
 9       **A. Did I review all the**  
 10 **records? No.**  
 11       **Q. Let me try asking it this**  
 12 **way.**  
 13       The following sentence  
 14 starts out "In preparing this affidavit,  
 15 I have reviewed those records." What is  
 16 included in the phrase "those records"?  
 17       **A. Well, we're referring to the**  
 18 **actions of the council, which are a part**  
 19 **of what I've mentioned in -- I talked**  
 20 **about my affidavit, specific grants or**  
 21 **licenses that were issued by the council.**  
 22 **Those are the ones that I did review.**  
 23       **Q. Okay. In those records of**  
 24 **actions by the counsel, did you see any**

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1 discussion of any particular activities  
 2 that would be occurring on a structure  
 3 that was authorized under the grant?  
 4       **A. If I did, they would have**  
 5 **been permitted activities. They would**  
 6 **have had to have had activities that**  
 7 **would have been a separate portion of**  
 8 **this. Okay?**  
 9       **Q. Okay.**  
 10       **A. In addition to getting the**  
 11 **grant, the applicant would have had to**  
 12 **have gotten the necessary approvals by**  
 13 **any state, local or federal jurisdictions**  
 14 **on the top of activity.**  
 15       **Q. Can the grants or leases be**  
 16 **issued without the issuance of the other**  
 17 **required permits?**  
 18       **A. Can you give me an example**  
 19 **of what you're referring to? Any grant**  
 20 **be issued --**  
 21       **Q. Well, let's say there was a**  
 22 **pending application for a waterfront**  
 23 **development permit.**  
 24       And also an application for

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1 a lease of the lands that the applicant  
 2 wanted to use.  
 3 **A. Well, like I had previously**  
 4 **said, the counsel will not approve an**  
 5 **application unless the permit has been**  
 6 **approved first.**  
 7 **Q. All right. Does the**  
 8 **Tidelands Resource Council concern itself**  
 9 **with whether a project crosses from New**  
 10 **Jersey into another state?**  
 11 **A. No.**  
 12 **Q. Does the Bureau of Tidelands**  
 13 **concern itself with the issue of whether**  
 14 **a project crosses a boundary from New**  
 15 **Jersey into another state?**  
 16 **A. No.**  
 17 **Q. So, the Bureau and therefore**  
 18 **the Tidelands Council would basically**  
 19 **look to see if the project was authorized**  
 20 **under New Jersey laws and wouldn't**  
 21 **consider one way or another whether**  
 22 **another states laws might apply?**  
 23 **A. Yes.**  
 24 **Q. In Paragraph 2 also, you**

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1 mentioned "The laws of New Jersey  
 2 concerning legislative riparian grants."  
 3 What laws do you mean to  
 4 refer to there?  
 5 **A. Well, prior to 1871, the**  
 6 **grants, conveyances, were issued by the**  
 7 **legislature.**  
 8 **Q. So, that's all -- this**  
 9 **phrase only refers to the laws of New**  
 10 **Jersey from 1871 back?**  
 11 **A. Well, the laws of New Jersey**  
 12 **concerning legislative riparian grants.**  
 13 **Those are the grants issued prior to**  
 14 **1871.**  
 15 **Q. You're talking about the**  
 16 **grants issued directly by the legislature**  
 17 **as opposed to issues by the Tidelands**  
 18 **Resource Council?**  
 19 **A. Or its predecessor.**  
 20 **Q. I assume those were issued**  
 21 **under the authority of the legislature;**  
 22 **correct?**  
 23 **A. Yes.**  
 24 **Q. That's why I just wasn't**

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1 clear about what this --  
 2 **A. Yes.**  
 3 **Q. -- included. But you just**  
 4 **meant 1871 and before. What portions of**  
 5 **the record compile the New Jersey versus**  
 6 **Delaware did you review?**  
 7 **A. Can you be more specific?**  
 8 **When you say --**  
 9 **Q. Well, your affidavit in**  
 10 **Paragraph 2 -- sorry I didn't point you**  
 11 **to that but I'm just going through it --**  
 12 **it says -- this is a list of what you**  
 13 **reviewed. And the next thing in the list**  
 14 **is "Portions of the record compiled in**  
 15 **New Jersey versus Delaware."**  
 16 **A. 1934 proceedings. I had**  
 17 **just looked through some of the**  
 18 **proceedings but did not look in any kind**  
 19 **of depth at all. I just looked at the**  
 20 **proceedings from 1934, the action.**  
 21 **Q. Just very briefly, last in**  
 22 **this paragraph you mentioned the response**  
 23 **of Delaware to a Freedom of Information**  
 24 **Act request concerning River Walk in**

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1 Penns Grove. What did that consist of?  
 2 **A. I don't recall.**  
 3 **Q. You testified in New Jersey**  
 4 **versus New York, another original**  
 5 **jurisdiction case; correct?**  
 6 **A. That's correct.**  
 7 **Q. What was the nature of**  
 8 **your -- were you a fact or expert witness**  
 9 **in that case?**  
 10 **A. I was an expert witness.**  
 11 **Q. What was the area of your**  
 12 **expertise?**  
 13 **A. Delineation of tidelands.**  
 14 **Q. I'm sorry?**  
 15 **A. The delineation of tidelands**  
 16 **and the interpretation of aerial**  
 17 **photography and historical maps.**  
 18 **Q. Was the purpose there to**  
 19 **determine where the mean high tide line**  
 20 **once existed?**  
 21 **A. The purpose there was to**  
 22 **identify the natural high water line at**  
 23 **Ellis Island; describe changes to the**  
 24 **island between the 18th century and the**

58	<p>1 present.</p> <p>2 Q. Are there other cases that</p> <p>3 you've testified as an expert?</p> <p>4 A. Yes.</p> <p>5 Q. How many cases were those?</p> <p>6 A. Are you referring to cases</p> <p>7 that went to trial? Or just --</p> <p>8 Q. Just cases that were filed.</p> <p>9 It doesn't matter how far they proceeded.</p> <p>10 A. I know of a case in Atlantic</p> <p>11 County, back in -- I believe it was 1987,</p> <p>12 '86. I was accepted as an expert in</p> <p>13 interpretation of delineation of maps.</p> <p>14 Q. What did that case concern?</p> <p>15 A. It involved a riparian</p> <p>16 claim.</p> <p>17 Q. So, your purpose was to</p> <p>18 figure out where the high tide, the mean</p> <p>19 high tide line existed?</p> <p>20 A. Yeah, where the historical</p> <p>21 high tide line was.</p> <p>22 Q. I want to introduce Exhibit</p> <p>23 2, Castagna-2.</p> <p>24 - - -</p>	60	<p>1 questions about these.</p> <p>2 There are nine cases listed</p> <p>3 here; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Did all of these cases</p> <p>6 concern the establishment of the location</p> <p>7 of the mean high tide line?</p> <p>8 A. No.</p> <p>9 Q. Did most of them concern</p> <p>10 that question?</p> <p>11 A. Yes.</p> <p>12 Q. And was that the limit of</p> <p>13 your involvement or testimony in those</p> <p>14 cases?</p> <p>15 A. In the cases that involve</p> <p>16 the location of high tide line?</p> <p>17 Q. Right.</p> <p>18 Maybe you can just tell me</p> <p>19 which cases those were by numbers?</p> <p>20 A. Number one, location of the</p> <p>21 high tide line.</p> <p>22 Q. Okay.</p> <p>23 A. Number two, number three,</p> <p>24 number four, number five, number six,</p>
59	<p>1 (Whereupon, the exhibit was</p> <p>2 marked Castagna-2 for</p> <p>3 identification.)</p> <p>4 - - -</p> <p>5 BY MR. ATTAWAY:</p> <p>6 Q. I got this from the National</p> <p>7 Archives. You'll see at the bottom it</p> <p>8 says reproduced at the National Archives.</p> <p>9 This is -- I've included the</p> <p>10 caption, affidavit of Richard Castagna</p> <p>11 and I just included the signature page,</p> <p>12 which is Page 18 and then beyond that,</p> <p>13 there's an Exhibit A, that is your resume</p> <p>14 and Exhibit B that has a list of cases in</p> <p>15 which you testified?</p> <p>16 A. Yeah. There were a number</p> <p>17 of cases. I'm not sure if I was</p> <p>18 qualified as an expert in all of these.</p> <p>19 Q. Okay.</p> <p>20 A. I was just trying to recall</p> <p>21 which one I knew I was qualified as an</p> <p>22 expert.</p> <p>23 Q. I don't want to belabor this</p> <p>24 but I want to ask you a couple of</p>	61	<p>1 number seven, those.</p> <p>2 Q. Okay.</p> <p>3 A. Eight and nine were not.</p> <p>4 Q. Okay. I'll get to those in</p> <p>5 a minute. Of one through seven, did any</p> <p>6 of those concern the boundary between New</p> <p>7 Jersey and Delaware, in any way?</p> <p>8 A. No.</p> <p>9 Q. Have you ever been involved</p> <p>10 in another case that concerned the</p> <p>11 boundary between those two states in any</p> <p>12 way?</p> <p>13 A. No.</p> <p>14 Q. Did these seven cases</p> <p>15 essentially concern the line dividing the</p> <p>16 rights of private parties and the state</p> <p>17 with respect to lands abutting the coast?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. But none of those</p> <p>20 were on the -- well, were any of these on</p> <p>21 the Delaware River?</p> <p>22 A. No.</p> <p>23 Q. Eight is Beal V Hill. What</p> <p>24 was that case about?</p>

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1       **A. A drowning; a child drowned**  
 2 **in Crosswicks Creek in Burlington County.**  
 3 **And I was just, as a representative from**  
 4 **the Bureau of Tidelands, I was just asked**  
 5 **to answer some questions.**  
 6       **Q. And number nine?**  
 7       **A. That had more to do with**  
 8 **photo interpretation. It was not**  
 9 **directly related to tidelands. It had to**  
 10 **do -- I don't recall the specifics. But**  
 11 **it did not have to do with tidelands. It**  
 12 **had to do with what was -- with photo**  
 13 **interpretation. I don't recall the**  
 14 **specifics.**  
 15       **Q. Okay. Fair enough. I think**  
 16 **we're done with this exhibit.**  
 17       **MR. ATTAWAY: This would be**  
 18 **a good time for me to take a break**  
 19 **if everybody else is in agreement.**  
 20       **THE WITNESS: Very good.**  
 21       - - -  
 22       **(Whereupon, there was a**  
 23 **recess commencing at 10:45 a.m.**  
 24 **and concluding at 10:56 a.m.)**

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1       - - -  
 2 **BY MR. ATTAWAY:**  
 3       **Q. Back on the record.**  
 4       **A. Is there something I can**  
 5 **correct from what I said previously?**  
 6       **Q. Sure.**  
 7       **A. You had asked me who I had**  
 8 **spoken to, what other attorneys. I did**  
 9 **also speak with Rachael Horwitz and Amy**  
 10 **Dolin. I just wanted to clarify.**  
 11       **Q. At the meetings that you**  
 12 **mentioned?**  
 13       **A. At the meetings I had**  
 14 **mentioned.**  
 15       **Q. Okay.**  
 16       **A. I just wanted to clarify**  
 17 **that.**  
 18       **Q. Okay. I understand. You**  
 19 **meet one attorney, they all just kind of**  
 20 **run together.**  
 21       **A. They all ran together.**  
 22       **Q. Proceeding through your**  
 23 **declaration, Paragraph 3 states that**  
 24 **"Riparian rights in New Jersey have been**

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1 **delineated by statute."**  
 2       **What is your understanding**  
 3 **of the meaning of that phrase riparian**  
 4 **rights?**  
 5       **A. Riparian rights are the**  
 6 **right of an upland owner to utilize the**  
 7 **water area in front of his property for**  
 8 **purposes of constructing piers, docks,**  
 9 **wharfs.**  
 10       **Q. Does an upland owner have a**  
 11 **riparian right to load or unload any**  
 12 **particular kind of cargo, such as**  
 13 **pesticides, coal, energy?**  
 14       **A. Only if he receives a permit**  
 15 **or if he makes an application to local,**  
 16 **federal, state authorities and get**  
 17 **permission to do that.**  
 18       **Q. Within New Jersey, where**  
 19 **would that person apply to get permission**  
 20 **to handle certain cargo?**  
 21       **A. That, I can't answer.**  
 22       **Q. Would the permit that was**  
 23 **awarded for -- to authorize that activity**  
 24 **be termed a riparian permit?**

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1       **A. It's not -- riparian permit?**  
 2 **There are riparian licenses. But you're**  
 3 **asking me whether something that another**  
 4 **office issued would be called a riparian**  
 5 **permit? I don't know.**  
 6       **Q. Have you ever seen such a**  
 7 **permit called a riparian permit; heard or**  
 8 **seen it called that?**  
 9       **A. I'm familiar with waterfront**  
 10 **permits but I've never seen on the top**  
 11 **riparian permit, no.**  
 12       **Q. Have you heard it described**  
 13 **as a riparian permit?**  
 14       **A. No.**  
 15       **Q. The next sentence in**  
 16 **Paragraph 3 states "Riparian owners have**  
 17 **no constitutional riparian rights."**  
 18       **What do you mean here by**  
 19 **riparian owners?**  
 20       **A. Riparian owners are the**  
 21 **owners of property adjacent to the water.**  
 22       **Q. So, is it the case that by**  
 23 **owning property that is adjacent to the**  
 24 **water, that the property owner acquires**

<p style="text-align: right;">66</p> <p>1 riparian rights?                  2 <b>A. Rephrase that question. Is</b>                  3 <b>it --</b>                  4 <b>Q. Is it the case that a</b>                  5 <b>riparian owner, by virtue of owning</b>                  6 <b>property that abuts waters, would obtain</b>                  7 <b>riparian rights?</b>                  8 <b>A. If he so desired; if he made</b>                  9 <b>an application to do that.</b>                  10 <b>Q. Okay. Is it fair to say</b>                  11 <b>that riparian rights are incidents of the</b>                  12 <b>ownership of property abutting the</b>                  13 <b>waters?</b>                  14 <b>A. What do you mean by</b>                  15 <b>incidents of?</b>                  16 <b>Q. Is it -- a riparian owner</b>                  17 <b>gets riparian rights by virtue of his or</b>                  18 <b>her ownership of the land abutting the</b>                  19 <b>waters; is that correct?</b>                  20 <b>A. Yes.</b>                  21 <b>Q. So, if someone owned a</b>                  22 <b>parcel that was say 500 feet inland, but</b>                  23 <b>did not abut the water, would that person</b>                  24 <b>have any riparian rights?</b></p>	<p style="text-align: right;">68</p> <p>1 I don't want you to tell me anything that                  2 you've told the Attorney General's Office                  3 or that they've told you, because that                  4 would be privileged.                  5 <b>A. Well, the interpretation of</b>                  6 <b>one of these laws, I would consult the</b>                  7 <b>Attorney General's Office.</b>                  8 <b>Q. Okay. Does that happen</b>                  9 <b>fairly commonly in the course of your</b>                  10 <b>day-to-day work?</b>                  11 <b>A. No.</b>                  12 <b>Q. I'm sorry?</b>                  13 <b>A. No.</b>                  14 <b>Q. How often would you say that</b>                  15 <b>an issue comes up that you need to</b>                  16 <b>consult the Attorney General's Office?</b>                  17 <b>A. With regard to these</b>                  18 <b>specific laws?</b>                  19 <b>Q. Well, with regard to these</b>                  20 <b>laws and the other laws governing the</b>                  21 <b>work that you do.</b>                  22 <b>A. If I have a question, I do</b>                  23 <b>consult the Attorney General's Office</b>                  24 <b>concerning some of these laws.</b></p>
<p style="text-align: right;">67</p> <p>1 <b>A. If their property does not</b>                  2 <b>abut the water, no.</b>                  3 <b>Q. The rest of Paragraph 3</b>                  4 <b>cites laws from New Jersey, both in the</b>                  5 <b>1800s and the 1900s.</b>                  6 <b>Have you done any legal</b>                  7 <b>studies, Mr. Castagna?</b>                  8 <b>A. No.</b>                  9 <b>Q. Do you work with these laws</b>                  10 <b>regularly?</b>                  11 <b>A. Well, they serve as the</b>                  12 <b>basis for what we do.</b>                  13 <b>Q. So, in the course of your</b>                  14 <b>job, have you occasion to read and</b>                  15 <b>interpret and understand the laws that</b>                  16 <b>you cite here in Paragraph 3?</b>                  17 <b>A. Yes.</b>                  18 <b>Q. Do you also consult with the</b>                  19 <b>Attorney General's Office in interpreting</b>                  20 <b>those laws?</b>                  21 <b>A. Most definitely.</b>                  22 <b>Q. In what context would you</b>                  23 <b>commonly consult with the Attorney</b>                  24 <b>General's Office? And just to be clear,</b></p>	<p style="text-align: right;">69</p> <p>1 <b>Q. Does that happen regularly?</b>                  2 <b>A. Not that often, no.</b>                  3 <b>Q. Can you estimate, on</b>                  4 <b>average, how many times a year since</b>                  5 <b>you've been supervisor of the Southern</b>                  6 <b>Region and now manager?</b>                  7 <b>A. I would say once a month or</b>                  8 <b>once every couple of months I'll have a</b>                  9 <b>question.</b>                  10 <b>Q. Okay. Fair enough.</b>                  11 <b>In Paragraph 4 and it's on</b>                  12 <b>page that's number 28A.</b>                  13 <b>A. 28A or 27?</b>                  14 <b>Q. The paragraph starts on 27A</b>                  15 <b>but I want to look at 28A.</b>                  16 <b>A. It continues. Okay.</b>                  17 <b>Q. Yes. The paragraph talks</b>                  18 <b>about several rights that riparian owners</b>                  19 <b>have. And then it says the exercise of</b>                  20 <b>this right is subject to obtaining</b>                  21 <b>applicable state environmental permits</b>                  22 <b>and a tidelands license.</b>                  23 <b>And I take it that's just a</b>                  24 <b>restatement of what you've already</b></p>

70	<p>1 testified to today that a riparian grant                  2 doesn't authorize any particular activity                  3 if other permits are required; is that                  4 correct?                  5 <b>A. Yeah, that's correct.</b>                  6 <b>Q. And then the next sentence</b>                  7 <b>talks about riparian owners having a</b>                  8 <b>common law right to accretion and also a</b>                  9 <b>risk of suffering a loss of their land by</b>                  10 <b>erosion?</b>                  11 <b>A. Uh-huh.</b>                  12 <b>Q. In your understanding, is</b>                  13 <b>that a riparian right that riparian</b>                  14 <b>owners have?</b>                  15 <b>A. Yes.</b>                  16 <b>Q. And I take it that that</b>                  17 <b>would be determined by the location of</b>                  18 <b>the mean high tide line, which is</b>                  19 <b>determined -- which is determined in</b>                  20 <b>large part by the maps that you worked on</b>                  21 <b>throughout your career?</b>                  22 <b>A. Determine what? Where?</b>                  23 <b>Q. In order to determine</b>                  24 <b>accretion or erosion, what would you have</b></p>	72	<p>1 <b>permission.</b>                  2 <b>Q. Anything else you can think</b>                  3 <b>of?</b>                  4 <b>A. Right now, that's all I can</b>                  5 <b>think of.</b>                  6 <b>Q. And in Paragraph 5, it says,</b>                  7 <b>"Such in general were the riparian rights</b>                  8 <b>of property owners in New Jersey in 1905</b>                  9 <b>or shortly thereafter; rights which</b>                  10 <b>continue to be in effect to the present</b>                  11 <b>day."</b>                  12 <b>As a result of reading that,</b>                  13 <b>am I right to assume that your</b>                  14 <b>understanding is that the riparian rights</b>                  15 <b>of property owners haven't changed in any</b>                  16 <b>material way between 1905 and today?</b>                  17 <b>A. To go back to your other</b>                  18 <b>question, I mean another right of a</b>                  19 <b>property owner is to be able to reach a</b>                  20 <b>navigable channel and to construct wharfs</b>                  21 <b>or piers to enable him to do that.</b>                  22 <b>They have the first right to</b>                  23 <b>do that. No one else could do that on</b>                  24 <b>their property without their permission,</b></p>
71	<p>1 to look at first, to determine whether                  2 accretion or erosion had occurred?                  3 <b>A. I would look at a series of</b>                  4 <b>aerial photography.</b>                  5 <b>Q. In order to determine what?</b>                  6 <b>A. Determine whether it was</b>                  7 <b>accretion or fill. If someone filled the</b>                  8 <b>property or if it built out naturally.</b>                  9 <b>Q. Okay. So, would accretion</b>                  10 <b>occur when the mean high tide line moved</b>                  11 <b>water ward?</b>                  12 <b>A. Accretion occurs when the</b>                  13 <b>mean high tide line moves water ward,</b>                  14 <b>yes.</b>                  15 <b>Q. And erosion occurs when it</b>                  16 <b>moves the other way and the landowner</b>                  17 <b>loses land.</b>                  18 <b>Are there any other riparian</b>                  19 <b>rights that riparian owners have in your</b>                  20 <b>understanding?</b>                  21 <b>A. Well, they have the right to</b>                  22 <b>build structures in front of their</b>                  23 <b>property. And no one else could build</b>                  24 <b>those structures without their</b></p>	73	<p>1 <b>but that's a right that they have to be</b>                  2 <b>able to reach that channel.</b>                  3 <b>Q. And that's a riparian right,</b>                  4 <b>in your understanding?</b>                  5 <b>A. In my understanding, that's</b>                  6 <b>a right to reach, to get a vessel out to</b>                  7 <b>the channel.</b>                  8 <b>Q. And you said earlier that</b>                  9 <b>the right to load or unload particular</b>                  10 <b>cargo, though, would not be included</b>                  11 <b>within that riparian right because the</b>                  12 <b>wharf owner would have to get a permit?</b>                  13 <b>A. They'd have to get a permit</b>                  14 <b>in order to do that but they have an</b>                  15 <b>inherent right to get out to the main</b>                  16 <b>channel.</b>                  17 <b>Q. Next -- the next portion of</b>                  18 <b>your affidavit, there is a heading before</b>                  19 <b>Paragraph 6 and the heading states,</b>                  20 <b>"Action of the State of New Jersey</b>                  21 <b>asserting its riparian jurisdiction over</b>                  22 <b>the lands of the Delaware River within</b>                  23 <b>the 12 mile circle."</b>                  24 <b>I'd like to break this down</b></p>

74	<p>1 first. What is the 12 mile circle?</p> <p>2 <b>A. What is the 12 mile circle?</b></p> <p>3 Q. In your understanding.</p> <p>4 <b>A. It's a circle that</b></p> <p>5 <b>intersects portions of land that's</b></p> <p>6 <b>offshore of New Jersey.</b></p> <p>7 Q. Where is it located, in</p> <p>8 general?</p> <p>9 <b>A. It extends from Southern</b></p> <p>10 <b>Gloucester County and includes most of</b></p> <p>11 <b>Salem County.</b></p> <p>12 Q. And Southern Gloucester</p> <p>13 County, am I correct to say, that that's</p> <p>14 at the location where the boundaries of</p> <p>15 Pennsylvania, New Jersey and Delaware</p> <p>16 meet?</p> <p>17 <b>A. I'd have to look at a map.</b></p> <p>18 <b>I'm not certain of that.</b></p> <p>19 <b>You through in Pennsylvania</b></p> <p>20 <b>there. I haven't addressed that issue.</b></p> <p>21 Q. Is Gloucester County north</p> <p>22 of Salem County?</p> <p>23 <b>A. Gloucester County is north</b></p> <p>24 <b>of Salem County, yes.</b></p>	76	<p>1 <b>your left.</b></p> <p>2 Q. Okay. So, there's a point</p> <p>3 in the river where the boundary of</p> <p>4 Delaware or the State of Delaware stops</p> <p>5 and then north of that New Jersey and</p> <p>6 Pennsylvania own respective parts of the</p> <p>7 Delaware River; is that correct?</p> <p>8 <b>A. I'd have to look at a map.</b></p> <p>9 Q. So the northern part of the</p> <p>10 12 mile circle is in Logan township.</p> <p>11 And what about the southern</p> <p>12 part?</p> <p>13 <b>A. It's in Salem County.</b></p> <p>14 Q. Okay. Do you know about how</p> <p>15 much distance there is between the</p> <p>16 northern and southern parts?</p> <p>17 <b>A. It's about 29 miles.</b></p> <p>18 Q. Where, within that 29 mile</p> <p>19 stretch, which also is within the 12 mile</p> <p>20 circle, does the boundary lie between New</p> <p>21 Jersey and Delaware?</p> <p>22 <b>A. The boundary between New</b></p> <p>23 <b>Jersey and Delaware is the low water</b></p> <p>24 <b>line.</b></p>
75	<p>1 Q. Let me try it this way:</p> <p>2 Where is the northern boundary of the 12</p> <p>3 mile circle?</p> <p>4 <b>A. In Logan Township;</b></p> <p>5 <b>Gloucester County.</b></p> <p>6 Q. Is Logan Township near the</p> <p>7 Pennsylvania, New Jersey border?</p> <p>8 <b>A. Well, Logan Township is in</b></p> <p>9 <b>New Jersey.</b></p> <p>10 Q. If I were in a boat, heading</p> <p>11 north in the Delaware River and I were</p> <p>12 first adjacent to Salem County on my</p> <p>13 right and then I go further north and I'm</p> <p>14 adjacent to Gloucester County on my</p> <p>15 right.</p> <p>16 At some point I would leave</p> <p>17 Delaware; correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And then what state would I</p> <p>20 enter if I continue up the Delaware</p> <p>21 River?</p> <p>22 <b>A. If you continue up the</b></p> <p>23 <b>Delaware River, New Jersey would be on</b></p> <p>24 <b>your right and Pennsylvania would be on</b></p>	77	<p>1 Q. On which side of the river?</p> <p>2 <b>A. On the New Jersey side.</b></p> <p>3 Q. Are you aware of a boundary</p> <p>4 agreement between New Jersey and Delaware</p> <p>5 about how to establish the mean low water</p> <p>6 mark, delineating the boundary between</p> <p>7 the states?</p> <p>8 <b>A. Are you referring to the</b></p> <p>9 <b>compact?</b></p> <p>10 Q. I'm referring to a more</p> <p>11 recent agreement between the two states,</p> <p>12 where the states mapped the boundary and</p> <p>13 agreed where the boundary would lie.</p> <p>14 <b>A. No.</b></p> <p>15 Q. You're not aware of that?</p> <p>16 <b>A. A boundary agreement?</b></p> <p>17 Q. Yes.</p> <p>18 You're not aware of an</p> <p>19 agreement that establishes the mean low</p> <p>20 water line at the level that it existed</p> <p>21 in 1934?</p> <p>22 <b>A. I was aware of the 1904</b></p> <p>23 <b>compact. And I was aware of the 1934</b></p> <p>24 <b>decision.</b></p>

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1           **But after that, no.**  
 2           Q. Okay. Fair enough.  
 3           Do you know -- you said you  
 4 created maps and reviewed more maps of  
 5 the boundary.  
 6           Actually, you said you  
 7 weren't sure if you created maps within  
 8 the 12 mile circle earlier, we were  
 9 talking about the Delaware River. But  
 10 have you reviewed maps over time to see  
 11 where the mean low water line existed at  
 12 different points in time over the course  
 13 of history?  
 14           A. No.  
 15           Q. Within if 12 mile circle?  
 16           A. No. No.  
 17           Q. Do you know whether there's  
 18 been any accretion or erosion between  
 19 1934 and the present day within the 12  
 20 mile circle that would make the actual  
 21 mean low water line have changed  
 22 positions?  
 23           A. I've not investigated that.  
 24           Q. Okay. The heading also

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1 includes the phrase riparian  
 2 jurisdiction.  
 3           What is your understanding  
 4 of riparian jurisdiction?  
 5           A. Well, the sovereign  
 6 authority of a -- of a state to regulate,  
 7 tax and police the area between the  
 8 shoreline or mean high water and a  
 9 navigable channel.  
 10           Q. When did you come to that  
 11 understanding?  
 12           A. When reviewing this  
 13 application in this case.  
 14           Q. And by this application --  
 15           A. Excuse me. In this  
 16 litigation.  
 17           Q. Did you review the  
 18 application filed by BP to build the  
 19 crown landing project that's the subject  
 20 matter of this litigation?  
 21           A. We have an application for  
 22 a -- an interim license in a lease. We  
 23 have not yet received a permit. So, I  
 24 have not yet reviewed in any depth.

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1           Q. So, it wasn't until this  
 2 case that you came to the understanding  
 3 that riparian jurisdiction includes a  
 4 state's right to regulate, tax and  
 5 police?  
 6           A. Well, it's been my  
 7 understanding, but I've focused in on it  
 8 because of this particular case.  
 9           Q. When did you come to this  
 10 understanding?  
 11           A. When did it come to my  
 12 understanding? In the course of my work,  
 13 the Bureau of Tidelands, it's my  
 14 understanding that the jurisdiction of a  
 15 riparian owner is to be able to reach a  
 16 navigable channel. I've always known  
 17 that. That's not anything that's --  
 18 that's the purpose of what the Bureau of  
 19 Tidelands -- that's the purpose of any  
 20 licensee. He wants to be able to reach  
 21 navigable waters.  
 22           Q. I just want to back up a  
 23 step. You mentioned the location of the  
 24 boundary on the 12 mile circle on the low

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1 water line of the New Jersey shore.  
 2           When did you become aware of  
 3 the location of that boundary?  
 4           A. I have seen maps that showed  
 5 the boundary line over the course of my  
 6 tenure here; that shows the low water  
 7 line.  
 8           Q. Is it fair to say that early  
 9 in your career, starting in 1977, that  
 10 you were aware of the location of the  
 11 boundary within the 12 mile circle?  
 12           A. That's fair to say. I had  
 13 seen a boundary line on maps that did  
 14 show that.  
 15           Q. Okay. What is your  
 16 understanding of New Jersey's authority,  
 17 regulatory authority within the 12 mile  
 18 circle, over a project that begins in New  
 19 Jersey, but extends into Delaware?  
 20           A. It is my understanding that  
 21 as far as my bureau, the Bureau of  
 22 Tidelands is concerned, an applicant has  
 23 the right to reach navigable waters.  
 24           And as defined in -- as I've

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1 been told by counsel.  
 2 Q. During what time period?  
 3 A. Whenever I've asked the  
 4 question about our ability to -- the  
 5 Bureau's ability to issue licenses or  
 6 grants beyond the low water line, I've  
 7 been told by my counsel we can do that.  
 8 Q. Starting -- what's the  
 9 earliest time in which you developed that  
 10 understanding?  
 11 A. I can't say for certain, but  
 12 it goes back maybe ten years.  
 13 Q. If we're in 2006 now --  
 14 A. Some time when I became  
 15 Southern Region supervisor.  
 16 Q. So, before you became  
 17 Southern Region supervisor, you did not  
 18 have that understanding?  
 19 A. Well, it never became an  
 20 issue. Because my area of my concern was  
 21 above the -- delineating the mean high  
 22 water line.  
 23 Q. So, it just never came up  
 24 and you never considered it?

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1 A. It never came up.  
 2 When it did come up, I asked  
 3 counsel the question about can we issue  
 4 licenses or any riparian instruments and  
 5 they said yes, we can.  
 6 And I followed my counsel's  
 7 advice as to how I would handle those  
 8 issues.  
 9 Q. When did you first face the  
 10 question of whether you could issue a  
 11 license for lands that extended into  
 12 Delaware?  
 13 A. I don't recall.  
 14 Q. You started with the -- you  
 15 said it was not before 1993; correct?  
 16 A. I don't believe it was.  
 17 Q. Do you remember in  
 18 connection with what project this  
 19 question came up?  
 20 A. Before you asked that  
 21 question, I was thinking -- no, I don't.  
 22 I don't recall what specific project.  
 23 But I may have seen this low water line  
 24 on the map. I asked counsel, I said we

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1 can issue tidelands conveyances beyond  
 2 that line.  
 3 Q. And you don't remember when?  
 4 A. No. No.  
 5 Q. Was it in 2005 when BP filed  
 6 its application?  
 7 A. No. It was long before  
 8 then.  
 9 Q. Do you know whether it was  
 10 in connection with a structure that now  
 11 exists in the 12 mile circle?  
 12 A. I don't recall.  
 13 Q. Later on, we're going to go  
 14 through the specific grants that you've  
 15 talked about in your affidavit and maybe  
 16 it will come back to you which grant this  
 17 question came up with regard to?  
 18 A. It may not have been a  
 19 specific case. It just might have been a  
 20 general question. I mean I'm not saying  
 21 it was a specific case. It could have  
 22 just been a general question. There's a  
 23 line here and we -- what can we do. I  
 24 was told that we can issue licenses,

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1 leases and grants.  
 2 Q. I would just ask later when  
 3 we go through those to keep it in mind.  
 4 If it comes back to you, you let me know.  
 5 I'll try to remember to ask you as well.  
 6 A. Okay.  
 7 Q. In Paragraph 7 of your  
 8 affidavit, there are three perhaps within  
 9 that numbered paragraph.  
 10 The third one states "From  
 11 1978 to the present, the council  
 12 conditioned it's approval of a grant,  
 13 license or easement on the applicants  
 14 obtaining a New Jersey regulatory permit;  
 15 together with all other required federal,  
 16 New Jersey and local regulatory permits."  
 17 What changed in 1978?  
 18 A. I don't recall. I was not a  
 19 part of this process in 1978; I just know  
 20 that a separate permit was required.  
 21 Q. How did you get the  
 22 information to include this fact in your  
 23 affidavit?  
 24 A. Well, it's just common

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1 knowledge in the Bureau that at some  
 2 point in time, a separate permit was  
 3 required from another bureau.  
 4 Prior to that, the permit  
 5 was part of the grant package. Counsel  
 6 approved both the permit and the license.  
 7 Q. So, prior to 1978, what  
 8 sorts of permits would the counsel  
 9 approve in addition to the riparian  
 10 grant, lease or conveyance?  
 11 A. I wasn't here, so I don't  
 12 know.  
 13 But I --  
 14 Q. Well, you just said that  
 15 they approved permits, but you don't know  
 16 what kind of permits they approved?  
 17 A. Well, they would approve  
 18 permits for a particular activity that  
 19 would have been part of the application.  
 20 Q. Can you recall any  
 21 particular document that would establish  
 22 that?  
 23 A. No.  
 24 Q. Do you recall having seen

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1 one?  
 2 A. No.  
 3 Q. Can you think of any  
 4 particular activity that was approved by  
 5 the Tidelands Resource Council?  
 6 A. Prior to 1978?  
 7 Q. Yes.  
 8 A. Yeah. Within the 12 mile  
 9 circle?  
 10 Q. Yes.  
 11 A. They are mentioned in my  
 12 affidavit.  
 13 Q. I think your affidavit  
 14 mentions the grants, leases and  
 15 conveyance of land; but -- okay. Where  
 16 in your affidavit does it show that the  
 17 Tidelands Resource Council approved a  
 18 particular activity to occur on the lands  
 19 that were the subject of a grant, lease  
 20 or conveyance?  
 21 A. Well, it was my  
 22 understanding that prior to the approval  
 23 of any tidelands conveyance, there would  
 24 need to be also approval of the activity

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1 by the state or local or federal  
 2 authority.  
 3 Q. Would that approval have  
 4 been given by the Tidelands Resource  
 5 Council or by some other entity?  
 6 A. That approval would had to  
 7 be given by some other entity.  
 8 Q. For the particular  
 9 activities?  
 10 A. For the particular activity.  
 11 Whether it's federal, local  
 12 or state; they would have to approve the  
 13 activity.  
 14 Q. But the Tidelands Resource  
 15 Council would not have anything to do  
 16 with approving particular activities?  
 17 A. No. No.  
 18 Q. They would simply approve or  
 19 deny the application to grant the lands?  
 20 A. Right; after 1978 there was  
 21 a separate office that did the  
 22 permitting.  
 23 Q. Okay.  
 24 A. Okay. But prior to that,

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1 there may have been local or state or  
 2 federal.  
 3 Q. But not the Tidelands  
 4 Resource Council?  
 5 A. No, not the Tidelands  
 6 Resource Council.  
 7 Q. I thought I -- I must have  
 8 misunderstood your answer before.  
 9 A. No, they didn't approve  
 10 permits.  
 11 Q. Or to approve particular  
 12 activities, whether or not they were a  
 13 permit or not but they did not; correct?  
 14 A. That's correct.  
 15 Q. You said earlier it was your  
 16 understanding that New Jersey has the  
 17 authority to issue grants, leases and  
 18 conveyances of lands that belong to  
 19 Delaware; is that correct?  
 20 A. Yes.  
 21 Q. How did you come to that  
 22 understanding?  
 23 A. Through my counsel.  
 24 Q. In what time period?

90	<p>1 A. As I said, some time --</p> <p>2 since 1993.</p> <p>3 Q. And I know we already went</p> <p>4 over this. Let me just try one more</p> <p>5 question about it.</p> <p>6 Was it relatively early in</p> <p>7 your tenure starting in 1993 or was it</p> <p>8 more recent?</p> <p>9 A. I believe it was earlier in</p> <p>10 my tenure when I became the Southern</p> <p>11 Region supervisor.</p> <p>12 Q. Okay. What about New</p> <p>13 Jersey's regulatory authority within the</p> <p>14 12 mile circle to issue or deny permits</p> <p>15 relating to particular activities?</p> <p>16 A. I cannot address permitting.</p> <p>17 Q. What is your understanding</p> <p>18 of Delaware's regulatory authority within</p> <p>19 the 12 mile circle as it applies to a</p> <p>20 boundary straddling project, if that term</p> <p>21 is clear enough?</p> <p>22 A. I don't know.</p> <p>23 Q. Have you ever considered it?</p> <p>24 A. No.</p>	92
91	<p>1 Q. Prior to this litigation, do</p> <p>2 you know whether New Jersey has ever</p> <p>3 contended that Delaware lacks the</p> <p>4 authority to regulate boundary straddling</p> <p>5 projects within the 12 mile circle?</p> <p>6 A. Prior to this -- I don't</p> <p>7 know; no.</p> <p>8 Q. You're not aware of any?</p> <p>9 A. I'm not aware of any, no.</p> <p>10 Q. And by New Jersey, I mean</p> <p>11 yourself, anyone in the Department of</p> <p>12 Environmental Protection or anyone else</p> <p>13 employed by or represented by the state?</p> <p>14 A. I can't speak to anyone else</p> <p>15 in the department.</p> <p>16 Q. I'm just asking for your</p> <p>17 personal knowledge. I just want to</p> <p>18 clarify that when I said New Jersey, I</p> <p>19 meant a lot of people.</p> <p>20 A. Yeah.</p> <p>21 Q. So, you're not aware of</p> <p>22 anybody that represents the State of New</p> <p>23 Jersey or is employed by it that has</p> <p>24 contended that Delaware lacks regulatory</p>	93
90	<p>1 over a boundary straddling project;</p> <p>2 correct?</p> <p>3 A. Could you -- could you just</p> <p>4 say the question again?</p> <p>5 Q. Sure.</p> <p>6 A. Just so I --</p> <p>7 Q. Okay. Prior to this</p> <p>8 litigation, are you aware of any employee</p> <p>9 or representative of the State of New</p> <p>10 Jersey, that has ever stated that</p> <p>11 Delaware lacks the authority to regulate</p> <p>12 a project that straddles the boundary</p> <p>13 between the two states within the 12 mile</p> <p>14 circle?</p> <p>15 A. Well, yes. Again, when I</p> <p>16 have consulted with my counsel, I was</p> <p>17 told that we are allowed, the Bureau of</p> <p>18 Tidelands, we have jurisdiction authority</p> <p>19 to approve tidelands conveyances out</p> <p>20 shore of any high water line -- of any</p> <p>21 low water line.</p> <p>22 Q. Have you ever heard anyone</p> <p>23 say that that precluded Delaware from</p> <p>24 regulating activities to occur on those</p>	93
91	<p>1 lands; to the extent the lands belong to</p> <p>2 Delaware?</p> <p>3 A. No.</p> <p>4 Q. Are you familiar with</p> <p>5 Delaware's coastal zone laws?</p> <p>6 A. No.</p> <p>7 Q. Delaware's Subaqueous Lands</p> <p>8 Acts?</p> <p>9 A. No.</p> <p>10 Q. Delaware's Coastal Zone</p> <p>11 Management Act?</p> <p>12 A. No.</p> <p>13 Q. Not even in the context of</p> <p>14 this litigation have you become familiar</p> <p>15 with those laws?</p> <p>16 A. No.</p> <p>17 Q. Are you familiar with any</p> <p>18 other Delaware permitting laws?</p> <p>19 A. No.</p> <p>20 Q. You mentioned the 1905</p> <p>21 compact earlier.</p> <p>22 What is your understanding</p> <p>23 of that document?</p> <p>24 A. My understanding of that</p>	93

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1 document is that the State of New Jersey  
 2 has sovereign authority to issue  
 3 tidelands leases, licenses and grants out  
 4 to the main channel.  
 5 Q. Do you have an  
 6 understanding, based on that document, of  
 7 Delaware's authority to regulate a  
 8 project that straddles the boundary  
 9 between the two states?  
 10 A. No.  
 11 Q. No understanding one way or  
 12 the other?  
 13 A. No.  
 14 Q. Okay.  
 15 A. Well, my understanding is  
 16 they don't have the authority to  
 17 regulate, insure of the navigation  
 18 channel on the New Jersey side.  
 19 Q. And how did you come to that  
 20 understanding?  
 21 A. That understanding is based  
 22 on what I've read from the compact.  
 23 Q. Okay. I'd like to introduce  
 24 Castagna-3, which is a copy of the 1905

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1 compact.  
 2 I just want you to identify  
 3 where in the compact you base that  
 4 understanding.  
 5 - - -  
 6 (Whereupon, the exhibit was  
 7 marked Castagna-3 for  
 8 identification.)  
 9 - - -  
 10 THE WITNESS: Article 7,  
 11 each state on its own side of the  
 12 river continued to exercises  
 13 riparian jurisdiction of every  
 14 kind and nature and to make  
 15 grants, leases and conveyances of  
 16 riparian land and rights under the  
 17 laws of the respective states.  
 18 BY MR. ATTAWAY:  
 19 Q. When did you first read this  
 20 language?  
 21 A. The first time I read this  
 22 was -- the beginning of this litigation.  
 23 Q. What is your understanding  
 24 of how this language applies to any

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1 permitting activities by Delaware as  
 2 applied to a boundary straddling project?  
 3 A. Again, permitting  
 4 activity -- I'm not here to address  
 5 permitting activities.  
 6 Q. You have no --  
 7 A. That's not within my scope  
 8 of knowledge.  
 9 Q. Okay. So, just to clarify,  
 10 have you no understanding one way or  
 11 another about the meaning of Article 7 as  
 12 applied to the authority of Delaware or  
 13 New Jersey to issue permits regulating  
 14 activities to occur on a wharf extending  
 15 into Delaware?  
 16 A. What I'm saying, I can't  
 17 speak to that. It's not within my  
 18 authority to speak to that.  
 19 Q. Does that mean that you have  
 20 no understanding?  
 21 A. What it means is I don't  
 22 have the knowledge about the permitting  
 23 process.  
 24 Q. Okay. Fair enough. Are you

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1 aware of any occasion where Delaware has  
 2 exercised regulatory authority over a  
 3 project that straddles the boundary  
 4 within the 12 mile circle?  
 5 A. Yes.  
 6 Q. On what occasions?  
 7 A. There was a license  
 8 application by DuPont this past summer  
 9 for dredging and for the placement of  
 10 rip-rap on the -- that straddled the  
 11 boundary and it was actually inshore of  
 12 the boundary.  
 13 Q. And Delaware issued a permit  
 14 for that?  
 15 A. Yes.  
 16 Q. Have you seen the Delaware  
 17 permit?  
 18 A. No.  
 19 Q. How did you find out about  
 20 it?  
 21 A. I was told by the  
 22 applicants.  
 23 Q. Okay. Did you say anything  
 24 to the applicants about whether they

98

1 needed to apply to Delaware?  
 2 **A. I told them they needed to**  
 3 **apply to New Jersey.**  
 4 Q. Did you say anything about  
 5 whether they needed to apply to Delaware?  
 6 **A. I said it was within our**  
 7 **jurisdiction here. And I don't recall**  
 8 **what I told them as far as Delaware.**  
 9 Q. Did you have any discussions  
 10 with them about whether or not Delaware  
 11 had any regulatory authority at all over  
 12 the project?  
 13 **A. I don't recall.**  
 14 Q. Was anyone else -- who was  
 15 present at that meeting, first for the  
 16 DEP or anyone else associated with New  
 17 Jersey?  
 18 **A. Well, I was there -- I don't**  
 19 **recall the names of the parties of the**  
 20 **representatives of DuPont.**  
 21 Q. Do you remember how many  
 22 people there were?  
 23 **A. Three or four people.**  
 24 Q. Were you by yourself from

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1 New Jersey?  
 2 **A. I believe so.**  
 3 Q. Are you aware of other  
 4 occasions where Delaware has exercised  
 5 regulatory authority over a boundary  
 6 straddling project?  
 7 **A. In the scope of my**  
 8 **knowledge, no.**  
 9 Q. Does your affidavit --  
 10 **A. Could I just check my**  
 11 **affidavit?**  
 12 Q. Sure.  
 13 **A. In my affidavit, we were to**  
 14 **turn to 37A.**  
 15 Q. You're referring to the  
 16 discussion --  
 17 **A. The Fenwick Commons.**  
 18 Q. Did you attend any meetings  
 19 with Fenwick Commons?  
 20 **A. No.**  
 21 Q. Regarding this?  
 22 **A. No.**  
 23 Q. Are you aware of any  
 24 meetings between anyone from the State of

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1 New Jersey and the representatives of  
 2 Fenwick?  
 3 **A. No.**  
 4 Q. What is your understanding  
 5 of Delaware's regulation of that project?  
 6 **A. I just know that they**  
 7 **applied to the State of Delaware for this**  
 8 **project.**  
 9 Q. Do you know whether Delaware  
 10 approved it or not?  
 11 **A. I don't know.**  
 12 Q. Okay. Anything else? Any  
 13 other occasions where Delaware --  
 14 **A. Can I review?**  
 15 Q. Please.  
 16 **A. Yes. An assignment of**  
 17 **management rights; turn to Page 50A.**  
 18 Q. That's the Fort Mott project  
 19 that you're referring to?  
 20 **A. The rehabilitation of the**  
 21 **pier.**  
 22 Q. Okay. Did you attend any  
 23 meetings or have any conversations about  
 24 this project?

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1 **A. No, because this was before**  
 2 **the time I was -- I don't recall.**  
 3 Q. This was before the time you  
 4 were what?  
 5 **A. The manager.**  
 6 Q. But you were supervisor of  
 7 the Southern Region; correct?  
 8 **A. Right. But I don't recall**  
 9 **attending any meetings.**  
 10 Q. And this is in the Southern  
 11 Region; correct?  
 12 **A. Yes. But like I said, I**  
 13 **don't recall.**  
 14 Q. And was there a tidelands  
 15 conveyance in conjunction with this?  
 16 **A. It was a management**  
 17 **agreement.**  
 18 Q. What is -- what do you mean  
 19 by management agreement?  
 20 **A. Well, in turn for allowing**  
 21 **public access, we allowed the Division of**  
 22 **Parks and Forestry within the State of**  
 23 **New Jersey, to use the area for free.**  
 24 Q. Okay. Did the Tidelands

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1 Resource Council issue an approval for  
 2 that to happen?  
 3 A. Yes.  
 4 Q. So, there is a tidelands  
 5 instrument I think you called them?  
 6 A. It's called a management  
 7 agreement.  
 8 Q. In the course of deciding  
 9 whether to approve that or assisting your  
 10 bureau, staff assisting the Tidelands  
 11 Resource Council in this decision whether  
 12 to approve the management agreement, did  
 13 you determine whether or not the  
 14 necessary permits had been granted?  
 15 A. Well, the permits would have  
 16 had to have been issued prior to the  
 17 issuance of a management agreement.  
 18 Q. And your bureau would have  
 19 made sure that that had happened before  
 20 you recommended to the Tidelands Resource  
 21 Council that they approve the tidelands  
 22 grants?  
 23 A. Yes.  
 24 Q. Or the management agreement?

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1 A. Management agreement.  
 2 Q. So, therefore, the  
 3 permitting bodies within DEP would have  
 4 transmitted the Fort Mott permits to your  
 5 division or your bureau, the Bureau of  
 6 Tidelands; is that correct?  
 7 A. Yes.  
 8 Q. Do you remember seeing that?  
 9 A. No.  
 10 Q. Do you know who would have  
 11 seen that?  
 12 A. The former manager.  
 13 Q. Ms. Cubberley would have  
 14 seen it and reviewed it?  
 15 A. Yes.  
 16 Q. Would anyone below her have  
 17 reviewed it and then perhaps written a  
 18 memorandum or recommending? I assume the  
 19 managers are busy?  
 20 A. I don't recall.  
 21 Q. Is this the type of thing  
 22 that you as a manager would review  
 23 yourself when it came in?  
 24 A. Yes; but sometimes the

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1 manager would just review things herself.  
 2 And I would not see them.  
 3 Q. I meant now that you are the  
 4 manager, would this be the type of  
 5 thing --  
 6 A. Oh, yes.  
 7 Q. Would you read the permits  
 8 yourself before sending --  
 9 A. The permits would be  
 10 reviewed by people that work for me, to  
 11 make sure they --  
 12 Q. So, you would insure that  
 13 the permits had been issued?  
 14 A. I would be sure they are  
 15 issued before it goes before the  
 16 Tidelands Council.  
 17 Q. Would you read the permits  
 18 yourself or would you rely on your staff?  
 19 A. I would rely on the staff.  
 20 Q. Do you know if that was  
 21 Ms. Cubberley's practice as well?  
 22 A. I don't know.  
 23 Q. Do you know who would have  
 24 been on Miss Cubberley's staff to review

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1 the permits and report to her if that  
 2 was -- if that had been her practice?  
 3 A. I would have been on her  
 4 staff.  
 5 Q. But you didn't process this  
 6 permit?  
 7 A. I don't recall processing  
 8 this.  
 9 Q. Or this management  
 10 agreement?  
 11 A. I don't recall.  
 12 Q. Okay. Do you know who did?  
 13 A. I don't recall.  
 14 Q. Was there anyone above you  
 15 in the Southern Region?  
 16 A. No.  
 17 Q. You reported directly to  
 18 Ms. Cubberley?  
 19 A. Uh-huh.  
 20 Q. Someone else in the Bureau  
 21 of Tidelands would have reviewed the Fort  
 22 Mott documents and reported directly to  
 23 Ms. Cubberley?  
 24 A. No. Mrs. Cubberley could do

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1 **this herself.**  
 2 Q. If she had gotten someone to  
 3 review the documents first, would it have  
 4 been you?  
 5 A. **Could have been.**  
 6 Q. Who else could it have been?  
 7 A. **Could have been other staff**  
 8 **members.**  
 9 Q. What are their names?  
 10 A. **William Kresnosky, Michael**  
 11 **Cuccia.**  
 12 Q. Can you spell those last  
 13 names?  
 14 A. **Kresnosky,**  
 15 **K-R-N-E-S-O-S-K-Y, and Cuccia,**  
 16 **C-U-C-C-I-A.**  
 17 Q. Can you spell Kresnosky  
 18 again. I think there might be some more  
 19 letters in it.  
 20 A. **K-R-E-S-N-O-S-K-Y.**  
 21 Q. Okay.  
 22 A. **Again, I don't recall. I**  
 23 **don't know who reviewed this case.**  
 24 Q. Okay. But somebody would

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1 have read the permit in the Bureau of  
 2 Tidelands?  
 3 A. **Yeah.**  
 4 MR. ATTAWAY: Off the  
 5 record.  
 6 - - -  
 7 (Whereupon, the exhibits  
 8 were marked Castagna-4 through 11  
 9 for identification.)  
 10 - - -  
 11 (Whereupon, there was a  
 12 brief recess.)  
 13 - - -  
 14 BY MR. ATTAWAY:  
 15 Q. When we were off the record,  
 16 Mr. Castagna, I had exhibits marked  
 17 Castagna-4 through 11 and these documents  
 18 all pertain to Delaware's regulation of  
 19 DuPont; generally the Chambers Works  
 20 Facility that is upland of New Jersey,  
 21 but as I understand it, has structure  
 22 that extends into the Delaware River.  
 23 Is that consistent with your  
 24 understanding?

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1 A. **Yes.**  
 2 Q. Have you seen any of these  
 3 documents?  
 4 A. **I don't recall seeing them.**  
 5 Q. Have you been generally  
 6 familiar with Delaware's regulation of  
 7 the Chamber Works facility over the  
 8 years?  
 9 A. **No.**  
 10 Q. Did you have an  
 11 understanding that Delaware was not  
 12 regulating that facility?  
 13 A. **Well, it's my understanding**  
 14 **they were regulating or they were having**  
 15 **some influence on the regulation of that**  
 16 **facility.**  
 17 Q. Okay.  
 18 A. **By virtue of this permit**  
 19 **that was issued -- not the permit -- the**  
 20 **tidelands license that was issued. And**  
 21 **the meeting I had with Delaware, I**  
 22 **understood that they were also being**  
 23 **regulated by Delaware.**  
 24 Q. Okay. And that's the

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1 meeting last summer that you talked about  
 2 a little while ago?  
 3 A. **Yeah, it was very clear that**  
 4 **they had meetings and they had previously**  
 5 **had their approvals in hand from Delaware**  
 6 **when they met with me.**  
 7 Q. Okay. And these exhibits  
 8 that we are just looking at, would you  
 9 agree that they showed that Delaware has  
 10 exercised some regulatory authority over  
 11 the Chamber Works project over the last  
 12 few decades?  
 13 A. **Well, again, I've never seen**  
 14 **these documents before. I really haven't**  
 15 **had a lot of time to review them.**  
 16 **But a quick look at these**  
 17 **indicates there's some type of regulatory**  
 18 **authority that is being handed by**  
 19 **Delaware in these cases, these matters.**  
 20 Q. Okay. The Chamber Works  
 21 facility, is that a big facility?  
 22 A. **I don't know.**  
 23 Q. Your affidavit talks about a  
 24 number of grants by the State of New

110	<p>1 Jersey or by the Tidelands Resource                  2 Council, to be more specific, to DuPont.                  3 There are multiple grants to DuPont; is                  4 that correct?                  5 A. Yes.                  6 Q. Do you know how many of                  7 those grants are con -- do you know how                  8 many of those grants concern the Chamber                  9 Works facility?                  10 A. I don't recall.                  11 Q. How would you determine                  12 that, if you had to do so?                  13 A. I would have to have a map,                  14 showing the property. And then I could                  15 look at the map, determine which of these                  16 grants that I referred to -- refer to the                  17 Chambers Works facility.                  18 Q. Looking at Exhibit 10 -- the                  19 April 7th, 2004 letter. It has                  20 letterhead at the top by both the State                  21 of Delaware and State of New Jersey.                  22 Would you agree that this is a joint                  23 letter written by the governors of New                  24 Jersey and Delaware to the acting</p>	112	<p>1 Q. You're not familiar that VX                  2 is a nerve agent that was used in World                  3 War II?                  4 A. No.                  5 Q. All right. During the                  6 Exhibit 11, this is titled agenda                  7 technical briefing meeting, treatment and                  8 disposal of neutralized VX at DuPont                  9 Chambers Works.                  10 And it says -- do you have                  11 it? It will be on the bottom, if they                  12 are still in order?                  13 A. Okay.                  14 Q. This is an agenda technical                  15 briefing meeting, treatment and disposal                  16 of neutralized VX at DuPont Chambers                  17 Works at the Delaware DNREC Office,                  18 Department of Natural Resources and                  19 Environmental Control is the acronym                  20 DNREC.                  21 On the second page there it                  22 looks like a sign-in sheet and it's dated                  23 March 10th, '04.                  24 On the top half of the page</p>
111	<p>1 secretary of the Army Department of                  2 Defense, the Pentagon?                  3 A. Are you referring to the                  4 April 7th letter?                  5 Q. I am.                  6 A. Where it says Governor of                  7 the State of Delaware and State of New                  8 Jersey?                  9 Q. Correct.                  10 A. But I don't know what the                  11 content of this is or how it -- what the                  12 meaning of it is; because I haven't had                  13 any time to read it in any kind of depth.                  14 Q. I understand; the first                  15 paragraph talks about eliminating                  16 stockpiles of the nerve agent VX, now                  17 stored at Newport, Indiana.                  18 Have you at any time during                  19 your tenure in DEP been familiar with any                  20 proposals to dispose of VX gas at the                  21 Chamber Works facility?                  22 A. No. No.                  23 Q. Do you know what VX is?                  24 A. No.</p>	113	<p>1 there are three names of people that                  2 appear to be from New Jersey DEP because                  3 that's what's written next to their name,                  4 Sam Wolfe, Susan Rosenwinkel and Pilar                  5 Patterson?                  6 A. No.                  7 Q. Do you know who they are?                  8 A. No.                  9 Q. Never seen their names                  10 before?                  11 A. No.                  12 Q. What about Bob Tudor?                  13 A. Yes.                  14 Q. Who is Bob Tudor?                  15 A. He was at one time an                  16 assistant director.                  17 Q. Of?                  18 A. He had something in the                  19 coastal resources area. It may have been                  20 assistant director of coastal resources                  21 or some -- I don't recall his exact title                  22 but I know he had authoritative position                  23 in coastal resources at one point.                  24 Q. Did you ever meet Mr. Tudor?</p>

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1       **A. Yes.**  
 2       **Q. Did you ever work with him?**  
 3       **A. Not directly, no**  
 4       **Q. Did you work with him**  
 5 **indirectly?**  
 6       **A. I can't say I have. I mean**  
 7 **I know who he is at the time. It was**  
 8 **many years ago. I don't remember being**  
 9 **in any meetings with him that concerned**  
 10 **any issues like this.**  
 11       **Q. Issues like what?**  
 12       **A. I don't remember being in**  
 13 **any meetings, period. I mean --**  
 14       **Q. Is he one of the people that**  
 15 **would have transmitted permits or permit**  
 16 **applications to the Bureau of Tidelands?**  
 17       **A. He may have.**  
 18       **Q. Do you recall ever seeing**  
 19 **his name on documents that you worked**  
 20 **with in the Bureau of Tidelands?**  
 21       **A. I don't recall.**  
 22       **Q. So, when you say he may have**  
 23 **been one of the people that transmitted**  
 24 **permits to the Bureau of Tidelands, do**

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1       you have any knowledge that he did that?  
 2       **A. Well, because I believe he**  
 3 **worked in coastal resources. So, he must**  
 4 **have had some influence on the issuance**  
 5 **of permits.**  
 6       **Q. All right.**  
 7       **MR. ATTAWAY: Break?**  
 8       - - -  
 9       (Whereupon, there was a  
 10 luncheon recess commencing at  
 11 12:08 p.m. and concluding at 1:10  
 12 p.m.)  
 13       - - -  
 14       **MR. ATTAWAY: Please mark**  
 15 **this.**  
 16       - - -  
 17       (Whereupon, the exhibit was  
 18 marked Castagna-12 for  
 19 identification.)  
 20       - - -  
 21       **MR. ATTAWAY: This is 13.**  
 22       - - -  
 23       (Whereupon, the exhibit was  
 24 marked Castagna-13 for

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1       identification.)  
 2       - - -  
 3       **BY MR. ATTAWAY:**  
 4       **Q. I've had premarked two**  
 5 **exhibits; Castagna-12 is a draft dated**  
 6 **May, 1978, State of New Jersey, Coastal**  
 7 **Management Program Bay and Ocean shore**  
 8 **Segment.**  
 9       And then Exhibit 13 is the  
 10 final version of the same document dated  
 11 I believe it's August, 1978.  
 12       And these are voluminous  
 13 documents, for which I've provided  
 14 excerpts.  
 15       Mr. Castagna, before we get  
 16 to the documents, are you familiar, in  
 17 general, with New Jersey Coastal  
 18 Management Plan?  
 19       **A. No.**  
 20       **Q. Ever heard of it?**  
 21       **A. Yes.**  
 22       **Q. What is your understanding,**  
 23 **however slim, of the Coastal Management**  
 24 **Plan?**

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1       **A. This is a plan to manage the**  
 2 **coastal zone, but I've never been in an**  
 3 **office that had to deal with this**  
 4 **directly.**  
 5       **So, I've always known of it.**  
 6 **I've never had to deal with it.**  
 7       **Q. Is it your understanding**  
 8 **that the Coastal Management Plan doesn't**  
 9 **affect the work of the Bureau of**  
 10 **Tidelands?**  
 11       **A. No. It doesn't -- no.**  
 12       **Q. No, that's not your**  
 13 **understanding or no, the coastal**  
 14 **management --**  
 15       **A. The coastal management plan**  
 16 **does not effect the work of the Tidelands**  
 17 **Resource Council and Bureau of Tidelands.**  
 18       **Q. Have you read any portions**  
 19 **of the Coastal Management Program**  
 20 **documents before today?**  
 21       **A. No.**  
 22       **Q. Have you seen them?**  
 23       **A. These documents?**  
 24       **Q. Yes.**

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1       **A. I don't recall seeing them.**  
 2       **Q. I just want to look at Page**  
 3       18 of Exhibit 12 and I'll just say that  
 4       the same text is included in the final  
 5       version on Page 19 and I won't ask you to  
 6       agree with me on that.  
 7       But let's just look at Page  
 8       18 of Exhibit 12.  
 9       The first full paragraph on  
 10      that page reads "New Jersey's bay and  
 11      ocean source segment boundary with the  
 12      State of Delaware, through Delaware Bay  
 13      and the Delaware River was established in  
 14      1933 by the U.S. Supreme Court in New  
 15      Jersey versus Delaware, 291 U.S., 361."  
 16      Is that consistent with your  
 17      understanding of where the boundary lies?  
 18      **A. Are you referring to the**  
 19      **first sentence?**  
 20      **Q. I need to read further. I'm**  
 21      sorry.  
 22      **A. Okay.**  
 23      **Q. "The interstate boundary is**  
 24      generally along the ship channel in the

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1      middle of Delaware Bay. However, from a  
 2      point near the northern tip of Artificial  
 3      Island in Lower Alloway Creek Township,  
 4      Salem County, the interstate boundary  
 5      between New Jersey and Delaware extends  
 6      north at the mean low water line on the  
 7      New Jersey shoreline until the Delaware  
 8      Pennsylvania boundary."  
 9      Is that consistent with your  
 10     understanding of where the boundary  
 11     between New Jersey and Delaware lies in  
 12     the 12 mile circle?  
 13     **A. Yes.**  
 14     **Q. And then the last sentence**  
 15     reads "Resolution of potential conflicts  
 16     between the coastal policies of Delaware  
 17     and New Jersey will require continued  
 18     coordination and work in the first year  
 19     of program approval, toward appropriate  
 20     agreements between the coastal management  
 21     programs of both states, Salem County and  
 22     the affected municipalities."  
 23     I know you said you hadn't  
 24     seen this document, so, is it the case

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1      that you haven't read this language  
 2      before?  
 3      **A. No.**  
 4      **Q. This last sentence where it**  
 5      talks about continued cooperation and  
 6      work in the first year of program  
 7      approval between Delaware and New Jersey,  
 8      is that a concept that you were familiar  
 9      with at any time during your tenure at  
 10     DEP?  
 11     **A. No.**  
 12     **Q. I'd like to mark another**  
 13     exhibit.  
 14     - - -  
 15     (Whereupon, the exhibit was  
 16     marked Castagna-14 for  
 17     identification.)  
 18     - - -  
 19     **BY MR. ATTAWAY:**  
 20     **Q. We've had marked for**  
 21     identification, Castagna-14 which is a  
 22     document entitled Options for New  
 23     Jersey's developed coast dated March,  
 24     1979, produced by the Department of

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1      Environmental Protection. And that's  
 2      stated on the cover page.  
 3      Mr. Castagna, have you seen  
 4      this document before?  
 5      **A. No.**  
 6      **Q. Have you heard of its**  
 7      existence?  
 8      **A. No.**  
 9      **Q. You've had a chance just in**  
 10     the last few minutes to review pages  
 11     144 -- 141 through 144, which concern the  
 12     boundary between Delaware and New Jersey;  
 13     correct?  
 14     **A. Yes.**  
 15     **Q. Just looking at Page 144,**  
 16     the last sentence in the first paragraph  
 17     states that "Major development extending  
 18     into the Delaware River could require  
 19     approval from the State of Delaware, in  
 20     addition to approvals from the State of  
 21     New Jersey."  
 22     Is that a concept that you  
 23     were familiar -- have been familiar with  
 24     at any time at the DEP?

122	<p>1 A. This paragraph, was it 144, 2 first paragraph? 3 Q. I'm sorry. 141. 4 A. I thought you said 144. 5 Q. My mistake. Take your time. 6 That's fine. 7 A. Could you repeat the 8 question? 9 Q. We'll start over. The first 10 paragraph on Page 141 talks about the 11 boundary and the fact that it exists at 12 the mean low water line on the New Jersey 13 shoreline; correct? 14 A. Yes. 15 Q. And in the last paragraph 16 states "Consequently, major development 17 extending into the Delaware River could 18 require approval from the State of 19 Delaware, in addition to approvals from 20 the State of New Jersey." 21 I read that correctly? 22 MR. ANDERSEN: Off the 23 record. 24 - - -</p>	124	<p>1 So, this is not consistent 2 with my knowledge and my understanding. 3 Q. What is your understanding 4 as to the extent of Delaware's 5 jurisdiction? 6 A. My understanding of the 7 boundary line is the low water line. 8 Q. Right. 9 A. However, the State of New 10 Jersey has exclusive jurisdiction for 11 riparian matters out to the channel. 12 Q. And when you say riparian 13 matters, does that include or exclude the 14 necessary permits that are required? 15 A. I'm referring to the 16 issuance of riparian grants, leases and 17 licenses. 18 Q. And so as you testified 19 earlier, if I remember it correctly, the 20 permitting for specific activities is an 21 entirely separate matter; is that 22 correct? 23 A. That's correct. 24 Q. About halfway down the page,</p>
123	<p>1 (Whereupon, there was an 2 off-the-record discussion.) 3 - - - 4 BY MR. ATTAWAY: 5 Q. I'm looking at the last 6 sentence in the first paragraph -- strike 7 that. 8 The last sentence of the 9 first paragraph states "Consequently, 10 major development extending into the 11 Delaware River could require approval 12 from the State of Delaware, in addition 13 to approvals from the State of New 14 Jersey." 15 Did I read that correctly? 16 A. Yes. 17 Q. Is that consistent with your 18 understanding as a regulator in the DEP? 19 A. From my perspective, from 20 the Bureau of Tidelands, and how we 21 handle riparian applications, this is not 22 my understanding of how we would handle 23 this particular -- it's my understanding, 24 we have jurisdiction out to the channel.</p>	125	<p>1 there's a paragraph that starts, "In 2 1971, the State of Delaware enacted a 3 stringent coastal zone act which 4 prohibited heavy industrial development 5 in a defined coastal zone. 6 "Since the boundary between 7 New Jersey and Delaware, extends to the 8 New Jersey shoreline, the restrictive 9 provisions of this coastal management law 10 applied to development that would be 11 proposed for sites involving land and 12 water along the Salem County waterfront." 13 Again, is this type of 14 permitting activity outside the bounds of 15 your knowledge? 16 A. This is -- yes, the 17 permitting activity is outside the scope 18 of what I would handle. 19 Q. And at the bottom of the 20 page, there's one sentence paragraph that 21 states "Consequently, under Delaware law, 22 some types of activities would be 23 prohibited from locating along the 24 Delaware River in Salem County, while</p>

126	<p>1 other facilities desiring to locate along                  2 the river would need to obtain permit                  3 approval from the State of Delaware."                  4 Is that something that you                  5 have any knowledge about one way or the                  6 other?                  7 A. No.                  8 Q. You had a chance to skim                  9 through the next two pages. There's a                  10 map on Page 142 and then 144 and 144 have                  11 text and they generally, as I read it,                  12 pertain to Delaware's permitting                  13 authority under its coastal zone laws,                  14 the Underwater Land Act and the Coastal                  15 Zone Act; is that correct?                  16 A. That's correct.                  17 Q. Is there anything in this                  18 discussion that's within your knowledge                  19 in the Bureau of Tidelands?                  20 A. No.                  21 Q. So, these all concern                  22 permitting activities?                  23 A. Permitting activities.                  24 Q. That is outside the scope of</p>	128	<p>1 - - -                  2 BY MR. ATTAWAY:                  3 Q. Mr. Castagna, looking at                  4 Exhibit 15, Page 18, which is by the way,                  5 Bates stamped Delaware 24213, there's a                  6 paragraph at the bottom of the page under                  7 the heading Seaward and Interstate                  8 Boundaries.                  9 Do you see that?                  10 A. Yes.                  11 Q. And it begins, I'll just                  12 read that paragraph, "In most of Salem                  13 County, the Delaware and New Jersey state                  14 boundary is the mean low water line on                  15 the eastern New Jersey shore of the                  16 Delaware River. The New Jersey and                  17 Delaware coastal management agencies have                  18 discussed this issue and have concluded                  19 that any New Jersey project extending                  20 beyond mean low water must obtain coastal                  21 permits from both states."                  22 Have you seen this language                  23 before?                  24 A. No.</p>
127	<p>1 your job duties and knowledge?                  2 A. That's correct.                  3 Q. I think we're done with that                  4 exhibit.                  5 MR. ATTAWAY: I'd like to                  6 mark for identification                  7 Castagna-15.                  8 - - -                  9 (Whereupon, the exhibit was                  10 marked Castagna-15 for                  11 identification.)                  12 - - -                  13 MR. ATTAWAY: This is the                  14 draft 1980 coastal management                  15 plan. And I'd like to mark                  16 Castagna-16 which is the final                  17 1980 New Jersey Coastal Management                  18 Plan. And these again are                  19 voluminous documents that I have                  20 excerpted.                  21 - - -                  22 (Whereupon, the exhibit was                  23 marked Castagna-16 for                  24 identification.)</p>	129	<p>1 Q. Have you seen this -- the                  2 1980 Coastal Management Plan before?                  3 A. No.                  4 Q. Never read it? Never opened                  5 it?                  6 A. No.                  7 Q. And I take it from your                  8 previous answers that you don't have an                  9 understanding of whether this language is                  10 correct or not; is that true?                  11 A. When you say an                  12 understanding, what -- can you be more                  13 clear?                  14 Q. In your career at DEP, have                  15 you developed an understanding as to                  16 whether Delaware coastal management laws                  17 would apply to a boundary straddling                  18 project?                  19 A. Well, my understanding, we                  20 would require a waterfront development                  21 permit in the State of New Jersey; from a                  22 project. And we don't require or, to my                  23 knowledge, we have ever required a permit                  24 from Delaware in order to approve a</p>

130	<p>1 project in New Jersey.</p> <p>2 Q. If a project only went to</p> <p>3 the low water mark, in other words, it</p> <p>4 did not cross the boundary, would a new</p> <p>5 Jersey waterfront development permit</p> <p>6 still be required?</p> <p>7 A. Oh, yes.</p> <p>8 Q. Okay. And that's because</p> <p>9 the law applies below mean high water;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. So, even if it were</p> <p>13 determined that New Jersey had no</p> <p>14 authority beyond the boundary, New Jersey</p> <p>15 would still regulate under the Waterfront</p> <p>16 Development Act projects that extend</p> <p>17 beyond mean high water?</p> <p>18 A. That's my understanding.</p> <p>19 Q. Turning back to the sentence</p> <p>20 I just read, or the second of the two</p> <p>21 sentences I just read it talks about the</p> <p>22 "New Jersey and Delaware coastal</p> <p>23 management agencies having discussed the</p> <p>24 issue."</p>	132	<p>1 Exhibit 16, turn past the yellow slip</p> <p>2 sheet and there's Pages 254 and 255.</p> <p>3 Take a moment to read that</p> <p>4 two paragraph discussion and then I'll</p> <p>5 have a question or two about it.</p> <p>6 A. Okay. I've read it.</p> <p>7 Q. The first paragraph has some</p> <p>8 language quoted from the National Energy</p> <p>9 Plan. And I just want to look at the</p> <p>10 second paragraph and I'll read that it</p> <p>11 states "The New Jersey Coastal Program</p> <p>12 states that LNG terminals are discouraged</p> <p>13 unless they are constructed so as to</p> <p>14 neither endanger human life nor</p> <p>15 property nor otherwise impair the public</p> <p>16 health, safety and welfare and comply</p> <p>17 with the coastal resource and development</p> <p>18 policies.</p> <p>19 "Because the tankering of</p> <p>20 LNG could pose potential risk to life and</p> <p>21 property, adjacent to New Jersey</p> <p>22 waterways, which also serve as boundaries</p> <p>23 with the States of Pennsylvania and</p> <p>24 Delaware along the Delaware River and the</p>
131	<p>1 Do you have any awareness of</p> <p>2 any such discussions between New Jersey</p> <p>3 and Delaware?</p> <p>4 A. No.</p> <p>5 Q. Do you know if any of your</p> <p>6 colleagues or superiors at any time</p> <p>7 had --</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. Okay. Let's turn to Exhibit</p> <p>10 16, which is the final New Jersey Coastal</p> <p>11 Management Program document; August 1980.</p> <p>12 And if you could look at</p> <p>13 Page 20, the last paragraph.</p> <p>14 A. Okay.</p> <p>15 Q. Is that basically the same</p> <p>16 language we just read or that I just read</p> <p>17 out of the draft?</p> <p>18 A. It appears to be the same</p> <p>19 language.</p> <p>20 MS. CONKLIN: Let him finish</p> <p>21 his question.</p> <p>22 BY MR. ATTAWAY:</p> <p>23 Q. All right. Let's --</p> <p>24 sticking with the final version, which is</p>	133	<p>1 State of New York and the Port of New</p> <p>2 York and New Jersey, the state considers</p> <p>3 decision concerning the siting of LNG</p> <p>4 terminals to be an interstate matter."</p> <p>5 Is this discussion</p> <p>6 consistent with your understanding during</p> <p>7 your tenure at DEP regarding the citing</p> <p>8 of LNG terminals, which for the record,</p> <p>9 LNG stands for liquefied natural gas?</p> <p>10 A. My understanding that</p> <p>11 permits are required. And my</p> <p>12 understanding is that New Jersey has this</p> <p>13 area of -- New Jersey has the riparian</p> <p>14 jurisdiction up to the channel. But any</p> <p>15 decision on whether to put this -- any</p> <p>16 type of facility is contingent upon</p> <p>17 obtaining state, local, federal permits.</p> <p>18 Q. Okay. Including those of</p> <p>19 Delaware?</p> <p>20 A. From the Bureau of</p> <p>21 Tidelands, we're looking for a permit</p> <p>22 from the State of New Jersey.</p> <p>23 But that can be a matter</p> <p>24 that can be brought up later. But --</p>

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1 **it's my understanding that a permit from**  
 2 **the State of New Jersey is required.**  
 3 Q. Okay. The end of the  
 4 statement that I just read talks about  
 5 the siting of LNG terminals being an  
 6 interstate matter.  
 7 Is that consistent with your  
 8 understanding?  
 9 A. No.  
 10 Q. Is it inconsistent with your  
 11 understanding?  
 12 A. Yes.  
 13 Q. In what way?  
 14 A. **With respect that the State**  
 15 **of New Jersey, as riparian jurisdiction,**  
 16 **up to the channel; the edge of the**  
 17 **channel. And that's how it's**  
 18 **inconsistent.**  
 19 Q. In your understanding, does  
 20 riparian jurisdiction include or exclude  
 21 the permits that are required in addition  
 22 to the riparian grant, lease or  
 23 conveyance that the Bureau of Tidelands  
 24 handles?

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1 A. **Well, the permits would be**  
 2 **required. Permits from the State of New**  
 3 **Jersey. That's my understanding.**  
 4 **And this matter could not**  
 5 **proceed without those permits being**  
 6 **issued. That's why the counsel could not**  
 7 **hear this matter until these permits were**  
 8 **issued.**  
 9 Q. And you testified earlier  
 10 that whether or not Delaware could also  
 11 require permits was not an issue that was  
 12 within your knowledge; is that correct?  
 13 A. **That is not within my**  
 14 **knowledge, yes.**  
 15 Q. But in discussing this, you  
 16 just said that whether the citing of LMG  
 17 terminals is an interstate matter is  
 18 inconsistent with your understanding and  
 19 I'm just trying to understand how you can  
 20 both not have any knowledge of whether or  
 21 not Delaware has permitting authority and  
 22 state that for Delaware to have  
 23 permitting authority is inconsistent with  
 24 your understanding.

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1 A. **Again, my understanding is**  
 2 **that a permit is required from the State**  
 3 **of New Jersey.**  
 4 I do not have knowledge of  
 5 whether a permit is required from the  
 6 State of Delaware for this facility.  
 7 It is not -- the Tidelands  
 8 Resource Council will approve this if  
 9 there's a permit from the State of New  
 10 Jersey.  
 11 Q. Let's turn the next page,  
 12 it's a yellow sheet.  
 13 Actually, let's go -- I'll  
 14 make this easy; go to the end of the  
 15 exhibit and there's a little logo that  
 16 says let's protect our earth and a  
 17 picture of a bird and a wave and on the  
 18 preceding page, which is number 533,  
 19 there's a list of people, maybe I should  
 20 direct you to 532 and 33. It's a two  
 21 page, Appendix J?  
 22 A. **533?**  
 23 Q. Yes.  
 24 A. **Okay.**

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1 Q. You might want to look at  
 2 532; Appendix J it says preparers of the  
 3 New Jersey Coastal Management Program and  
 4 Final Environmental Statement. On this  
 5 page there's a list of people from NOAA  
 6 and then on 533, and then there's a list  
 7 of people from the New Jersey Department  
 8 of Environmental Protection.  
 9 Starting at the top, do you  
 10 know who David Kinsey is?  
 11 A. **He was a former director of**  
 12 **the Bureau of Coastal Resources.**  
 13 Q. Okay. Did you work with  
 14 him?  
 15 A. **Not directly, no.**  
 16 Q. Would you get permits  
 17 forwarded from his department to  
 18 tidelands?  
 19 A. **I believe when he was**  
 20 **director, I worked -- I did not work for**  
 21 **the Bureau of Tidelands.**  
 22 Q. Okay.  
 23 A. **I can't say that for**  
 24 **certain, but he was a director when I**

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1 worked for the Office of Environmental  
 2 Analysis, when I wasn't mapping tidelands  
 3 and I don't know when he retired or moved  
 4 on but I don't recall him being the  
 5 director when I worked for the Bureau of  
 6 Tidelands.  
 7 Q. You moved to the Tidelands  
 8 in '87?  
 9 A. '87.  
 10 Q. Okay.  
 11 A. So, I --  
 12 Q. And this document is 1980.  
 13 Let's move on down to the  
 14 bottom half of the page.  
 15 There's a single spaced  
 16 paragraph that begins "Planning  
 17 assistance was also provided by" and it  
 18 lists a number of people, starting with  
 19 Chief Steven Whitney in the Bureau of  
 20 Coastal Project Review.  
 21 And then a little bit lower  
 22 it says "Chief James Johnson of the  
 23 Bureau of Tidelands."  
 24 Is that the same James

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1 Johnson that preceded Joe Ann Cubberley  
 2 in the management position that you now  
 3 hold?  
 4 A. Yes. Yes.  
 5 Q. Do you know how long  
 6 Mr. Johnson held this position?  
 7 A. Approximately 25 years.  
 8 Q. So, from 1993, back 25  
 9 years?  
 10 A. Approximately, more or less.  
 11 I believe it was  
 12 approximately 25 years.  
 13 Q. Do you know if he was ever  
 14 interested in or knowledgeable about the  
 15 boundary between New Jersey and Delaware  
 16 and the implications for each regulatory  
 17 authority?  
 18 A. No.  
 19 Q. You never talked to him  
 20 about it?  
 21 A. No.  
 22 Q. Did you know that he  
 23 provided input for this document?  
 24 A. No.

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1 Q. Do you have any reason to  
 2 think that having read the statements  
 3 that we just went over about Delaware  
 4 having permitting authority over boundary  
 5 straddling projects that it would have  
 6 caused Mr. Johnson to say no, that's not  
 7 right?  
 8 A. I don't know.  
 9 Q. Let's turn back a couple of  
 10 pages beyond the yellow slip sheet. I'm  
 11 looking at 499. This is an excerpt from  
 12 the list of comments submitted by parties  
 13 to the DEP. I'm looking at Number 392.  
 14 Do you see that?  
 15 A. Yes.  
 16 Q. I'll just read it, it says  
 17 Salem County is strongly opposed to the  
 18 statement in this revision that any  
 19 project in the area must be consistent  
 20 with both Delaware's and New Jersey's  
 21 coastal programs and obtain permits from  
 22 two states."  
 23 Did I read that correctly?  
 24 A. Yes.

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1 Q. It says the commenter  
 2 committing this is Salem County Planning  
 3 Board.  
 4 The response from DEP is as  
 5 follows "This disagreement is noted but  
 6 DEP has found no other solution available  
 7 by administrative action to address the  
 8 peculiar New Jersey/Delaware boundary in  
 9 Salem County where the Delaware state  
 10 line reaches to low tide on the New  
 11 Jersey shore."  
 12 Did I also read that  
 13 correctly?  
 14 A. Yes.  
 15 Q. Before today, have you read  
 16 or otherwise become familiar with this  
 17 general complaint lodged by Salem County?  
 18 A. No.  
 19 Q. And I guess based on your  
 20 prior testimony about your lack of  
 21 knowledge and expertise with regard to  
 22 permitting requirements, this is not  
 23 something that you could give an opinion  
 24 about one way or another; correct?

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1       **A. That's correct.**  
 2       **Q. Are you familiar with a**  
 3 **compact between Delaware and New Jersey**  
 4 **entered in 1962, regarding structures**  
 5 **that cross the river?**  
 6       **A. No.**  
 7       **Q. I'd like to turn back to**  
 8 **your affidavit, please, Page 49A,**  
 9 **Subparagraph 41, which is within**  
 10 **Paragraph 8 of your affidavit.**  
 11       **A. Did you say Page 48,**  
 12 **Subparagraph 38?**  
 13       **Q. Page 49, Subparagraph 41;**  
 14 **about Keystone.**  
 15       **A. Okay.**  
 16       **Q. The latter half of the**  
 17 **second paragraph on Page 49A talks**  
 18 **about -- I'll read it, it says "On**  
 19 **September 30th, 1991 the State of**  
 20 **Delaware granted Keystone Cogeneration**  
 21 **Systems, Inc., permission to construct a**  
 22 **coal unloading pier and to conduct**  
 23 **dredging at this location. The document**  
 24 **included a subaqueous lands lease for ten**

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1 years, which may be renewed in the public  
 2 interest."  
 3       Do you know whether New  
 4 Jersey conditioned its permit on the  
 5 issuance of this Delaware permit that you  
 6 discuss?  
 7       **A. Referring to Item 41?**  
 8       **Q. Yes, sir.**  
 9       **A. Well, this was before I was**  
 10 **regional supervisor. So, I don't have**  
 11 **any recollection of this approval when**  
 12 **counsel approved it.**  
 13       **Q. Okay. If I remember**  
 14 **correctly, a few minutes ago you said you**  
 15 **weren't aware of any instance where New**  
 16 **Jersey conditioned a New Jersey permit on**  
 17 **the issuance of Delaware permits; is that**  
 18 **correct?**  
 19       **A. Well, this morning, I spoke**  
 20 **to the licenses that were issued this**  
 21 **past summer and I spoke to the fact that**  
 22 **I was aware of those approvals by the**  
 23 **State of Delaware.**  
 24       **But you're asking a**

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1 **different question now.**  
 2       **Q. It is a different question,**  
 3 **yes.**  
 4       **A. And what you're saying is**  
 5 **whether our -- whether the Bureau of**  
 6 **Tidelands approval was conditioned upon**  
 7 **the approval of the State of Delaware?**  
 8       **Q. You can answer that**  
 9 **question.**  
 10       **A. I mean is that what you're**  
 11 **asking?**  
 12       **Q. You can answer that question**  
 13 **and I can ask --**  
 14       **A. Could you rephrase the**  
 15 **question so I can understand exactly what**  
 16 **you're asking.**  
 17       **Q. Okay. I believe you said**  
 18 **earlier that you were not aware of any**  
 19 **instance where New Jersey conditioned its**  
 20 **permit on the issuance of Delaware**  
 21 **permits; is that correct?**  
 22       **A. Yes.**  
 23       **Q. Have you seen the permit**  
 24 **that New Jersey issued to Keystone?**

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1       **A. I don't recall looking at**  
 2 **it, no.**  
 3       **Q. So, in preparing this**  
 4 **affidavit, where you spend two paragraphs**  
 5 **talking about the Keystone project and**  
 6 **specifically about Delaware's permit**  
 7 **issued to Keystone, you didn't review New**  
 8 **Jersey's permit to Keystone?**  
 9       **A. I guess I don't recall**  
 10 **reviewing that permit.**  
 11       **Q. Okay. Let me introduce that**  
 12 **permit for identification.**  
 13       - - -  
 14       (Whereupon, the exhibit was  
 15 marked Costagna-17 for  
 16 identification.)  
 17       - - -  
 18       THE WITNESS: Okay.  
 19 BY MR. ATTAWAY:  
 20       **Q. Looking at Exhibit 17, have**  
 21 **you seen this permit issued by New Jersey**  
 22 **to Keystone before?**  
 23       **A. I don't recall seeing this.**  
 24       **Q. So, you didn't review it in**

146	<p>1 preparing your affidavit?                  2 A. No.                  3 Q. Okay.                  4 A. I don't recall seeing it.                  5 Q. You mentioned earlier that                  6 it was the duty of the Bureau of                  7 Tidelands to insure that all the                  8 necessary permits were issued before                  9 forwarding the application to the                  10 Tidelands Resource Council for                  11 processing; correct?                  12 A. That's correct.                  13 Q. I know this was before                  14 your -- before 1993, when you became                  15 supervisor but you were at the Bureau of                  16 Tidelands at this time; correct?                  17 A. That's correct.                  18 Q. Do you know whether this                  19 permit would have necessarily been                  20 transferred -- transmitted to the Bureau                  21 of Tidelands?                  22 A. Yes, it would have been                  23 transferred to the Bureau; prior to the                  24 approval.</p>	148	<p>1 at to see if there were any special                  2 conditions.                  3 Q. Okay. As manager today, or                  4 acting manager, I think you said, is it                  5 your practice, either to read the permit                  6 to yourself or to make sure that someone                  7 else reads them and reports to you?                  8 A. Yeah. I do not read all the                  9 permits myself; because of all the                  10 applications.                  11 The permits are read by a                  12 staff person, who reviews the permits and                  13 once that permit is submitted, the                  14 application can proceed and be reviewed                  15 by the Tidelands council.                  16 Q. Page 5, at the top of the                  17 page, terms and conditions, letter E, it                  18 says "Prior to construction, the                  19 permittee must submit copies of all the                  20 permits or approvals listed below to the                  21 element."                  22 And I believe element refers                  23 to the Land Use Regulation Division; is                  24 that correct?</p>
147	<p>1 Q. Okay. And would it have                  2 been reviewed by the manager?                  3 A. At that time, James Johnson,                  4 yes.                  5 Q. And turning to page --                  6 A. Or one of his -- one of the                  7 people who worked on this.                  8 Q. And his staff?                  9 A. His staff.                  10 Q. Would his staff read the                  11 permit and summarize it?                  12 A. Uh-huh.                  13 Q. And report to Mr. Johnson?                  14 A. Or they would just let him                  15 know the permit was approved.                  16 Q. Would somebody read the                  17 permit and flag any what might be unusual                  18 conditions?                  19 A. I couldn't speak to what was                  20 happening back then, because I wasn't                  21 involved in that process.                  22 Q. As manager --                  23 A. But it seems to me that the                  24 permit should have been viewed and looked</p>	149	<p>1 A. I'm not certain.                  2 Q. Turn back to Page 1, issuing                  3 Land Use Regulation elements. I'm not                  4 familiar with the terminology element.                  5 Is that just a word in this                  6 context used to refer to the Land Use                  7 Regulation?                  8 A. It appears so.                  9 Q. Division or department or                  10 whatever?                  11 A. It appears so.                  12 Q. Okay. And condition four 4                  13 says Subaqueous Land and Coastal Zone                  14 Management, Delaware.                  15 Is it your understanding,                  16 based on this, that the permittee that is                  17 Keystone, could not begin construction                  18 until it had secured the necessary                  19 Delaware permits?                  20 A. That's my understanding by                  21 reading this, yes.                  22 Q. If a permit like this came                  23 across your desk, in the Bureau of                  24 Tidelands, would you think anything of it</p>

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1 or would you just keep reading?  
 2 **A. Well, this was a requirement**  
 3 **to get this permit.**  
 4 **But as far as the Tidelands**  
 5 **Resource Council, they are looking for**  
 6 **the approval permit, which they did**  
 7 **receive.**  
 8 **So, in order to get the**  
 9 **permit, they had to meet these**  
 10 **conditions.**  
 11 **What the Tidelands Resource**  
 12 **Council is looking for, is the**  
 13 **approval -- the approval of this permit**  
 14 **and once that permit is approved, they**  
 15 **would issue the license.**  
 16 **One of the conditions here**  
 17 **is that they obtain a lease in the State**  
 18 **of Delaware and they didn't meet that**  
 19 **condition; we would have never have seen**  
 20 **the permit.**  
 21 **Because it wouldn't have**  
 22 **been approved. If it's not approved, it**  
 23 **wouldn't have gotten to the Tideland's**  
 24 **council.**

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1 **Q. Okay. Do you know**  
 2 **whether -- this condition says "Prior to**  
 3 **construction, the permittee must submit**  
 4 **copies of all the permits or approvals**  
 5 **listed below to the element."**  
 6 **And it's --**  
 7 **A. Again, I'm speaking about**  
 8 **permits, which I really don't have any**  
 9 **authority to do. I'm just looking at**  
 10 **this permit and I'm looking at this from**  
 11 **the Tidelands Resource. What the council**  
 12 **is looking for is just the approval of**  
 13 **the permit. Okay? So, this was approved**  
 14 **by a different -- as the element of,**  
 15 **what's this, the -- the Land Use**  
 16 **Regulation.**  
 17 **Q. So, is it your understanding**  
 18 **that this permit would never be forwarded**  
 19 **to the Bureau of Tidelands unless and**  
 20 **until the Delaware permits had been**  
 21 **secured?**  
 22 **A. Again, I am not -- I cannot**  
 23 **speak to the permitting people.**  
 24 **Q. Okay.**

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1 **A. So, they need to approve**  
 2 **this permit.**  
 3 **When this permit is**  
 4 **approved, they submit it to us. And I**  
 5 **cannot speak to what their requirements**  
 6 **are for this particular matter.**  
 7 **Q. Okay. The date on this**  
 8 **permit is September 24, 1991; correct?**  
 9 **A. Yes.**  
 10 **Q. And according to your**  
 11 **affidavit, the second paragraph of**  
 12 **Paragraph 8, Subparagraph 41, it says**  
 13 **that the Delaware permit was issued on**  
 14 **September 30th, which is six days later;**  
 15 **correct?**  
 16 **A. Yes.**  
 17 **Q. Are you aware of any**  
 18 **discussions with Keystone by any New**  
 19 **Jersey employee or representative about**  
 20 **Delaware's regulatory authority over this**  
 21 **project?**  
 22 **A. No.**  
 23 **Q. The Keystone project?**  
 24 **A. No.**

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1 **Q. Are you aware that**  
 2 **Mr. William Andersen and Mr. James**  
 3 **Johnson claim to have had some sort of**  
 4 **discussions about Delaware's regulatory**  
 5 **authority over the Keystone project in**  
 6 **this time period?**  
 7 **A. I'm not aware of that.**  
 8 **Q. And you haven't talked to**  
 9 **either one of them about it?**  
 10 **A. About this particular**  
 11 **project? And they are speaking with --**  
 12 **Q. Let me withdraw that**  
 13 **question, because any discussions you had**  
 14 **with Mr. Andersen would be privileged;**  
 15 **so, I don't intend to ask about that.**  
 16 **Your affidavit mentions a**  
 17 **permit issued by the State of Delaware on**  
 18 **September 30th, 1991.**  
 19 **How did you learn that**  
 20 **information in order to incorporate it in**  
 21 **your affidavit?**  
 22 **A. This information was**  
 23 **provided to me by my staff. And I did**  
 24 **not personally look at all of it, you**

154	<p>1 <b>know. I reviewed it but I did not --</b></p> <p>2 Q. So, did you cause portions</p> <p>3 of this affidavit to be written by your</p> <p>4 staff?</p> <p>5 A. They supplied the</p> <p>6 information to me. Okay? And that</p> <p>7 information was then given to the AG's</p> <p>8 office, which would summarize this.</p> <p>9 Q. So, is it likely the case</p> <p>10 that one of your staff members had a copy</p> <p>11 of the Delaware permit to refer to here?</p> <p>12 A. They could have looked</p> <p>13 through the file and looked at it and</p> <p>14 made that determination.</p> <p>15 Q. Okay. Does that mean that</p> <p>16 the Delaware permit would be in the</p> <p>17 Keystone file, kept by the Bureau of</p> <p>18 Tidelands?</p> <p>19 A. It may be. I'm not certain</p> <p>20 of that. It could be.</p> <p>21 Q. In the course of this</p> <p>22 litigation, did you make available</p> <p>23 documents, either in the custody of</p> <p>24 yourself or anyone else in the Bureau of</p>	156	<p>1 response to those requests?</p> <p>2 A. There was discovery -- are</p> <p>3 you referring to the discovery? There</p> <p>4 were documents that were supplied, yes.</p> <p>5 Q. When were those supplied and</p> <p>6 by whom?</p> <p>7 A. They were supplied by</p> <p>8 counsel.</p> <p>9 Q. And when did that happen?</p> <p>10 A. This past summer.</p> <p>11 Q. Aside from the DuPont</p> <p>12 documents that you just mentioned?</p> <p>13 A. They were supplied by</p> <p>14 counsel.</p> <p>15 Q. The DuPont documents were</p> <p>16 supplied by counsel?</p> <p>17 A. I believe so.</p> <p>18 Q. Let me start over because I</p> <p>19 think we're not communicating.</p> <p>20 This past June, Delaware</p> <p>21 served document requests -- by this past</p> <p>22 June, I mean June of 2006, three months</p> <p>23 ago, four months ago, whatever, Delaware</p> <p>24 served, as part of the formal discovery</p>
155	<p>1 Tidelands or the Bureau itself, to</p> <p>2 Council for Production of Delaware?</p> <p>3 A. Yes.</p> <p>4 Q. When did you do that?</p> <p>5 A. I do recall someone from</p> <p>6 Delaware coming to the Bureau.</p> <p>7 We had made copies of</p> <p>8 information that they copied and</p> <p>9 collected. And they used that</p> <p>10 information and took it with them.</p> <p>11 Q. How about subsequent to</p> <p>12 that, in -- over this past summer, summer</p> <p>13 of 2006? Did you provide any documents?</p> <p>14 A. Personally? I don't recall.</p> <p>15 Oh, yeah, well, I did -- I did -- there</p> <p>16 was some documents related to the DuPont</p> <p>17 lease that was approved this past July</p> <p>18 that I did supply.</p> <p>19 Q. Did you -- were you given a</p> <p>20 copy or made aware of the substance of</p> <p>21 the discovery request served by Delaware</p> <p>22 this past June?</p> <p>23 A. Yes.</p> <p>24 Q. Did you provide documents in</p>	157	<p>1 process in this litigation, requests for</p> <p>2 production of documents and there were a</p> <p>3 number of specific requests.</p> <p>4 Were you given a copy of</p> <p>5 those?</p> <p>6 A. Yes.</p> <p>7 Q. And that was this past June?</p> <p>8 A. If it's what I'm thinking</p> <p>9 of, you requested copies of photography?</p> <p>10 Aerial photography? That we did supply.</p> <p>11 Q. That's the only request that</p> <p>12 you remember?</p> <p>13 A. These requests went through</p> <p>14 the AG's Office. So, they may have</p> <p>15 handled these through my staff.</p> <p>16 Q. So, it was only a request</p> <p>17 for photographs?</p> <p>18 A. I don't --</p> <p>19 Q. Aerial photographs?</p> <p>20 A. I don't recall. Again,</p> <p>21 these requests went through the AG's</p> <p>22 Office. So --</p> <p>23 Q. Well, I believe asking if</p> <p>24 they went to you. What I'm trying to ask</p>

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1 is were you made aware that Delaware had  
 2 requested documents and did you search or  
 3 cause files of the Bureau of Tidelands to  
 4 be searched in response to those Requests  
 5 for Production of Documents?  
 6 **A. I do recall last year, last**  
 7 **fall, we did assemble some documents for**  
 8 **Delaware.**  
 9 **Q. Okay.**  
 10 **A. But I don't recall this past**  
 11 **summer.**  
 12 **Q. But nothing since then**  
 13 **except for the aerial photographs that**  
 14 **were produced in the last couple of**  
 15 **months?**  
 16 **A. I do recall the aerial**  
 17 **photography. That was handled by one of**  
 18 **my staff.**  
 19 **Q. Okay.**  
 20 **A. He assembled the aerial**  
 21 **photographs and he provided those to**  
 22 **Delaware.**  
 23 **There may have been other**  
 24 **documents that my staff would have**

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1 **handled that I was unaware of.**  
 2 **Q. Are you aware that Delaware**  
 3 **issued more permits to Keystone than the**  
 4 **one mentioned on September 30th, 1991 in**  
 5 **your affidavit?**  
 6 **A. No.**  
 7 **MR. ATTAWAY: Off the**  
 8 **record.**  
 9 - - -  
 10 (Whereupon, the exhibit was  
 11 marked Castagna-18 and 19 for  
 12 identification.)  
 13 - - -  
 14 (Whereupon, there was a  
 15 recess commencing at 2:18 p.m. and  
 16 concluding at 2:30 p.m.)  
 17 - - -  
 18 **BY MR. ATTAWAY:**  
 19 **Q. We've had marked as Exhibits**  
 20 **18 and 19 first a memorandum dated August**  
 21 **28th, 1991 from Robert Tudor to James**  
 22 **Johnson regarding Keystone and then 19 is**  
 23 **a titled State of New Jersey Department**  
 24 **of Environmental Protection and Energy**

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1 **Land Use Regulation Element Bureau of**  
 2 **Coastal Regulation, Summary Analysis**  
 3 **dated September 24, 1991; also about**  
 4 **Keystone.**  
 5 **Mr. Castagna, have you had a**  
 6 **chance to take a look at these documents**  
 7 **during the break?**  
 8 **A. No, I haven't; but I'll look**  
 9 **now.**  
 10 **Q. Okay. We'll wait.**  
 11 **A. Is there anything specific**  
 12 **you'd like me to look at?**  
 13 **Q. Well, I'd like you to read**  
 14 **the one page letter, Exhibit 18.**  
 15 **A. Okay.**  
 16 **Q. And I will point you to a**  
 17 **couple of places in the longer document.**  
 18 **A. Okay.**  
 19 **Q. Exhibits 18 is dated August**  
 20 **28th and it's from Robert Tudor to James**  
 21 **Johnson.**  
 22 **And Robert Tudor, you**  
 23 **mentioned earlier, he was in the, I think**  
 24 **the coastal management bureau; is that**

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1 **correct?**  
 2 **A. Yes.**  
 3 **Q. What is the staff**  
 4 **preliminary analysis that he mentions in**  
 5 **this memorandum but that is not actually**  
 6 **attached to the copy that we have?**  
 7 **A. I have no idea.**  
 8 **Q. Do you commonly receive a**  
 9 **staff preliminary analysis for a project?**  
 10 **A. No.**  
 11 **Q. From coastal management?**  
 12 **A. No.**  
 13 **Q. But this is 1991 and it was**  
 14 **when James Johnson was the head of the**  
 15 **Bureau of Tidelands; correct?**  
 16 **A. That's correct.**  
 17 **Q. It appears from this**  
 18 **memorandum that Mr. Johnson did receive a**  
 19 **staff preliminary analysis from**  
 20 **Mr. Tudor; is that correct?**  
 21 **A. Yes.**  
 22 **Q. Exhibit 19 is titled a**  
 23 **summary analysis, which is different**  
 24 **phraseology than staff preliminary**

162	<p>1 analysis.</p> <p>2 And I note that the summary</p> <p>3 analysis is dated September 24th, which</p> <p>4 is almost a month after the memorandum</p> <p>5 claiming to attach the staff preliminary</p> <p>6 analysis.</p> <p>7 So, what I'd like to find</p> <p>8 out is, is the summary analysis the same</p> <p>9 thing in substance that was transmitted</p> <p>10 to Mr. Johnson on August 28th, 1991? Do</p> <p>11 you have any idea?</p> <p>12 <b>A. I have no idea.</b></p> <p>13 <b>Q. Okay. For the record, these</b></p> <p>14 <b>two exhibits, 18 and 19 are the</b></p> <p>15 <b>documents -- they are some of the</b></p> <p>16 <b>documents, let me be more specific, two</b></p> <p>17 <b>of the five documents that I was provided</b></p> <p>18 <b>with by New Jersey counsel, about ten</b></p> <p>19 <b>minutes before we started this deposition</b></p> <p>20 <b>this morning.</b></p> <p>21 Looking at Exhibit 19, I</p> <p>22 just want to turn to the last page, the</p> <p>23 signature page.</p> <p>24 And confirm with you that it</p>	164	<p>1 If you turn to the second</p> <p>2 page, Roman one, introduction; Roman two,</p> <p>3 summary analysis and number three,</p> <p>4 administrative history, Roman three.</p> <p>5 And then on the next page,</p> <p>6 which is Page 3 of the permit, which is</p> <p>7 under the administrative history section,</p> <p>8 there is -- there is a paragraph at the</p> <p>9 bottom of Page 3, which is Bates stamped</p> <p>10 New Jersey 7711, that talks about the</p> <p>11 1905 compact.</p> <p>12 Do you see that?</p> <p>13 <b>A. Second to the last</b></p> <p>14 <b>paragraph?</b></p> <p>15 <b>Q. Yes.</b></p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q. Just take the time you need</b></p> <p>18 <b>to read that paragraph, plus the</b></p> <p>19 <b>carry-over paragraph.</b></p> <p>20 <b>A. Okay.</b></p> <p>21 <b>Q. What is your understanding</b></p> <p>22 <b>of those two paragraphs?</b></p> <p>23 <b>A. New Jersey stated that,</b></p> <p>24 <b>according to Article 7 of the compact,</b></p>
163	<p>1 is signed by Bob Tudor, the final page?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q. Do you still have the</b></p> <p>4 <b>Keystone permit handy? Keep the</b></p> <p>5 <b>signature page on Exhibit 19 open. I'd</b></p> <p>6 <b>like you to compare the signature of Bob</b></p> <p>7 <b>Tudor to the signature that's on the</b></p> <p>8 <b>Keystone permit. Does it appear to you</b></p> <p>9 <b>the Bob Tudor signed the Keystone permit</b></p> <p>10 <b>as well?</b></p> <p>11 <b>A. I'm not an expert in</b></p> <p>12 <b>signatures but it appears to be similar.</b></p> <p>13 <b>Q. And Ruth Ehinger also signed</b></p> <p>14 <b>this summary analysis that we have as</b></p> <p>15 <b>Exhibit 19; correct?</b></p> <p>16 <b>A. Yes.</b></p> <p>17 <b>Q. Did you work with Ruth</b></p> <p>18 <b>Ehinger at any time?</b></p> <p>19 <b>A. No.</b></p> <p>20 <b>Q. How about David Fanz, who</b></p> <p>21 <b>also signed the summary analysis?</b></p> <p>22 <b>A. I've never worked with them.</b></p> <p>23 <b>Q. I have a few more questions</b></p> <p>24 <b>about the summary analysis.</b></p>	165	<p>1 <b>New Jersey had the right to exercise</b></p> <p>2 <b>riparian jurisdiction for the</b></p> <p>3 <b>construction of this project. And it</b></p> <p>4 <b>also talked about the fact that Delaware</b></p> <p>5 <b>assumed they had jurisdiction and also</b></p> <p>6 <b>required a permit.</b></p> <p>7 <b>Q. All right. So, would you</b></p> <p>8 <b>read this to acknowledge that while New</b></p> <p>9 <b>Jersey contended that it had the right to</b></p> <p>10 <b>issue a riparian instrument through the</b></p> <p>11 <b>Bureau of Tidelands, that Delaware,</b></p> <p>12 <b>nevertheless, still had authority to</b></p> <p>13 <b>apply its Coastal Zone Act and require a</b></p> <p>14 <b>permit?</b></p> <p>15 <b>A. Well, it doesn't say it had</b></p> <p>16 <b>the authority. It just said Delaware had</b></p> <p>17 <b>assumed it had jurisdiction.</b></p> <p>18 <b>Q. Do you remember the</b></p> <p>19 <b>condition in the final permit that is</b></p> <p>20 <b>dated the same date as this summary</b></p> <p>21 <b>analysis, September 24th, that requires</b></p> <p>22 <b>the applicant to get permits from</b></p> <p>23 <b>Delaware before beginning construction?</b></p> <p>24 <b>A. Yes.</b></p>

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1 Q. In that context, would you  
 2 read this language in the summary  
 3 analysis to acknowledge that Delaware had  
 4 authority to require a permit under the  
 5 1905 compact?  
 6 A. Well, the way I look at this  
 7 is that the permit included a condition  
 8 that there would be an approval by the  
 9 State of Delaware for the project.  
 10 Q. If New Jersey were taking  
 11 the position that Delaware had no  
 12 authority to require a permit, then why  
 13 on earth would the permit require a  
 14 Delaware -- would the New Jersey permit  
 15 require a Delaware permit.  
 16 MS. CONKLIN: I'm going to  
 17 have to enter an objection to the  
 18 entire line of questioning. He's  
 19 repeatedly stated he doesn't know  
 20 anything about permits. It's  
 21 speculation. If you want  
 22 speculation, you can continue.  
 23 BY MR. ATTAWAY:  
 24 Q. You can answer.

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1 A. Again, I will say, I'm not  
 2 the person who writes or deals with  
 3 permits.  
 4 So, I would agree with  
 5 counsel.  
 6 Q. Turning to the back of the  
 7 summary analysis, New Jersey 7738,  
 8 Exhibit 19?  
 9 A. Yes.  
 10 Q. Looking at Number 5, and  
 11 then there's A through D underneath it,  
 12 is that in substance the same condition  
 13 that was placed in the final permit that  
 14 required, prior to construction, that  
 15 Keystone obtain the permits from  
 16 Delaware?  
 17 A. Yes.  
 18 Q. So, it's the case then that  
 19 in the same document, stating that New  
 20 Jersey had riparian jurisdiction to issue  
 21 a riparian grants to the Keystone  
 22 project, the same document requires  
 23 coastal zone permits from Delaware, prior  
 24 to construction; is that correct?

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1 A. What the Tidelands Resource  
 2 Council is looking for is an approved  
 3 permit.  
 4 And a permit required  
 5 approval by the State of Delaware, so be  
 6 it.  
 7 But all the Tidelands  
 8 Resource Council, I believe, was looking  
 9 for was approval from the State of New  
 10 Jersey.  
 11 Q. And the Tidelands Resource  
 12 Council, to your knowledge, never took  
 13 the position that Delaware lacked  
 14 regulatory authority over a project that  
 15 the Resource Council approved; is that  
 16 correct?  
 17 A. Can you repeat the question?  
 18 - - -  
 19 (Whereupon, the following  
 20 portion of the record was read by  
 21 the court reporter:  
 22 "QUESTION: And the  
 23 Tidelands Resource Council, to  
 24 your knowledge, never took the

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1 position that Delaware lacked  
 2 regulatory authority over a  
 3 project that the Resource Council  
 4 approved; is that correct?")  
 5 - - -  
 6 THE WITNESS: It is my  
 7 understanding that the Tidelands  
 8 Resource Council only required a  
 9 permit from the State of New  
 10 Jersey and did not require any  
 11 approvals from the State of  
 12 Delaware. That's my --  
 13 BY MR. ATTAWAY:  
 14 Q. So, to --  
 15 A. That's my knowledge, yeah.  
 16 Q. To your knowledge, the  
 17 Tidelands Resource Council never took the  
 18 position that Delaware lacked the  
 19 authority to regulate a boundary  
 20 straddling project; correct?  
 21 A. You say lacked the  
 22 authority?  
 23 Q. Yes.  
 24 A. I still don't --

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1 Q. Did the Tidelands Resource  
 2 Council ever take the position that  
 3 Delaware could not regulate a project  
 4 that extended into Delaware?  
 5 A. I don't know. I don't know.  
 6 Q. To your knowledge, that  
 7 never --  
 8 A. To my knowledge, I don't  
 9 know.  
 10 Q. Are you aware of a draft of  
 11 a memorandum of understanding that was  
 12 negotiated by New Jersey and Delaware in  
 13 1994 regarding coordination of permit  
 14 reviews by the respective states?  
 15 A. No.  
 16 Q. Are you familiar with Steven  
 17 Whitney?  
 18 A. I know of Steven Whitney.  
 19 Q. Did you work with him at any  
 20 time?  
 21 A. No.  
 22 Q. I'd like to mark for  
 23 identification Castagna-20.  
 24

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1 cover memorandum, which is Delaware 27930  
 2 on the Bates stamp has a list of  
 3 distribution. It says Bob Tudor, U.S.  
 4 EPA.  
 5 Is that the same Bob Tudor  
 6 that signed the Keystone permit and the  
 7 summary analysis memo in 1991? Is he  
 8 then in 1994, had he moved to EPA?  
 9 A. I'm not certain of that.  
 10 Q. The distribution states that  
 11 Joe Ann Cubberley was on the distribution  
 12 list.  
 13 She was your boss at the  
 14 time; correct?  
 15 A. That's correct.  
 16 Q. Did you ever discuss or did  
 17 she discuss with you the fact that  
 18 representatives of New Jersey DEP and  
 19 DNREC were negotiating an agreement to  
 20 coordinate permitting activities?  
 21 A. No.  
 22 Q. I just have one or two more  
 23 questions about this.  
 24 On Page 2 of the draft

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1 (Whereupon, the exhibit was  
 2 marked Castagna-20 for  
 3 identification.)  
 4  
 5 BY MR. ATTAWAY:  
 6 Q. I will just identify it.  
 7 This is a -- it is a one-page cover  
 8 memorandum from Steven Whitney to  
 9 distribution. And there's a list of  
 10 names at the bottom of the page under  
 11 distribution.  
 12 Attached to this one-page  
 13 cover memo is a short multi-page  
 14 memorandum of agreement between New  
 15 Jersey Department of Environmental  
 16 Protection and Delaware Department of  
 17 Natural Resource and Environmental  
 18 Control.  
 19 And the cover memo is dated  
 20 July 7th, 1994.  
 21 Mr. Castagna, have you ever  
 22 seen this before?  
 23 A. No.  
 24 Q. Page 1 -- I'm sorry -- the

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1 memorandum, there's a section titled  
 2 sharing of development applications.  
 3 I'll give you a chance to  
 4 read that; it's a half page paragraph. I  
 5 will just ask you a question about the  
 6 last sentence.  
 7 A. Okay.  
 8 Q. The last sentence of that  
 9 paragraph reads "Both agencies recognize  
 10 that each agency has the independent  
 11 authority to approve or deny applications  
 12 pursuant to its own regulations. DEP and  
 13 DNREC will share applications under the  
 14 following authorities."  
 15 And then it lists a number  
 16 of laws issued by the representative  
 17 states.  
 18 With respect to the  
 19 statement that both agencies recognize  
 20 that each agency has the independent  
 21 authority to approve or deny applications  
 22 pursuant to its own regulations, is that  
 23 also a matter of permitting that is  
 24 beyond your area of knowledge?

174	<p>1 <b>A. That's correct.</b></p> <p>2 Q. So, yours is just limited to</p> <p>3 the riparian grants, leases and</p> <p>4 conveyances but not permits for any</p> <p>5 activities to be conducted thereon?</p> <p>6 <b>A. That is correct.</b></p> <p>7 Q. You said earlier that you</p> <p>8 couldn't recall any instance where New</p> <p>9 Jersey had expressly conditioned the</p> <p>10 validity of the New Jersey permit on the</p> <p>11 issuance of Delaware permits.</p> <p>12 And then we looked at</p> <p>13 Keystone and you said that you had not</p> <p>14 been familiar with that condition and</p> <p>15 that permit; correct?</p> <p>16 <b>A. That's correct.</b></p> <p>17 Q. Has anything in our</p> <p>18 discussion refreshed your recollection</p> <p>19 about another permit that New Jersey</p> <p>20 issued that required Delaware permits?</p> <p>21 <b>A. Again, I mentioned DuPont</b></p> <p>22 <b>issue. That was fresh in my memory,</b></p> <p>23 <b>because I just -- that was just presented</b></p> <p>24 <b>to the Tidelands Resource Council this</b></p>	176	<p>1 Q. Okay. I don't think I've</p> <p>2 seen that. Have you provided that to</p> <p>3 your counsel for production in Delaware?</p> <p>4 <b>A. I don't know if they've</b></p> <p>5 <b>asked for it or -- I don't know.</b></p> <p>6 Q. Since we're on the record,</p> <p>7 I'd like to ask for a copy of it now to</p> <p>8 be produced in due course.</p> <p>9 <b>MR. ANDERSEN: Yes.</b></p> <p>10 <b>MR. ATTAWAY: Thank you.</b></p> <p>11 <b>BY MR. ATTAWAY:</b></p> <p>12 Q. Turning to your affidavit,</p> <p>13 Page 50.</p> <p>14 I'm looking at Subparagraph</p> <p>15 44.</p> <p>16 This is a discussion of the</p> <p>17 Fort Mott project; correct?</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. And New Jersey issued a, I</p> <p>20 think we talked about this earlier, a</p> <p>21 management -- what did you call it?</p> <p>22 <b>A. Management agreement.</b></p> <p>23 Q. Management agreement.</p> <p>24 And that was a document</p>
175	<p>1 <b>past summer.</b></p> <p>2 Q. Did the permit issued by New</p> <p>3 Jersey for that DuPont project require</p> <p>4 Delaware permits?</p> <p>5 <b>A. The permit was already</b></p> <p>6 <b>issued.</b></p> <p>7 Q. Did the permit that New</p> <p>8 Jersey issued --</p> <p>9 <b>A. The license.</b></p> <p>10 Q. Okay. Did the license that</p> <p>11 New Jersey issued say that Delaware</p> <p>12 permits were required?</p> <p>13 <b>A. Well, no. The counsel made</b></p> <p>14 <b>a statement that they don't -- there was</b></p> <p>15 <b>a statement made at the counsel meeting</b></p> <p>16 <b>that kind of, I forget exactly what it</b></p> <p>17 <b>was, but it basically stated that the</b></p> <p>18 <b>jurisdiction for this area is within New</b></p> <p>19 <b>Jersey.</b></p> <p>20 Q. What document is that</p> <p>21 statement contained in? Is that the</p> <p>22 minutes of the council meeting?</p> <p>23 <b>A. It might be the minutes of</b></p> <p>24 <b>the council meeting.</b></p>	177	<p>1 issued by the Tidelands Resource Council;</p> <p>2 correct?</p> <p>3 <b>A. That's correct.</b></p> <p>4 Q. The latter part of this</p> <p>5 paragraph, and it's on Page 51, says "One</p> <p>6 of the administrative conditions in this</p> <p>7 permit imposed by New Jersey was that</p> <p>8 certain aspects of this project were</p> <p>9 subject to approval by the State of</p> <p>10 Delaware.</p> <p>11 Does this refresh your</p> <p>12 recollection as to whether you recall New</p> <p>13 Jersey having condition to permit on the</p> <p>14 issuance of a Delaware permit?</p> <p>15 <b>A. What I recollect is this was</b></p> <p>16 <b>a requirement by the Division of Parks</b></p> <p>17 <b>and Forestry. It was not a requirement</b></p> <p>18 <b>by the Tidelands Resource Council. It</b></p> <p>19 <b>was Parks and Forestry.</b></p> <p>20 Q. So, when you said you</p> <p>21 weren't aware of any condition imposed by</p> <p>22 New Jersey, you really meant a condition</p> <p>23 imposed by the Bureau of Tidelands?</p> <p>24 <b>A. Bureau of Tidelands. This</b></p>

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1 was a condition imposed as part of the  
 2 permitting process.  
 3 Q. It states here that Delaware  
 4 approved a lease for this project on --  
 5 in February of 1996; correct?  
 6 A. Yes.  
 7 Q. And it's your understanding  
 8 that -- well, let's just introduce the  
 9 permit for clarity.  
 10 - - -  
 11 (Whereupon, the exhibit was  
 12 marked Castagna-21 for  
 13 identification.)  
 14 - - -  
 15 BY MR. ATTAWAY:  
 16 Q. Have you had a chance to  
 17 review the Fort Mott permit?  
 18 A. Yes.  
 19 Q. Does this refresh your  
 20 recollection as to who imposed the  
 21 administrative condition?  
 22 A. Yeah. This -- the permit  
 23 was for the Department of Parks and  
 24 Forestry. I guess the condition was by

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1 the Land Use Regulation program.  
 2 Q. So, the applicant was one  
 3 division of the DEP and the -- that  
 4 applied to another division of DEP for a  
 5 permit to rehabilitate Fort Mott pier;  
 6 correct?  
 7 A. That's correct.  
 8 Q. Do you know how it came to  
 9 be that this -- that the administrative  
 10 condition requiring Delaware permits was  
 11 included in this permit?  
 12 A. No.  
 13 Q. You never discussed that  
 14 condition with Ms. Cubberley?  
 15 A. No.  
 16 Q. Did you have anything to do  
 17 with the Fort Mott tidelands conveyance?  
 18 A. I don't recall. I don't  
 19 believe I was involved in this. It  
 20 doesn't -- I don't remember that I was  
 21 involved in this.  
 22 It doesn't say, oh, yeah, I  
 23 was -- no.  
 24 Q. So, would Miss Cubberley

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1 have prepared the Tidelands instrument  
 2 herself?  
 3 A. Yes.  
 4 Q. Do you have a copy of the  
 5 tidelands instrument?  
 6 A. We would have a copy in our  
 7 office, yes.  
 8 Q. And would you have the  
 9 transmittal of any permits in your office  
 10 as well?  
 11 A. If there's a copy, yes, the  
 12 permit should also be in our file along  
 13 with the actual document.  
 14 Q. I'd like to request that you  
 15 provide to your counsel and that counsel  
 16 produce the file on Fort Mott from the  
 17 Bureau of Tidelands.  
 18 A. Okay.  
 19 MR. ANDERSEN: We've already  
 20 done that. Off the record.  
 21 - - -  
 22 (Whereupon, there was a  
 23 recess commencing at 2:58 p.m. and  
 24 concluding at 3:04 p.m.)

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1 - - -  
 2 BY MR. ATTAWAY:  
 3 Q. Mr. Castagna, what is your  
 4 understanding of the Crown Landing  
 5 project that is at issue in the  
 6 litigation?  
 7 A. Well, Crown Landing, BP, has  
 8 proposed to build a liquefied petroleum  
 9 facility in Logan Township, Gloucester  
 10 County. I understand that there are  
 11 permits that have not yet been approved  
 12 as yet. We have an application at our  
 13 bureau for a tidelands conveyance.  
 14 Q. Are you aware of positions  
 15 taken by the various people in the DEP  
 16 about Delaware's regulatory authority  
 17 over that project?  
 18 A. No.  
 19 Q. Are you aware of a letter  
 20 from David Risilia, filed at the federal  
 21 energy regulatory commission, regarding  
 22 Delaware's regulatory over the Crown  
 23 Landing project?  
 24 A. I don't recall.

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1 Q. Are you aware of any  
 2 subsequent retraction by other people of  
 3 certain statements that Mr. Risilia made  
 4 in his February 4th, 2005 letter?  
 5 A. No.  
 6 Q. Just not something that  
 7 you've had to deal with at all?  
 8 A. No.  
 9 Q. You have no knowledge?  
 10 A. No.  
 11 Q. You haven't seen any of the  
 12 letters to FERC or to the parties  
 13 regarding whether or not Delaware has  
 14 regulatory authority?  
 15 A. There is information in our  
 16 file. I looked at it quickly. I haven't  
 17 spent a lot of time because it's a  
 18 pending case which we don't have a permit  
 19 for. Because there is no permit. It's  
 20 essentially just sitting there. It's not  
 21 going anywhere. It's not anything I'm  
 22 actively working on.  
 23 Q. Okay. Fair enough.  
 24 MR. ATTAWAY: Let's take a

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1 break.  
 2 - - -  
 3 (Whereupon, there was a  
 4 recess commencing at 3:06 p.m. and  
 5 concluding at 3:26 p.m.)  
 6 - - -  
 7 (Whereupon, the exhibits  
 8 were marked Castagna-22 and 23 for  
 9 identification.)  
 10 - - -  
 11 BY MR. ATTAWAY:  
 12 Q. I've just had marked as  
 13 Exhibits Castagna-22 New Jersey responses  
 14 to Delaware's First Request for  
 15 Admissions. And then Castagna-23 is a  
 16 stack of aerial photos that were recently  
 17 produced by New Jersey as individual  
 18 documents, but to save time, and I don't  
 19 think this will have any effect on our  
 20 discussion, I had them marked as a set.  
 21 So, they are all Exhibit 23.  
 22 And it's my understanding  
 23 that these are all of the aerial photos  
 24 that New Jersey produced over the last

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1 couple of months.  
 2 And one final note about  
 3 Exhibit 23, the Bates numbers that we --  
 4 we got these documents on a CD. And each  
 5 file was labeled with a discrete Bates  
 6 number, however, on a number of the  
 7 documents the Bates number was not on the  
 8 image so when we printed them out, we had  
 9 a printout with no Bates number.  
 10 So, I had my assistant,  
 11 paralegal, place by hand, so it would be  
 12 obvious that it was, you know, this is  
 13 different from what we pointed out, the  
 14 Bates number that was contained on the  
 15 electronic file.  
 16 And that's been double  
 17 checked.  
 18 So, I apologize in advance  
 19 if there ends up being an error on the  
 20 numbering but we did our best to make  
 21 sure that what was on the CD is reflected  
 22 on the printout.  
 23 Before we get to those,  
 24 Mr. Castagna, I want to start with

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1 paragraph of your affidavit.  
 2 It is quite long; it goes  
 3 from Page 29 to Page 55 and it has 44  
 4 subparagraphs; correct?  
 5 A. Yes.  
 6 Q. And Paragraph 8 has some  
 7 introductory text before you get to the  
 8 subparagraph. It starts out by saying  
 9 that on at least eight occasions between  
 10 1854 and 1905 New Jersey exercised its  
 11 riparian jurisdiction by approving state  
 12 tidelands conveyances below the low water  
 13 line within the 12 mile circle.  
 14 Then it goes on to say that  
 15 you Mr. Castagna found 33 instances  
 16 between 1905 in which New Jersey, it says  
 17 here, continued to exercise its riparian  
 18 jurisdiction on the New Jersey side of  
 19 the river within a 12 mile circle.  
 20 When you say riparian  
 21 jurisdiction here, I take it from our  
 22 prior discussion throughout the day, that  
 23 you were referring solely to the grants,  
 24 leases and conveyances of land issued by

186	<p>1 the Bureau of Tidelands; is that correct?</p> <p>2 <b>A. Well, by riparian</b></p> <p>3 <b>jurisdiction, I'm referring to New Jersey</b></p> <p>4 <b>sovereign authority to regulate tax and</b></p> <p>5 <b>police the area between the mean high</b></p> <p>6 <b>water line and the navigation channel.</b></p> <p>7 Q. Okay. Does your -- what do</p> <p>8 you mean by regulate?</p> <p>9 <b>A. Well, by regulate, to issue</b></p> <p>10 <b>the tidelands conveyances, that the</b></p> <p>11 <b>predecessors of the tidelands resource</b></p> <p>12 <b>counsel have done since 1854.</b></p> <p>13 Q. Okay. And I take it from</p> <p>14 our previous discussion that when you use</p> <p>15 the word regulate, you don't mean to</p> <p>16 include any permits that other divisions</p> <p>17 of DEP issue; correct?</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. And again, you said you</p> <p>20 mentioned policing.</p> <p>21 Does your affidavit talk</p> <p>22 anywhere about policing structures or</p> <p>23 grants or what sort of policing?</p> <p>24 <b>A. No.</b></p>	188	<p>1 Q. Does policing include</p> <p>2 anything else?</p> <p>3 <b>A. Not that I can think of</b></p> <p>4 <b>right now.</b></p> <p>5 Q. It doesn't include</p> <p>6 permitting?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Towards the bottom of Page</p> <p>9 30, you refer to a map depicting the</p> <p>10 grants. That map is attached to your</p> <p>11 affidavit; correct?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And let's just turn to that</p> <p>14 map briefly.</p> <p>15 <b>A. Okay.</b></p> <p>16 Q. The map has, there are</p> <p>17 numbers 1 through 44 up and down the New</p> <p>18 Jersey shoreline within the 12 mile</p> <p>19 circle; correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And there are sort of</p> <p>22 rectangular shapes that extend out into</p> <p>23 the water.</p> <p>24 <b>Are those intended to be</b></p>
187	<p>1 Q. Okay.</p> <p>2 <b>A. That's just my understanding</b></p> <p>3 <b>of what riparian jurisdiction is.</b></p> <p>4 Q. That's the understanding</p> <p>5 that you came to over the last year?</p> <p>6 <b>A. Yeah.</b></p> <p>7 Q. Do you have any knowledge of</p> <p>8 any acts of policing a structure or a</p> <p>9 riparian grant?</p> <p>10 <b>A. No.</b></p> <p>11 Q. What is your understanding</p> <p>12 of policing, as you are using it right</p> <p>13 now?</p> <p>14 <b>A. By policing, to I guess if</b></p> <p>15 <b>there was a crime committed or if there's</b></p> <p>16 <b>any acts of vandalism, it would be under</b></p> <p>17 <b>the jurisdiction of New Jersey. If it's</b></p> <p>18 <b>on a structure that New Jersey has</b></p> <p>19 <b>authorized the placement of.</b></p> <p>20 Q. But you don't have any</p> <p>21 knowledge of any particular --</p> <p>22 <b>A. No. No.</b></p> <p>23 Q. -- exercises of policing?</p> <p>24 <b>A. No.</b></p>	189	<p>1 drawn to the scale of the map?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Subparagraphs 1 through 44</p> <p>4 discuss how many grants issued by the</p> <p>5 Tidelands Resource Council or its</p> <p>6 predecessors?</p> <p>7 <b>A. That's correct.</b></p> <p>8 Q. I was trying --</p> <p>9 <b>A. Was that a question?</b></p> <p>10 Q. Yeah. Maybe it wasn't a</p> <p>11 very good question. Maybe I can do it</p> <p>12 this way: We talked about the language</p> <p>13 at the beginning of Paragraph 8 where you</p> <p>14 mentioned eight conveyances before 1905</p> <p>15 and 33 after 1905.</p> <p>16 Those two numbers add up to</p> <p>17 41; correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Subparagraphs 1 through 44</p> <p>20 and Paragraph 8 discuss 41 riparian</p> <p>21 grants; correct?</p> <p>22 <b>A. There are 41 riparian</b></p> <p>23 <b>conveyances. There are a couple of</b></p> <p>24 <b>numbers that are not referring to actual</b></p>

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1 conveyances. It's just information being  
 2 supplied.  
 3 Q. That's what I thought. I  
 4 just wanted to make sure we were on  
 5 common ground.  
 6 A. Yes, Yes.  
 7 Q. Did New Jersey give Delaware  
 8 notice before it issued any of these  
 9 grants?  
 10 A. I don't know.  
 11 Q. How would Delaware find out  
 12 that New Jersey had issued a riparian  
 13 grant, lease or conveyance?  
 14 A. Well, they are filed with  
 15 the county clerk in the county of record.  
 16 Q. So, someone from Delaware  
 17 would have to go and search the files of  
 18 the counties all up and down the New  
 19 Jersey shoreline within the 12 mile  
 20 circle to discover whether a grant had  
 21 been made?  
 22 A. They are also available in  
 23 the Bureau of Tidelands management, these  
 24 records are kept.

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1 Q. Here in Trenton?  
 2 A. Here in Trenton.  
 3 Q. Anywhere else?  
 4 A. The legislative grants are  
 5 listed in the laws of New Jersey.  
 6 Q. How many legislative grants  
 7 were there?  
 8 A. Well, those that were issued  
 9 prior to 1871. I believe there was one  
 10 in 1871 and all of those prior.  
 11 So, there may have been  
 12 maybe four or five.  
 13 Q. Okay. Just looking at  
 14 Paragraph Number 1, this talks about a  
 15 grant to Thomas Broadway.  
 16 What, if any structure ever  
 17 existed on the lands covered by this  
 18 grant?  
 19 A. In the 1934 proceedings, the  
 20 New Jersey versus Delaware number two,  
 21 Mr. Sherman, on behalf of the State of  
 22 New Jersey, testified that a wharf  
 23 existed at this location.  
 24 Q. Who is Mr. Sherman?

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1 A. He was an engineer who  
 2 worked for the Bureau of Commerce and  
 3 Navigation, which is a predecessor to the  
 4 Bureau of Tidelands.  
 5 Q. And he was New Jersey's  
 6 witness during that proceeding; correct?  
 7 A. My understanding, yes.  
 8 Q. There are a number of grants  
 9 with respect to which -- that were issued  
 10 before 1934; with respect to which  
 11 Mr. Sherman, or at least your affidavit  
 12 doesn't say that Mr. Sherman said that  
 13 there was a structure on those grants;  
 14 correct?  
 15 A. That's correct.  
 16 Q. If you didn't say in your  
 17 affidavit that Mr. Sherman had so  
 18 testified that there was a structure  
 19 there, is it then the case that he did  
 20 not so testify?  
 21 A. I don't know if that's to be  
 22 true; because I wasn't there.  
 23 Q. That was a convoluted  
 24 question.

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1 Was it your intention to  
 2 include a reference to all the instances  
 3 where Mr. Sherman testified there was a  
 4 structure on a particular grant?  
 5 A. Yes.  
 6 Q. And are you aware, with  
 7 respect to grants regarding which  
 8 Mr. Sherman did not testify that a  
 9 structure existed, are you aware of any  
 10 other evidence showing that a structure  
 11 existed on that particular grant up to  
 12 1934?  
 13 A. If the structure appeared on  
 14 an aerial photograph, if a structure  
 15 existed prior to 1934, but still existed  
 16 on an aerial photograph in 1934, it would  
 17 appear.  
 18 Q. Are you aware of any such  
 19 structures?  
 20 A. I do know that a number of  
 21 structures do appear in aerial  
 22 photography but I'm not certain which  
 23 ones did, off the top of my head.  
 24 Q. So, sitting here right now,

194	<p>1 with respect to grant number one, do you                  2 know anything more than what is stated in                  3 your affidavit? In other words, do you                  4 know what the nature of this wharf was                  5 when it was built, how long it was used,                  6 when it fell into disuse?                  7 <b>A. No.</b>                  8 <b>Q. So, we'd have to look at</b>                  9 <b>Mr. Sherman's testimony that you cite and</b>                  10 <b>see whatever that says?</b>                  11 <b>A. That's correct.</b>                  12 <b>Q. And that would be the</b>                  13 <b>position of a New Jersey's own witness in</b>                  14 <b>that case; correct?</b>                  15 <b>A. Yes.</b>                  16 <b>Q. Let's look at Exhibit 22</b>                  17 <b>which is New Jersey response to</b>                  18 <b>Delaware's First Request for Admissions.</b>                  19 <b>I think we're only going to</b>                  20 <b>discuss Response Number 34, which is Page</b>                  21 <b>16 and 17.</b>                  22 <b>I'll give you a chance to</b>                  23 <b>read that and I'll ask you a couple of</b>                  24 <b>questions.</b></p>	196	<p>1 existed on a particular grant and I just                  2 want to keep a running tally and figure                  3 out what the total number is.                  4 <b>So, let's go through --</b>                  5 <b>A. I know approximately how</b>                  6 <b>many appear on aerial photography.</b>                  7 <b>Q. Okay. Maybe it we can</b>                  8 <b>approach it that way.</b>                  9 <b>A. I'm not going to be able to</b>                  10 <b>tell you which ones, but I know an</b>                  11 <b>approximate number.</b>                  12 <b>Q. Okay.</b>                  13 <b>A. Approximately 21, 22 appear</b>                  14 <b>on aerial photography.</b>                  15 <b>Q. Structures?</b>                  16 <b>A. Structures, yeah.</b>                  17 <b>Q. And that's at any given</b>                  18 <b>point in time?</b>                  19 <b>A. Yeah. At some point in</b>                  20 <b>time.</b>                  21 <b>Q. Okay. At some point in</b>                  22 <b>time, there are 21 or 22 discrete</b>                  23 <b>structures showing on aerial photographs?</b>                  24 <b>A. That's correct.</b></p>
195	<p>1 <b>A. Okay.</b>                  2 <b>Q. Mr. Castagna, have you seen</b>                  3 <b>this response to Delaware's Request for</b>                  4 <b>Admissions before?</b>                  5 <b>A. Yes.</b>                  6 <b>Q. Did you assist in preparing</b>                  7 <b>the response?</b>                  8 <b>A. Are you referring</b>                  9 <b>specifically to 34?</b>                  10 <b>Q. 34, yes.</b>                  11 <b>A. My staff reviewed aerial</b>                  12 <b>photography and documented the evidence</b>                  13 <b>that is shown here.</b>                  14 <b>Q. Did you review this before</b>                  15 <b>it was served on Delaware?</b>                  16 <b>A. Yes.</b>                  17 <b>Q. Did you review the aerial</b>                  18 <b>photographs underlying it?</b>                  19 <b>A. I reviewed the aerial</b>                  20 <b>photographs, yes.</b>                  21 <b>Q. I'd like to just go through</b>                  22 <b>these and establish where we -- where</b>                  23 <b>there is no evidence, at least it's</b>                  24 <b>stated here, that any structure ever</b></p>	197	<p>1 <b>Q. All right. And maybe we can</b>                  2 <b>do this more quickly. And that's very</b>                  3 <b>helpful; thank you.</b>                  4 <b>When I count these responses</b>                  5 <b>A through X and go through them, I count</b>                  6 <b>16 grants on which the response states</b>                  7 <b>that there is no structure on the</b>                  8 <b>referenced aerial photographs. And</b>                  9 <b>there's also no testimony by Mr. Sherman</b>                  10 <b>that a grant existed at the time that he</b>                  11 <b>gave his testimony or any time prior to</b>                  12 <b>that.</b>                  13 <b>So, I count 16. Does</b>                  14 <b>that -- is that number consistent with</b>                  15 <b>your understanding of all of these data?</b>                  16 <b>If you like, we can just go through them.</b>                  17 <b>It won't take very long.</b>                  18 <b>A. The aerial photography began</b>                  19 <b>around 1930.</b>                  20 <b>Q. Right.</b>                  21 <b>A. To 2002. So, if there was a</b>                  22 <b>seasonal structure on a grant that was</b>                  23 <b>issued in 1916 and it was there for two</b>                  24 <b>years and they took it out, we would</b></p>

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1 have -- unless there was some  
 2 documentation of that structure, we would  
 3 have no knowledge of it.  
 4 Q. Okay. But you're not aware  
 5 of any such documentation?  
 6 A. For seasonal?  
 7 Q. Right.  
 8 A. No. And also, the other  
 9 thing I wanted to say is that these  
 10 aerial -- many of these aerial photos may  
 11 have been taken in the winter months.  
 12 And again, you might have a situation  
 13 where it might have been a seasonal  
 14 structure that may have been put in  
 15 during the summer months and then taken  
 16 out.  
 17 So, that's another area  
 18 where there's some unknown; whether there  
 19 was a structure there.  
 20 Q. What kind of structures are  
 21 seasonal structures?  
 22 A. Well, like a personal  
 23 floating dock.  
 24 Q. How far out in the river

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1 would that typically extend?  
 2 A. It would extend far enough  
 3 out to reach navigable waters. So the  
 4 vessel can reach a point where they could  
 5 reach the waters to get out.  
 6 Q. Are we talking small water  
 7 craft?  
 8 A. Yeah.  
 9 Q. I assume so, if it's a  
 10 temporary dock that would come and go  
 11 with the seasons?  
 12 A. Right.  
 13 Q. And small water craft has a  
 14 shallow draft; correct?  
 15 A. That is correct.  
 16 Q. And a water draft with a  
 17 shallow draft would not need very deep  
 18 water to dock in; would it?  
 19 A. That's true.  
 20 Q. So, isn't it likely that  
 21 such a temporary structure would not have  
 22 to extend beyond the low water mark?  
 23 MS. CONKLIN: I'm going to  
 24 object for lack of foundation

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1 because we don't know the depth of  
 2 the channel where each of these  
 3 things are located. The record  
 4 indicates that there's -- I'm not  
 5 going to go into what the record  
 6 indicates but until he establishes  
 7 he knows what the depth of channel  
 8 is, we're speculating about  
 9 whether a boat could clear, how  
 10 far the pier has to go, et cetera.  
 11 BY MR. ATTAWAY:  
 12 Q. What is your understanding  
 13 with respect to how far out a seasonal  
 14 structure would have to go?  
 15 A. Well, if it's low water, the  
 16 structure would have to go beyond the low  
 17 water line, because if it went just to  
 18 the low water line, at low tide it would  
 19 be mud.  
 20 And the boat would not be  
 21 able to navigate out to the channel.  
 22 Q. Isn't it possible that the  
 23 boat could navigate out and come back at  
 24 high tide?

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1 A. That's possible.  
 2 Q. But you were aware of no  
 3 evidence of any such seasonal structure  
 4 having existed?  
 5 A. No. No.  
 6 Q. Let's just go through this  
 7 list. I'm going to skip over a few  
 8 numbers and we'll come back to them.  
 9 I just want to go through  
 10 the numbers, where I think if we look at  
 11 your affidavit, and the affidavit will  
 12 not have any reference to Sherman's  
 13 testimony that a structure existed at the  
 14 time he testified or any time previous.  
 15 And he testified in what year?  
 16 A. 1934.  
 17 Q. Okay. If that's what your  
 18 understanding is.  
 19 So, number three, him  
 20 looking at your affidavit, I don't see  
 21 any reference to Sherman's testimony or  
 22 any other evidence of a structure.  
 23 And the admission response  
 24 is not specific, but I take it based on

202	<p>1 your affidavit and the response to A that</p> <p>2 New Jersey is aware of no evidence</p> <p>3 showing that a structure existed at any</p> <p>4 point in time on that grant; is that</p> <p>5 correct?</p> <p>6 <b>A. That's correct.</b></p> <p>7 <b>Q. With respect to B, which is</b></p> <p>8 <b>Subparagraph 8, again, I don't see any</b></p> <p>9 <b>testimony from Sherman and the response</b></p> <p>10 <b>indicates that there's no aerial</b></p> <p>11 <b>photography from 1930, 1951, 1962, 1979,</b></p> <p>12 <b>2000 or 2002 showing a structure;</b></p> <p>13 <b>correct?</b></p> <p>14 <b>A. That's correct.</b></p> <p>15 <b>Q. There's no evidence between</b></p> <p>16 <b>1883 and the present day that a structure</b></p> <p>17 <b>ever existed?</b></p> <p>18 <b>A. But again, the grant was</b></p> <p>19 <b>issued in 1883 and we're showing</b></p> <p>20 <b>photography that started in 1930. There</b></p> <p>21 <b>may have been a structure there.</b></p> <p>22 <b>Q. Mr. Sherman investigated all</b></p> <p>23 <b>of the grants in order to determine</b></p> <p>24 <b>whether a structure existed on them; is</b></p>	204	<p>1 D, let's skip over. E,</p> <p>2 Subparagraph 13 no evidence in your</p> <p>3 affidavit or the admission response</p> <p>4 indicating that a structure existed at</p> <p>5 any time after the 1916 grant?</p> <p>6 <b>A. Okay.</b></p> <p>7 <b>Q. Okay, you agree?</b></p> <p>8 <b>A. Yes. Yes.</b></p> <p>9 <b>Q. Okay. So, that's number</b></p> <p>10 <b>four; correct?</b></p> <p>11 <b>A. Number four?</b></p> <p>12 <b>Q. I just wanted to keep a</b></p> <p>13 <b>running tally on grants on which there's</b></p> <p>14 <b>no evidence of a structure existing from</b></p> <p>15 <b>the issuance of the grants. Let's go</b></p> <p>16 <b>back. I've numbered A, one.</b></p> <p>17 <b>A. A is one, okay.</b></p> <p>18 <b>Q. And B is two and if you want</b></p> <p>19 <b>to mark it on your exhibit right next to</b></p> <p>20 <b>the letter, that might be easiest.</b></p> <p>21 <b>You're certainly free to write on it, if</b></p> <p>22 <b>you want.</b></p> <p>23 <b>So, C would be three?</b></p> <p>24 <b>A. Okay.</b></p>
203	<p>1 that correct?</p> <p>2 <b>A. I don't know what his</b></p> <p>3 <b>purpose was. But it appears that would</b></p> <p>4 <b>have been the case.</b></p> <p>5 <b>Q. Wasn't his purpose just to</b></p> <p>6 <b>identify the grants on which structures</b></p> <p>7 <b>existed; either when he testified or at</b></p> <p>8 <b>some previous point in time?</b></p> <p>9 <b>A. It would appear to be so.</b></p> <p>10 <b>Q. The same question with</b></p> <p>11 <b>respect to C. No mention in your</b></p> <p>12 <b>affidavit as to a structure and no</b></p> <p>13 <b>structure shown on the aerial photographs</b></p> <p>14 <b>that you reference; is that correct?</b></p> <p>15 <b>A. That's correct.</b></p> <p>16 <b>Q. So, we're up to -- I'm just</b></p> <p>17 <b>going to keep a running tally in my copy</b></p> <p>18 <b>here. And if you'd like to do the same,</b></p> <p>19 <b>I just want to get a number that we can</b></p> <p>20 <b>agree on once we've gone through the list</b></p> <p>21 <b>as to where there's no evidence of a</b></p> <p>22 <b>structure.</b></p> <p>23 <b>I think we're up to three;</b></p> <p>24 <b>A, B and C.</b></p>	205	<p>1 <b>Q. E would be four. Now we're</b></p> <p>2 <b>up to F, which we haven't talked about</b></p> <p>3 <b>yet.</b></p> <p>4 <b>Looking at Subparagraph 16</b></p> <p>5 <b>in your affidavit, I don't see any</b></p> <p>6 <b>reference to a structure there or in the</b></p> <p>7 <b>admission response.</b></p> <p>8 <b>So, I would number that</b></p> <p>9 <b>five, if you're in agreement?</b></p> <p>10 <b>A. Okay.</b></p> <p>11 <b>Q. And H, Number 18,</b></p> <p>12 <b>Subparagraph 18, I don't see any evidence</b></p> <p>13 <b>in either place; can we number that six.</b></p> <p>14 <b>A. Okay.</b></p> <p>15 <b>Q. And "I" would be seven, I</b></p> <p>16 <b>believe, which is Subparagraph 24?</b></p> <p>17 <b>A. Okay.</b></p> <p>18 <b>Q. And then letter J,</b></p> <p>19 <b>Subparagraph 25, I would number that</b></p> <p>20 <b>eight, if you're in agreement.</b></p> <p>21 <b>A. Okay.</b></p> <p>22 <b>Q. And letter K, Subparagraph</b></p> <p>23 <b>26, I would number that nine, if you</b></p> <p>24 <b>agree?</b></p>

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1       **A. Okay.**  
 2       Q. L, Subparagraph 28, I would  
 3 number that ten.  
 4       **A. Okay.**  
 5       Q. Letter M, Subparagraph 29, I  
 6 would number that 11.  
 7       **A. Okay.**  
 8       Q. Letter N, Subparagraph 30, I  
 9 would number that 12.  
 10       **A. Okay.**  
 11       Q. Subparagraph O -- I'm sorry,  
 12 letter O, Subparagraph 31, I would number  
 13 that 13.  
 14       **A. Okay.**  
 15       Q. Letter P, Subparagraph 32, I  
 16 would number that 14.  
 17       **A. Okay.**  
 18       Q. Letter Q, Subparagraph 33, I  
 19 would number that 15?  
 20       **A. Okay.**  
 21       Q. Letter S, Subparagraph 36, I  
 22 would number that 16?  
 23       **A. Okay.**  
 24       Q. And then skipping all the

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1 way down to X, Subparagraph 43, I would  
 2 number that 17.  
 3       **A. Okay. 17.**  
 4       Q. Okay. So, we're in  
 5 agreement that 17 -- respect to 17 of the  
 6 41 grants discussed in Paragraph 8,  
 7 there's no evidence at any point in time  
 8 between the date of the grant and today  
 9 that a structure ever existed on those  
 10 lands; is that correct?  
 11       **A. Yes.**  
 12       Q. Okay. So, we have 17 there.  
 13       Now I just want to back up  
 14 and go over the areas of -- that were --  
 15 where Delaware asked in its admission  
 16 request to admit that no structure  
 17 existed and New Jersey disagreed and  
 18 stated that certain structures were found  
 19 on aerial photography.  
 20       So, I just want to go back  
 21 to D, letter D, which is Subparagraph 10.  
 22 I would just ask you, in the set of  
 23 aerial photographs that New Jersey has  
 24 produced and is marked as Exhibit 23, to

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1 show me what photographs demonstrate that  
 2 a pier is shown on that site.  
 3       **A. These are not -- these are**  
 4 **just copies of the photos that we**  
 5 **provided.**  
 6       **Are these labeled here?**  
 7 **Let's see.**  
 8       Q. Let me ask a couple of  
 9 questions about the production of the  
 10 aerial photos.  
 11       How did -- I take it, my  
 12 understanding that you caused these  
 13 photos to be provided to counsel and then  
 14 counsel provided them to Delaware;  
 15 correct?  
 16       **A. Yes.**  
 17       Q. In what form did your office  
 18 provide the photos?  
 19       **A. They were scanned. They**  
 20 **were digitized. They were scanned and**  
 21 **put on a CD.**  
 22       Q. These were originally hard  
 23 copy photographs?  
 24       **A. Originally hard copies that**

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1 **were scanned.**  
 2       Q. And they were scanned into  
 3 electronic format. Okay.  
 4       And I will represent to you  
 5 that I had these printed out off of a CD  
 6 that we received and as I stated earlier,  
 7 I had them labeled with the Bates stamps  
 8 that were on the CD but not on the image  
 9 themselves.  
 10       So that when you say I'm  
 11 basing there on photo X, you will able to  
 12 provide a Bates stamp that everyone can  
 13 identify later on.  
 14       There's still something we  
 15 need to clear up about the quality or the  
 16 authenticity of the photographs?  
 17       **A. Again, these are not the**  
 18 **same clarity as the originals. And even**  
 19 **the digitized versions; because they are**  
 20 **copied.**  
 21       Q. Did you compare the  
 22 electronic scanned version with the hard  
 23 copy?  
 24       **A. No, I didn't.**

210	<p>1 Q. To see if there was any loss 2 of quality? 3 A. No, I didn't. 4 Q. So, you don't know if 5 printing out one of these images from the 6 CD would look nearly as good as the 7 original from which they were scanned? 8 A. The originals were looked at 9 on a stereo magnification, also, which 10 we're looking at a paper print. It's not 11 going to have the same clarity as looking 12 at it under a stereoscope, look at the 13 photos. 14 MR. ANDERSEN: Off the 15 record. 16 - - - 17 (Whereupon, there was an 18 off-the-record discussion.) 19 - - - 20 BY MR. ATTAWAY: 21 Q. Let's try this starting with 22 Subparagraph 10. 23 MR. ANDERSEN: Do you see 24 which ones I'm talking about?</p>	212	<p>1 it was usable or not? 2 A. No. 3 Q. Let's move on to letter G; 4 still on request for admission, 34; 5 Subparagraph 17, it says pilings and a 6 dock shown? 7 A. Exhibit 1977 NY 06787; 8 Paragraph 8, number 17, there's a 9 structure that appears with pilings. 10 Q. Is that the Chamber Works 11 facility? 12 A. I'm not certain of that. 13 Q. That's the 1977 photo. 14 Do we also have a 1979? 15 A. Yes, there's also a 1979 16 photo. 17 MS. CONKLIN: Could you read 18 the page, please. 19 THE WITNESS: 1796 NJ 06789. 20 BY MR. ATTAWAY: 21 Q. Let's move on to letter R, 22 Subparagraph 34. 23 MR. ANDERSEN: Can we take a 24 break for a minute?</p>
211	<p>1 Here. Take my copy. This is 2 Paragraph 10. 3 BY MR. ATTAWAY: 4 Q. Mr. Castagna, which aerial 5 photographs document the statement in 6 letter D that a pier is shown on this 7 site in 1940, 1977 and 1979 aerial 8 photography? 9 A. 1940 NJ 06796, number ten, 10 Eugene DuPont grant, there's an arrow 11 pointing to a pier. 12 Q. Do you know what sort of 13 pier this is? 14 A. It's a pier that extends out 15 from the shoreline into the water. 16 Q. Could you tell when you 17 looked at this under magnification 18 whether this pier was, in 1940, a usable 19 pier or was it dilapidated? 20 A. I did not look at it. I was 21 just looking to see if there was a 22 structure there. I wasn't looking for 23 the condition. 24 Q. So, you don't know whether</p>	213	<p>1 - - - 2 (Whereupon, there was a 3 brief recess.) 4 - - - 5 MR. ANDERSEN: It appears 6 that the aerial -- that the 7 reproductions that you've made 8 here of the photography that we 9 gave you are too pixilated for 10 some of us to even be able to read 11 the notations that we've put on 12 the outside here. The original 13 documentation is not -- should 14 reproduce better than this. We of 15 course have the originals of it. 16 What I propose to do because 17 we didn't have it at the time 18 we -- that these answers were 19 prepared by the staff, we didn't 20 have the Bates numbers that we 21 gave you here, is that we can 22 cross reference each one of these 23 Bates numbers, each one of these 24 answers to the Bates numbers.</p>

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1 MR. ATTAWAY: Okay.  
 2 MR. ANDERSEN: And then if  
 3 you have further questions about  
 4 individual photographs, we can go  
 5 through that. And ultimately, if  
 6 your technical people and our  
 7 technical people aren't able to  
 8 produce better copies of these  
 9 things, then we'll produce the  
 10 originals if we have to.  
 11 MR. ATTAWAY: Okay. That's  
 12 a very good resolution to that.  
 13 MR. ANDERSEN: Some of these  
 14 we can't read.  
 15 MR. ATTAWAY: My experience  
 16 in reading some of the images on  
 17 screen, they were very hard to  
 18 read and I was having to zoom in  
 19 to read a few of them.  
 20 So, but -- but I think your  
 21 proposed resolution is a good one.  
 22 MR. ANDERSEN: All right.  
 23 MR. ATTAWAY: I agree.  
 24 MS. CONKLIN: What's a time

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1 frame for getting this done, Bill?  
 2 Do you have any idea?  
 3 MR. ANDERSEN: I don't know.  
 4 Where is Tom?  
 5 THE WITNESS: He's here.  
 6 MR. ANDERSEN: It's a  
 7 question of getting to Tom.  
 8 MR. ATTAWAY: As long as we  
 9 get it in a reasonable period of  
 10 time. I don't think there's an  
 11 urgency to it. Okay.  
 12 MR. ANDERSEN: We believe  
 13 that all of the -- if this is all  
 14 of the aerial photography that we  
 15 gave you, then we believe that it  
 16 demonstrates all of the  
 17 information that we show that we  
 18 referred to in answer to admission  
 19 number 34.  
 20 MS. CONKLIN: We're going to  
 21 get them better resolution --  
 22 we're going to get them correlated  
 23 Bates numbers for each of these  
 24 itemized structures.

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1 MR. ANDERSEN: Right. And  
 2 if the technical people can't get  
 3 together, why this isn't a better  
 4 resolution, we'll either give them  
 5 a better set of these copies  
 6 ourselves or somehow get them the  
 7 originals.  
 8 MR. ATTAWAY: Could you just  
 9 give us a copy of the hard copies  
 10 before they were scanned, along  
 11 with the correlation?  
 12 MR. ANDERSEN: That's a  
 13 question I'd like to pose to the  
 14 technical people to see how it's  
 15 done.  
 16 MR. ATTAWAY: That might be  
 17 the easiest thing.  
 18 MR. ANDERSEN: I don't know  
 19 the expense of that and I don't  
 20 know the time frame for that.  
 21 MS. CONKLIN: We need to  
 22 ask.  
 23 MR. ANDERSEN: Right.  
 24 MR. ATTAWAY: Okay. Let me

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1 see if I have any other questions,  
 2 in that case.  
 3 I have no further questions.  
 4 MS. CONKLIN: Thank you.  
 5 - - -  
 6 (Whereupon, the deposition  
 7 concluded at 4:18 p.m.)  
 8 - - -  
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**CERTIFICATE**

I hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me on the deposition of the above matter, and that this is a correct transcript of the same.

-----  
Teresa M. Beaver, RPR

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)

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Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that is made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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**ERRATA**  
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**ACKNOWLEDGEMENT OF DEPONENT**

I, \_\_\_\_\_, do hereby certify that I have read the foregoing pages, \_\_\_\_\_ and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

\_\_\_\_\_  
DATE                      SIGNATURE

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

My commission expires: \_\_\_\_\_  
Notary Public

	LAWYER'S NOTES	
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 14  
 15 Also Present:  
 Meredith Gaudio, Esquire  
 16 Connolly Bove Lodge & Hutz, LLP  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
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5

1 Suzanne Dietrick, after  
 2 having been duly sworn, was  
 3 examined and testified as follows:  
 4  
 ---  
 5 ORAL EXAMINATION  
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 6  
 7 MR. NEWELL: This is the  
 8 deposition of Suzanne Dietrick  
 9 being taken in the State of New  
 10 Jersey versus State of Delaware,  
 11 134 Original, in the Supreme Court  
 12 of the United States. This  
 13 deposition is being held in the  
 14 office of the Bureau of Tidelands,  
 15 9 Ewing Street, Trenton, New  
 16 Jersey. Today's date is  
 17 October 13, 2006. It is currently  
 18 a little before 9:30 a.m.  
 19 Present in addition to Ms.  
 20 Dietrick are myself, Ryan Newell,  
 21 attorney for the State of  
 22 Delaware, Meredith Gaudio, my  
 23 co-worker, Eileen Kelly, attorney  
 24 for the State of New Jersey and

6

1 Samantha Oakley, certified court  
2 reporter.  
3 BY MR. NEWELL:  
4 Q. Good morning, Ms. Dietrick.  
5 A. Good morning.  
6 Q. Thank you for coming. As I  
7 said, my name a Brian Newell I'm an  
8 attorney for the State of Delaware.  
9 You understand you're under  
10 oath, correct?  
11 A. Yes.  
12 Q. Is there anything that would  
13 prevent you from testifying fully and  
14 accurately today?  
15 A. No.  
16 Q. Do you have any mental or  
17 physical limitations that would prevent  
18 you from testifying fully and accurately?  
19 A. No.  
20 Q. Are you currently on any  
21 medication?  
22 A. No.  
23 Q. Ms. Dietrick, have you ever  
24 been deposed before?

7

1 A. No.  
2 Q. Do you understand how a  
3 deposition works?  
4 A. Yes.  
5 Q. Just to clarify, what I'm  
6 going to do is ask you some questions  
7 about what you do and what you know as it  
8 affects this case. You have to answer  
9 those questions under oath. When I'm all  
10 said and done, and your lawyer may ask  
11 questions if she wants to, but at the end  
12 the court reporter is going to type up  
13 the transcript, the record, and that's  
14 going to be it. Do you understand?  
15 A. Yes.  
16 Q. I'm going to ask that you  
17 listen carefully to the questions that I  
18 have asked you and answer only those  
19 questions that you hear fully. If you  
20 don't hear a question, please stop me and  
21 I'll repeat it. Will you do that?  
22 A. Yes.  
23 Q. I also want you to answer  
24 only those questions that you completely

8

1 understand. If you don't understand a  
2 question, please let me know, I'll try to  
3 rephrase it. Do you promise to do so?  
4 A. Yes.  
5 Q. I'm going to assume that if  
6 you answer a question you both heard and  
7 understood these questions; is that  
8 correct?  
9 A. Yes.  
10 Q. It's also important that  
11 only one person speak at a time. The  
12 court reporter can only listen to one  
13 person. If I'm talking, wait until I  
14 finish and if you're talking I'll do the  
15 same; is that okay?  
16 A. Yes.  
17 Q. Also, I need you to provide  
18 verbal answers like you're doing so far.  
19 Nodding and shaking your head huh-huh or  
20 uh-huh won't suffice. Ms. Oakley is  
21 going to need you to provide a verbal  
22 answer, a no, a yes or some explanation.  
23 Got it?  
24 A. Yes.

9

1 Q. If you need to take a break  
2 today at some point, let me know and I'll  
3 try to accommodate you.  
4 A. Okay.  
5 Q. Other than conversations  
6 with your attorney, please tell me how  
7 you prepared for today's deposition.  
8 A. I reviewed the permit file  
9 within the Office of Dredging and  
10 Sediment Technology.  
11 Q. Did you bring that document  
12 with you today?  
13 A. No.  
14 Q. Did you happen to read any  
15 of the pleadings in this case?  
16 A. No.  
17 Q. Did you talk to anyone else  
18 to prepare?  
19 A. I asked Dave Risilia how his  
20 deposition went last week and that was  
21 it.  
22 Q. Did you have meetings with  
23 counsel?  
24 A. Yes.

<p style="text-align: right;">10</p> <p>1 Q. When exactly did you meet 2 with counsel? 3 A. <b>On October 4th and 4 October 12th.</b> 5 Q. Let's go back to the 6 October 4th date. Who was present at 7 that meeting? 8 A. <b>Myself and Eileen Kelly.</b> 9 Q. That was it? 10 A. <b>Yes.</b> 11 Q. No one else walked into the 12 room? 13 A. <b>No.</b> 14 Q. How about October 12th, that 15 was the other date? 16 A. <b>Is that yesterday? Yes, 17 myself and Eileen Kelly.</b> 18 Q. Again, just the two of you 19 the entire time? 20 A. <b>Yes.</b> 21 Q. Just to get into a little 22 bit of background, could you explain to 23 me what your educational background is? 24 A. <b>I have bachelor of science</b></p>	<p style="text-align: right;">12</p> <p>1 A. <b>Philadelphia Child 2 Settlement Camp for Underprivileged 3 Children.</b> 4 Q. That was prior to your under 5 graduate degree? 6 A. <b>Yes.</b> 7 Q. Let's kind of work from 1989 8 when you started at the DEP, that is the 9 Department of Environmental Protection, 10 correct? 11 A. <b>Yes.</b> 12 Q. Let's start from there and 13 kind of go year by year or job by job, if 14 you will. And when doing so, please 15 provide me with the title, what you did 16 and the time period that you worked in 17 that position. 18 A. <b>June of 1989 I was employed 19 by the Bureau of Industrial Discharge 20 Permits. My job was to issue NJPDES 21 permits for industrial discharges to 22 surface water. From then until probably 23 1992. I then transferred within that 24 same bureau to the Whole Effluent</b></p>
<p style="text-align: right;">11</p> <p>1 <b>in Marine Science from Stockton State 2 College.</b> 3 Q. What year was that? 4 A. <b>1989, I graduated. I 5 started with the Department of 6 Environmental Protection June of 1989, 7 and I have been employed by this agency 8 since then.</b> 9 Q. Let's take a step back. 10 What exactly does that degree entail? 11 A. <b>The study of marine life and 12 ecosystems associated with marine life 13 and ichthyology, physiology of species. 14 That's about it.</b> 15 Q. Is that something you use a 16 lot in your job today? 17 A. <b>Yes, I do.</b> 18 Q. You mentioned that you 19 started work at the DEP. Right after 20 graduation, is that your first full-time 21 job? 22 A. <b>No. Prior to that I was an 23 executive assistant at a camp.</b> 24 Q. What kind of camp?</p>	<p style="text-align: right;">13</p> <p>1 <b>Toxicity Unit and in that capacity I was 2 required to review whole effluent 3 toxicity tests related to discharge to 4 surface water permits and also to develop 5 the permit effluent limits related to 6 whole effluent toxicity.</b> 7 <b>In January of 1998, I was 8 hired by the -- transferred to the Land 9 Use Regulation Program and began working 10 in the Dredging Unit within that program, 11 and then in June of 1998 I then 12 transferred into the newly created Office 13 of Dredging and Sediment Technology 14 within the Site Remediation Program.</b> 15 <b>In September of 2002, I 16 became the manager of the Office of 17 Dredging -- Office of Dredging and 18 Sediment Technology and that is where I 19 am currently employed.</b> 20 Q. Taking a step back when you 21 were with LURP. 22 A. <b>Yes.</b> 23 Q. There was a dredging 24 department within that?</p>

14

1       **A. There was a unit, and there**  
2 **was a supervisor. In addition to his**  
3 **capacity of managing the dredging unit he**  
4 **also handled freshwater wetlands permits**  
5 **and other employees, but I was tasked**  
6 **with handling the dredging for the State**  
7 **of New Jersey in that capacity.**  
8       **Q. Does that department still**  
9 **work with dredging at all?**  
10       **A. No. They do not work with**  
11 **dredging in tidal waters; our office is**  
12 **responsible for that. They still are**  
13 **involved in the dredging and permitting**  
14 **and approval for freshwater lakes.**  
15       **Q. So the dredging**  
16 **responsibilities for tidelands has now**  
17 **shifted to the Office of Dredging and**  
18 **Sediment Technology?**  
19       **A. For tidal waters.**  
20       **Q. Is your current office,**  
21 **which is the Office of Dredging and**  
22 **Sediment Technology, is that part of the**  
23 **Department of Environmental Protection?**  
24       **A. Yes.**

15

1       **Q. Who do you report to within**  
2 **your office?**  
3       **A. Irene Cropp.**  
4       **Q. Now, going up the ladder,**  
5 **does your office report to any other**  
6 **agencies higher up in the hierarchy?**  
7       **A. No.**  
8       **Q. At your office, do you have**  
9 **anyone who works underneath you?**  
10       **A. I have four employees.**  
11       **Q. Their names are?**  
12       **A. Dave Risilla, Jeff Thein,**  
13 **Mark Davis and Gary Nickerson.**  
14       **Q. What does each of those**  
15 **individuals do?**  
16       **A. They each are tasked with**  
17 **handling separate sections of the State**  
18 **of New Jersey dredging activities and**  
19 **port-related activities are split into**  
20 **counties and each one is given a certain**  
21 **area.**  
22       **Q. So you are the top, the**  
23 **chief person in the Office of Dredging**  
24 **and Sediment Technology?**

16

1       **A. Yes, I am.**  
2       **Q. A little more specifically,**  
3 **what specific types of work would the**  
4 **Office of Dredging and Sediment**  
5 **Technology do?**  
6       **A. We issue waterfront**  
7 **development permits, freshwater wetlands**  
8 **permits, water quality certificates,**  
9 **federal consistency and stream**  
10 **encroachment permits.**  
11       **Q. Do you get involved with the**  
12 **testing of soil at all?**  
13       **A. Yes, we do.**  
14       **Q. In what capacity?**  
15       **A. The sediment sample results**  
16 **come in as part of the application for**  
17 **waterfront development or whatever**  
18 **regulatory permit is issued. Prior to**  
19 **those results being submitted to us, we**  
20 **work with an applicant and develop a**  
21 **sediment sampling plan for analyzing**  
22 **those materials.**  
23       **Q. Does your office concern**  
24 **itself with the effects of activities on**

17

1       the Delaware River, the effect activities  
2 would have on fish and wildlife?  
3       **A. Yes, we do.**  
4       **Q. How so?**  
5       **A. Generally when an**  
6 **application is submitted to our office,**  
7 **it is transmitted to the Division of Fish**  
8 **and Wildlife for them to be given the**  
9 **opportunity to evaluate the project and**  
10 **to submit comments to our office as to**  
11 **the conditions that they would like**  
12 **incorporated and/or information that they**  
13 **believe is deficient in the application.**  
14       **Q. So it sounds like there's a**  
15 **lot of coordination that goes on between**  
16 **your office and other offices within the**  
17 **DEP?**  
18       **A. Yes. Then on top of the**  
19 **State Fish and Wildlife, we also work**  
20 **with the National Marine Fishery Service**  
21 **and the U.S. Fish and Wildlife Service.**  
22       **Q. Are you familiar with the**  
23 **Bureau of Tidelands?**  
24       **A. Yes, I am.**

18

1 Q. Where, relative in the  
2 organizational structure of the DEP, do  
3 they fall to your office?  
4 A. Can you rephrase?  
5 Q. Sure. Is the Bureau of  
6 Tidelands an agency that you would work  
7 with quite often or is it someone you  
8 report to or someone that reports to you?  
9 A. **There's no direct reporting.**  
10 **We coordinate with them because as a**  
11 **requirement of any waterfront development**  
12 **permit, an applicant is required to**  
13 **demonstrate that they have a tideland**  
14 **instrument for the area that they're**  
15 **proposing to regulate activity into**  
16 **and/or they have applied for said**  
17 **tidelands instrument as we are going**  
18 **through the permit process. So we do**  
19 **work with them in getting an**  
20 **understanding as to what existing**  
21 **tideland instruments may be out there for**  
22 **a project.**  
23 Q. When you say tidelands  
24 instrument, what exactly are you speaking

19

1 of?  
2 A. **When we issue a waterfront**  
3 **development for a regulated activity they**  
4 **also required to get a tidelands**  
5 **instrument to put that feature in waters**  
6 **owned by the State of New Jersey. So**  
7 **what they are required to do is file an**  
8 **application with the Bureau of Tidelands**  
9 **for a grant lease or license to occupy**  
10 **those lands -- those waters.**  
11 Q. So if I were looking to do  
12 something within the tidelands, I would  
13 first go to the Bureau of Tidelands and  
14 then branch out to the other departments  
15 or other interests?  
16 A. **Typically what is done is**  
17 **that the waterfront development permit is**  
18 **submitted, and if there's already a**  
19 **tidelands grant for that area, the**  
20 **process is much easier to go through.**  
21 **What then happens is that if we do not**  
22 **see appropriate documentation of any sort**  
23 **we do refer the applicant to start the**  
24 **process with the Bureau of Tidelands.**

20

1 Q. Are you familiar with the  
2 director of the Bureau of Tidelands or  
3 the lead person in the bureau?  
4 A. I was.  
5 Q. Do you know who it is?  
6 A. **No, not off the top of my**  
7 **head.**  
8 Q. How frequently does your  
9 office or you, yourself, in your role at  
10 the office interact with the Bureau of  
11 Tidelands?  
12 A. **On pretty much every**  
13 **application.**  
14 Q. So you have to coordinate a  
15 lot with your applications?  
16 A. **Yes, to work with them to**  
17 **make sure they are aware of the**  
18 **application and/or inquire as to where**  
19 **the license is, if it has been applied**  
20 **for.**  
21 Q. Is there anything else -- is  
22 that all you know about the Bureau of  
23 Tidelands as it affects your job?  
24 A. **Pretty much.**

21

1 Q. Are you familiar with New  
2 Jersey's Coastal Management Office?  
3 A. Yes, I am.  
4 Q. Is that also part of the  
5 DEP?  
6 A. Yes.  
7 Q. What exactly does that  
8 office do?  
9 A. **They're responsible for the**  
10 **Coastal Zone Management program and**  
11 **coordinating with NOAA in making sure**  
12 **that our enforceable policies are**  
13 **up-to-date and approved by the National**  
14 **Oceanic and Atmospheric Administration**  
15 **and also working on just getting**  
16 **information out regarding the Coastal**  
17 **Zone Management areas and the coastal**  
18 **effects of activities on our coastal**  
19 **zone.**  
20 Q. Does your office interact a  
21 lot with the Coastal Management Office?  
22 A. **Yes, we do.**  
23 Q. Do they set forth regulatory  
24 procedures or guidelines or laws that

22

1 you're required to follow?  
 2 **A. I would actually say it's a**  
 3 **coordinated approach. The Coastal**  
 4 **Management Office does some of the**  
 5 **regulations and then the Land Use**  
 6 **Regulation Program also does some of the**  
 7 **regulatory revisions.**  
 8 Q. Who is in charge or who is  
 9 the director of the Coastal Management  
 10 Office?  
 11 **A. Ruth Ehinger.**  
 12 Q. Does the Office of Dredging  
 13 and Sediment Technology respond to any  
 14 police or fire or other emergency calls  
 15 in the Delaware River?  
 16 **A. No.**  
 17 Q. That would be outside the  
 18 scope of what you do?  
 19 **A. That is correct.**  
 20 Q. Are you familiar at all with  
 21 the Delaware River Basin Commission?  
 22 **A. Yes, I am.**  
 23 Q. For my knowledge, could you  
 24 please explain what they do?

23

1 **A. They are responsible for**  
 2 **review of -- what I have been involved**  
 3 **with -- as developer of TMDL's for**  
 4 **parameters of the concern within estuary,**  
 5 **from a water quality standpoint. They**  
 6 **also evaluate the sediment quality in and**  
 7 **around the Delaware Estuary and they also**  
 8 **are involved in evaluated point source**  
 9 **discharges into their basin and they work**  
 10 **very closely with our NJDES DSW program.**  
 11 Q. If you don't mind, sometimes  
 12 when you use these acronyms if you  
 13 wouldn't mind saying them for the first  
 14 time. What is TMDLs?  
 15 **A. Total daily maximum loads.**  
 16 Q. So it's TDMLs?  
 17 **A. I'm sorry. Total maximum**  
 18 **daily loads, TMDLs. Sorry. I'm used to**  
 19 **doing acronyms.**  
 20 Q. I'm not up on the lingo yet.  
 21 So you interact frequently also with the  
 22 DRBC?  
 23 **A. Not really.**  
 24 Q. No?

24

1 **A. No.**  
 2 Q. Are you familiar with the  
 3 Delaware River Bay Authority?  
 4 **A. Yes, I am.**  
 5 Q. Can you please explain what  
 6 you understand that they do?  
 7 **A. We are involved with them**  
 8 **related to their dredging activities and**  
 9 **port-related activities at their**  
 10 **facilities.**  
 11 Q. When you say their  
 12 facilities, where are their facilities?  
 13 **A. In the Delaware River. I am**  
 14 **not clear as to exactly where they're**  
 15 **located.**  
 16 Q. How often do you interact  
 17 with the DRBA?  
 18 **A. At interagency meetings as**  
 19 **well as during the permitting process, we**  
 20 **work with our consultants predominantly?**  
 21 Q. Who would be present at an  
 22 interagency meeting?  
 23 **A. It's held twice a year.**  
 24 **It's generally related to the disposal**

25

1 **location, the Weeks Marine and the users**  
 2 **that take their dredge material to that**  
 3 **facility, and that is when we run into**  
 4 **the different agencies that are within**  
 5 **the harbors as well as some of the**  
 6 **private facilities. Army Corps of**  
 7 **Engineers is in attendance, New Jersey**  
 8 **DOT and/or their consultants.**  
 9 Q. The DOT would be Department  
 10 of Transportation?  
 11 **A. Yes.**  
 12 Q. Would there be just New  
 13 Jersey agencies?  
 14 **A. No. There's also the**  
 15 **Philadelphia Regional Port Authority,**  
 16 **DRPA, representative is there and I**  
 17 **believe -- I'm not sure of the other**  
 18 **organizations.**  
 19 Q. Would Delaware have any  
 20 agencies present at those interstate  
 21 meetings?  
 22 **A. I have only been in**  
 23 **attendance at one where they have been**  
 24 **present, DNREC.**

<p style="text-align: right;">26</p> <p>1 Q. Let's go a little more  2 specific into the application review  3 process. Could you describe for me the  4 step-by-step process if someone were to  5 come to your office and want a dredging  6 permit, where would they begin and what  7 would be the process that they would go  8 through?  9 A. Okay. Typically, it is  10 recommended that they have a  11 preapplication meeting with our office to  12 go over the scope of the project and to  13 look at the proposed dredging component.  14 At that time we typically ask them to  15 perform a hydrographic survey of the area  16 of dredging, get a volume of material  17 they're proposing to remove as well as  18 the proposed disposal location.  19 That documentation is then  20 submitted to our office and we develop a  21 sediment sampling plan for their use in  22 going out and doing a chemical, as well  23 as a physical evaluation, of the material  24 to be removed. Then a waterfront</p>	<p style="text-align: right;">28</p> <p>1 Q. What would be a deficiency  2 that would hold up a process?  3 A. Missing information, certain  4 rules on coastal zone management were not  5 addressed at all or not addressed  6 adequately for us to glean whether or not  7 they have demonstrated compliance with  8 our rules on coastal zone management.  9 Administrative may be not  10 notices were not filed properly to the  11 appropriate entities and also  12 demonstrating whether or not they have  13 any information on tidelands.  14 Q. So there are other permits  15 or approvals that someone might need and  16 if they don't have those approvals or  17 permits, would that be a deficiency as  18 well?  19 A. If they had not demonstrated  20 that -- for one, they did not demonstrate  21 that they had the tidelands instrument  22 already or that they had not applied for  23 said instrument that would be a  24 deficiency that would be identified.</p>
<p style="text-align: right;">27</p> <p>1 development permit application is  2 submitted. We review that application  3 within 20 days of its receipt and at that  4 point we issue -- if necessary and we  5 feel we need additional information, a  6 deficiency letter is issued which details  7 what items were not found in the  8 application or a request clarification on  9 what was presented in the application.  10 At that time we typically  11 ask that the applicant respond within  12 30 days within receipt of our deficiency  13 letter addressing all of the items that  14 were in the letter. When that response  15 comes back in we have 15 days to look at  16 that information and if everything comes  17 back in and has answered all of our  18 deficiencies, at that time from that  19 receipt of that response that would -- we  20 would deem the application complete and  21 that would start our 90-day review period  22 for that application, and we have 90 days  23 in which to render a decision on the  24 application.</p>	<p style="text-align: right;">29</p> <p>1 Q. Would there be any federal  2 permits or approvals that they would need  3 prior to -- that would prevent them from  4 moving on?  5 A. Typically, the Army Corps of  6 Engineers who issues their permits for  7 these types of activities, they do not  8 issue their approvals until we issue our  9 documents. So it is somewhat contingent  10 on us issuing our permit decision and  11 then they issue theirs.  12 Q. Once you give your approval  13 in the Office of Dredging and Sediment  14 Technology, would you then send that to  15 the Army Corps?  16 A. Yes, we do.  17 Q. Would there be any other  18 interstate agencies that would have  19 interest, any of the bordering states  20 that border New Jersey?  21 A. Um...  22 Q. Let me rephrase that. Would  23 there be any permits or applications  24 required from other states if this</p>

30

1 project were to extend into other states'  
 2 waters?

3 MS. KELLY: Object to the  
 4 foundation of that. Go ahead.

5 THE WITNESS: Typically, if  
 6 there's -- the example I can use  
 7 is if in Pennsylvania a dredging  
 8 project was discharging its  
 9 dredging material in Weeks Marine,  
 10 which is located in New Jersey,  
 11 they would also be required to get  
 12 a Pennsylvania permit for the  
 13 dredging activity and we would  
 14 issue a water quality certificate  
 15 for the discharge of the dredging  
 16 material into Weeks' facility.

17 BY MR. NEWELL:

18 Q. Thank you. When someone  
 19 obtains a tidelands instrument, does that  
 20 necessarily entitle them to the right to  
 21 dredge?

22 A. They would need to get our  
 23 waterfront development permit and water  
 24 quality certificate.

31

1 Q. That's a separate thing, to  
 2 clarify?

3 A. Yes.

4 Q. Are you familiar at all with  
 5 New Jersey's Coastal Zone Management  
 6 Program?

7 A. Yes, I am.

8 Q. In your office, what role  
 9 does the New Jersey CZMP have, is it a  
 10 guideline?

11 A. Out of the -- within the  
 12 Coastal Zone Management program Ruth's  
 13 office is required to submit what are  
 14 referred enforceable policies under the  
 15 rules of Coastal Zone Management and  
 16 those are our guiding rules as we are  
 17 going through our waterfront development  
 18 permit. So I know that that -- that  
 19 those enforceable policies are within the  
 20 Coastal Zone Management Program document.

21 Q. So when your office is  
 22 approving a dredging permit, for example,  
 23 you attempt to do those in a manner  
 24 that's consistent with the CZMP?

32

1 A. Yes.

2 Q. What is your understanding  
 3 of the boundary between New Jersey and  
 4 Delaware?

5 A. Can you clarify that?

6 Q. Sure. Within the Delaware  
 7 River.

8 A. I know that the state line  
 9 goes mainly within the New Jersey and  
 10 Delaware and there is this Twelve Mile  
 11 Circle.

12 Q. Where would that state line  
 13 be in the river, do you have any  
 14 knowledge of where that line lies?

15 A. Down the middle of the river  
 16 below the Twelve Mile Circle and within  
 17 the circle it's at the mean high  
 18 waterline.

19 Q. At the mean high waterline?

20 A. Yes.

21 Q. On which side?

22 A. I'm sorry. Mean low  
 23 waterline.

24 Q. On which side of the river?

33

1 A. New Jersey side.

2 Q. So within the Twelve Mile  
 3 Circle the boundary between Delaware and  
 4 New Jersey, it's your understanding that  
 5 it runs to the low water mark on New  
 6 Jersey's side?

7 A. That is correct.

8 Q. Have you ever been on a boat  
 9 ride down the Delaware River?

10 A. Yes, I have.

11 Q. What times?

12 A. May of 2005, around there.

13 Q. Was that part of your -- was  
 14 that an employment-related trip?

15 A. Yes. We had asked Weeks  
 16 Marine to have us take a boat ride and  
 17 look at some of the facilities they  
 18 dredge on both the Philadelphia and New  
 19 Jersey side.

20 Q. Where is Weeks Marine?

21 A. At the Commodore Barry  
 22 Bridge.

23 Q. When exactly did you become  
 24 familiar with the term that you used

34

1 earlier, the Twelve Mile Circle?  
 2 **A. In the review of this**  
 3 **project.**  
 4 **Q. This project being the Crown**  
 5 **Landing project?**  
 6 **A. The BP LNG project.**  
 7 **Q. Prior to that you had never**  
 8 **heard the term Twelve Mile Circle?**  
 9 **A. I knew that in the vicinity**  
 10 **of the DuPont facility when we were**  
 11 **involved in a permit action at that**  
 12 **facility that Delaware was issuing some**  
 13 **sort of approval. I was not aware of**  
 14 **what they were going to issue.**  
 15 **Q. Why was Delaware issuing an**  
 16 **approval?**  
 17 **MS. KELLY: Object to the**  
 18 **foundation of that.**  
 19 **BY MR. NEWELL:**  
 20 **Q. Do you have an understanding**  
 21 **why Delaware would have issued an**  
 22 **approval?**  
 23 **A. Not at the time.**  
 24 **Q. Do you have any**

35

1 understanding now as to what?  
 2 **A. Yes.**  
 3 **Q. What is your understanding?**  
 4 **A. That they have the**  
 5 **authorization to evaluate projects within**  
 6 **this Twelve Mile Circle.**  
 7 **Q. Prior to coming to**  
 8 **understand the term the Twelve Mile**  
 9 **Circle, were you aware that the boundary**  
 10 **ran to the low water mark on the New**  
 11 **Jersey side within the Delaware River?**  
 12 **A. I'm not sure of the**  
 13 **question.**  
 14 **Q. You said just recently it**  
 15 **just come within the last two years since**  
 16 **this project has been pending you became**  
 17 **familiar with the term Twelve Mile**  
 18 **Circle. Prior to that, were you aware of**  
 19 **where the boundary lay between Delaware**  
 20 **and if New Jersey?**  
 21 **A. No, not in this area.**  
 22 **Q. Does your job at all require**  
 23 **you to know where the boundary lay? For**  
 24 **example, does your job require you to**

36

1 know where New Jersey territory extends  
 2 to?  
 3 **A. Yes.**  
 4 **Q. But you did not know where**  
 5 **the boundary lay between Delaware and New**  
 6 **Jersey?**  
 7 **A. In this area. I knew where**  
 8 **it was below this area in Delaware, south**  
 9 **of the Delaware Bay.**  
 10 **Q. South of the bay?**  
 11 **A. Well, south of where it runs**  
 12 **down the middle of the river and the bay.**  
 13 **Q. Are you familiar with any**  
 14 **structures extending from the New Jersey**  
 15 **shore into Delaware territory?**  
 16 **A. Current structures?**  
 17 **Q. Sure.**  
 18 **A. No.**  
 19 **Q. You're not familiar with any**  
 20 **structures?**  
 21 **A. No.**  
 22 **Q. What is your understanding**  
 23 **of New Jersey's regulatory authority**  
 24 **within the Twelve Mile Circle?**

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1 **MS. KELLY: Overbroad but go**  
 2 **ahead if you can.**  
 3 **THE WITNESS: We are**  
 4 **authorized to regulate all**  
 5 **activities in that stretch.**  
 6 **BY MR. NEWELL:**  
 7 **Q. So all activities within the**  
 8 **Twelve Mile Circle?**  
 9 **A. Yes.**  
 10 **Q. So that would mean all**  
 11 **activities that extend beyond the low**  
 12 **water mark of the New Jersey shore into**  
 13 **the Twelve Mile Circle?**  
 14 **A. If they originate in New**  
 15 **Jersey.**  
 16 **Q. And by originate --**  
 17 **A. The structure would**  
 18 **originate in New Jersey. For example, a**  
 19 **pier structure.**  
 20 **Q. Do you have an understanding**  
 21 **as to Delaware's regulatory authority**  
 22 **within the Twelve Mile Circle?**  
 23 **A. No, I do not.**  
 24 **Q. Are you aware of your office**

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1 ever objecting to Delaware's exercise of  
 2 dredging permits -- of regulating  
 3 dredging permits within the Twelve Mile  
 4 Circle?  
 5 **A. Not that I'm aware of.**  
 6 **Q.** Are you aware, to your  
 7 knowledge, of any other New Jersey agency  
 8 ever objecting to Delaware's exercise of  
 9 jurisdiction in the Twelve Mile Circle?  
 10 **A. No.**  
 11 **Q.** Correct me if I'm wrong, but  
 12 I believe you just said that it was your  
 13 understanding that New Jersey would have  
 14 regulatory authority for any projects  
 15 extending from the New Jersey shore into  
 16 the Twelve Mile Circle?  
 17 **A. That is correct.**  
 18 **Q.** To your knowledge, how long  
 19 has that been New Jersey's position? Has  
 20 it always been that position? Let me  
 21 rephrase.  
 22 Has New Jersey always  
 23 maintained that it is their regulatory  
 24 authority to govern and regulate any

39

1 projects extending from the New Jersey  
 2 shore into the Twelve Mile Circle?  
 3 **MS. KELLY:** I'm going to  
 4 object to foundation. Go ahead --  
 5 no present knowledge.  
 6 **THE WITNESS:** Not to my  
 7 knowledge. I'm not aware of it.  
 8 **BY MR. NEWELL:**  
 9 **Q.** If a project were to extend  
 10 from the New Jersey shore into the Twelve  
 11 Mile Circle in Delaware territory, would  
 12 your office have the authority to  
 13 authorize dredging in the Twelve Mile  
 14 Circle?  
 15 **A. Yes.**  
 16 **Q.** Does New Jersey authorize  
 17 dredging projects that would extend from  
 18 the New Jersey shore into let's say New  
 19 York territory?  
 20 **A. Yes.**  
 21 **Q.** Does New Jersey authorize  
 22 dredging projects that, again, originate  
 23 in New Jersey but would extend into  
 24 Pennsylvania?

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1 **A. Yes.**  
 2 **Q.** And that dredging would  
 3 occur within the other state?  
 4 **A. Yes.**  
 5 **Q.** Just to kind of tie things  
 6 up if you wouldn't mind, could you just  
 7 reiterate for me what New Jersey's  
 8 position is regarding dredging activities  
 9 that take place in Delaware soil but  
 10 begin on the New Jersey shore?  
 11 **MS. KELLY:** I'm going to  
 12 object. That's a very broad  
 13 question, New Jersey's position.  
 14 Are you asking in her capacity at  
 15 the Office of Dredging? I mean,  
 16 she can answer it but I'm just  
 17 putting my objection on the  
 18 record. It's very vague and  
 19 broad, so.  
 20 **BY MR. NEWELL:**  
 21 **Q.** I'll rephrase. What is your  
 22 understanding is as an employee of the  
 23 Office of Dredging and Sediment  
 24 Technology as to New Jersey's regulatory

41

1 authority regarding dredging activities  
 2 that take place in Delaware but originate  
 3 in New Jersey?  
 4 **A. That we have the regulatory  
 5 authority to issue permits for that  
 6 activity.**  
 7 **Q.** If the projects extended  
 8 into the Twelve Mile Circle within  
 9 Delaware would your office coordinate  
 10 with the Delaware agency in charge of  
 11 dredging?  
 12 **A. We have in past coordinated  
 13 with PADEP on projects that originated in  
 14 Pennsylvania in which the dredge material  
 15 was coming into New Jersey.**  
 16 **Q.** I'm sorry. How about if it  
 17 extends into the Twelve Mile Circle  
 18 within Delaware. The Twelve Mile Circle  
 19 is within Delaware territory. Has your  
 20 office interacted or coordinated with  
 21 Delaware agencies for dredging permits?  
 22 **A. No.**  
 23 **Q.** Just to give me a little  
 24 more understanding of what your office

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1 does, what coastal zone laws, statute,  
 2 regulations govern the work you do? I  
 3 recognize it's a broad question. Just  
 4 kind of take your time and I'll let you  
 5 explain what various laws and things you  
 6 work with on a day-to-day basis.  
 7 **A. The rules on coastal zone**  
 8 **management, the coastal zone program**  
 9 **rules, the freshwater wetlands**  
 10 **regulations, stream encroachment**  
 11 **regulations and also the federal**  
 12 **consistency regulations.**  
 13 **Q. Taking each one of those**  
 14 **individually, could you just explain what**  
 15 **each of those laws governs or what they**  
 16 **say?**  
 17 **A. The rules on coastal zone**  
 18 **management are acceptability conditions**  
 19 **for regulated activities that occur**  
 20 **within the coastal zone of New Jersey and**  
 21 **how a project should be constructed in**  
 22 **order to demonstrate compliance with**  
 23 **those rules in order to minimize or avoid**  
 24 **impacts to any sensitive habitat.**

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1 **Freshwater wetlands**  
 2 **protection act regulates activities in**  
 3 **freshwater wetlands. The coastal permit**  
 4 **program rules are more the administrative**  
 5 **regulations as to how we do our permit**  
 6 **decisions, as well as the adjudicatory**  
 7 **hearing process, as well as the civil**  
 8 **administration penalty process.**  
 9 **The federal consistency**  
 10 **regulations apply to federal agencies**  
 11 **that are looking to do activities in our**  
 12 **coastal zone.**  
 13 **Q. Did you mention the Coastal**  
 14 **Area Facilities Review Act?**  
 15 **A. I call them the federal**  
 16 **consistency regulations.**  
 17 **Q. Okay. That's CAFRA?**  
 18 **A. I'm sorry. We only**  
 19 **minimally get involved with the CAFRA**  
 20 **regulations.**  
 21 **Q. And the Waterfront**  
 22 **Development Act?**  
 23 **A. That is the law over the**  
 24 **rules on coastal zone management.**

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1 **Q. Do you know what chapter of**  
 2 **the New Jersey statutory code regulates**  
 3 **dredging?**  
 4 **A. I'm not sure of the**  
 5 **question.**  
 6 **Q. Are you familiar with New**  
 7 **Jersey's statutory code?**  
 8 **A. Yes.**  
 9 **Q. Within that code there's a**  
 10 **section of dredging; do you know what**  
 11 **section that is?**  
 12 **A. No.**  
 13 **Q. Are you familiar with the**  
 14 **chapter entitled that regulates the**  
 15 **issuance of riparian leases, grants or**  
 16 **conveyances?**  
 17 **A. No.**  
 18 **Q. Are you familiar with any of**  
 19 **Delaware's coastal zone laws?**  
 20 **A. No.**  
 21 **Q. I'd like to discuss now for**  
 22 **a little bit the New Jersey Coastal**  
 23 **Management Plan. Are you familiar with**  
 24 **the Final Environmental Impact Statement**

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1 that New Jersey issued in regard to its  
 2 coastal management plan?  
 3 **A. No.**  
 4 **Q. But you are familiar with**  
 5 **the coastal management plan?**  
 6 **A. Yes.**  
 7 **MR. NEWELL: I'd like to**  
 8 **have marked Dietrick-1.**  
 9 **(Whereupon document was marked**  
 10 **Dietrick-1 for identification.)**  
 11 **BY MR. NEWELL:**  
 12 **Q. What I have before you is**  
 13 **marked Dietrick-1. You will see that it**  
 14 **has at the bottom right-hand corner Bates**  
 15 **number DE20352. Just so you understand,**  
 16 **Bates number is basically the marking**  
 17 **that lawyers use when sharing exhibits or**  
 18 **documents with opposing counsel and the**  
 19 **court.**  
 20 **This is a huge document. I**  
 21 **have only provided you with a brief**  
 22 **couple of pages. I didn't want to have**  
 23 **to carry the whole thing here and I'm**  
 24 **sure you don't want the whole thing**

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1 either. I did provide you with the table  
2 of contents if you want to take a couple  
3 of minutes to familiarize yourself with  
4 that. Just take your time and see what  
5 it covers.  
6 **A. To clarify, I was shown this**  
7 **document yesterday by my attorneys, the**  
8 **cover of it.**  
9 Q. You were shown just the  
10 cover of it?  
11 **A. Yes, I did not go through**  
12 **it.**  
13 Q. Now that you remember you  
14 have seen that document, were you shown  
15 any other documents that you're aware of?  
16 **A. No.**  
17 Q. Have you had a chance to  
18 review the table of contents?  
19 **A. Yes.**  
20 Q. Albeit briefly?  
21 **A. Yes.**  
22 Q. If you wouldn't mind turning  
23 to page 19 in the document but it's  
24 actually has Bates number DEP20381. Are

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1 you there?  
2 **A. Yes.**  
3 Q. You will see that we're in  
4 Chapter 2 of the Coastal Management Plan  
5 entitled Boundary. Do you see that?  
6 **A. Yes.**  
7 Q. I'm going to ask that you  
8 read this section on boundary. It will  
9 be -- the next page will be page 19 and  
10 page 20. If you wouldn't mind taking  
11 your time and just reading that. When  
12 you're done, I'm going to ask you a  
13 couple of questions as it pertains to  
14 page 20.  
15 **A. (Witness reading.) Okay.**  
16 Q. You have had a chance to  
17 read these two pages?  
18 **A. Yes.**  
19 Q. Again, please take your time  
20 when you're doing this. I'm in no hurry.  
21 If you wouldn't mind again turning to  
22 what is DE20382, page 20. Do you see the  
23 section on Seaward and Interstate  
24 Boundaries?

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1 **A. Yes.**  
2 Q. I'm going to read the second  
3 paragraph into the record and then I'm  
4 going to ask you a question on it.  
5 Please listen as I do read it. "In most  
6 of Salem County, the Delaware-New Jersey  
7 State boundary is the mean low waterline  
8 on the eastern (New Jersey) shore of the  
9 Delaware River. The New Jersey and  
10 Delaware Coastal Management agencies have  
11 discussed this issue and have concluded  
12 that any New Jersey project extending  
13 beyond mean low water must obtain coastal  
14 permits from both states. New Jersey and  
15 Delaware, therefore, will coordinate  
16 reviews of any proposed development that  
17 would span the interstate boundary to  
18 ensure that no development is constructed  
19 unless it would be consistent with both  
20 state coastal management programs."  
21 Can you tell me what your  
22 understanding of this language is?  
23 **A. That if a project that**  
24 **originates in New Jersey extends into the**

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1 **Delaware-New Jersey state boundary that**  
2 **both states have the ability to issue**  
3 **permits for that activity.**  
4 MR. NEWELL: Would you mind  
5 reading back that answer for me?  
6 (Whereupon the last answer was  
7 read back.)  
8 BY MR. NEWELL:  
9 Q. When you say extends into  
10 the boundary, do you mean extends beyond  
11 one state's boundary into the other  
12 state?  
13 **A. Below mean low water, as is**  
14 **here.**  
15 Q. So if it were to extend from  
16 the New Jersey side that would be from  
17 the New Jersey shore across the mean low  
18 water into Delaware territory?  
19 **A. That is correct.**  
20 Q. Thank you. I was just  
21 trying to clarify.  
22 If you don't mind, please  
23 flip a couple of pages. I'm going to ask  
24 you to turn to what we have as DE20614.

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1 Actually, it should be the next page.  
 2 You will see at the bottom it's page 253  
 3 of the Coastal Management Plan. I'm not  
 4 actually going to ask you any questions  
 5 about this page in front of you. I'll  
 6 begin asking you questions starting at  
 7 the bottom of the next page under the  
 8 section Liquified Natural Gas carrying  
 9 over on to the following page. But in  
 10 fairness, please feel free to review the  
 11 entire section. So starting on page 253  
 12 and carrying over to page 255 stopping at  
 13 recreation on page 255. Do you see that?  
 14 A. Yes.  
 15 Q. Take your time.  
 16 A. (Witness reading.)  
 17 Q. Ms. Dietrick, so you know  
 18 we'll take a break right after this.  
 19 A. Okay.  
 20 Q. Please turn to DE20615 -- I  
 21 apologize, 20616. The first full  
 22 paragraph on that page, I'm going to read  
 23 that into the record and again ask you  
 24 questions when I'm finished. "The New

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1 Jersey Coastal Program states that LNG  
 2 terminals are discouraged unless they are  
 3 constructed so as to neither unduly  
 4 endanger human life nor property nor  
 5 otherwise impair the public health,  
 6 safety and welfare, and comply with the  
 7 Coast Resource and Development Policies."  
 8 Because the tankering of LNG could pose  
 9 potential risk to life and property  
 10 adjacent to New Jersey's waterways which  
 11 also serve as boundaries with the states  
 12 of Pennsylvania and Delaware along the  
 13 Delaware River and the state of New York  
 14 in the Port of New York and New Jersey,  
 15 the state considers decisions concerning  
 16 the siting of LNG terminals to be an  
 17 interstate matter." Do you see that  
 18 language?  
 19 A. Yes.  
 20 Q. In particular, what is your  
 21 understanding of the final two lines of  
 22 that paragraph stating the state  
 23 considers decisions concerning the siting  
 24 of LNG terminals to be an interstate

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1 matter?  
 2 A. It appears to be talking  
 3 about the tankering of the LNG vessels  
 4 and the potential risk to the different  
 5 states which border the bistate rivers  
 6 and that all states should be involved in  
 7 the siting of those facilities.  
 8 Q. By involved, what do you  
 9 mean by that?  
 10 A. It talks about decisions. I  
 11 can't go beyond what that decisions  
 12 means.  
 13 Q. So if an LNG facility were  
 14 to be placed extending from the New  
 15 Jersey shore into the Twelve Mile Circle,  
 16 is it your understanding that New Jersey  
 17 would have to work with Delaware because  
 18 this would be an interstate matter?  
 19 MS. KELLY: Are you asking  
 20 based on this document?  
 21 MR. NEWELL: Yes.  
 22 THE WITNESS: Yes.  
 23 BY MR. NEWELL:  
 24 Q. Would that mean -- is that

53

1 your understanding --  
 2 A. Based on the reading of this  
 3 document.  
 4 Q. Please let me finish. Would  
 5 it be your understanding that for an LNG  
 6 facility that involved dredging that the  
 7 dredging would involve interstate  
 8 cooperation?  
 9 A. Based on the reading of this  
 10 document.  
 11 MR. NEWELL: Why don't we  
 12 take a break? Let the record show  
 13 there is beeping going on in the  
 14 office and we'll take a break and  
 15 see if we can fix it.  
 16 (Whereupon a break was taken.)  
 17 BY MR. NEWELL:  
 18 Q. Ms. Dietrick, we're now back  
 19 on the record. While we were off the  
 20 record, did you happen to have any  
 21 conversations with counsel?  
 22 A. Yes, I did.  
 23 Q. Was it about the substance  
 24 of your testimony?

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1       **A. Yes.**  
2       Q. Let's move on. Are you  
3 familiar with interstate compacts between  
4 the State of New Jersey and Delaware?  
5       **A. The 1905 Compact.**  
6       MR. NEWELL: I'd like to  
7 have marked Dietrick-2.  
8 (Whereupon document was marked  
9 Dietrick-2 for identification.)  
10 BY MR. NEWELL:  
11 Q. What I have handed you  
12 marked Dietrick-2, the first page it has  
13 Delaware Bates DE06770. This is the  
14 Compact of 1905 that you just referenced  
15 between the State of New Jersey and the  
16 State of Delaware. You are familiar with  
17 this document?  
18       **A. I'm not familiar with this**  
19 **document.**  
20 Q. But you have heard of the  
21 Compact of 1905?  
22       **A. That is correct.**  
23 Q. How did you become aware of  
24 the compact of 1905?

55

1       **A. In going through the LNG**  
2 **project application.**  
3 Q. So you saw reference to the  
4 Compact of 1905 in the application?  
5       **A. Yes, and information coming**  
6 **from the applicant.**  
7 Q. And the applicant being  
8 British Petroleum or Crown Landing?  
9       **A. That is correct.**  
10 Q. What you say information  
11 coming the applicant, what type of  
12 information might that be?  
13       **A. It was response to a**  
14 **deficiency letter.**  
15 Q. Prior to that, had you had  
16 any interaction or any knowledge of the  
17 Compact of 1905?  
18       **A. As we were going through the**  
19 **application also.**  
20 Q. So your first awareness of  
21 the Compact of 1905 came about with New  
22 Jersey's interactions with BP/Crown  
23 Landing?  
24       **A. And our review of the**

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1 **application also.**  
2 Q. No other occasions you have  
3 an opportunity to rely upon the compact?  
4       **A. No.**  
5 Q. Can you give me your  
6 understanding of the Compact of 1905?  
7       **A. No.**  
8 Q. So you have no understanding  
9 of what it actually states or means?  
10       **A. I guess clarify the**  
11 **question.**  
12 Q. What is your understanding  
13 of the Compact of 1905 and what the  
14 document says?  
15       **A. That there is a circle in**  
16 **and around the Port of Wilmington that is**  
17 **-- was established as waters of Delaware.**  
18 Q. That understanding came  
19 about based on information provided by  
20 the applicant?  
21       **A. And in discussions with the**  
22 **project manager.**  
23 Q. The project manager being?  
24       **A. Dave Risilia.**

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1 Q. So the project manager was  
2 Dave Risilia who was within your office?  
3       **A. That's correct.**  
4 Q. Just to clarify, you have  
5 actually never read this document?  
6       **A. That is correct.**  
7 Q. So if I were to ask you  
8 about particular sections of this  
9 document you would have no understanding  
10 as to what those sections would mean?  
11       **A. I have never reviewed this**  
12 **document.**  
13 Q. You mentioned that the  
14 compact discusses the Twelve Mile Circle.  
15 Are you aware of any discussion within  
16 the compact about jurisdiction of the two  
17 states, New Jersey and Delaware?  
18       **A. No I am not.**  
19 Q. So to your knowledge, the  
20 Compact of 1905 strictly deals with  
21 boundary?  
22       **A. My understanding is that,**  
23 **yes.**  
24 Q. Since the Crown Landing

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1 application, have you had any other  
2 opportunities to rely on the Compact of  
3 1905 in your role in the Office of  
4 Dredging and Sediment Technology?  
5 **A. This is the only application**  
6 **currently before our office.**  
7 Q. Under what context did the  
8 Compact of 1905 come up in the Crown  
9 Landing application?  
10 **A. As we were going through the**  
11 **application and reviewing that**  
12 **application, there were a number of**  
13 **newspaper accounts regarding the Compact**  
14 **of 1905.**  
15 Q. Those were current  
16 newspapers?  
17 **A. Yes.**  
18 Q. So –  
19 **A. Referencing it.**  
20 Q. So 2004, 2005 time period?  
21 **A. That is correct.**  
22 Q. Did you rely on those  
23 newspaper articles for what they said  
24 about the Compact of 1905?

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1 **A. No, it just made references**  
2 **to it.**  
3 Q. Do you understand why Crown  
4 Landing or British Petroleum would have  
5 brought to your attention the Compact of  
6 1905?  
7 **A. No, I do not.**  
8 Q. So it's fair to say that  
9 you're familiar with the proposed Crown  
10 Landing project?  
11 **A. In a management role.**  
12 Q. In a management role within  
13 the Office of Dredging and Sediment  
14 Technology?  
15 **A. Correct.**  
16 Q. And that is because is there  
17 proposed dredging issues with this Crown  
18 Landing pier?  
19 **A. There's proposed dredging as**  
20 **a regulated activity.**  
21 Q. Can you tell me a little bit  
22 about what that dredging would be or  
23 where it would be I should say?  
24 **A. The dredging is to occur**

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1 **around the pier structure in order to**  
2 **allow for the vessel to be moored at the**  
3 **pier structure.**  
4 Q. Where would that pier be?  
5 Would that be within New Jersey  
6 territory?  
7 **A. It originates in New Jersey.**  
8 Q. The pier originates in New  
9 Jersey?  
10 **A. Yes.**  
11 Q. Would it extend into  
12 Delaware territory?  
13 **A. Yes, it extends into**  
14 **Delaware waters.**  
15 Q. That dredging, would it be  
16 of New Jersey soil as well Delaware soil  
17 then?  
18 **A. I'm not sure of the**  
19 **question.**  
20 Q. You said the dredging would  
21 occur at the pier. You said that the  
22 pier originates in New Jersey, extends  
23 into Delaware. So would there be  
24 dredging of both New Jersey soil so –

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1 **A. It's dredging in Delaware**  
2 **waters.**  
3 Q. Completely in Delaware  
4 waters?  
5 **A. I'm not sure.**  
6 Q. Do you have any idea how  
7 much -- the approximate amount how much  
8 soil is anticipated to be dredged?  
9 **A. I think approximately**  
10 **800,000 cubic yards.**  
11 Q. For someone who doesn't  
12 really know how much a cubic yard is, how  
13 much is 800,000 cubic yards?  
14 **A. It's difficult to quantify.**  
15 **A cubic yard is 3 by 3 by 3 so...**  
16 Q. Do you have any analogy that  
17 you can relate it to in terms of amount?  
18 **A. It would be equivalent to**  
19 **the dredging of a section of the federal**  
20 **navigation channel in the New York-New**  
21 **Jersey Harbor, the volume.**  
22 Q. We're talking about a lot of  
23 dredging?  
24 **A. Yes.**

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1 Q. Are you familiar at all with  
2 the Marcus Hook Anchorage?  
3 A. I know where it is located.  
4 Q. Do you have knowledge  
5 whether the use of the Crown Landing  
6 facility would interfere with the  
7 anchorage?  
8 A. I know it's in the vicinity  
9 of the project.  
10 Q. But do you know whether if  
11 the proposed Crown Landing facility were  
12 to come to fruition, would the use of  
13 that facility interfere at all with the  
14 anchorage?  
15 A. I can't answer that  
16 question.  
17 Q. That is because you do not  
18 know the answer?  
19 A. I do not know the answer.  
20 Q. Would there be anyone you  
21 could talk to to find out that answer?  
22 A. The project manager, Dave  
23 Risilia.  
24 Q. Dave Risilia would know that

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1 answer?  
2 A. Yes.  
3 Q. Is the dredging associated  
4 with the Crown Landing, is that more  
5 dredging than you're used to seeing for  
6 the projects you permit or is it less?  
7 A. It's on the larger scale.  
8 MR. NEWELL: I'd like to  
9 have marked Dietrick-3.  
10 (Whereupon document was marked  
11 Dietrick-3 for identification.)  
12 BY MR. NEWELL:  
13 Q. Ms. Dietrick, what we have  
14 here that has now been marked as Dietrick  
15 Dietrick-3 has Bates numbers NJ01036 to  
16 NJ1067. You will see that these are NJ,  
17 which means that this document was  
18 provided by the State of New Jersey to  
19 the State of Delaware. What you have  
20 before you is February 4, 2005 letter  
21 from the Office of Dredging and Sediment  
22 Technology to David Blaha of  
23 Environmental Resources Management. This  
24 letter is signed by Dave Risilia. Are

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1 you familiar with this document?  
2 A. Yes, I am.  
3 Q. What is your understanding  
4 of this document?  
5 A. It's a deficiency letter on  
6 an application that was submitted to our  
7 office upon review by Dave Risilia.  
8 These are the items that he believes are  
9 missing and/or need further clarification  
10 within the application that was  
11 submitted.  
12 Q. Environmental Resources  
13 Management, is that the applicant?  
14 A. That is the consultant.  
15 Q. They are the consultant to  
16 whom?  
17 A. BP.  
18 Q. Would this communication  
19 also have been sent to BP?  
20 A. There is a copy sent to a  
21 Laurie Beppler of BP Crown Landing.  
22 Q. What exactly does a  
23 consultant do for an applicant?  
24 A. Prepare the application on

65

1 behalf of the applicant.  
2 Q. So is a consultant someone  
3 that is familiar with New Jersey's  
4 coastal laws and what would be needed for  
5 the permit?  
6 A. They're familiar with the  
7 application contents and our rules on  
8 coastal zone management, yes.  
9 Q. Thank you. So to clarify,  
10 this letter here then is in reference to  
11 the proposed Crown Landing facility in  
12 Logan Township; is that correct?  
13 A. That is correct.  
14 Q. In order to ask some  
15 questions, I know you said you are  
16 familiar with it but I want to give you a  
17 chance to read this document. Can you  
18 please look at this first page NJ01036,  
19 and I want you to see the third  
20 paragraph. It begins, the project site.  
21 Please take your time and read that and  
22 let me know when you have finished.  
23 A. (Witness reading.) Finished.  
24 Q. Thank you. Just listen to

66

1 me as I read this into the record and  
2 then I'm going to ask you some questions  
3 about it. "The project site is located  
4 in the States of Delaware and New Jersey.  
5 Accordingly, activities taking place from  
6 the mean low waterline (MLWL) offshore  
7 are located in the State of Delaware and  
8 therefore are subject to Delaware Coastal  
9 Zone Management Regulations. Activities  
10 or associated impacts to New Jersey's  
11 coastal resources occurring from the MLWL  
12 landward are the subject of this  
13 application."  
14 Is it your understanding  
15 that Mr. Risilia in this paragraph is  
16 stating that activities occurring for the  
17 proposed Crown Landing project that  
18 extend beyond the mean low waterline into  
19 the Twelve Mile Circle would be subject  
20 to Delaware regulation?  
21 **A. Yes, but we issued a letter**  
22 **of clarification shortly after this**  
23 **deficiency letter was issued.**  
24 Q. As far as this letter itself

67

1 right here, is it your understanding that  
2 Mr. Risilia is saying that Delaware would  
3 have jurisdiction over some of this  
4 project?  
5 **A. Based on the contents of**  
6 **this letter, yes.**  
7 Q. Do you know what type of  
8 research or work Mr. Risilia did to  
9 prepare this letter?  
10 **A. I believe he relied on the**  
11 **previous permit application that we had**  
12 **reviewed for the DuPont permit in which**  
13 **an approval was obtained from the State**  
14 **of Delaware for that regulated activity.**  
15 Q. I assume that this letter is  
16 a fairly important letter to the  
17 applicant; is that correct?  
18 **A. That is correct.**  
19 Q. And Office of Dredging and  
20 Sediment Technology I would assume would  
21 take all efforts to make sure the  
22 statements made in the letter are  
23 correct; is that true?  
24 **A. Yes.**

68

1 Q. So they would not make a  
2 false representation knowingly?  
3 **A. Can you clarify that**  
4 **statement?**  
5 Q. If the statement that Mr.  
6 Risilia stated in the third paragraph  
7 were false, he would have made -- he made  
8 every effort to make sure that this  
9 statement is accurate?  
10 **A. At the time, yes.**  
11 Q. Did you get a chance to  
12 review this letter before it was sent?  
13 **A. Yes.**  
14 Q. Did you provide comments to  
15 Mr. Risilia on this letter?  
16 **A. I do not recall.**  
17 Q. Would it surprise you if Mr.  
18 Risilia testified in deposition that you  
19 did provide comments on this letter?  
20 **A. No, it would not surprise**  
21 **me.**  
22 Q. Do you typically review and  
23 provide comment upon similar deficiency  
24 letters?

69

1 **A. On a project of this scale,**  
2 **yes.**  
3 Q. For smaller projects Mr.  
4 Risilia might act solo?  
5 **A. That's correct.**  
6 Q. If you had been aware of an  
7 inaccuracy in this letter, would you have  
8 alerted Mr. Risilia to the error?  
9 **A. Yes.**  
10 Q. Do you know if counsel  
11 reviewed this letter?  
12 **A. I do not recall.**  
13 Q. Along the same lines, if  
14 counsel would have reviewed this letter,  
15 do you know who the attorney would have  
16 been?  
17 **A. No, I do not.**  
18 Q. Does the Office of Dredging  
19 and Sediment Technology have a deputy  
20 attorney general assigned to that office?  
21 **A. Multiple DAGs are assigned.**  
22 Q. Do you know who they are?  
23 **A. A few. Rachel Horowitz,**  
24 **Lewin Weyl, Bill Andersen and at the time**

70

1 **I believe there was a Steve Brower who**  
 2 **was employed.**  
 3 Q. Mr. Brower is no longer?  
 4 A. **Not that I'm aware.**  
 5 Q. So is it possible that if a  
 6 letter were reviewed by attorneys for the  
 7 Office of Dredging and Sediment  
 8 Technology that those might have been  
 9 some of the people who reviewed the  
 10 letter?  
 11 A. **I believe.**  
 12 Q. But you're unaware whether  
 13 they did or did not?  
 14 A. **I do not recall.**  
 15 MR. NEWELL: I'd like to  
 16 have this marked Dietrick-4.  
 17 (Whereupon document was  
 18 marked Dietrick-4 for  
 19 identification.)  
 20 BY MR. NEWELL:  
 21 Q. Ms. Dietrick, what I have  
 22 before you now is marked DE28549. That's  
 23 the Bates number.  
 24 MS. KELLY: Just for the

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1 record, is that arrow on the  
 2 original or is that something that  
 3 was added?  
 4 MR. NEWELL: Ms. Kelly, I  
 5 believe this arrow, to my  
 6 understanding, was on the document  
 7 that we received. It's not my  
 8 arrow, and I don't believe that  
 9 that arrow is going to come into  
 10 play right now.  
 11 MS. KELLY: That's fine.  
 12 BY MR. NEWELL:  
 13 Q. What you have before you  
 14 again is marked DE28549 to DE28550. It  
 15 is Dietrick Exhibit-4. It is letter  
 16 dated May 11, 2005 from Gregory Roden to  
 17 David Risilia regarding the Crown Landing  
 18 facility. Ms. Dietrick, do you know who  
 19 Mr. Roden is?  
 20 A. **No.**  
 21 Q. After looking at this  
 22 letter, is there anything that you can  
 23 use to identify who he may be?  
 24 A. **He's the attorney for BP.**

72

1 Q. So prior to seeing his name  
 2 on this document you're unfamiliar with  
 3 who Mr. Roden is?  
 4 A. **The name does not sound**  
 5 **familiar to me.**  
 6 Q. Are you familiar with this  
 7 document?  
 8 A. **I reviewed it this morning.**  
 9 Q. You did review it this  
 10 morning?  
 11 A. **Yes.**  
 12 Q. Did you review that with  
 13 counsel?  
 14 A. **No.**  
 15 Q. You reviewed that on your  
 16 own?  
 17 A. **Yes.**  
 18 Q. I hate to keep coming back  
 19 to this but this is now the second time.  
 20 Were there any other documents that you  
 21 reviewed for your deposition today?  
 22 A. **The permit file.**  
 23 Q. So this is within the file?  
 24 A. **Yes.**

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1 Q. That clarifies. Thank you.  
 2 A. **Within the file.**  
 3 Q. So there are multiple  
 4 documents within that file?  
 5 A. **That's correct.**  
 6 Q. That's my error.  
 7 Would you please turn to  
 8 what is DE28550, it's the second and  
 9 final page of this document. Taking your  
 10 time, please read the first paragraph on  
 11 this document beginning with also in your  
 12 letter. Notify me when you're done.  
 13 A. (Witness reading.) **Okay.**  
 14 Q. You have had a chance to  
 15 read that paragraph?  
 16 A. **Yes.**  
 17 Q. Again, Mr. Roden is the  
 18 author of this letter and after reading  
 19 that paragraph, do you agree that Mr.  
 20 Roden disagrees with Mr. Risilia's  
 21 conclusion that Delaware would have  
 22 jurisdiction over the Crown Landing  
 23 project?  
 24 MS. KELLY: Object to the

74

1 form.

2 BY MR. NEWELL:

3 Q. Mr. Risilia in Dietrick-3

4 that we just read stated that Delaware

5 would have jurisdiction over the Crown

6 Landing project. You have now had a

7 chance to read Dietrick-4. In this

8 paragraph, Mr. Roden comments on Mr.

9 Risilia's February 4th letter. Is it

10 your understanding that in this paragraph

11 Mr. Roden is disagreeing with the

12 position taken by Mr. Risilia in his

13 February 4th letter?

14 A. Based on what is written in

15 this letter, yes.

16 Q. So it's your understanding

17 then what Mr. Roden is saying here

18 contrasts with what Mr. Risilia said?

19 A. Based on what is in this

20 letter, yes.

21 Q. That's all I'm asking you

22 for, what's in this letter. I'm not

23 concerned what his position is in any

24 other way, just this letter.

75

1 A. Yes.

2 Q. Do you have any idea why Mr.

3 Roden in this paragraph says that New

4 Jersey officials had "recently stated the

5 project was subject only to New Jersey

6 regulation?"

7 A. No, I do not.

8 Q. So do you think this issue

9 of whether Delaware has jurisdiction over

10 the proposed Crown Landing facility is an

11 important issue to British Petroleum?

12 MS. KELLY: Object to

13 foundation.

14 BY MR. NEWELL:

15 Q. Please answer the question.

16 A. Based on the reading of this

17 letter, yes.

18 Q. What in this letter

19 indicates that that would be an important

20 issue?

21 A. Because Mr. Roden chose to

22 make a clarification in this letter.

23 Q. This letter is dated May 11,

24 2005 and Mr. Risilia's letter was dated

76

1 February 4, 2005. If this were such an

2 important issue, do you know why Mr.

3 Roden would have waited over three months

4 to correct Mr. Risilia?

5 A. I do not know.

6 MR. NEWELL: I'd like to

7 have marked Dietrick-5.

8 (Whereupon document was marked

9 Dietrick-5 for identification.)

10 BY MR. NEWELL:

11 Q. What has been marked

12 Dietrick-5 has Bates number NJ01011 to NJ

13 01012. This is a May 24, 2005 letter

14 from Joseph J. Seebode to Mr. Blaha

15 regarding the Crown Landing project. Ms.

16 Dietrick, are you familiar with this

17 exhibit?

18 A. Yes, I am.

19 Q. Was this one of the

20 documents within the permit file?

21 A. Yes.

22 Q. Do you know Mr. Seebode?

23 A. Yes.

24 Q. Where does Mr. Seebode work?

77

1 A. At the time he was my

2 assistant commissioner in the site

3 remediation program. He is now currently

4 employed with the Army Corps of

5 Engineers, New York District. He was on

6 an IPA for two years.

7 Q. IPA, what is that?

8 A. Interagency switch of

9 people.

10 Q. Lots of acronyms here. So

11 at the time you said he was your

12 assistant and that would be in the Office

13 of Dredging and Sediment Technology?

14 A. He was my assistant

15 commissioner, yes.

16 Q. Just, again, what does an

17 assistant commissioner do?

18 A. He, at the time, managed the

19 entire site remediation program within

20 the DEP.

21 Q. So would he be on the same

22 hierarchal level as Mr. Risilia?

23 A. No. He would be the same

24 hierarchal level as my current assistant

78

1 commissioner, Irene Crop.  
 2 Q. So it would be you would be  
 3 at the top and then your assistant, Mr.  
 4 Risilia; is that correct?  
 5 A. Okay. Actually, it would be  
 6 Dave Risilia, myself, assistant  
 7 commissioner, commissioner.  
 8 Q. Okay.  
 9 A. He's not an assistant at  
 10 all. He's an assistant commissioner.  
 11 Q. So the assistant is someone  
 12 you would report to; is that correct?  
 13 A. Yes, that's correct.  
 14 Q. Again, I understand you're  
 15 familiar with this but take your time and  
 16 read this letter. Again, let me know  
 17 when you're finished and I'll ask you  
 18 some questions.  
 19 A. (Witness reading.) Okay.  
 20 Q. Do you know if this letter  
 21 was written in response to Mr. Roden's  
 22 May 11 letter to Mr. Risilia?  
 23 A. I do not know.  
 24 Q. Do you think that it might

80

1 is in Delaware or would be in Delaware?  
 2 A. That is my understanding of  
 3 this letter.  
 4 Q. Do you understand Mr.  
 5 Seebode's position to be consistent with  
 6 the position stated by Mr. Roden's letter  
 7 to Mr. Risilia?  
 8 A. Yes.  
 9 Q. Do you understand that Mr.  
 10 Seebode's position in this letter  
 11 contradicts Mr. Risilia's letter of  
 12 February 4, 2005?  
 13 A. Yes.  
 14 Q. Mr. Seebode at the time  
 15 worked at the Office of Dredging and  
 16 Sediment Technology?  
 17 A. He was the assistant  
 18 commissioner of the site remediation  
 19 program of which the Office of Dredging  
 20 and Sediment Technology is one of offices  
 21 he manages.  
 22 Q. In light of that, and in  
 23 light of the fact that you just testified  
 24 that Mr. Seebode's position is consistent

79

1 have been, considering the relative  
 2 proximity of days of Mr. Roden's to Mr.  
 3 Risilia's letter being May 11th and this  
 4 letter being May 24th, 2005, which is  
 5 just under two weeks later?  
 6 A. Can you rephrase the  
 7 question?  
 8 Q. Because this letter is  
 9 written 13 days after Mr. Roden's letter  
 10 to Mr. Risilia, do you think that this is  
 11 response from the Office of Dredging and  
 12 Sediment Technology to Mr. Roden's  
 13 letter?  
 14 A. I'm still not clear on the  
 15 question.  
 16 Q. Let's back up. Is it your  
 17 understanding in this letter that Mr.  
 18 Seebode states that New Jersey has  
 19 jurisdiction over this entire project?  
 20 A. Correct.  
 21 Q. And it's your understanding  
 22 that Mr. Seebode states that Delaware  
 23 does not have jurisdiction of this  
 24 project even though a portion of the pier

81

1 with Mr. Roden's position but in  
 2 contradiction to Mr. Risilia's stance as  
 3 to Delaware's proposed jurisdiction, do  
 4 you feel that this letter was sent to  
 5 Environmental Resources Management as a  
 6 result of Mr. Roden sending the letter to  
 7 Mr. Risilia?  
 8 MS. KELLY: Object. She's  
 9 already testified she didn't know.  
 10 BY MR. NEWELL:  
 11 Q. Please answer the question.  
 12 A. Yeah, I have no personal  
 13 knowledge as to why this was sent.  
 14 Q. So you don't remember any of  
 15 the preliminary issues that went into  
 16 drafting this letter?  
 17 A. I remember discussions with  
 18 our attorneys as we were developing this  
 19 letter.  
 20 Q. Isn't it important for the  
 21 Office of Dredging and Sediment  
 22 Technology to know the extent of New  
 23 Jersey's jurisdiction as it pertains to  
 24 dredging?

82

1       **A. Yes.**  
 2       **Q.** So can you explain why in  
 3 two different letters three months apart,  
 4 the office took different positions?  
 5       **MS. KELLY:** I'm going to  
 6 object to that but you can answer.  
 7       **THE WITNESS:** We were  
 8 mistaken in our first letter and  
 9 we felt the need to clarify it  
 10 here. We did not have a lot of  
 11 experience permitting activities  
 12 in this stretch of the river.  
 13 **BY MR. NEWELL:**  
 14       **Q.** Permitting activities that  
 15 extend into Delaware?  
 16       **A. Permitting activities into**  
 17 **the 12-mile radius.**  
 18       **Q.** And the 12-mile radius is  
 19 within the State of Delaware?  
 20       **A. That is correct.**  
 21       **Q.** Thank you.  
 22       **MR. NEWELL:** I'd like to  
 23 have marked Dietrick-6.  
 24 (Whereupon document was marked

83

1 Dietrick-6 for identification.)  
 2 **BY MR. NEWELL:**  
 3       **Q.** What has now been marked as  
 4 Dietrick-6 is a document containing Bates  
 5 DE1230 to DE1231. This is a letter dated  
 6 June 13, 2005 from you, Ms. Dietrick, to  
 7 Magalie R. Salas of the Federal Energy  
 8 Regulatory Commission regarding the Crown  
 9 Landing LNG project. Are you familiar  
 10 with this document?  
 11       **A. Yes.**  
 12       **Q.** Is this one of the documents  
 13 that would have been in the permit file?  
 14       **A. Yes.**  
 15       **Q.** Feel free to take a moment  
 16 to read the letter and refresh yourself.  
 17       **A. (Witness reading.)**  
 18       **Q.** Okay?  
 19       **A. Yes.**  
 20       **Q.** Can you tell me why this  
 21 letter was sent to the Federal Energy  
 22 Regulator Commission? We'll call them  
 23 FERC to make it easy.  
 24       **A. Because NOAA had submitted**

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1 **comments on the draft environmental**  
 2 **impact statement of which we were**  
 3 **provided a copy and felt the need to**  
 4 **clarify our position on the regulation of**  
 5 **the BP project.**  
 6       **Q.** Do you know if counsel for  
 7 the Office of Dredging and Sediment  
 8 Technology reviewed this letter?  
 9       **A. Yes.**  
 10       **Q.** They reviewed it prior to it  
 11 being sent?  
 12       **A. Signed?**  
 13       **Q.** Signed or sent.  
 14       **A. Yes.**  
 15       **Q.** Did they provide comment to  
 16 you on the letter?  
 17       **A. Yes.**  
 18       **Q.** Did they assist you in  
 19 drafting the substance of the letter?  
 20       **A. I believe so.**  
 21       **Q.** Do you know whether they  
 22 did?  
 23       **A. I can't definitively say yes**  
 24 **or no.**

85

1       **Q.** So your position is you're  
 2 unsure whether you wrote this letter or  
 3 had assistance from counsel in writing  
 4 this letter?  
 5       **A. I believe we had assistance**  
 6 **from counsel writing this letter.**  
 7       **Q.** Did you receive assistance  
 8 from anybody else in writing this letter?  
 9       **A. Not that I recall.**  
 10       **Q.** How did you arrive at your  
 11 conclusion that New Jersey, and not  
 12 Delaware, would have jurisdiction over  
 13 the parts of the Crown Landing project  
 14 within Delaware territory?  
 15       **A. Based upon our letter of May**  
 16 **24, 2005.**  
 17       **Q.** Did you have a different  
 18 opinion prior to the letter of May 24?  
 19       **A. I'm not sure of the**  
 20 **question.**  
 21       **Q.** Did you have a different  
 22 position as to New Jersey's jurisdiction  
 23 over the Crown Landing project prior to  
 24 the May 24th letter?

86

1       **A. When you say jurisdiction,**  
2       **what are you meaning?**  
3       **Q. In your letter, you state**  
4       **that New Jersey has exclusive riparian**  
5       **jurisdiction of every kind and nature on**  
6       **its side of the Delaware River. Has this**  
7       **always been your understanding of New**  
8       **Jersey's jurisdiction within the Twelve**  
9       **Mile Circle?**  
10       **A. Yes.**  
11       **Q. If that had always been your**  
12       **position as to New Jersey's**  
13       **jurisdiction --**  
14       **A. I'm sorry.**  
15       **Q. That's okay. We have a lot**  
16       **of dates here. Take your time and sort**  
17       **it all out.**  
18       **A. From our involvement in the**  
19       **other project, as I said, there was an**  
20       **approval of some nature issued by the**  
21       **State of Delaware for that activity. So**  
22       **when we issued the first letter, that was**  
23       **our understanding that there was some**  
24       **approvals. What they were, we were not**

87

1       **clear on. From the State of Delaware.**  
2       **On May 24, as I said, we corrected our**  
3       **deficiency letter and this serves to**  
4       **further clarify to FERC that position**  
5       **under the compact.**  
6       **Q. How were you able to comment**  
7       **on the Compact of 1905 when you stated**  
8       **earlier that you have never read the**  
9       **Compact of 1905?**  
10       **A. We received guidance from**  
11       **our attorneys.**  
12       **Q. Do you think it was**  
13       **important at the time to review the**  
14       **Compact of 1905?**  
15       **A. Myself, no.**  
16       **Q. So you were comfortable**  
17       **drafting this letter and placing your**  
18       **signature on it without reading the**  
19       **Compact of 1905?**  
20       **A. And working with our**  
21       **attorneys, yes.**  
22       **Q. Do you remember earlier**  
23       **discussing the Coastal Management**  
24       **Program, which I believe is marked as**

88

1       **Dietrick-1?**  
2       **A. Yes.**  
3       **Q. Do you remember discussing**  
4       **the section which said that any projects**  
5       **extending into the boundary of Delaware**  
6       **within the Twelve Mile Circle required**  
7       **cooperation and permitting from Delaware**  
8       **and New Jersey?**  
9       **A. Yes.**  
10       **Q. Is the position you take in**  
11       **this June 13, 2005 letter consistent with**  
12       **what you read in the Coastal Management**  
13       **Program?**  
14       **A. It appears to be.**  
15       **Q. How does it appear to be?**  
16       **A. That New Jersey has the**  
17       **right to regulate docks, wharves and**  
18       **piers that originate in New Jersey.**  
19       **Q. Is that your understanding**  
20       **of what the Coastal Management Program**  
21       **states?**  
22       **A. Yes, that we have the**  
23       **ability to regulate those activities.**  
24       **Q. What is your understanding**

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1       **as to Delaware's ability to regulate**  
2       **projects that extend from the New Jersey**  
3       **shore into Delaware territory?**  
4       **MS. KELLY: Are you asking**  
5       **her based on her review of the**  
6       **Coastal Zone Management Plan?**  
7       **BY MR. NEWELL:**  
8       **Q. Yes.**  
9       **A. Based on the review of this**  
10       **document.**  
11       **Q. In your letter of June 13,**  
12       **2005, are you stating that Delaware would**  
13       **have jurisdiction over parts of the Crown**  
14       **Landing project that extend into Delaware**  
15       **territory?**  
16       **A. No, we are not.**  
17       **Q. Is it not that that position**  
18       **is inconsistent with what you just stated**  
19       **is your understanding of the Coastal**  
20       **Management Program?**  
21       **A. On my review of that**  
22       **document, yes.**  
23       **Q. So yes, it is inconsistent?**  
24       **A. Yes.**

90

1 Q. Did you happen to review the  
 2 CMP at any point during the prior to  
 3 drafting your June 13, 2005 letter?  
 4 A. No.  
 5 Q. Would it be important to be  
 6 consistent with the CMP?  
 7 MS. KELLY: I'm going to  
 8 object to the foundation of that.  
 9 BY MR. NEWELL:  
 10 Q. You can answer the question.  
 11 A. Can you rephrase it?  
 12 Q. Sure. Would it have been  
 13 important in your June 13 of 2005 letter  
 14 to be consistent with the contents of the  
 15 CMP?  
 16 A. Yes.  
 17 Q. Do you know of any  
 18 consequences that would happen if a  
 19 position you take is inconsistent with  
 20 the Coastal Management Program?  
 21 A. I'm not sure of the  
 22 question.  
 23 Q. Well, you just stated it's  
 24 important to be consistent with the CMP

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1 and you also stated that this letter  
 2 here, your June 13 letter, is  
 3 inconsistent.  
 4 MS. KELLY: Objection;  
 5 that's vague.  
 6 THE WITNESS: I need to  
 7 clarify. This states that New  
 8 Jersey has the right to regulate  
 9 docks, wharves and piers  
 10 associated with dredging. This  
 11 document says that we have the  
 12 ability to regulate -- New Jersey  
 13 has the -- has the ability to  
 14 regulate those activities. That's  
 15 where I'm saying it's consistent.  
 16 So this says it's consistent with  
 17 that statement in this document.  
 18 BY MR. NEWELL:  
 19 Q. Let me ask you to clarify.  
 20 What do you mean when you say that, "New  
 21 Jersey has exclusive riparian  
 22 jurisdiction of every kind and nature on  
 23 its side of the Delaware River?"  
 24 A. That we have the right to

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1 regulate activities that originate in New  
 2 Jersey but go into Delaware waters, that  
 3 we have that right.  
 4 Q. And by exclusive, does that  
 5 preclude Delaware from having that  
 6 similar right?  
 7 A. Yes.  
 8 Q. Is that consistent with what  
 9 you read in the CMP, which is right  
 10 before you right now?  
 11 A. It does not appear to be  
 12 consistent.  
 13 Q. Thank you.  
 14 MS. KELLY: Do you need a  
 15 break.  
 16 THE WITNESS: I could use a  
 17 bathroom break.  
 18 BY MR. NEWELL:  
 19 Q. We're about to take a break.  
 20 Again, is there any problem with the fact  
 21 that you're not consistent with the CMP?  
 22 For example, would you have to retract  
 23 your opinion if it's not consistent with  
 24 the CMP?

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1 MS. KELLY: That's very  
 2 vague. I'm objecting to the form.  
 3 You can answer.  
 4 THE WITNESS: I don't  
 5 understand the question, I guess.  
 6 BY MR. NEWELL:  
 7 Q. You stated that it's  
 8 important in your role in the Office of  
 9 Dredging and Sediment Technology to be  
 10 consistent with the CMP. If you're not  
 11 consistent with the CMP, is that a  
 12 problem?  
 13 MS. KELLY: Continue the  
 14 objection that it is vague. I'm  
 15 also going to add an objection  
 16 that you're really asking her for  
 17 legal opinions, I think, as to  
 18 which she's not qualified and  
 19 which go to the issues in this  
 20 case. But subject to that  
 21 objection if she can answer, she  
 22 can.  
 23 THE WITNESS: I can't  
 24 answer. I'm not sure what the

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1 question is.  
 2 MR. NEWELL: Fair enough.  
 3 I'll move on.  
 4 MS. KELLY: If we're moving  
 5 on can we take a break?  
 6 MR. NEWELL: Just let me  
 7 finish one section, please, and  
 8 then we'll take a break.  
 9 BY MR. NEWELL:  
 10 Q. Going back, Ms. Dietrick,  
 11 and I'll try to be quick for you, to Mr.  
 12 Risilia's February 4, 2005 letter which  
 13 again we have marked as exhibit  
 14 Dietrick-3 and we have read the section  
 15 regarding his understanding of New Jersey  
 16 and Delaware's jurisdiction over the  
 17 proposed Crown Landing project. Is it  
 18 your understanding that Mr. Risilia's  
 19 statement in his February 4, 2005 letter  
 20 is consistent with the CMP?  
 21 A. There appears to be  
 22 differences.  
 23 Q. As it pertains to Delaware's  
 24 jurisdiction for projects that extend

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1 from the New Jersey shore into the Twelve  
 2 Mile Circle, is Mr. Risilia's statement  
 3 in his February 4, 2005 letter consistent  
 4 with similar provisions of the CMP?  
 5 A. This is saying that they  
 6 must obtain coastal permits from both  
 7 states. The February 4, 2005 letter  
 8 states that outshore are subject to the  
 9 State of Delaware and from mean high  
 10 waterline landward are subject to New  
 11 Jersey's coastal zone. So they do not  
 12 appear to be consistent.  
 13 Q. Is it your understanding  
 14 that the CMP states that projects  
 15 extending from New Jersey shore into the  
 16 Delaware River -- excuse me -- into  
 17 Delaware territory in the Twelve Mile  
 18 Circle require permitting from both  
 19 Delaware and New Jersey?  
 20 A. That's what this states.  
 21 Q. Is it your understanding  
 22 that in Mr. Risilia's February 4, 2005  
 23 letter he states that activities crossing  
 24 into the Delaware territory would require

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1 Delaware permits?  
 2 A. From the mean low waterline  
 3 out into the State of Delaware, yes.  
 4 Q. So is it your opinion that  
 5 what Mr. Risilia states is consistent  
 6 with what we just stated from the CMP  
 7 that permits for projects extending from  
 8 the New Jersey shore into Delaware  
 9 territory would require permitting from  
 10 Delaware?  
 11 A. Yes, looking -- I don't mean  
 12 to be difficult, but he is saying that  
 13 something from mean low water outshore  
 14 are -- must demonstrate compliance with  
 15 Delaware's coastal zone and activities  
 16 from mean low water landward are New  
 17 Jersey's coastal zone. And this appears  
 18 to say that activities located below mean  
 19 low water would obtain permits for both  
 20 states. So to me there is a distinction  
 21 in this language and this language,  
 22 there's a difference.  
 23 MR. NEWELL: Let's take a  
 24 break.

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1 (Whereupon a lunch break was  
 2 taken.)  
 3 BY MR. NEWELL:  
 4 Q. Ms. Dietrick, I hope you had  
 5 an a enjoyable lunch. While you were at  
 6 lunch, did you happen to have any  
 7 conversations with counsel?  
 8 A. Yes, I did.  
 9 Q. Did you talk about the  
 10 substance of this deposition at all?  
 11 A. Yes.  
 12 Q. Any questions that I might  
 13 ask you?  
 14 A. No.  
 15 MS. KELLY: You can -- okay,  
 16 go ahead.  
 17 THE WITNESS: No.  
 18 BY MR. NEWELL:  
 19 Q. About the questions that I  
 20 had already asked you?  
 21 MS. KELLY: I'm going to  
 22 direct her not to answer that,  
 23 privileged, getting into the  
 24 actual discussion. I'm going to

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1 direct her not to answer that.  
 2 You can look at her all day but...  
 3 BY MR. NEWELL:  
 4 Q. You're not going to answer  
 5 the answer then?  
 6 A. No.  
 7 Q. Because your attorney told  
 8 you not to answer?  
 9 A. That's correct.  
 10 Q. But you did have  
 11 conversation about this deposition?  
 12 MS. KELLY: She already said  
 13 yes.  
 14 MR. NEWELL: The objection  
 15 is noted.  
 16 BY MR. NEWELL:  
 17 Q. Moving on. You mentioned  
 18 earlier DuPont's facility in New Jersey.  
 19 Is that the Chambers Works facility in  
 20 Deepwater, New Jersey?  
 21 A. That is correct.  
 22 Q. Are you aware of any  
 23 dredging activities that have taken place  
 24 at the Chambers Works facility?

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1 A. It was actually remediation  
 2 of contaminated soils that existed  
 3 offshore of the upland areas. So they  
 4 needed to construct a cofferdam, and I  
 5 believe they entombed the material.  
 6 Q. What does entombed mean?  
 7 A. Put in a cofferdam and then  
 8 put over a -- usually they use a cement  
 9 bentonite fill material to basically  
 10 entomb the area so that it's no longer  
 11 exposed to the water body.  
 12 Q. Were you involved with that  
 13 at all?  
 14 A. I authorized the permits.  
 15 Q. Do you know what year that  
 16 was?  
 17 A. I'm not sure of the exact  
 18 year.  
 19 Q. Approximate?  
 20 A. 2003, 2002.  
 21 Q. The facility at Chambers  
 22 Works, does that originate on the New  
 23 Jersey shore?  
 24 A. Yes.

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1 Q. Does it extend into the  
 2 Twelve Mile Circle into Delaware  
 3 territory?  
 4 A. I'm not sure of what any of  
 5 their structures extend into.  
 6 Q. Are you aware of any  
 7 Delaware regulation of dredging at the  
 8 DuPont Chambers Works facility?  
 9 A. Regulation as in issuance of  
 10 permits?  
 11 Q. Are you aware of Delaware  
 12 issuing permission to dredge at the  
 13 Chambers Works facility?  
 14 A. Not that I'm aware of.  
 15 Q. But you said you are aware  
 16 of New Jersey doing that, correct?  
 17 A. It was not a dredging  
 18 permit; it was a remediation.  
 19 Q. Remediation is distinct from  
 20 dredging?  
 21 A. Correct.  
 22 Q. Can you clarify what  
 23 remediation would be?  
 24 A. In this case, there was

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1 contaminated sediments that were located  
 2 offshore of the facility. We were  
 3 involved in the permitting of that to  
 4 construct a cofferdam and entomb the  
 5 material. So we did not issue a dredging  
 6 permit for that activity.  
 7 Q. Thanks for the  
 8 clarification.  
 9 MR. NEWELL: Let's mark  
 10 Dietrick-7.  
 11 (Whereupon document was marked  
 12 Dietrick-7 for identification.)  
 13 BY MR. NEWELL:  
 14 Q. Ms. Dietrick, I have placed  
 15 before you now what has been marked as  
 16 Dietrick-7 with Bates number DE19340 to  
 17 DE19345. This is a 1971 lease from the  
 18 State of Delaware to DuPont. Please take  
 19 a moment. Are you familiar with this  
 20 document?  
 21 A. No, I am not.  
 22 Q. Please take a moment to  
 23 familiarize yourself with it. Let me  
 24 know when you have had enough time.

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1       **A. (Witness reading.) Okay.**  
 2       **Q. Does this lease grant DuPont**  
 3 **permission to dredge at the Chambers**  
 4 **Works facility?**  
 5       **MS. KELLY: Object to the**  
 6 **foundation and personal knowledge,**  
 7 **but if she can testify from the**  
 8 **document, then fine.**  
 9       **MR. NEWELL: She just said**  
 10 **she had a chance to familiarize**  
 11 **herself with it.**  
 12       **THE WITNESS: This appears**  
 13 **to be a tidelands lease.**  
 14 **BY MR. NEWELL:**  
 15       **Q. Does it authorize dredging**  
 16 **by the State of Delaware -- does the**  
 17 **State of Delaware authorize dredging?**  
 18       **A. It authorizes to dredge.**  
 19       **Q. Based on this document,**  
 20 **would it be your opinion that Delaware**  
 21 **has exercised jurisdiction over dredging**  
 22 **in the Twelve Mile Circle of a project**  
 23 **that extends from the New Jersey shore?**  
 24       **MS. KELLY: Objection;**

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1       **foundation and personal knowledge.**  
 2 **BY MR. NEWELL:**  
 3       **Q. Based on this document that**  
 4 **you have now become familiar with.**  
 5       **A. It appears to allow the**  
 6 **lessee, DuPont, permission to dredge,**  
 7 **construct the bulkhead, fill behind the**  
 8 **bulkhead and construct a dock.**  
 9       **Q. So is that yes?**  
 10       **A. Yes.**  
 11       **Q. Thank you.**  
 12       **MR. NEWELL: Let's mark**  
 13 **Dietrick-8.**  
 14 **(Whereupon document was marked**  
 15 **Dietrick-8 for identification.)**  
 16 **BY MR. NEWELL:**  
 17       **Q. Ms. Dietrick, what is before**  
 18 **you now has been marked as Dietrick-8.**  
 19 **It is a document with Bates number**  
 20 **DE19380. It is an October 15, 1982**  
 21 **letter from William Moyer to DuPont. Are**  
 22 **you familiar with this document?**  
 23       **A. No, I am not.**  
 24       **Q. Please take a moment and**

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1 read the document.  
 2       **A. (Witness reading.) Okay.**  
 3       **Q. In this document, does the**  
 4 **State of Delaware authorize DuPont to**  
 5 **dredge at the Chambers Works facility?**  
 6       **A. Yes.**  
 7       **Q. After reviewing this**  
 8 **document, would it be your opinion that**  
 9 **Delaware, based on this document, has**  
 10 **exercised jurisdiction to permit DuPont**  
 11 **to dredge at the Chambers Works facility?**  
 12       **A. They issued a wetlands**  
 13 **permit it looks like.**  
 14       **Q. I point you to the second**  
 15 **sentence in the first paragraph, and I'll**  
 16 **read it into the record. "The Department**  
 17 **hereby authorizes the maintenance**  
 18 **dredging in accordance with the plans**  
 19 **submitted subject to the following**  
 20 **conditions..."**  
 21       **A. It authorizes the activity.**  
 22       **Q. The activity is dredging?**  
 23       **A. Correct.**  
 24       **Q. To your knowledge, would**

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1 they be authorizing dredging at the  
 2 Chambers Works facility because this  
 3 project extends into the Twelve Mile  
 4 Circle?  
 5       **A. I can't draw any conclusions**  
 6 **from this.**  
 7       **Q. That is, would Delaware, if**  
 8 **this were strictly within New Jersey and**  
 9 **did not cross the low water mark on the**  
 10 **New Jersey shore, do you know if Delaware**  
 11 **would issue a permit for dredging of New**  
 12 **Jersey soil?**  
 13       **MS. KELLY: I'm going to**  
 14 **object on the same objection,**  
 15 **foundation, personal knowledge.**  
 16 **You're asking her to speculate**  
 17 **about Delaware. She can do it if**  
 18 **she wants or if she can.**  
 19       **THE WITNESS: Can you**  
 20 **rephrase the question?**  
 21 **BY MR. NEWELL:**  
 22       **Q. Sure. You stated here that**  
 23 **Delaware has authorized dredging by**  
 24 **DuPont at the Chambers Works facility.**

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1 Earlier you stated that you were unaware  
2 as to whether or not the Chambers Works  
3 facility crossed the mean low waterline  
4 into Delaware territory, and because you  
5 don't know where it crosses lines, I'm  
6 just asking, do you think that Delaware  
7 would regulate dredging of New Jersey  
8 soil or is it more likely that they're  
9 regulating the dredging of Delaware soil?  
10 **A. Again, I don't know where  
11 the line is. All I'm seeing is that the  
12 permit was issued at this point.**  
13 **MR. NEWELL:** Let's mark  
14 Dietrick-9.  
15 (Whereupon document was marked  
16 Dietrick-9 for identification.)  
17 **BY MR. NEWELL:**  
18 **Q.** Ms. Dietrick, what you have  
19 before you now is marked as Dietrick-9.  
20 It begins with the Bates number  
21 DUP0000099. This is a subsection or  
22 smaller part of a very large document.  
23 What I have provided you with is the  
24 cover page and table of contents and a

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1 couple of other pages I want to ask you  
2 some questions about. Are you familiar  
3 at all with this document?  
4 **A. No, I am not.**  
5 **Q.** What it is, it's a December  
6 of 2005 submission by DuPont. It says  
7 it's regarding Delaware Federal  
8 Consistency. Please take a moment and  
9 review the table of contents to see what  
10 this document in whole might pertain to.  
11 Then when you're done that, you can flip  
12 over to page what would be DUP103 and  
13 read the following two pages, 103 and  
14 104. Take your time.  
15 **A. (Witness reading.)**  
16 **Q.** Going back to the cover  
17 again before we start to get into  
18 questions about the 103 and 104 pages.  
19 It says Delaware Federal Consistency, do  
20 you have any idea what that means?  
21 **A. That the applicant is  
22 demonstrating compliance with Delaware's  
23 Coastal Zone Management Program.**  
24 **Q.** Thank you. I honestly

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1 didn't know what it meant.  
2 Let's turn over to page 103  
3 or start at page 103. This is your  
4 understanding that DuPont would submit  
5 this to show that they were in compliance  
6 with Delaware's coastal zone laws?  
7 **A. Correct.**  
8 **Q.** Would they submit something  
9 like this also to New Jersey if the  
10 project extended from New Jersey soil?  
11 **A. Yes.**  
12 **Q.** This is still the same  
13 facility, the Chambers Works facility?  
14 **A. Right.**  
15 **Q.** Looking on page DUP103, do  
16 you see subsection 1.3 entitled  
17 Jurisdictional Areas and Permit  
18 Requirements?  
19 **A. Yes.**  
20 **Q.** I'm going to take some time  
21 to read this into the record and ask you  
22 some questions about it. "Since SWMU 52  
23 project activities will be conducted  
24 within New Jersey and Delaware, project

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1 activities fall under the jurisdiction of  
2 both states. The New Jersey Department  
3 of Environmental Protection (NJDEP),  
4 Delaware Department of Natural Resources  
5 and Environmental Control (DNREC), as  
6 well as the US Army Corps of Engineers  
7 (USACE) are the regulatory agencies with  
8 jurisdiction in the area." After reading  
9 this section, is DuPont submitting  
10 statements that New Jersey has exclusive  
11 jurisdiction over the Chambers Works  
12 project?  
13 **A. Based on the reading of this  
14 document, no.**  
15 **Q.** Ms. Dietrick, please turn  
16 the page to DUP104. At the top of the  
17 page we're going to see the chart. It's  
18 a chart with subheadings -- column  
19 headings I should say, Agency is the  
20 first column. The second column is  
21 Law/Regulation and the third column is  
22 Jurisdictional Area. Under the agency  
23 column you will see there are four  
24 agencies listed: USACE for the Army

110	<p>1 Corps; DNREC; NJDEP, Land Use Regulation</p> <p>2 Program; NJDEP, Bureau of Tidelands. Can</p> <p>3 you please state to me based on this</p> <p>4 chart what is your understanding of</p> <p>5 DNREC's jurisdiction?</p> <p>6 MS. KELLY: Are you asking</p> <p>7 her to read the chart?</p> <p>8 MR. NEWELL: Yes.</p> <p>9 MS. KELLY: Because</p> <p>10 otherwise I'm objecting.</p> <p>11 THE WITNESS: DNREC</p> <p>12 regulates the governing use of</p> <p>13 subaqueous lands, subaqueous lands</p> <p>14 below mean low water within the</p> <p>15 State of Delaware.</p> <p>16 BY MR. NEWELL:</p> <p>17 Q. Will you do the same thing</p> <p>18 for me for what it says for the New</p> <p>19 Jersey DEP and specifically under the law</p> <p>20 regulation section where it says</p> <p>21 waterfront development law?</p> <p>22 A. <b>Waterfront development law,</b></p> <p>23 <b>interstate lands between mean low water</b></p> <p>24 <b>and mean high water and within 500 feet</b></p>	112	<p>1 mean low water mark on the New Jersey</p> <p>2 shore, so within the Twelve Mile Circle?</p> <p>3 A. <b>Based on what is in this</b></p> <p>4 <b>document, yes.</b></p> <p>5 Q. Ms. Dietrick, are you</p> <p>6 familiar at all with Keystone</p> <p>7 Cogeneration Plant in Swedesboro, New</p> <p>8 Jersey?</p> <p>9 A. <b>No, I am not.</b></p> <p>10 Q. So you would be unaware of</p> <p>11 any dredging activities that occurred at</p> <p>12 Keystone?</p> <p>13 A. <b>I'm not aware of any</b></p> <p>14 <b>dredging activities.</b></p> <p>15 Q. If I were to tell you that</p> <p>16 the Keystone facility extended beyond the</p> <p>17 mean low water mark into the Delaware</p> <p>18 territory, would you have any reason to</p> <p>19 disagree with that statement?</p> <p>20 A. <b>I have no knowledge of the</b></p> <p>21 <b>facility.</b></p> <p>22 Q. Have you ever had any</p> <p>23 knowledge of the facility?</p> <p>24 A. <b>No.</b></p>
111	<p>1 <b>of mean high water.</b></p> <p>2 Q. I'm sorry. Does it say</p> <p>3 interstate or intertidal?</p> <p>4 A. <b>I'm sorry. Intertidal</b></p> <p>5 <b>lands.</b></p> <p>6 Q. After looking at this chart,</p> <p>7 what is your understanding of Delaware's</p> <p>8 jurisdiction as to the DuPont project,</p> <p>9 more specifically DNREC's regulatory</p> <p>10 jurisdiction?</p> <p>11 A. <b>Based on what is in this</b></p> <p>12 <b>project description, DNREC is from</b></p> <p>13 <b>subaqueous lands below mean low water in</b></p> <p>14 <b>the State of Delaware and NJDEP</b></p> <p>15 <b>intertidal lands between mean low water</b></p> <p>16 <b>and mean high water 500 feet back onto</b></p> <p>17 <b>the land.</b></p> <p>18 Q. So that would be NJDEP would</p> <p>19 have jurisdiction up to the mean low</p> <p>20 waterline on the New Jersey shore?</p> <p>21 A. <b>Based on what is in this</b></p> <p>22 <b>document, yes.</b></p> <p>23 Q. That would also mean that</p> <p>24 DNREC would have jurisdiction up to the</p>	113	<p>1 MR. NEWELL: I'd like to</p> <p>2 mark Dietrick-10.</p> <p>3 (Whereupon document was marked</p> <p>4 Dietrick-10 for identification.)</p> <p>5 BY MR. NEWELL:</p> <p>6 Q. Ms. Dietrick, what you have</p> <p>7 in front of you now is Dietrick-10. To</p> <p>8 clarify, Dietrick-10 is Bates stamped</p> <p>9 DE02400 to DE02405. That which you have</p> <p>10 before you is a September 30, 1991</p> <p>11 subaqueous lands lease from the Delaware</p> <p>12 Department of Natural Resources and</p> <p>13 Environmental Control to Keystone. Are</p> <p>14 you familiar at all with this document?</p> <p>15 A. <b>No, I am not.</b></p> <p>16 Q. Since you're not familiar</p> <p>17 with it, please take some time to review</p> <p>18 this document.</p> <p>19 A. (Witness reading.) Okay.</p> <p>20 Q. I'll represent to you</p> <p>21 Keystone is a facility that begins on the</p> <p>22 New Jersey shore and extends into the</p> <p>23 Twelve Mile Circle. After reviewing this</p> <p>24 document, is it true that the Delaware</p>

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1 Department of Natural Resources and  
 2 Environmental Control authorized Keystone  
 3 to conduct dredging at the Delaware  
 4 River, Logan Township, Gloucester County,  
 5 New Jersey?  
 6 **A. Based on the letter, to**  
 7 **dredge 40,000 cubic yards from the**  
 8 **Delaware River.**  
 9 Q. They did authorize dredging,  
 10 correct?  
 11 **A. That is correct.**  
 12 **(Whereupon document was marked**  
 13 **Dietrick-11 for identification.)**  
 14 **BY MR. NEWELL:**  
 15 Q. Ms. Dietrick, what you have  
 16 before you now has been marked as  
 17 Dietrick-11. It has Bates number DE2377  
 18 to DE2378. As you can see from this  
 19 document, it's an April 6, 1992  
 20 Supplemental Approval from DNREC to  
 21 Keystone. Are you familiar at all with  
 22 this document?  
 23 **A. No.**  
 24 Q. Again, feel free to take

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1 your time and review the document.  
 2 **A. (Witness reading.) Okay.**  
 3 Q. After reviewing this  
 4 document, is it your understanding that  
 5 that document authorized Keystone to  
 6 conduct dredging in the Delaware River?  
 7 **A. It actually appears to be a**  
 8 **supplemental approval of the original**  
 9 **document issued on September 30 of 1991.**  
 10 Q. This supplemental approval  
 11 permits dredging activities?  
 12 **A. Yes.**  
 13 Q. After reviewing this  
 14 document, is it your opinion that  
 15 Delaware has exercised jurisdiction over  
 16 dredging of the Keystone project within  
 17 the Twelve Mile Circle?  
 18 **MS. KELLY: Object to form,**  
 19 **foundation. Sounds like it's**  
 20 **getting to be a legal opinion**  
 21 **but...**  
 22 **THE WITNESS: Based on the**  
 23 **review of this document, yes.**  
 24 **(Whereupon document was marked**

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1 Dietrick-12 for identification.)  
 2 **BY MR. NEWELL:**  
 3 Q. Ms. Dietrick, what you have  
 4 before you has Bates numbers NJ04403 to  
 5 NJ4409. This is a permit from the New  
 6 Jersey Department of Environmental  
 7 Protection to Keystone. Are you familiar  
 8 with this document?  
 9 **A. No, I am not.**  
 10 Q. Again, take your time and  
 11 review the document and let me know when  
 12 you're finished.  
 13 **A. (Witness reading.) Okay.**  
 14 Q. In this document, did the  
 15 DEP grant Keystone permission to dredge  
 16 at its facility?  
 17 **A. Yes.**  
 18 Q. But again, just to clarify,  
 19 in your role at your Office of Dredging  
 20 and Sediment Technology you were unaware  
 21 of any dredging at Keystone; is that  
 22 correct?  
 23 **A. That's correct.**  
 24 Q. Would you mind, please

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1 turning to page NJ04407 and NJ04408. If  
 2 you would on 4407, you will see what  
 3 appears to be subsection number 10. It's  
 4 bold and underscored and capital letters  
 5 ADMINISTRATIVE: Waterfront and  
 6 Individual Freshwater Wetlands. Do you  
 7 see that?  
 8 **A. Yes.**  
 9 Q. Please take a moment, again,  
 10 to review this subsection 10, which goes  
 11 on to the following page and end with sub  
 12 letter g.  
 13 **A. (Witness reading.)**  
 14 Q. Have you had enough time to  
 15 review that section?  
 16 **A. Yes.**  
 17 Q. Turning to page 4408 under  
 18 sub letter e, you will see that this is a  
 19 listing of four copies of permits or  
 20 approvals that the permittee must submit.  
 21 Approval number 4 is subaqueous land  
 22 coastal zone management from Delaware.  
 23 Do you see that?  
 24 **A. Yes.**

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1 Q. They're also two permits  
 2 required to be obtained from the State of  
 3 New Jersey and one from the Delaware  
 4 River Basin Commission. Does this appear  
 5 to state that there must be permits from  
 6 both Delaware and New Jersey required  
 7 from Keystone?  
 8 A. **Based on what is in this**  
 9 **document, yes.**  
 10 Q. Is this sub letter e.  
 11 inconsistent with your position that New  
 12 Jersey has exclusive jurisdiction of  
 13 projects extending from the New Jersey  
 14 shore into Delaware territory?  
 15 MS. KELLY: Objection; legal  
 16 conclusion.  
 17 THE WITNESS: I can't really  
 18 answer that.  
 19 BY MR. NEWELL:  
 20 Q. Your answer is you have no  
 21 basis to answer that question?  
 22 A. **I have no basis to answer**  
 23 **that question.**  
 24 Q. Is it your position that

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1 that document requires permits from  
 2 Delaware for activities at the Keystone  
 3 facility?  
 4 A. **It requires that prior to**  
 5 **construction the permittee has to submit**  
 6 **copies of all permits or approvals and**  
 7 **one of which appears to be from the State**  
 8 **of Delaware.**  
 9 Q. Because it requires permits  
 10 from New Jersey and Delaware, does this  
 11 appear to require interstate approvals?  
 12 A. **It appears to require**  
 13 **permits from both the State of Delaware**  
 14 **and the State of New Jersey.**  
 15 Q. Thank you. After reviewing  
 16 the documents for Keystone Cogeneration,  
 17 is it your opinion that Delaware. At  
 18 their very least. Has exercised  
 19 jurisdiction along with New Jersey over  
 20 dredging within the Twelve Mile Circle?  
 21 MS. KELLY: Object to the  
 22 form of that question. The same  
 23 objections as before: Basis,  
 24 legal opinion, foundation,

120

1 personal knowledge, all that  
 2 but...  
 3 THE WITNESS: Based on the  
 4 review of these documents, there  
 5 were two permits issued.  
 6 BY MR. NEWELL:  
 7 Q. Is that a yes that Delaware  
 8 and New Jersey have exercised  
 9 jurisdiction over Keystone Cogeneration?  
 10 A. **Based on these documents.**  
 11 Q. Yes?  
 12 A. Yes.  
 13 Q. Thank you. Ms. Dietrick,  
 14 are you familiar at all with the Fort  
 15 Mott Pier in New Jersey?  
 16 A. No.  
 17 Q. So you would have no  
 18 knowledge whether or not that pier began  
 19 on the New Jersey shore?  
 20 A. No.  
 21 Q. And you would have no  
 22 knowledge whether that pier, if it did  
 23 begin on the New Jersey shore, whether it  
 24 extended into Delaware territory?

121

1 A. No.  
 2 Q. Therefore, you would have no  
 3 knowledge of any dredging activities at  
 4 Fort Mott Pier?  
 5 A. No.  
 6 Q. I'd like to show you what  
 7 we're going to mark as Dietrick-13.  
 8 (Whereupon document was marked  
 9 Dietrick-13 for identification.)  
 10 BY MR. NEWELL:  
 11 Q. What you have before you has  
 12 now been marked as Dietrick-13. It  
 13 contains the Bates numbers DE01817 to  
 14 DE01818. It's a two-page document. This  
 15 is a January 8, 1995 memorandum from  
 16 Gregory Marshall of the New Jersey  
 17 Department of Environmental Protection to  
 18 Dan Saunders regarding Fort Mott. Are  
 19 you familiar with Mr. Marshall?  
 20 A. No.  
 21 Q. Are you familiar with Mr.  
 22 Saunders?  
 23 A. No.  
 24 Q. Are you familiar at all with

122

1 this document?

2 A. Not at all.

3 Q. Take a moment again, read

4 the document. I apologize that some of

5 the second paragraph and into the third

6 paragraph is marred. I will do my best

7 to not question you on the marred parts.

8 Do your best read it, if you will, the

9 entire document.

10 A. (Witness reading.) Okay.

11 Q. You have had time to review

12 the document?

13 A. Yes.

14 Q. Going back to the first

15 page, DE01817, if you look at the second

16 paragraph, can you tell me whether or not

17 this Fort Mott Pier extends into Delaware

18 waters?

19 A. I can't read this. I mean,

20 I can't even read it. It's difficult

21 even to read that section.

22 Q. Can you read the first

23 sentence of the second paragraph

24 beginning with as you know?

123

1 A. It says that the Fort Mott

2 pier extends into Delaware waters.

3 Q. Can you continue reading?

4 A. Therefore, subject to review

5 by the both the state -- by both the

6 Delaware and the New Jersey SHPO for

7 purpose of section 106.

8 Q. After reviewing this

9 paragraph, is it your understanding that

10 because the pier extends into Delaware

11 waters that it would be subject to review

12 by Delaware?

13 A. Based on the reading of this

14 document, yes.

15 Q. So, yes, Delaware would have

16 the authority to review the projects at

17 the pier?

18 MS. KELLY: Object to the

19 form of the characterization.

20 THE WITNESS: Based on the

21 reading of this document,

22 therefore, subject to review by

23 both the state -- by both the

24 Delaware and the New Jersey SHPO.

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1 I'm not familiar with section 106.

2 BY MR. NEWELL:

3 Q. Moving past Fort Mott, are

4 you familiar at all with the Colonial

5 Pipeline Company?

6 A. I know the company, yes.

7 Q. What do you know about them?

8 A. We did a permit for them to

9 construct a pipeline in the Arthur Kill.

10 Q. Where is Arthur Kill?

11 A. In the New York-New Jersey

12 Harbor.

13 Q. Was there dredging

14 associated with the pipeline at Arthur

15 Kill?

16 A. No.

17 Q. Are you familiar with any

18 pipelines that Colonial has that

19 extending from New Jersey into Delaware?

20 A. No, I am not.

21 (Whereupon document was marked

22 Dietrick-14 for identification.)

23 BY MR. NEWELL:

24 Q. Ms. Dietrick, I'd like to

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1 show you what we have marked as

2 Dietrick-14. It has Bates numbers

3 DE05691 to DE05695. This is an August 3,

4 1987 subaqueous lands lease from the

5 State of Delaware to Colonial. Are you

6 familiar with this document?

7 A. No, I am not.

8 Q. Again, I repeat myself.

9 Feel free to take your time as much as

10 you need and review this document.

11 A. Okay.

12 Q. Ms. Dietrick, could I ask

13 you to turn to DE5692? Do you see at the

14 very top, third line, "This lease shall

15 be subject to the following

16 conditions..." If you would please read

17 subparagraph number 2 to yourself.

18 A. (Witness reading.) Okay.

19 Q. Does subparagraph 2 on

20 DE05692 authorize Colonial Pipeline to

21 conduct dredging activities?

22 A. Yes.

23 Q. Ms. Dietrick, based on this

24 document, can you tell me which state is

126

1 authorizing the dredging?  
 2 **A. Based on this document it**  
 3 **appears that the State of Delaware is**  
 4 **issuing the dredging of 1,217 cubic yards**  
 5 **of material.**  
 6 Q. Thank you. Ms. Dietrick,  
 7 I'd like show you what we are going to  
 8 mark as Dietrick-15.  
 9 (Whereupon document was marked  
 10 Dietrick-15 for identification.)  
 11 BY MR. NEWELL:  
 12 Q. Ms. Dietrick, we have before  
 13 you what's marked Dietrick-15. This  
 14 document contains Bates numbers DE05764  
 15 to DE05765. Are you familiar at all with  
 16 document?  
 17 **A. No.**  
 18 Q. This is a February 21, 1991  
 19 approval for dredging from the Delaware  
 20 Department of Natural Resources and  
 21 Environmental Control to Colonial  
 22 Pipeline. Please take a moment again to  
 23 familiarize yourself with this document.  
 24 Take as much time as you need, please.

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1 **A. (Witness reading.) Okay.**  
 2 Q. In this document, does DNREC  
 3 authorize Colonial Pipeline to conduct  
 4 dredging activities?  
 5 **A. Yes.**  
 6 Q. Looking on page DE05764,  
 7 which is the first page of your document,  
 8 you will see under the colon at the end  
 9 of the first paragraph three enumerated  
 10 subsections. I'd like you to take a look  
 11 at subsection number 1.  
 12 **A. Okay.**  
 13 Q. After looking at subsection  
 14 number 1, does it state that the dredging  
 15 is to be conducted in accordance with  
 16 Delaware law, more specifically the DNREC  
 17 Surface Water Quality Standards?  
 18 **A. Yes.**  
 19 Q. Thank you. Ms. Dietrick, I  
 20 represent to you that the Colonial  
 21 Pipeline in question extends from the New  
 22 Jersey shore into Delaware territory  
 23 within the Twelve Mile Circle. After  
 24 reviewing these documents regarding

128

1 Colonial Pipeline, is it your opinion  
 2 Delaware has exercised jurisdiction over  
 3 dredging?  
 4 MS. KELLY: Objection to the  
 5 form; legal opinion; ultimate  
 6 conclusion in the case and no  
 7 personal knowledge. Go ahead.  
 8 THE WITNESS: Can you  
 9 rephrase the question?  
 10 BY MR. NEWELL:  
 11 Q. Absolutely.  
 12 MR. NEWELL: Do you want to  
 13 stipulate the objection?  
 14 MS. KELLY: Yes, unless you  
 15 change it.  
 16 BY MR. NEWELL:  
 17 Q. Let me repeat the question  
 18 for you. After reviewing the documents  
 19 pertaining to Colonial Pipeline, is it  
 20 your opinion that Delaware has exercised  
 21 jurisdiction over dredging of the  
 22 Colonial Pipeline that extends from the  
 23 New Jersey shore into Delaware territory  
 24 within the Twelve Mile Circle?

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1 **A. Based on my reading of this**  
 2 **document, yes.**  
 3 Q. Ms. Dietrick, we'll go a  
 4 little bit more and we'll take a break.  
 5 I understand there's probably some  
 6 post-lunch tiredness going on, at least  
 7 from my part.  
 8 Are you familiar at all with  
 9 the Connectiv facility in Logan Township?  
 10 **A. Not in my capacity in the**  
 11 **Office of Dredging, no.**  
 12 Q. Are you aware that such a  
 13 facility exists?  
 14 **A. Yes.**  
 15 Q. Can you tell me what you  
 16 your knowledge is of that facility as to  
 17 where it lies?  
 18 **A. I believe -- it's the cogen?**  
 19 Q. Yes.  
 20 **A. I believe it's located north**  
 21 **of the DuPont Chambers Works property.**  
 22 Q. By cogen you mean  
 23 cogeneration facility?  
 24 **A. Yes.**

130

1 Q. What exactly does a  
2 cogeneration facility do?  
3 A. **I think it just converts**  
4 **coal oil to another viable product for**  
5 **energy use.**  
6 Q. Do you know whether the  
7 Connectiv plant starts on the New Jersey  
8 shore?  
9 A. **I know the facility is**  
10 **located on the shore.**  
11 Q. Do you know whether that  
12 facility extends into Delaware territory?  
13 A. **I do not know.**  
14 Q. If I represent to you that  
15 it does, would you have any reason to  
16 disagree with me?  
17 A. **I have no personal knowledge**  
18 **what the structures are.**  
19 Q. Are you aware of any  
20 dredging activities that have taken place  
21 at Connectiv?  
22 A. **Not that I can recall.**  
23 Q. Also, as a point of  
24 clarification, are you aware that

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1 Connectiv was formerly known as Delmarva  
2 Power?  
3 A. **No, I did not.**  
4 Q. I'll represent to you that  
5 it was. I know my power bill has  
6 changed. I'd like to show what we are  
7 now going to mark Dietrick-16.  
8 (Whereupon document was marked  
9 Dietrick-16 for identification.)  
10 BY MR. NEWELL:  
11 Q. Ms. Dietrick, what I have  
12 now placed before you, again, is  
13 Dietrick-16. It contains Bates numbers  
14 DE06135 to DE06135. This is a  
15 November 27, 1995 approval from the  
16 Delaware Department of Natural Resources  
17 and Environmental Control to Delmarva  
18 Power. Are you familiar at all with this  
19 document?  
20 A. **No.**  
21 Q. Again, please take your time  
22 and review the two pages and let me know  
23 when you have had sufficient time to  
24 review it.

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1 A. **(Witness reading.) Okay.**  
2 Q. After reviewing this  
3 document, does it appear at the time  
4 Delmarva Power approached DNREC for  
5 permission to conduct maintenance  
6 dredging at its facility?  
7 A. **Yes.**  
8 Q. After reviewing this  
9 document, did DNREC authorize Delmarva  
10 Power to conduct dredging?  
11 A. **Yes.**  
12 Q. Was this authorization  
13 issued subject to requirement that  
14 Delmarva Power not violate the State of  
15 Delaware Department of Natural Resources  
16 and Environmental Control Surface Water  
17 Quality Standards?  
18 A. **Based on my reading of this**  
19 **document, yes.**  
20 Q. So after reviewing this  
21 document, is it your opinion that  
22 Delaware has exercised jurisdiction over  
23 dredging at the Delmarva Power facility?  
24 A. **Based on my review of this**

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1 **document, yes.**  
2 Q. Ms. Dietrick, I'd like to  
3 show you one more exhibit before we take  
4 a break. We're going to mark this  
5 Dietrick-17.  
6 (Whereupon document was marked  
7 Dietrick-17 for identification.)  
8 BY MR. NEWELL:  
9 Q. What has now been placed  
10 before you is Dietrick-17. It contains  
11 the Bates numbers DE06188 to DE06189.  
12 Are you familiar at all with this  
13 document?  
14 A. **No.**  
15 Q. Before you is a May 5, 1999  
16 subaqueous lands permit for maintenance  
17 dredging from the Delaware Department of  
18 Natural Resources and Environmental  
19 Control to Delmarva Power and Light.  
20 Take your time and read the document and  
21 let me know when you have had a chance to  
22 sufficiently review it.  
23 A. **(Witness reading.) Okay.**  
24 Q. Flipping over to) the second

134

1 page which is DE06189, looking at  
2 subparagraph number -- or paragraph  
3 number 2, again, does this document state  
4 that the dredging was to be conducted  
5 according to DNREC Surface Water Quality  
6 Standards?  
7 **A. One question of**  
8 **clarification. This permit appears to be**  
9 **authorizing dredging from the Delaware**  
10 **River at a location in Delaware --**  
11 **Wilmington, Delaware.**  
12 Q. Where are you looking?  
13 **A. Up at the top.**  
14 Q. The address right here?  
15 **A. No, the address up here**  
16 **(witness indicating).**  
17 Q. I believe that is the  
18 address of the company, Delmarva's  
19 address, as you can see in the addressee  
20 line.  
21 Again, if we turn to 6189,  
22 paragraph 2, does the document state that  
23 dredging should be done within DNREC's  
24 Surface Water Quality Standards?

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1 **A. Based on what is in this**  
2 **letter, yes.**  
3 Q. After reviewing these two  
4 documents from Connectiv, then Delmarva  
5 Power, is it your opinion that Delaware  
6 exercised jurisdiction over dredging at  
7 this facility within Delaware territory?  
8 **A. Based on my reading of these**  
9 **documents, yes.**  
10 Q. Let's take a quick break.  
11 (Whereupon a break was taken.)  
12 BY MR. NEWELL:  
13 Q. Ms. Dietrick, back on the  
14 record here. We'll do our best to close  
15 this up shortly. Again, I'm going to  
16 ask, did you have any conversation with  
17 counsel during break regarding the  
18 substance of your testimony today?  
19 **A. Yes. She said it was going**  
20 **okay.**  
21 Q. Have you understood all the  
22 questions as you have answered today, not  
23 necessarily the questions I have asked?  
24 **A. Yes.**

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1 Q. Did you reveal all the facts  
2 that you were asked about?  
3 **A. Yes.**  
4 Q. In light of the documents  
5 that you have reviewed today and the  
6 testimony you have given regarding those  
7 documents, would you agree that Delaware  
8 has exercised jurisdiction over dredging  
9 projects within the Twelve Mile Circle?  
10 **A. Based on my reading of the**  
11 **documents presented to me, yes.**  
12 Q. Excluding New Jersey's  
13 current position regarding the proposed  
14 Crown Landing facility --  
15 MS. KELLY: The what  
16 facility?  
17 MR. NEWELL: Crown Landing.  
18 BY MR. NEWELL:  
19 Q. Excluding New Jersey's  
20 current position regarding the Crown  
21 Landing facility and based on the  
22 documents that you have reviewed today,  
23 is it fair to say that it's been the  
24 practice of both New Jersey and Delaware

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1 to issue approvals for improvements  
2 extending from the New Jersey shore into  
3 the Twelve Mile Circle?  
4 MS. KELLY: We still have  
5 the list of stipulated objections,  
6 right?  
7 MR. NEWELL: Yes.  
8 THE WITNESS: Can you repeat  
9 that question?  
10 BY MR. NEWELL:  
11 Q. Not considering Crown  
12 Landing -- New Jersey's current position  
13 regarding jurisdiction of current  
14 proposed Crown Landing facility, based on  
15 your review of the documents today, is it  
16 fair to say it has been the practice of  
17 both New Jersey and Delaware to issue  
18 approvals for improvements extending from  
19 the New Jersey shore into Delaware  
20 territory within the Twelve Mile Circle?  
21 **A. Based on my review of the**  
22 **document and having no knowledge of where**  
23 **in some cases these facilities related to**  
24 **mean low water, it appears that there has**

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1 **been permits issued by both states.**  
 2 Q. Some of the facilities you  
 3 were aware cross mean low water, correct?  
 4 **A. For DuPont.**  
 5 Q. In that instance, both  
 6 Delaware and New Jersey issued permits?  
 7 **A. That is correct.**  
 8 Q. So if you can, yes or no,  
 9 would that be an example of interstate  
 10 approval for the DuPont facility?  
 11 **MS. KELLY: Object to the**  
 12 **form. Go ahead.**  
 13 **THE WITNESS: When you say**  
 14 **interstate, I'm not sure what that**  
 15 **means.**  
 16 **BY MR. NEWELL:**  
 17 Q. Approvals by both New Jersey  
 18 and Delaware.  
 19 **A. There were approvals issued**  
 20 **by both states for that project, yes.**  
 21 Q. You will recall in your  
 22 June 13, 2005 letter you stated that New  
 23 Jersey has exclusive riparian  
 24 jurisdiction. If you would like, feel

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1 free to turn to that now and refresh your  
 2 memory. We have that marked as  
 3 Dietrick-6.  
 4 After reviewing the  
 5 documents today, is it fair to say that  
 6 the position you took as New Jersey  
 7 having the authority to exercise  
 8 exclusive riparian jurisdiction, that  
 9 that position is inconsistent with the  
 10 documents you reviewed today?  
 11 **MS. KELLY: Object to the**  
 12 **extent it calls for a legal**  
 13 **conclusion.**  
 14 **THE WITNESS: I mean, I**  
 15 **can't really answer that based**  
 16 **on -- I can't really answer that.**  
 17 **BY MR. NEWELL:**  
 18 Q. Is your understanding that  
 19 exclusive riparian jurisdiction of every  
 20 kind and nature means that for a project  
 21 extending from the New Jersey shore into  
 22 Delaware territory within the Delaware  
 23 River that New Jersey alone possesses the  
 24 authority to regulate that project?

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1 **MS. KELLY: Objection;**  
 2 **leading conclusion, go ahead.**  
 3 **THE WITNESS: Can you repeat**  
 4 **the question?**  
 5 **BY MR. NEWELL:**  
 6 Q. Does your letter of June 13  
 7 state that New Jersey has exclusive  
 8 riparian jurisdiction of every kind and  
 9 nature?  
 10 **A. My June 13 letter states**  
 11 **that.**  
 12 Q. When you wrote that, was  
 13 your understanding of exclusive riparian  
 14 jurisdiction of every kind and nature  
 15 that it was New Jersey that retained the  
 16 authority to regulate the Crown Landing  
 17 project and not Delaware?  
 18 **A. Based on what is contained**  
 19 **in this letter, yes.**  
 20 Q. That was your opinion when  
 21 you wrote this letter?  
 22 **A. That is what is contained in**  
 23 **this letter.**  
 24 Q. Was that your opinion when

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1 you wrote this letter?  
 2 **A. I also worked with counsel**  
 3 **on this letter.**  
 4 Q. Correct, but your name as  
 5 signed to this document, correct?  
 6 **A. Correct.**  
 7 Q. So that was your opinion  
 8 when you signed this letter?  
 9 **A. That is what is in letter.**  
 10 Q. That is what you wrote?  
 11 **A. Yes.**  
 12 Q. Is what you wrote then  
 13 consistent with the documents you  
 14 reviewed today in which Delaware  
 15 exercised jurisdiction of projects  
 16 extending from New Jersey shore into  
 17 Delaware water?  
 18 **MS. KELLY: Object on the**  
 19 **legal conclusion basis, but I'll**  
 20 **continue that objection to these**  
 21 **questions.**  
 22 **THE WITNESS: I'm not aware**  
 23 **of whether or not there were any**  
 24 **permits issued by New Jersey for**

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1 these projects, so I can't answer.  
 2 BY MR. NEWELL:  
 3 Q. I believe you have just  
 4 stated that exclusive riparian  
 5 jurisdiction would mean that New Jersey  
 6 alone had the ability to authorize and  
 7 issue permits and that would mean that  
 8 Delaware would not have the authority to  
 9 do that?  
 10 A. Yes.  
 11 Q. You have seen documents  
 12 today in which Delaware has authorized  
 13 dredging?  
 14 A. Correct.  
 15 Q. So my question to you is,  
 16 based on the documents you reviewed  
 17 today, is the position you stated your  
 18 June 13, 2005 letter inconsistent?  
 19 A. My June 13 letter appears to  
 20 be inconsistent with these permits that I  
 21 have been shown.  
 22 Q. In going back I believe two  
 23 exhibits, Ms. Dietrick -- exhibit we have  
 24 marked Dietrick-3, you will see Mr.

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1 Risilia's letter to Mr. David Blaha. Do  
 2 you remember reviewing this document  
 3 earlier?  
 4 A. Yes.  
 5 Q. Again, we focused earlier on  
 6 the third paragraph in which Mr. Risilia  
 7 stated that because the Crown Landing  
 8 facility was going to extend from the New  
 9 Jersey shore into Delaware water and  
 10 Delaware territory that approvals would  
 11 be required from both Delaware and New  
 12 Jersey; is that correct?  
 13 A. That is correct.  
 14 Q. After reviewing the  
 15 documents today in which you have seen  
 16 Delaware and New Jersey issue approvals  
 17 for projects extending from the Jersey  
 18 Shore into Delaware territory, is it your  
 19 opinion that Mr. Risilia's February 4,  
 20 2005 letter is consistent with those  
 21 documents?  
 22 A. It appears to be consistent  
 23 with those documents.  
 24 MR. NEWELL: I have no

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1 further questions. Thank you for  
 2 your cooperation.  
 3 MS. KELLY: I don't have any  
 4 questions.  
 5 (Witness excused.)  
 6 (Deposition concluded at  
 7 approximately 2:00 p.m.)  
 8  
 9  
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1  
 2 CERTIFICATE  
 3  
 4  
 5 I HEREBY CERTIFY that the  
 6 witness was duly sworn by me and that the  
 7 deposition is a true record of the  
 8 testimony given by the witness.  
 9  
 10  
 11  
 12 Samantha A. Oakley  
 Certified Shorthand Reporter  
 Date: October 13, 2006  
 13  
 14  
 15  
 16  
 17  
 18 (The foregoing certification  
 19 of this transcript does not apply to any  
 20 reproduction of the same by any means,  
 21 unless under the direct control and/or  
 22 supervision of the certifying reporter.)  
 23  
 24

1	LAWYER'S NOTES	
2	PAGE LINE	
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2

1 APPEARANCES:

2

3

4 STATE OF NEW JERSEY

5 DEPARTMENT OF LAW & PUBLIC SAFETY

6 DIVISION OF LAW

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13

14

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16 TODD, EVANS & FIGEL, P.L.L.C.

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19 1615 M Street, N.W.

20 Washington, D.C. 20036

21 (202) 326-7935

22 Representing the Defendant

23

24

4

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2 DEPOSITION SUPPORT INDEX

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4

5 Direction to Witness Not to Answer

6 Page Line

7 None

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10 Request for Production of Documents

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15 Stipulations

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17 None

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20 Question Marked

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22 None

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4 Testimony of

5 RUTH E. EHINGER

6 PAGE

7 By Mr. Attaway 5

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10 EXHIBITS

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14 NJ Coastal Management

15 Program

16 Ehinger-2 August 1978 Final 41

17 NJ Coastal Management

18 Program

19 Ehinger-3 March 1979 Options for 51

20 NJ's Developed Coast

21 Ehinger-4 1980 Draft 63

22 NJ Coastal Management

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24 Ehinger-5 August 1980 Final 63

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27 Ehinger-6 N.J.S.A. 32:11E-1 88

28 Ehinger-7 Keystone Permit 93

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30 Ehinger-9 8/30/93 Letter 124

31 Ehinger-10 Fort Mott Permit 141

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33 Ehinger-11 Fort Mott Permit 145

34 Ehinger-12 LURP Application Form 148

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37 Ehinger-15 2/4/05 Letter 159

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41

42

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5

1 - - -

2 RUTH E. EHINGER, after

3 having been duly sworn, was

4 examined and testified as follows:

5 - - -

6 EXAMINATION

7 - - -

8 BY MR. ATTAWAY:

9 Q. Good morning Ms. Ehinger.

10 A. Good morning.

11 Q. My name is Scott Attaway.

12 And I represent the State of Delaware in

13 this case, which is New Jersey versus

14 Delaware, Original No. 134, filed in the

15 Supreme Court of the United States.

16 Before we begin, just a

17 couple of ground rules: First, if you

18 don't hear a question, let me know and

19 I'll repeat it. If you don't understand

20 a question, also let me know and I'll

21 rephrase it.

22 And because this is being

23 taken down by the court reporter, it's

24 important that only one of us speak at a

6

1 time. So you should let me finish my  
 2 question before you start to answer, and  
 3 likewise, I should do my best to let you  
 4 finish your answer before I say something  
 5 else.

6 Do you understand these  
 7 instructions?

8 A. Yes.

9 Q. Is there any reason of which  
 10 you're aware that would impair your  
 11 ability to testify truthfully today such  
 12 as any physical or medications, any other  
 13 limitations?

14 A. No.

15 Q. Other than conversations  
 16 with counsel, what did you do today to  
 17 prepare for your deposition?

18 A. Basically, I looked through  
 19 things with counsel. I looked through my  
 20 resume to see the time frames when I was  
 21 working in different jobs. I actually  
 22 looked at the program document, that one  
 23 section people have asked about, I mean,  
 24 talked about over the last few years.

7

1 Basically, that was it.

2 Q. When you said the program  
 3 document, what document is that?

4 A. The 1980, the orange book we  
 5 call it, 1980 Coastal Program.

6 Q. Coastal Management Plan?

7 A. Right.

8 Q. When did you meet with  
 9 counsel?

10 A. I met with counsel Friday --  
 11 on the phone Friday and then a few days  
 12 before when I was last scheduled, which  
 13 was maybe two weeks ago. I don't know  
 14 the date offhand.

15 Q. And did you meet or talk  
 16 with Ms. Kelly here?

17 A. Just this morning.

18 Q. And the counsel that you  
 19 spoke with before?

20 A. With Barbara Konklin on  
 21 Friday. And Luann Reilly Mancheczek was  
 22 who I had seen before the previously  
 23 scheduled date.

24 Q. Have you testified before in

8

1 any case, either a deposition or live  
 2 testimony in a court?

3 A. Yes.

4 Q. How many times?

5 A. Depositions several times.  
 6 In cases, maybe, I don't know, a dozen,  
 7 maybe less, probably less, too many.

8 Q. If it's too many, it will  
 9 take too long to go through them all.  
 10 I'll try to be brief. So were those  
 11 cases all employment related, that is,  
 12 related to your employment with the  
 13 Department of Environmental Protection?

14 A. Yes.

15 Q. Did any of those cases  
 16 concern the boundary between New Jersey  
 17 and Delaware?

18 A. No.

19 Q. Did any of those cases  
 20 concern the document known as the Compact  
 21 of 1905?

22 A. No.

23 Q. Did any of those cases  
 24 concern riparian rights?

9

1 A. Riparian rights? Well,  
 2 Waterfront Development permits at least  
 3 which are in tidal waters, so I guess  
 4 that extension. I was not there on the  
 5 tidal rights.

6 Q. Did all of those cases  
 7 concern the Waterfront Development  
 8 applications?

9 A. Not only those, no.

10 Q. What aspect of the  
 11 Waterfront Development applications did  
 12 those previous cases in which you  
 13 testified concern?

14 A. Applying regulations,  
 15 Coastal Zone Management regulations to a  
 16 specific proposed facility.

17 Q. Were any of those proposed  
 18 facilities located in whole or in part in  
 19 the Delaware River?

20 A. None of the ones I can think  
 21 of were.

22 Q. Just briefly, since you  
 23 reviewed your resume to remind yourself  
 24 of all the jobs -- I would have to do the

10

1 same thing, at least going back beyond a  
 2 particular time.  
 3 Let's start currently and  
 4 then I'll go back to the beginning and  
 5 we'll move forward. Currently, what is  
 6 your title, position?  
 7 **A. I'm Manager III in the**  
 8 **Coastal Management Office in DEP.**  
 9 **Q. And just for the record and**  
 10 **for the reporter, DEP stands for**  
 11 **Department of Environmental Protection,**  
 12 **correct?**  
 13 **A. Right.**  
 14 **Q. So what is your college**  
 15 **education?**  
 16 **A. Bachelor of Science in**  
 17 **biology from Brown University and a**  
 18 **Master of Science in biologic**  
 19 **oceanography from the University of Rhode**  
 20 **Island.**  
 21 **Q. After college, where did you**  
 22 **work?**  
 23 **A. After college?**  
 24 **Q. Yes.**

11

1 **A. I went to graduate school.**  
 2 **Q. I'm sorry, after graduate**  
 3 **school?**  
 4 **A. I came to work for DEP.**  
 5 **Q. And do you remember what**  
 6 **year that was?**  
 7 **A. 1979.**  
 8 **Q. What was your title then?**  
 9 **A. It was Senior -- well, DEP's**  
 10 **titles -- it was either Senior Planner or**  
 11 **Senior Environmental Specialist.**  
 12 **Q. What were your job**  
 13 **responsibilities at that time?**  
 14 **A. To review applications for**  
 15 **CAFRA, initially CAFRA permits.**  
 16 **Q. And CAFRA stands for?**  
 17 **A. Coastal Area Facility Review**  
 18 **Act.**  
 19 **Q. I assume you moved to**  
 20 **several positions afterward. What was**  
 21 **the first move after 1979?**  
 22 **A. I started taking on**  
 23 **additional responsibilities. The**  
 24 **first -- and I became a Principal**

12

1 **Environmental Specialist. The thing that**  
 2 **was really substantively different was**  
 3 **becoming a supervisor in 1985.**  
 4 **Q. Describe your duties as**  
 5 **supervisor.**  
 6 **A. I was responsible for what**  
 7 **was called the Shorefront Region, which**  
 8 **went from Cape May Point to Sandy Hook**  
 9 **and along Rariton Bay Shore. And I was**  
 10 **responsible for reviewing the work of my**  
 11 **staff, which reviewed applications under**  
 12 **the Waterfront Development Law, CAFRA and**  
 13 **the Wetlands Act of 1970.**  
 14 **Q. Did the shorefront you were**  
 15 **charged with overseeing include**  
 16 **shorelines of the Delaware River?**  
 17 **A. No.**  
 18 **Q. So just from Cape May north?**  
 19 **A. Right.**  
 20 **Q. And you said your title in**  
 21 **1985 or your responsibility was**  
 22 **supervisor. What were you supervising?**  
 23 **A. I was supervising four to**  
 24 **five staff who reviewed these permit**

13

1 **applications.**  
 2 **Q. And following that, what was**  
 3 **your next position?**  
 4 **A. I became the Bureau Chief**  
 5 **for the Bureau of Coastal Project Review**  
 6 **in 1988.**  
 7 **Q. What was the nature of that**  
 8 **change in your responsibilities?**  
 9 **A. I became responsible for all**  
 10 **of the CAFRA Waterfront Development and**  
 11 **Coastal Wetlands permits issued or the**  
 12 **applications reviewed, I should say.**  
 13 **Q. When you say all, do you**  
 14 **mean the geographic region for which you**  
 15 **were responsible increased?**  
 16 **A. Yes.**  
 17 **Q. And did it increase to**  
 18 **include areas of the Delaware River?**  
 19 **A. Yes.**  
 20 **Q. Was there any portion of the**  
 21 **Delaware River that was excluded from**  
 22 **your oversight responsibilities?**  
 23 **A. It was just the tidal areas,**  
 24 **so it was not north of Trenton.**

<p style="text-align: right;">14</p> <p>1 Q. But basically up the 2 Delaware River to Trenton or 3 approximately to Trenton? 4 A. Yes. 5 Q. The next position, what 6 would that have been? 7 A. It was the same title but 8 the responsibilities changed in that in 9 1990 I added on the, in this geographical 10 area -- I added geographical area and 11 Freshland Wetlands Protection Act 12 responsibilities and Flood Hazard Area 13 Control Act responsibilities. At that 14 point, I had everything from Burlington 15 and Monmouth County south. 16 Q. So same title but just more 17 responsibilities? 18 A. Right. 19 Q. And after 1990? 20 A. Actually, I don't even know 21 the year but it was the same 22 responsibilities. 23 Q. Do you know approximately 24 the time period?</p>	<p style="text-align: right;">16</p> <p>1 office. I'm sorry, how does it fit into 2 what, DEP? 3 Q. Yes. 4 A. I report to the Director of 5 the Office of Policy Planning and 6 Science, who reports to the Chief of 7 Staff, I believe, who reports to the 8 Commissioner. 9 Q. So Chief of Staff is Chief 10 of Staff to the Commissioner? 11 A. Correct, for the department. 12 Q. What does the Waterfront 13 Development Act in general require? 14 A. It's an act that was passed 15 to look at commerce and navigation issues 16 back in 1914, and it requires permits for 17 development in and along tidal waters. 18 Q. What are the standards that 19 you use for deciding whether to approve 20 or deny a Waterfront Development Act 21 application? 22 A. The Coastal Zone Management 23 rules. 24 Q. And just describe briefly</p>
<p style="text-align: right;">15</p> <p>1 A. Probably like '96 or seven 2 maybe. I don't know. 3 Q. What was that new title? 4 A. That's when I became Manager 5 III. 6 Q. What does Manager III mean? 7 A. There's a series of manager 8 titles in Civil Service, the lowest being 9 Manager IV, which is usually bureau 10 chief. And then III is an assistant 11 director typically, II is usually a 12 director and -- actually, a one can be a 13 director also. I'm not sure. 14 Q. So what's the difference 15 between a manager and a bureau chief? 16 A. I think it's how much you 17 get paid and how many people work for you 18 maybe. I'm not sure. 19 Q. So you're currently Manager 20 III in the Coastal Management Office. 21 How does that fit into the DEP as a 22 general matter, the structure of the DEP? 23 A. In 2001, I left the 24 permitting office and went to this</p>	<p style="text-align: right;">17</p> <p>1 those rules. 2 A. N.J.A.C. 7:7E, they set 3 standards that are grouped in three 4 different -- there's location policies 5 that deal with where something is 6 proposed; used policies that deal with 7 proposed use; and resource policies that 8 deal with various resources like water 9 quality, fish, scenic resources, et 10 cetera. 11 Q. Where does CAFRA fit into 12 that? 13 A. Fit into the -- that 14 meaning? 15 Q. I'm sorry, it was a vague 16 question. Do the regulations that you 17 cited, which were New Jersey 7:7E, do 18 those incorporate CAFRA as well? 19 A. Those are used to review 20 CAFRA applications. 21 Q. Are there any other 22 regulations that are used to review CAFRA 23 applications? 24 A. There are Coastal Permit</p>

18

1 **Program rules which have general permits**  
 2 **and also jurisdiction and procedures.**  
 3 Q. Do you know where those are  
 4 codified?  
 5 A. 7:7, N.J.A.C. 7:7.  
 6 Q. So 7:7 and 7:7E together, do  
 7 those cover the universe of CAFRA and  
 8 Waterfront Development Act regulations or  
 9 are there others as well?  
 10 A. **Those are the primary. I**  
 11 **can't think of other regulations offhand.**  
 12 Q. Are those regulations  
 13 voluminous?  
 14 A. **Yes. Aren't they all?**  
 15 Q. Are you familiar with  
 16 Delaware's coastal zone laws?  
 17 A. **No.**  
 18 Q. Ever had occasion to look at  
 19 Delaware's Subaqueous Lands Act?  
 20 A. **No.**  
 21 Q. Coastal Zone Management Act?  
 22 A. **No.**  
 23 Q. Are you familiar with the  
 24 Twelve-Mile Circle?

19

1 A. **Yes.**  
 2 Q. What is your understanding  
 3 of the Twelve-Mile Circle, please?  
 4 A. **That it's a circle around, I**  
 5 **think, Wilmington that stems back from**  
 6 **colonial times and identifies areas that**  
 7 **are in the State of Delaware as opposed**  
 8 **to in the Delaware River.**  
 9 Well, it's a circle around  
 10 **them that is part of the Delaware, the**  
 11 **areas within Delaware. And it comes from**  
 12 **colonial times is basically my**  
 13 **understanding.**  
 14 Q. What is your understanding  
 15 of the boundary -- let me back up. The  
 16 Twelve-Mile Circle is applicable to the  
 17 Delaware River, correct?  
 18 A. **It is applicable to the**  
 19 **Delaware River that's within the circle.**  
 20 Q. Where on the river is the  
 21 Twelve-Mile Circle; could you identify  
 22 the north and south?  
 23 A. **I know it comes, I think,**  
 24 **from Wilmington and you draw a circle**

20

1 **around.**  
 2 Q. So do you know where the top  
 3 of the circle would be?  
 4 A. **Not really, 12 miles north.**  
 5 Q. Or the bottom?  
 6 A. **Not exactly.**  
 7 Q. Do you know whether the  
 8 Delaware Memorial Bridge is within the  
 9 Twelve-Mile Circle?  
 10 A. **Actually, I don't know.**  
 11 Q. What is your understanding  
 12 of the boundary between New Jersey and  
 13 Delaware within the Twelve-Mile Circle?  
 14 MS. KELLY: Are you asking  
 15 her currently, her current  
 16 understanding?  
 17 MR. ATTAWAY: Yes.  
 18 THE WITNESS: That the areas  
 19 within the circle are in the State  
 20 of Delaware.  
 21 BY MR. ATTAWAY:  
 22 Q. If I were on a boat sailing  
 23 from the Delaware shore to the New Jersey  
 24 shore within the Twelve-Mile Circle, do

21

1 you know at what point I would leave  
 2 Delaware and enter New Jersey?  
 3 A. **If you're on a boat in the**  
 4 **circle?**  
 5 Q. Right.  
 6 A. **I guess it would depend**  
 7 **where you were on the -- I don't**  
 8 **understand your question, I guess.**  
 9 Q. Do you know whether the  
 10 boundary between New Jersey and Delaware  
 11 is in the middle of the Delaware River or  
 12 is it at the New Jersey shore within the  
 13 Twelve-Mile Circle?  
 14 A. **In part, it's at the Jersey**  
 15 **shore. And then it must go further away**  
 16 **from the Jersey shore within the circle,**  
 17 **I assume.**  
 18 Q. Do you know where on the New  
 19 Jersey shore the boundary lies?  
 20 A. **You mean what municipality**  
 21 **or something?**  
 22 Q. Would it be at high tide or  
 23 at low tide, if you know?  
 24 A. **I'm not positive.**

22

1 Q. Fair enough. Are you  
 2 familiar with the structures that extend  
 3 from the New Jersey shore into Delaware,  
 4 again, within the Twelve-Mile Circle?  
 5 A. Existing structures that do?  
 6 Q. Yes.  
 7 A. No, I don't think I am. I  
 8 can't think of any that I know of.  
 9 Q. Do you know whether there  
 10 have ever been any structures that  
 11 crossed from New Jersey into Delaware  
 12 within the Twelve-Mile Circle?  
 13 A. I guess I'm having a hard  
 14 time -- it depends. I guess, if the  
 15 Delaware Bridge is, then it crosses from  
 16 one to the other. But I don't know if  
 17 it's in or it isn't in the circle.  
 18 Q. Do you know whether the  
 19 Twelve-Mile Circle includes the boundary  
 20 between Delaware and Pennsylvania --  
 21 A. No, I don't know.  
 22 Q. -- at the northern point?  
 23 A. Don't know.  
 24 Q. In the context of your job

23

1 as a regulator, do you have occasion to  
 2 have an understanding of New Jersey's  
 3 regulatory authority within the  
 4 Twelve-Mile Circle?  
 5 A. Do you mean my previous job?  
 6 I'm not a regulator today. But you mean  
 7 when I was in a job as a regulator?  
 8 Q. Let's start with right now,  
 9 because you are still employed by the  
 10 DEP, right?  
 11 A. Yes.  
 12 Q. As manager?  
 13 A. But I'm not regulating  
 14 anything.  
 15 Q. As a public servant for the  
 16 State of New Jersey, --  
 17 A. Okay.  
 18 Q. -- what is your  
 19 understanding of New Jersey's regulatory  
 20 authority within the Twelve-Mile Circle?  
 21 A. My understanding today --  
 22 Q. Yes.  
 23 A. -- is that if we had, and I  
 24 guess my understanding is limited to the

24

1 Waterfront Development Law, that if there  
 2 was some structure being proposed and  
 3 extended from our shore out into that  
 4 area New Jersey would regulate it.  
 5 Q. If that structure crossed  
 6 the boundary, let's say it's a wharf or a  
 7 pier, if it crossed the boundary between  
 8 New Jersey and Delaware and extended into  
 9 Delaware, what is your understanding of  
 10 New Jersey's regulatory authority over  
 11 that sort of project?  
 12 A. My understanding again today  
 13 is that we would regulate that.  
 14 Q. And would Delaware also  
 15 regulate it?  
 16 A. I don't know if Delaware  
 17 would or wouldn't regulate it.  
 18 Q. Did you ever have a  
 19 different understanding of the respective  
 20 states' authority within the Twelve-Mile  
 21 Circle?  
 22 A. I wasn't really aware of the  
 23 Twelve-Mile Circle, so I don't know if I  
 24 had a different understanding of

25

1 authority. I still thought New Jersey  
 2 would regulate there.  
 3 Q. When did you learn of the  
 4 existence of the Twelve-Mile Circle?  
 5 A. I don't know the time  
 6 exactly. I remember hearing of it I'm  
 7 guessing sometime in the '90s.  
 8 Q. Early '90s, late '90s?  
 9 A. I couldn't even tell you.  
 10 Q. Do you know whether New  
 11 Jersey or anyone representing the state  
 12 has contended that Delaware lacks  
 13 regulatory authority over a project that  
 14 straddles the boundary between both  
 15 states?  
 16 A. I know there's the case of  
 17 the LNG facility that's proposed we're  
 18 here for today.  
 19 Q. That's the case we're  
 20 talking about today. That's why you're  
 21 here today.  
 22 A. Yes.  
 23 Q. Prior to that?  
 24 A. Prior to that, did I know of

26

1 -- could you say it again?  
2 Q. Sure. Are you aware of  
3 anyone within New Jersey or that  
4 represented the state or worked for the  
5 state having contended that Delaware  
6 lacked regulatory authority over a  
7 project that extended from New Jersey  
8 into Delaware, in other words, a boundary  
9 straddling project?  
10 A. I don't ever remember  
11 discussing anything about that.  
12 Q. Have you had conversations  
13 with anyone from the State of Delaware  
14 concerning Delaware's regulatory  
15 authority over a project that straddled  
16 the boundary?  
17 A. Over this specific project,  
18 we've acknowledged that we are at odds.  
19 But we haven't had any discussion in  
20 depth of any sort. We've avoided that.  
21 Q. Prior to that?  
22 A. Prior to that, I don't  
23 remember any discussions.  
24 Q. In the history of your

27

1 employment at DEP, have you had an  
2 occasion to come across the word  
3 riparian?  
4 A. Yes.  
5 Q. What is your understanding  
6 of that word?  
7 A. Of riparian?  
8 Q. Yes.  
9 A. Relating to shores. My  
10 context has been tidal shores, riparian  
11 lands.  
12 Q. What are riparian lands?  
13 A. The lands that are under  
14 the, I think of it as lands under the  
15 mean high waterline or along the shore.  
16 Q. When did you come to that  
17 understanding?  
18 A. Probably a long time ago. I  
19 don't know. Early in my career I dealt  
20 with riparian lands, riparian rights.  
21 Q. Does the State of New Jersey  
22 grant riparian rights?  
23 A. Today?  
24 Q. Yes.

28

1 A. Some. Typically, they're  
2 leases or licenses today.  
3 Q. How does that occur?  
4 A. Through an application which  
5 comes to the Bureau of Tidelands. And  
6 the Tidelands Resource Council then votes  
7 on that and then ultimately it gets  
8 signed. I think grants get signed by the  
9 governor maybe and others, but I'm not  
10 sure.  
11 Q. You mentioned the Bureau of  
12 Tidelands and the Tidelands Resource  
13 Council. Just explain briefly your  
14 understanding of those two entities.  
15 A. The Bureau of Tidelands is a  
16 bureau within the Department of  
17 Environmental Protection in what's now  
18 the Division of Land Use Regulation. The  
19 Tidelands Resource Council has appointed  
20 members -- I don't even remember how many  
21 at the moment; it's been a while -- who  
22 then review the various applications for  
23 conveying the state's tidelands and vote  
24 to approve those or not.

29

1 Q. Who appoints the members of  
2 the Tidelands Resource Council?  
3 A. I actually don't know for  
4 sure.  
5 Q. Why would someone need to  
6 apply to the Bureau of Tidelands for a  
7 permit?  
8 A. If they were proposing  
9 something that would occupy state  
10 tidelands or perhaps if they were -- and  
11 then dredging would be, removing sand or  
12 sediment from state's tidelands.  
13 Q. Does your office -- it's  
14 Coastal Resource Management?  
15 A. Coastal Management Office.  
16 Q. Is your office involved in  
17 the work of the Bureau of Tidelands?  
18 A. No.  
19 Q. Do you coordinate with the  
20 work of the Bureau of Tidelands?  
21 A. No.  
22 Q. Do you send information to  
23 the Bureau of Tidelands about your  
24 permitting processes?

30

1       **A. I don't do permit processes**  
2 **anymore.**  
3       **Q. At the time when you were --**  
4 **you did permits for?**  
5       **A. A long time.**  
6       **Q. Just remind me from**  
7 **approximately when to when?**  
8       **A. To 2001.**  
9       **Q. And starting in 1979?**  
10       **A. Yes.**  
11       **Q. When you were issuing**  
12 **permits, did you send the permits to the**  
13 **Bureau of Tidelands at any time?**  
14       **A. Yes. If it was a Waterfront**  
15 **Development permit that needed tidelands**  
16 **conveyance, it would have been sent to**  
17 **the Bureau of Tidelands.**  
18       **Q. And how would you know that**  
19 **it needed a tideland conveyance?**  
20       **A. Many of them came in -- on**  
21 **the application form, the applicant**  
22 **should have indicated that it needed a**  
23 **tidelands conveyance and that they were**  
24 **applying for that at that time.**

31

1       **Q. And the criteria for that**  
2 **generally was that they were proposing to**  
3 **build a structure or do something on**  
4 **submerged lands owned by the State of New**  
5 **Jersey?**  
6       **A. Yes, at or below the mean**  
7 **high waterline or formerly flow lands.**  
8       **Q. When you say formerly flow**  
9 **lands, does that mean lands that were**  
10 **once under water but perhaps had been**  
11 **filled and are no longer below water?**  
12       **A. Yes.**  
13       **Q. Is it necessary for an**  
14 **applicant for a tidelands conveyance**  
15 **first to get all the applicable permits**  
16 **from the Coastal Management Office?**  
17       **A. That changed over time while**  
18 **I was doing permits. Initially, we would**  
19 **review for the permits, send an unsigned**  
20 **permit over, at which time Tidelands**  
21 **would act and then we would sign the**  
22 **permit.**  
23       **Somewhere, and I don't know**  
24 **the time frame, it was decided that that**

32

1       **was too cumbersome a process and**  
2 **tidelands conveyances could be issued or**  
3 **permits could be issued, I guess --**  
4 **permits could be issued even before the**  
5 **tidelands conveyance, so that's basically**  
6 **how it went.**  
7       **I'm not sure if tidelands**  
8 **conveyances were issued before the**  
9 **permits now that I think of it. But that**  
10 **was the main process change that I'm**  
11 **aware of because we'd sign the permits or**  
12 **not. First, we had to sign them until**  
13 **they had a conveyance and then we signed**  
14 **them regardless of having the conveyance**  
15 **with a condition.**  
16       **Q. And once you signed the**  
17 **permits, would you then send a copy of**  
18 **the awarded permit to the Bureau of**  
19 **Tidelands?**  
20       **A. Yes.**  
21       **Q. Why would you do that?**  
22       **A. So that they would have a**  
23 **record and could take whatever action**  
24 **they needed to take.**

33

1       **Q. In your understanding, was**  
2 **it necessary for the applicant to prove**  
3 **to the Bureau of Tidelands that it had**  
4 **already obtained all the necessary**  
5 **wetlands permits in order to get the**  
6 **riparian conveyance that they were**  
7 **seeking from tidelands?**  
8       **A. I'm not sure if they**  
9 **required that.**  
10       **Q. But as a matter of course,**  
11 **you would send the executed permit to the**  
12 **Bureau of Tidelands so that they would be**  
13 **aware of the action that you had taken?**  
14       **A. Yes.**  
15       **Q. And during what period was**  
16 **that the common practice?**  
17       **A. I don't know when we**  
18 **switched over to that rather than the**  
19 **unsigned permits. But for all the time I**  
20 **was there, we either sent an unsigned or**  
21 **a signed permit to Tidelands.**  
22       **Q. So from 1979 to 2001, you**  
23 **would send either the signed or unsigned**  
24 **permits --**

34

1       **A. Right.**  
 2       Q. -- to the Bureau of  
 3 Tidelands to indicate the action that  
 4 your bureau either had taken or was  
 5 planning to take?  
 6       **A. Right. That was the process**  
 7 **we had established.**  
 8       Q. Are you familiar with the  
 9 document known as the 1905 Compact  
 10 between New Jersey and Delaware?  
 11       **A. I'm aware of it.**  
 12       Q. When did you first become  
 13 aware of it?  
 14       **A. In the last year or two as**  
 15 **this case arose.**  
 16       Q. Had you read the Compact?  
 17       **A. No.**  
 18       Q. So you never heard of it or  
 19 discussed it prior to the past year  
 20 and-a-half or so?  
 21       **A. I don't remember ever**  
 22 **hearing of it or discussing it before,**  
 23 **no.**  
 24       Q. We talked briefly a little

35

1 bit earlier about projects that straddled  
 2 the boundary, and what I mean by that is  
 3 a project that would begin and, for  
 4 example, a wharf, that would begin on the  
 5 New Jersey shore and extend into the  
 6 water beyond the boundary line between  
 7 the two states, and therefore, it would  
 8 be what hopefully we can refer to in  
 9 shorthand as a boundary straddling  
 10 project.  
 11       **A. Okay.**  
 12       Q. Are you aware of any  
 13 Delaware regulation of a boundary  
 14 straddling project within the Twelve-Mile  
 15 Circle?  
 16       **A. I'm aware in this case that**  
 17 **Delaware took some action.**  
 18       Q. What is your understanding  
 19 about this case?  
 20       **A. That Delaware denied the LNG**  
 21 **facility under a Delaware statute, which**  
 22 **I think dealt with industrial uses or**  
 23 **something of the Delaware River.**  
 24       Q. How did you come to learn

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1 that?  
 2       **A. I'm not sure, either**  
 3 **newspaper article. There are plenty of**  
 4 **newspaper articles and maybe someone here**  
 5 **told me also.**  
 6       Q. As part of your job  
 7 responsibilities as Manager of the  
 8 Coastal Bureau?  
 9       **A. As part of my job? So your**  
 10 **question is did someone tell me as part**  
 11 **of my job responsibilities?**  
 12       Q. Yes. Or did you learn of it  
 13 in the course of performing your job as  
 14 opposed to reading the morning newspaper?  
 15       **A. I don't know where I first**  
 16 **learned of it. I learned of it at my job**  
 17 **as well as reading the paper.**  
 18       Q. Does working on this case  
 19 comprise any part of your current job  
 20 responsibilities?  
 21       **MS. KELLY: Can I ask you a**  
 22 **question? When you say this case,**  
 23 **are you referring to the LNG**  
 24 **Project or the litigation?**

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1       **MR. ATTAWAY: Good question.**  
 2       Let's take it one at a time.  
 3 **BY MR. ATTAWAY:**  
 4       Q. Aside from your being at  
 5 this deposition today, does working on  
 6 this litigation, which is New Jersey  
 7 versus Delaware, Original No. 134,  
 8 comprise any part of your current job  
 9 responsibilities?  
 10       **A. Aside from this deposition,**  
 11 **I'm not working on it.**  
 12       Q. Does New Jersey's regulatory  
 13 processes in processing BP's application  
 14 to bill the LNG facility comprise any  
 15 part of your job responsibilities?  
 16       **A. I was at an early meeting**  
 17 **when BP came into the department. I**  
 18 **don't have any permit review**  
 19 **responsibilities, but I have been asked a**  
 20 **few times by staff who are reviewing it**  
 21 **to look at letters they've drafted on**  
 22 **deficiencies or policy application.**  
 23       Q. When did your involvement  
 24 begin?

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1       **A. Somewhere around the time of**  
2 **the first -- when a deficiency letter was**  
3 **being drafted. And I don't actually know**  
4 **which deficiency. I think there had been**  
5 **several. I don't know if it was the**  
6 **first or which.**  
7       **Q. Do you know whose name that**  
8 **deficiency letter would have gone out**  
9 **under?**  
10       **A. No. I know who prepared it.**  
11 **It was Dave Risilia. I don't know whose**  
12 **name was on the letter.**  
13       **Q. Was it a substantial letter;**  
14 **in other words, did it contain a number**  
15 **of pages?**  
16       **A. Yes.**  
17       **Q. Maybe 30, 40 pages?**  
18       **A. A lot of pages.**  
19       **Q. Would that have been in**  
20 **early 2005?**  
21       **A. It could have been. I don't**  
22 **know when the application actually first**  
23 **came in.**  
24       **Q. So you advised or consulted**

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1 with your staff regarding the  
2 deficiencies stated in the letter that  
3 eventually went out?  
4       **A. Dave is not my staff, does**  
5 **not report to me. So he asked me to look**  
6 **at it, so I did look at it with him.**  
7       **Q. In doing that, did you**  
8 **discuss any issues with him concerning**  
9 **the boundary between Delaware and New**  
10 **Jersey?**  
11       **A. I don't remember discussing**  
12 **the boundary. I remember discussing**  
13 **application of the Coastal Zone**  
14 **Management rules.**  
15       **Q. What general subjects do you**  
16 **recall discussing with him?**  
17       **A. Partly applying the energy**  
18 **use rules, which is something that isn't**  
19 **applied very often. Some people aren't**  
20 **that familiar with it.**  
21       **That was probably the main**  
22 **thing that he asked me about. I know**  
23 **there are a lot of other things he talked**  
24 **about. He was concerned about some of**

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1 **the dredge, sediment analysis for**  
2 **dredging, removal of shallows, rain**  
3 **fisheries, how fisheries would be**  
4 **affected. Those were some of the other**  
5 **issues.**  
6       **Q. Did you discuss with him the**  
7 **fact that Delaware had denied a permit**  
8 **for BP to build the project?**  
9       **A. I don't know.**  
10       **Q. Prior to the current**  
11 **proposed project by BP, which is also**  
12 **known as Crown Landing -- would you agree**  
13 **with that?**  
14       **A. Sounds right. I know it's**  
15 **BP. I guess it is. If you tell me it**  
16 **is, I believe you.**  
17       **Q. I'll represent to you that**  
18 **that's my understanding.**  
19       **A. Okay.**  
20       **Q. I was just asking to make**  
21 **sure we had some common ground.**  
22       **A. Okay.**  
23       **Q. It often gets referred to as**  
24 **the BP Project or the Crown Landing**

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1 Project.  
2       **A. Okay.**  
3       **Q. And my understanding is that**  
4 **those mean the same thing.**  
5       **A. Okay.**  
6       **Q. I just didn't --**  
7       **A. That's good to know.**  
8       **Q. Prior to the Crown Landing**  
9 **Project, are you aware of any instance**  
10 **where Delaware exercised regulatory**  
11 **authority over a boundary straddling**  
12 **project?**  
13       **A. I don't know of one where**  
14 **they exercised authority.**  
15       **MR. ATTAWAY: Can we take a**  
16 **little break?**  
17       **MS. KELLY: Sure.**  
18       - - -  
19       **(A recess occurred.)**  
20       - - -  
21       **(Ehinger-1 and Ehinger-2 marked**  
22 **for identification.)**  
23       - - -  
24 **BY MR. ATTAWAY:**

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1 Q. We've just had marked as  
2 exhibits Ehinger-1 and Ehinger-2.  
3 There's a draft Coastal Management  
4 Program, Bay and Ocean Shore Segment for  
5 the State of New Jersey dated May 1978,  
6 which is Exhibit-1. And then Exhibit-2  
7 is the final version of the same document  
8 that was issued in August 1978.  
9 MR. ATTAWAY: For the  
10 record, these are voluminous  
11 documents. They're approximately  
12 500 pages each, and therefore, I  
13 included only small excerpts for  
14 the exhibits which is basically  
15 the title pages, the table of  
16 contents and the section on  
17 boundaries defining the coastal  
18 zone.  
19 BY MR. ATTAWAY:  
20 Q. Ms. Ehinger, have you seen  
21 either of these documents before?  
22 A. I have seen them before.  
23 Q. Do you remember when you  
24 first saw them?

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1 A. Not specifically, no.  
2 Q. Rough time period?  
3 A. Probably when I started  
4 working at the DEP, I guess. But I don't  
5 remember.  
6 Q. So perhaps 1979 --  
7 A. Perhaps.  
8 Q. -- because that's when you  
9 started working at DEP?  
10 What is your understanding  
11 of New Jersey's Coastal Management  
12 Program? What was it intended to  
13 accomplish?  
14 A. The program establishes, I  
15 think, eight or six basic goals that are  
16 actually in these documents that are  
17 basically to balance development  
18 pressures with I guess you'd say  
19 protection of environmental areas.  
20 Q. Looking at Exhibit-1, on the  
21 front page, it says Draft Environmental  
22 Impact Statement, U.S. Department of  
23 Commerce, National Oceanic and  
24 Atmospheric Administration, Office of

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1 Coastal Zone Management. Is it your  
2 understanding that this document was  
3 submitted to the federal government?  
4 A. The letter on the inside  
5 indicates it was submitted to the federal  
6 government. Yes, that's my  
7 understanding.  
8 Q. Do you know the process of  
9 developing this document, like how long  
10 did it take and --  
11 A. No. I didn't start working  
12 here until 1979, so I wasn't involved in  
13 this document.  
14 Q. I understand you weren't  
15 involved. But do you have an  
16 understanding of when the process leading  
17 to the creation of this document started?  
18 A. I know the federal act  
19 passed in 1972, so it would have been  
20 after that, between 1972 and 1978.  
21 Q. Do you have an understanding  
22 of roughly how many resources went into  
23 preparing the document for submission to  
24 the federal government?

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1 A. You mean dollars or people?  
2 Q. Any way you can quantify it,  
3 substantial --  
4 A. When I started working,  
5 there was a Coastal Planning Office that  
6 worked on these on the federal program.  
7 Q. Who headed the Coastal  
8 Management Office at that time?  
9 A. The division was headed by  
10 Donald Graham.  
11 Q. I'm sorry, did you say  
12 Coastal Planning Office a moment ago?  
13 A. Yes. I don't know its  
14 official name but that's what I called  
15 it.  
16 Q. The entity you intended to  
17 refer to, who headed that?  
18 A. When I started working, I  
19 would say it was John Weingart -- no, it  
20 could have been Dave. I don't know for  
21 sure. I could name a couple  
22 possibilities.  
23 Q. John Weingart or David?  
24 A. Kinsey maybe.

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1 Q. What was the purpose of  
2 submitting the Coastal Management Plan to  
3 the federal government?  
4 A. The federal act allows a  
5 state to develop a coastal plan, at which  
6 point one part is their federal dollars  
7 associated with it; another is that  
8 there's the ability of the state to have  
9 sort of a coherent plan for managing  
10 their coast; and another is federal  
11 consistency, which is the ability of the  
12 state to review various federal actions  
13 in or affecting their coastal zone.  
14 Q. You mentioned federal  
15 dollars. What does that mean?  
16 A. There are federal grants  
17 that come, that states with an approved  
18 Coastal Management Program for are  
19 eligible.  
20 Q. So, in that sense, in  
21 submitting this document to the federal  
22 government, was it an important document  
23 for New Jersey?  
24 A. You mean what did New Jersey

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1 think at that time? I mean, I wasn't  
2 here in 1978. I wasn't even in the  
3 state. I don't know how it was perceived  
4 in New Jersey really at that time.  
5 Q. Please turn to Page 18 of  
6 Exhibit-1, the May 1978 draft. And  
7 that's actually a section that begins on  
8 Page 16. There's a photograph in  
9 between.  
10 I'm going to just ask you a  
11 question about the first, full paragraph  
12 on Page 18 but feel free to read from the  
13 beginning of that section on for context  
14 and then let me know when you're ready to  
15 proceed.  
16 A. Okay.  
17 Q. The first paragraph on Page  
18 18 reads as follows: Quote, New Jersey's  
19 Bay and Ocean Shore Segment boundary with  
20 with the State of Delaware through  
21 Delaware Bay and the Delaware River was  
22 established in 1933 by the U.S. Supreme  
23 Court in New Jersey versus Delaware (291  
24 U.S. 361), end quote.

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1 Ms. Ehinger, at any time  
2 during your employment with DEP, have you  
3 been familiar with the case that's cited  
4 here?  
5 A. Aware of. I don't know that  
6 I would call it familiar with.  
7 Q. When did you first become  
8 aware of that case?  
9 A. I became aware of the case  
10 in the context of this whole issue over  
11 the Crown Landing Project. I was aware  
12 of the fact the boundary was there  
13 somewhere before that but I don't know  
14 when.  
15 Q. And the next sentence  
16 states: Quote, the interstate boundary  
17 is generally along the ship channel in  
18 the middle of Delaware Bay. However,  
19 from a point near the northern tip of  
20 Artificial Island, in Lower Alloways Creek  
21 Township, Salem County, the interstate  
22 boundary between New Jersey and Delaware  
23 extends north at the mean low waterline  
24 on the New Jersey shoreline until the

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1 Delaware-Pennsylvania boundary, end  
2 quote.  
3 Does that sentence or is  
4 that sentence consistent with your  
5 understanding of where the boundary is  
6 between New Jersey and Delaware?  
7 A. As I said earlier, I'm aware  
8 that it extends to the shore. I don't  
9 really know where the northern and  
10 southern places it hits the New Jersey  
11 shore are.  
12 Q. And then the last sentence  
13 in that first paragraph on Page 18 --  
14 which, by the way, for the record is  
15 Bates stamped DE23849.  
16 Ms. Ehinger, you may be  
17 aware of Bates stamps. But if you're  
18 not, it's the numbers that the lawyers  
19 use to identify documents. You'll see  
20 that in the lower right-hand corner.  
21 The last sentence of the  
22 first paragraph on that page reads:  
23 Quote, resolution of potential conflicts  
24 between the coastal policies of Delaware

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1 and New Jersey will require continued  
 2 coordination and work in the first year  
 3 of Program approval, toward appropriate  
 4 agreements between the Coastal Management  
 5 Programs of both states, Salem County and  
 6 the affected municipalities, end quote.  
 7 What is your understanding  
 8 of this language?  
 9 A. You mean what do I think  
 10 that sentence means?  
 11 Q. Yes.  
 12 A. I have no understanding  
 13 other than reading it here. It means to  
 14 me that New Jersey and Delaware are going  
 15 to figure out how they're going to  
 16 handle, how their Coastal Management  
 17 Programs will coordinate or work on any  
 18 potential conflicts in this area and  
 19 they're going to spend a year doing it or  
 20 a year after they're approved.  
 21 Q. Had you seen the language in  
 22 this document before today?  
 23 A. I don't remember reading  
 24 this particular one.

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1 Q. Do you remember discussing  
 2 the concept of coordination between New  
 3 Jersey and Delaware at any time during  
 4 your career in the department?  
 5 A. Not coordinating of this  
 6 nature. I mean, that we should talk to  
 7 each other and work together in general  
 8 because we're adjacent states. But no,  
 9 not boundary specific stuff.  
 10 Q. I just have one question  
 11 about the second document. Keep the  
 12 first document, Exhibit-1, open to Page  
 13 18. And I just want you to read the  
 14 second, full paragraph on Page 19 of  
 15 Exhibit-2 and just tell me in general  
 16 whether that is in substance the same  
 17 language?  
 18 A. Yes.  
 19 - - -  
 20 (Ehinger-3 marked for  
 21 identification.)  
 22 - - -  
 23 BY MR. ATTAWAY:  
 24 Q. We've marked as Exhibit-3 a

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1 document titled Options for New Jersey's  
 2 Developed Coast dated March 1979, and  
 3 it's from the Department of Environmental  
 4 Protection of New Jersey.  
 5 Ms. Ehinger, do you remember  
 6 when in 1979 you started working for the  
 7 DEP?  
 8 A. January.  
 9 Q. And this document was dated  
 10 March 1, 1979. Have you seen this  
 11 document before today?  
 12 A. I found it in a box for  
 13 Rachel Harvis last week or so. I don't  
 14 remember seeing it before that.  
 15 Q. Did you look for other  
 16 documents to be used in this case when  
 17 you were searching for this document?  
 18 A. Last week I think it was or  
 19 maybe the week before Rachel was looking  
 20 --  
 21 MS. KELLY: Hold on. That's  
 22 kind of getting into what Rachel  
 23 asked her to do in terms of --  
 24 it's relevant whether she's seen

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1 it before.  
 2 But she said that she looked  
 3 at it at the request of counsel in  
 4 preparation for this case and for  
 5 document productions. I think  
 6 anything else would be privileged,  
 7 so if we can move away from that.  
 8 BY MR. ATTAWAY:  
 9 Q. What I'm asking is what you  
 10 did and not what an attorney told you to  
 11 do?  
 12 A. I pulled out, I looked for a  
 13 document titled Options for New Jersey's  
 14 Developed Coast which had three volumes  
 15 and I found two of them. And I left them  
 16 to be picked up in my office.  
 17 Q. Were you looking  
 18 specifically for this document?  
 19 MS. KELLY: I'm going to  
 20 object because of request of  
 21 counsel to -- I'm not sure whether  
 22 this was in response to your  
 23 request or whatever, but I think  
 24 it's a privileged issue.

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1 If you want to ask her about  
2 the substance of the document, her  
3 knowledge of it, that's fine.  
4 MR. ATTAWAY: I will.  
5 BY MR. ATTAWAY:  
6 Q. At any other time prior to  
7 last week when you looked for this  
8 document, did you search your files for  
9 documents to be given to New Jersey  
10 attorneys for use in this case?  
11 A. We made all the documents in  
12 our office available to New Jersey  
13 attorneys. They went through all our  
14 files.  
15 Q. When was that?  
16 A. I don't know when that was,  
17 the last couple years. And then Delaware  
18 attorneys came up and looked also.  
19 Q. When you say all the  
20 documents in your office, can you be a  
21 little more specific?  
22 A. We have boxes, dozens of  
23 boxes of files. We have file drawers.  
24 We have documents in bookcases. So it's

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1 all of those various things.  
2 Q. Where are those documents  
3 located?  
4 A. On the seventh floor of the  
5 DEP building.  
6 Q. The main DEP building just  
7 down the street from here?  
8 A. Yes, 401 East State Street.  
9 Q. How far back do those  
10 documents go?  
11 A. I don't know, 1970s, but I  
12 don't know if they go before that or when  
13 in the '70s.  
14 Q. Is there another location,  
15 an off-site location to which documents  
16 could have been sent between the '70s and  
17 today?  
18 A. Not from our office, I don't  
19 believe so. Land Use Regulation uses  
20 storage for permit files. I don't know  
21 if they use them for anything else.  
22 Q. You said Land Use uses  
23 storage for permit files. Do you mean  
24 off-site storage?

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1 A. Yes, because they have many  
2 permit application files that go way  
3 back. Some of them are off site. A lot  
4 of them are off site.  
5 Q. So if someone wanted to find  
6 all of the documents relevant to New  
7 Jersey's Coastal Management Program,  
8 where would one look to find those?  
9 A. I would look in our office.  
10 I would look in Land Use Regulation.  
11 Q. I'm sorry, I don't mean to  
12 interrupt you. When you say our  
13 office --  
14 A. The Coastal Management  
15 Office. And I would look in the Division  
16 of Land Use Regulation Offices. And I  
17 guess that's really all I can think of.  
18 NOAA's offices, I guess.  
19 Q. NOAA, being a federal  
20 agency?  
21 A. Yes, in Silver Spring.  
22 Q. Do you know if the Land Use  
23 Regulation Offices were searched for  
24 documents relevant to New Jersey's

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1 Coastal Management Plan?  
2 A. Do I know? No, I don't  
3 know.  
4 Q. Who is in charge of Land  
5 Use?  
6 A. Tom Micai is the director,  
7 M-I-C-A-I.  
8 Q. Do you know how long he's  
9 been the director?  
10 A. Not very long.  
11 Q. Who preceded him?  
12 A. Mark Moriello.  
13 Q. Do you know about how long  
14 was his tenure?  
15 A. Mark's?  
16 Q. Yes.  
17 A. Beginning of 2002. Is that  
18 when we had the election? 2002 to 2006.  
19 Q. Based on your reference to  
20 the election, does that mean that that  
21 position is a political appointment?  
22 A. It sometimes is and  
23 sometimes isn't.  
24 Q. Is your position a political

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1 appointment?  
 2 A. No.  
 3 Q. And who do you report to?  
 4 A. **Jean Herm.**  
 5 Q. And what is his or her  
 6 title?  
 7 A. **She is Director of the**  
 8 **Office of Policy Planning and Science.**  
 9 Q. And is she a Manager II?  
 10 A. **I don't know what her Civil**  
 11 **Service title is.**  
 12 Q. Let's turn back to the  
 13 Options document. Thanks for humoring me  
 14 with that diversion.  
 15 You've had a chance to look  
 16 at Pages 141 to 144. Is that correct?  
 17 MR. ATTAWAY: Just for the  
 18 record, these are Bates stamped  
 19 DE29661 through 29664. And this  
 20 is a voluminous document, and I've  
 21 provided only excerpts as a  
 22 deposition exhibit.  
 23 BY MR. ATTAWAY:  
 24 Q. So that was a long question.

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1 My question was intended to be: Have you  
 2 had a chance to look at this today?  
 3 A. Yes.  
 4 Q. Have you seen this -- I'm  
 5 sorry, you answered that earlier you had  
 6 seen the document.  
 7 Had you read Pages 141  
 8 through 144 before today?  
 9 A. **Not that I know of.**  
 10 Q. The first paragraph on Page  
 11 141, the last sentence states -- the  
 12 paragraph talks about the U.S. Supreme  
 13 Court decision in New Jersey versus  
 14 Delaware from 1933 that was referenced  
 15 earlier in the 1978 reports. And the  
 16 paragraph ends:  
 17 Consequently, major  
 18 development extending into the Delaware  
 19 River could require approval from the  
 20 State of Delaware, in addition to  
 21 approvals from the State of New Jersey,  
 22 end quote.  
 23 What is your understanding  
 24 of that language?

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1 A. **My understanding that**  
 2 **whoever wrote this felt that what it**  
 3 **says. I mean, I can't really elaborate**  
 4 **what it says. Major development could**  
 5 **require approval from the State of**  
 6 **Delaware as well as approvals from New**  
 7 **Jersey.**  
 8 Q. Was that consistent with  
 9 your working understanding during your  
 10 tenure at DEP?  
 11 A. **I really don't remember ever**  
 12 **thinking about Delaware permits when I**  
 13 **worked doing permits.**  
 14 Q. Toward the bottom of Page  
 15 141, there's a discussion about what's  
 16 termed as Delaware's, quote, stringent  
 17 Coastal Zone Act, which prohibited heavy  
 18 industrial development in a defined  
 19 coastal zone. Since the boundary between  
 20 New Jersey and Delaware extends to the  
 21 New Jersey shoreline, the restrictive  
 22 provisions of this Coastal Management Law  
 23 applied to development that would be  
 24 proposed for sites involving land and

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1 water along the Salem County Waterfront,  
 2 end quote.  
 3 Is that statement consistent  
 4 with your understanding of Delaware's  
 5 regulatory authority?  
 6 A. **My understanding today of**  
 7 **Delaware's regulatory authority do you**  
 8 **mean?**  
 9 Q. We can take it first today  
 10 and then I'll ask you at other points in  
 11 time.  
 12 A. **I guess what I would say is**  
 13 **my -- I don't really try to interpret**  
 14 **Delaware law is what I would say.**  
 15 **My understanding today is**  
 16 **that New Jersey would regulate these**  
 17 **things, and my understanding in the past**  
 18 **was New Jersey would regulate these**  
 19 **things. And I really didn't get into**  
 20 **whether or not or how Delaware regulated.**  
 21 Q. On Page 143 in the middle,  
 22 there's a heading that's titled Delaware  
 23 Jurisdiction in Salem County. And then  
 24 further down there's a discussion of the

62	<p>1 Delaware Underwater Lands Act. The last, 2 full sentence on that page reads: 3       The only experience with the 4 Delaware Underwater Lands Act and 5 development in New Jersey was in 1971 6 when Delaware granted a lease to the 7 DuPont Chambers Works in Deepwater to use 8 subaqueous lands in the Delaware River, 9 end quote.</p> <p>10       Do you have any knowledge 11 about Delaware's grant in 1971 of the 12 referenced lease to Chambers Works? 13       <b>A. No.</b> 14       <b>Q. So not now or at any point</b> 15 <b>in time?</b> 16       <b>A. Correct.</b> 17       <b>Q. On Page 144, the last</b> 18 <b>paragraph, second sentence reads: The</b> 19 <b>Delaware Attorney General issued an</b> 20 <b>advisory opinion concerning the effect of</b> 21 <b>the provisions of Delaware's Coastal Zone</b> 22 <b>Act on industrial development activities</b> 23 <b>in Salem County, which attempted to</b> 24 <b>clarify questions regarding permissible</b></p>	64	<p>1 written that? 2       <b>A. It's what I call the Coastal</b> 3 <b>Planning Bureau, but I don't know.</b> 4       <b>Q. And was that the bureau that</b> 5 <b>was headed either by Dave Kinsey or John</b> 6 <b>Weingart that you mentioned earlier?</b> 7       <b>A. Right.</b> 8       <b>Q. Do you know what those --</b> 9 <b>I'm sorry, I have more than one question.</b> 10 <b>Do you know what those individuals are</b> 11 <b>doing now?</b> 12       <b>A. They both are in the state.</b> 13 <b>Yes, I know what at least one is doing.</b> 14       <b>Q. Okay.</b> 15       <b>A. John Weingart is at Rutgers.</b> 16 <b>And he's also the Highlands, like the</b> 17 <b>chair or something of the Highlands.</b> 18       <b>Q. Is he employed by the State</b> 19 <b>of New Jersey?</b> 20       <b>A. He works at Rutgers, so I</b> 21 <b>assume that means yes. Dave Kinsey is in</b> 22 <b>New Jersey doing something. He's working</b> 23 <b>in New Jersey.</b> 24       <b>Q. In the private sector as far</b></p>
63	<p>1 uses, end quote. 2       Were you at any time 3 familiar with such an opinion by the 4 Attorney General of Delaware? 5       <b>A. No.</b> 6       - - - 7       <b>(A recess occurred.)</b> 8       - - - 9       <b>(Ehinger-4 and Ehinger-5 marked</b> 10 <b>for identification.)</b> 11       - - - 12 <b>BY MR. ATTAWAY:</b> 13       <b>Q. Before we proceed to the two</b> 14 <b>exhibits that I've just had marked, I</b> 15 <b>have one follow-up question on the last</b> 16 <b>exhibit, the Options report. We were</b> 17 <b>discussing three pages about the boundary</b> 18 <b>between New Jersey and Delaware, Pages</b> 19 <b>141 through 144. Do you know who would</b> 20 <b>have had responsibility for writing that</b> 21 <b>section?</b> 22       <b>A. No. I know a bureau but not</b> 23 <b>a person.</b> 24       <b>Q. Which bureau would have</b></p>	65	<p>1 as you know? 2       <b>A. In the private sector as far</b> 3 <b>as I know, possibly also at a university</b> 4 <b>though.</b> 5       <b>Q. Are Mr. Weingart or</b> 6 <b>Mr. Kinsey employed by the DEP?</b> 7       <b>A. Mr. Kinsey is not. And I</b> 8 <b>don't know if this Highlands council that</b> 9 <b>was established by law in the last few</b> 10 <b>years has -- I assume he's not an</b> 11 <b>employee. I don't know how he gets</b> 12 <b>appointed to this role he has.</b> 13       <b>Q. Let's move onto the exhibits</b> 14 <b>that are now marked Ehinger-4 and</b> 15 <b>Ehinger-5. Ehinger-4 is the draft 1980,</b> 16 <b>New Jersey Coastal Management Program.</b> 17 <b>And Exhibit-5 is the final of the same</b> 18 <b>document dated August 1980.</b> 19       <b>Ms. Ehinger, you've referred</b> 20 <b>to this document as the orange book?</b> 21       <b>A. Not the draft, the final.</b> 22       <b>Q. So Exhibit-5?</b> 23       <b>A. Yes, Exhibit-5.</b> 24       <b>Q. The August 1980 final</b></p>

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1 report?

2 **A. Correct.**

3 Q. And is that because it has

4 an orange cover?

5 **A. It sure is.**

6 Q. How widely used is the

7 orange book?

8 **A. It's not widely used.**

9 Q. What about early on when it

10 was first promulgated?

11 **A. There's a big section of it**

12 **that is regulations, and the regulations**

13 **were used a lot.**

14 Q. So shortly after it was

15 promulgated the orange book was used

16 often within the DEP?

17 **A. The regulations sections**

18 **were. We had a lot of regulations**

19 **printed separate, so it could have been**

20 **an excerpt from it. But that**

21 **substantively was the same as the**

22 **regulations in the orange book.**

23 Q. Do you know whether

24 attorneys for New Jersey reviewed the

67

1 orange book before it was issued?

2 **A. I don't know.**

3 Q. In your experience, is this

4 the type of document that would be

5 reviewed by attorneys before it were

6 issued?

7 **A. Not necessarily.**

8 Q. Unless it was submitted to

9 the federal government for funding,

10 correct?

11 **A. It was submitted to the**

12 **federal government for approval of the**

13 **Coastal Management Program on a statewide**

14 **basis.**

15 Q. And did New Jersey receive

16 federal funding as a result?

17 **A. New Jersey received federal**

18 **funding, yes.**

19 Q. Would you consider it

20 important for the document submitted to

21 the federal government to receive federal

22 funds to be accurate in all respects?

23 **A. I think it's important for**

24 **any document to be accurate.**

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1 Q. Would you consider the

2 Coastal Management Plan to be an

3 important document for New Jersey?

4 **A. Yes.**

5 Q. Looking at Exhibit-4, which

6 is the May 1980 draft, I'd like you to

7 look at the last paragraph on Page 18,

8 which for the record is DE24213. Again,

9 these coastal management documents are

10 voluminous and I've provided only

11 excerpts. Ready?

12 **A. Yes.**

13 Q. The last paragraph on Page

14 18 talks about the boundary between New

15 Jersey and Delaware. And let me just

16 read it. I think it's three sentences

17 long.

18 Quote, in most of Salem

19 County, the Delaware-New Jersey State

20 boundary is the mean low waterline on the

21 eastern (New Jersey) shore of the

22 Delaware River. The New Jersey and

23 Delaware Coastal Management agencies have

24 discussed this issue and have concluded

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1 that any New Jersey project extending

2 beyond mean low water must obtain coastal

3 permits from both states. New Jersey and

4 Delaware, therefore, will coordinate

5 reviews of any proposed development that

6 would span the interstate boundary to

7 ensure that no development is constructed

8 unless it would be consistent with both

9 state Coastal Management Programs, end

10 quote. Did I read that correctly?

11 **A. Yes.**

12 Q. Would Mr. Kinsey and/or

13 Mr. Weingart have drafted this language

14 as well as the boundary language in the

15 Options report?

16 **A. I don't know if they would**

17 **have drafted it. And I didn't mean to**

18 **say they drafted this language in the**

19 **Options report. I meant to say they**

20 **would have been overseeing the office**

21 **that drafted it. I don't know who**

22 **drafted this language.**

23 Q. So they would have had final

24 approval over whether to include or

70

1 exclude this language in the report  
2 issued to the public?  
3 **A. Final approval you said?**  
4 **Q. Yes.**  
5 **A. I don't know if they would**  
6 **have had final approval. They would have**  
7 **certainly had a role, an approval role.**  
8 **Whether it was final, I don't know.**  
9 **Q. So they would have given**  
10 **their opinion on whether this language**  
11 **should be included or excluded in the**  
12 **final report as released to the public?**  
13 **A. I guess I should clarify.**  
14 **This is my view in the regulatory**  
15 **permitting world of how things worked in**  
16 **the planning world which they were**  
17 **overseeing, so I really wasn't involved.**  
18 **I can't really say exactly how they did**  
19 **it or what opinions they gave.**  
20 **What I can say is the**  
21 **permitting section was here and didn't**  
22 **get involved. They were in charge of the**  
23 **planning section where these documents**  
24 **came from. So that's really what I'm --**

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1 **maybe a better segue intended.**  
2 **Q. Who else was in the planning**  
3 **department that was responsible for**  
4 **creating this document?**  
5 **A. There's a whole, small**  
6 **bureau that was in the planning office.**  
7 **You mean the names of some of the people?**  
8 **Q. If you can remember any.**  
9 **A. I mean, I can remember some**  
10 **of the names. I don't know the time**  
11 **periods. I know there's an Allan**  
12 **Campbell. There was a Stewart McKenzie.**  
13 **There was Skip Wiener. There were**  
14 **others. Those are some of them. This**  
15 **was a long time ago.**  
16 **Q. I understand.**  
17 **A. And we really didn't work**  
18 **that much together on these things.**  
19 **Q. So you were in permitting,**  
20 **and they were in planning?**  
21 **A. Correct.**  
22 **Q. Did you provide input to the**  
23 **Coastal Management Plan, the orange book?**  
24 **A. I don't remember doing so.**

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1 **Q. Let's look at Exhibit-5,**  
2 **which is the final version. And I'd just**  
3 **like you to look at Page 20 and compare**  
4 **it to what I just read into the record of**  
5 **Page 18 of the draft and let me know if**  
6 **it's the same language.**  
7 **A. It is.**  
8 **Q. Thank you. On Page 254 and**  
9 **255 of the final, the orange book,**  
10 **Exhibit-5, there's a passage, just a**  
11 **couple of paragraphs pertaining to**  
12 **liquified natural gas, which I think**  
13 **earlier you referred to as LNG, which is**  
14 **the acronym for liquified natural gas.**  
15 **If you can take a moment to read that,**  
16 **let me know when you're ready.**  
17 **A. Okay.**  
18 **Q. The first paragraph quotes**  
19 **some language from the National Energy**  
20 **Plan. And then the second paragraph,**  
21 **which is on Page 255, DE20616 is the**  
22 **Bates stamp, states as follows:**  
23 **Quote, the New Jersey**  
24 **Coastal Program states that LNG terminals**

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1 are discouraged unless they are  
2 constructed so as to neither unduly  
3 endanger human life nor property nor  
4 otherwise impair the public health,  
5 safety and welfare, and comply with the  
6 Coastal Resource and Development  
7 Policies. Because the tankering of LNG  
8 could pose potential risk to life and  
9 property adjacent to New Jersey's  
10 waterways which also serve as boundaries  
11 with the states of Pennsylvania and  
12 Delaware along the Delaware River and the  
13 state of New York in the Port of New York  
14 and New Jersey, the state considers  
15 decisions concerning the siting of LNG  
16 terminals to be an interstate matter, end  
17 quote.  
18 **Did you have a similar**  
19 **understanding that the siting of LNG**  
20 **terminals would be an interstate matter?**  
21 **A. I never, until this project**  
22 **came along, thought about LNG terminals**  
23 **siting. So if you mean -- and when it**  
24 **did, I was not actually thinking of it as**

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1 **an interstate matter. I was thinking of**  
 2 **it as a New Jersey matter.**  
 3 Q. On what basis were you  
 4 thinking of it as a New Jersey matter?  
 5 A. **Just because I thought in my**  
 6 **view it was New Jersey, so that's how I**  
 7 **thought of it.**  
 8 Q. Were you aware that part of  
 9 the facility, the proposed facility was  
 10 going to be in Delaware?  
 11 A. **I became aware of that**  
 12 **somewhere along the line, yes.**  
 13 Q. What was your initial  
 14 understanding of whether Delaware would  
 15 have authority to regulate the proposed  
 16 project to the extent that it extended  
 17 into Delaware?  
 18 A. **I never really thought about**  
 19 **Delaware regulating it or not.**  
 20 Q. So you were just --  
 21 A. **I kind of focused on New**  
 22 **Jersey regulation, not other states'**  
 23 **regulations.**  
 24 Q. So you saw a project and you

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1 saw that it was at least partially in New  
 2 Jersey and you thought that New Jersey  
 3 regulations would apply to it but you  
 4 didn't give a thought one way or another  
 5 to Delaware?  
 6 A. **Right. And I wasn't**  
 7 **particularly involved in the project**  
 8 **either.**  
 9 Q. Who was primarily involved  
 10 in processing the permits for the  
 11 proposed BP facility?  
 12 A. **It's in the Office of**  
 13 **Dredging and Sediment Technology. The**  
 14 **project manager is David Risilia, and his**  
 15 **supervisor is Suzanne Dietrich.**  
 16 Q. I'd like to turn to the last  
 17 page of Exhibit-5, the orange book.  
 18 A. **This?**  
 19 Q. Yes -- well, the next to  
 20 last page. Page 533, it's the last page  
 21 with text on it. This is a list of  
 22 people involved in preparing the  
 23 document. At the top, I think you'll see  
 24 a list, David Kinsey and John Weingart.

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1 And Allan Campbell, I think you mentioned  
 2 his name.  
 3 A. **Yes.**  
 4 Q. Between Mr. Kinsey,  
 5 Mr. Weingart and Mr. Campbell, who do you  
 6 think would most likely have focused on  
 7 the boundary issues that we've discussed  
 8 in the various drafts and final Coastal  
 9 Management Plans?  
 10 A. **I don't know.**  
 11 Q. Below that, there's a list  
 12 of planning staff. Any idea who would  
 13 have been primarily involved in the  
 14 boundary language?  
 15 A. **No.**  
 16 Q. Below that, there's a  
 17 paragraph that says: Planning assistance  
 18 was also provided by Chief Steven Whitney  
 19 and a number of other individuals of the  
 20 Bureau of Coastal Project Review,  
 21 including yourself. What planning  
 22 assistance did you provide for the orange  
 23 book?  
 24 A. **I don't remember providing**

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1 **any planning assistance. They listed**  
 2 **everyone, probably everyone in the**  
 3 **bureau. But I don't remember.**  
 4 Q. Could you possibly have  
 5 given comments to Chief Steven Whitney,  
 6 who then passed it on?  
 7 A. **I don't remember looking at**  
 8 **a draft. I don't remember being involved**  
 9 **in it.**  
 10 Q. Mr. Whitney was your  
 11 superior at that time?  
 12 A. **Yes, he was.**  
 13 Q. And he was the chief of the  
 14 --  
 15 A. **Bureau of Coastal Project**  
 16 **Review. I worked for Phil Sandine, who**  
 17 **worked for Steve.**  
 18 Q. I see Phil Sandine's name in  
 19 there. So you reported to Mr. Sandine  
 20 and then he reported to Mr. Whitney?  
 21 A. **Correct.**  
 22 Q. Did you at any point work  
 23 directly with Mr. Whitney?  
 24 A. **What do you mean by work**

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1 **directly with? Like talk to him**  
 2 **directly?**  
 3 Q. Let me break it up into  
 4 several questions. Did you at any time  
 5 throughout your career at DEP report  
 6 correctly to Mr. Whitney?  
 7 A. Yes.  
 8 Q. During what period of time?  
 9 A. **When I was a supervisor, I**  
 10 **reported to him at least part of the**  
 11 **time, if not all of the time.**  
 12 Q. And I know you said it early  
 13 on. If you can remind me of the dates?  
 14 A. '85 to '88, beginning of  
 15 '88.  
 16 Q. At other times, did you talk  
 17 directly to Mr. Whitney about permitting  
 18 issues?  
 19 A. **We talked about permitting**  
 20 **issues when I was working in -- when he**  
 21 **was a bureau chief, I was talking to him**  
 22 **about permitting issues, yes.**  
 23 Q. Did you ever talk to him  
 24 about the boundary between New Jersey and

79

1 Delaware?  
 2 A. **I don't ever remember**  
 3 **talking to him about the boundary.**  
 4 Q. Further down in that  
 5 paragraph after listing the individuals  
 6 in the Bureau of Coastal Project Review,  
 7 it goes on: Chief Thomas Hampton of the  
 8 Bureau of Coastal Enforcement and Field  
 9 Services. What was that bureau's  
 10 function?  
 11 A. **That bureau's function was**  
 12 **to -- in 1980, we're talking -- was to**  
 13 **enforce the three coastal permitting**  
 14 **statutes; Waterfront Development,**  
 15 **Wetlands Act of 1970 and CAFRA. And they**  
 16 **also conducted site inspections for**  
 17 **permit applications.**  
 18 Q. And then next is Chief James  
 19 Johnson of the Bureau of Tidelands. We  
 20 talked a little earlier about the Bureau  
 21 of Tidelands. And I think you said in  
 22 general, and correct me if I'm wrong,  
 23 that that's the bureau that would advise  
 24 the Tidelands Resource Council about

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1 whether to grant or deny a permit for a  
 2 riparian conveyance?  
 3 A. **Whether or not they advise**  
 4 **them -- they're the staff to them. I**  
 5 **don't know if you would say they gave**  
 6 **them advice or they just prepared all the**  
 7 **documents and pulled the information**  
 8 **together.**  
 9 Q. But they provided supporting  
 10 information for --  
 11 A. Yes.  
 12 Q. -- the Tidelands Resource  
 13 Council to decide whether to approve or  
 14 deny a grant application?  
 15 A. **They did provide them the**  
 16 **information, yes.**  
 17 Q. Did you ever work with  
 18 Mr. Johnson? It says Chief James  
 19 Johnson.  
 20 A. **Work with him or for him?**  
 21 Q. First, for him.  
 22 A. No.  
 23 Q. That's what I would have  
 24 assumed. Did you ever work with him?

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1 A. **Sometimes on an**  
 2 **application -- sometimes I would be**  
 3 **involved with the Bureau of Tidelands in**  
 4 **trying to figure out some kind of tricky**  
 5 **or tidelands issue, particularly a dock**  
 6 **type of thing.**  
 7 Q. What type of issue would  
 8 that be?  
 9 A. **When neighbors complain**  
 10 **about where someone's dock is going to**  
 11 **be, whether it should be their riparian**  
 12 **rights or someone else's and it will**  
 13 **affect their navigation in and out of**  
 14 **their dock or their property.**  
 15 Q. Did you inform Mr. Johnson  
 16 of permits that you were processing that  
 17 applied to activities to occur on lands  
 18 covered by an application for a riparian  
 19 conveyance?  
 20 A. **We sent them the permits**  
 21 **either signed or unsigned. And at one**  
 22 **point, we used to send them just notice**  
 23 **of applications but I don't know when**  
 24 **that stopped.**

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1 Q. So you would have sent  
2 Mr. Johnson a copy of any permit that you  
3 proposed to issue or had issued. Is that  
4 correct?  
5 A. We would have -- and it  
6 wasn't me personally sending but the  
7 process was that a permit that needed a  
8 tidelands conveyance of something below  
9 the mean low waterline would be sent to  
10 the Bureau of Tidelands.  
11 Q. And that was the standard  
12 operating procedure --  
13 A. Yes.  
14 Q. -- that it would be sent by  
15 the Bureau of Coastal Management to the  
16 Bureau of Tidelands?  
17 A. Right.  
18 Q. And would the chief  
19 typically review the permits?  
20 A. The chief?  
21 Q. Of the Bureau of Tidelands.  
22 A. I don't know if he reviewed  
23 them.  
24 Q. Do you know who in Tidelands

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1 would review them?  
2 A. No.  
3 Q. Do you know how long  
4 Mr. Johnson was Chief of the Bureau of  
5 Tidelands?  
6 A. No, a long time.  
7 Q. Was he chief when you  
8 started in 1979?  
9 A. Yes.  
10 Q. When was he succeeded, if  
11 you remember?  
12 A. I don't remember.  
13 Q. Do you remember who  
14 succeeded him?  
15 A. Yes, JoAnne Cubberley.  
16 Q. And how long did Ms.  
17 Cubberley serve as the Chief to the  
18 Bureau of Tidelands?  
19 A. I don't know that either.  
20 She retired a year or two ago. From  
21 whenever he left until then, she was.  
22 Q. So she was, as far as you  
23 know, she was the Chief of the Bureau of  
24 Tidelands following Mr. Johnson's exit

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1 and until Ms. Cubberley's retirement?  
2 A. Yes.  
3 Q. Did you work with Ms.  
4 Cubberley in any way?  
5 A. Yes.  
6 Q. Would you forward Ms.  
7 Cubberley as well as to Mr. Johnson when  
8 he had the position a copy of any permit  
9 that your division proposed or had  
10 executed?  
11 A. If it had a tidelands issue.  
12 If it was below -- if it is now and  
13 formerly flowed the mean high water, you  
14 need a conveyance.  
15 Q. Any activity proposed to be  
16 undertaken below mean high waterline,  
17 those permits would be forwarded to the  
18 Bureau of Tidelands?  
19 A. They should have been, if  
20 they didn't already have some kind of  
21 conveyance.  
22 Q. So, in other words, if there  
23 was already a conveyance in existence and  
24 this was a permitting application for a

85

1 new activity to occur on that same land,  
2 then would you or would you not send the  
3 permit to the Bureau of Tidelands?  
4 A. If you were -- it's easier  
5 with an example.  
6 Q. Sure.  
7 A. If you had formerly flowed  
8 land that's already been granted, then  
9 you wouldn't send that to tidelands. If  
10 you were doing maybe some kind of, if you  
11 had a license area for a dock at  
12 someone's home and you were doing  
13 something to modify that dock but it was  
14 all still within the license and the same  
15 number of slips, you wouldn't necessarily  
16 need to send that. But the majority of  
17 them would be sent.  
18 Q. Do you know whether there's  
19 an amendment process for the New Jersey  
20 Coastal Management Plan?  
21 A. There is a process to amend  
22 or change a state program.  
23 Q. And what is that process?  
24 A. The process is to -- the one

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1 that we've done has been program changes  
 2 as opposed to amendments, and that's the  
 3 one I'm familiar with.  
 4 Q. What's the difference  
 5 between a program change and amendment?  
 6 A. The amendments I think have  
 7 to go, they're a bigger process and a  
 8 bigger change. What we've submitted are  
 9 what we call routine program changes,  
 10 which would be a change to the program.  
 11 What we've worked on has been changes to  
 12 enforceable policies, which is primarily  
 13 our regulations and statutes, which it is  
 14 our regulations and statutes.  
 15 Q. And when you say the  
 16 programs or the changes were submitted,  
 17 were they submitted to the federal  
 18 government or were you talking about to  
 19 the State of New Jersey?  
 20 A. New Jersey would submit them  
 21 to the federal government for approval by  
 22 the federal government.  
 23 Q. And that applies to routine  
 24 program changes as well as I think what

87

1 you contrasted them with would be  
 2 amendments?  
 3 A. Yes. Either would have to  
 4 be approved by the federal government.  
 5 Q. Presumably, it's a different  
 6 process or standard for approving  
 7 amendments --  
 8 A. Right.  
 9 Q. -- as opposed to routine?  
 10 A. Yes, a different process at  
 11 least.  
 12 Q. You mentioned routine  
 13 program changes. Are you aware of any  
 14 amendments that New Jersey sought to  
 15 affect to its Coastal Management Program?  
 16 A. We went from the '78 to the  
 17 '80 and it included other areas. As far  
 18 as I know, that wasn't considered an  
 19 amendment. It was just the final  
 20 program. And I don't know of any  
 21 amendments, just program changes.  
 22 Q. Do you know how many routine  
 23 program changes have been submitted to  
 24 the federal government?

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1 A. Quite a few. I don't know  
 2 the number.  
 3 Q. Do you know if it's more or  
 4 less than ten?  
 5 A. I'd say it's around ten.  
 6 Q. Fair enough. Are you  
 7 familiar with the Delaware River and Bay  
 8 Authority?  
 9 A. Delaware River and Bay  
 10 Authority? I'm not sure I am.  
 11 Q. Are you familiar with the  
 12 Compact of 1962 between Delaware and New  
 13 Jersey?  
 14 A. No.  
 15 Q. Let me just see if this  
 16 refreshes your recollection.  
 17 - - -  
 18 (Ehinger-6 marked for  
 19 identification.)  
 20 - - -  
 21 BY MR. ATTAWAY:  
 22 Q. We've had marked as  
 23 Ehinger-6 the New Jersey statute  
 24 codifying a Delaware-New Jersey Compact

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1 originally executed in 1962. Ms.  
 2 Ehinger, have you seen this before?  
 3 A. Not that I'm -- no, I don't  
 4 remember ever seeing it before.  
 5 Q. Are you aware of it having  
 6 read the -- I think you read the preamble  
 7 and maybe selected other portions. Does  
 8 this refresh your recollection as to  
 9 hearing about any such Compact?  
 10 A. No.  
 11 Q. Turning to Page 10 of the  
 12 printout which is the exhibit, there's  
 13 Article XXII and its title, Environmental  
 14 Protection. I'll just read Part A. It  
 15 says:  
 16 Quote, the planning,  
 17 development, construction and operation  
 18 of any project, other than a crossing,  
 19 shall comply with all environmental  
 20 protection laws, regulations, directives  
 21 and orders, including, without  
 22 limitation, any coastal zone laws,  
 23 wetlands laws, or subaqueous land laws or  
 24 natural resource laws, now or hereafter

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1 enacted, or promulgated by the state in  
 2 which the project, or any part thereof,  
 3 is located, end quote.  
 4 So focusing on the language  
 5 towards the end, the state in which the  
 6 project, or any part thereof is located,  
 7 does this refresh your recollection as to  
 8 the coordination between New Jersey and  
 9 Delaware of a boundary straddling  
 10 project?  
 11 **A. It doesn't refresh my**  
 12 **recollection because I don't remember**  
 13 **ever seeing it before.**  
 14 **Q. Is this consistent with any**  
 15 **policy that you're aware of within the**  
 16 **department?**  
 17 **A. No. As I said, I don't**  
 18 **remember discussing a coordinated review**  
 19 **ever or what Delaware's authority should**  
 20 **be in these areas.**  
 21 **Q. You just focused on New**  
 22 **Jersey requirements and didn't --**  
 23 **A. Right.**  
 24 **Q. -- concern yourself one way**

91

1 or another with whether Delaware had or  
 2 lacked regulatory authority over a  
 3 boundary straddling project. Is that  
 4 correct?  
 5 **A. That's correct. I mean, and**  
 6 **I really didn't have much occasion. I**  
 7 **mean, I was looking at thousands of**  
 8 **permits and I don't remember any -- there**  
 9 **aren't those that stand out in this area**  
 10 **to my mind.**  
 11 **Q. Do you remember ever**  
 12 **processing a permit that concerned a**  
 13 **boundary straddling project?**  
 14 **A. Do I remember ever**  
 15 **processing one? I remember as I reviewed**  
 16 **documents there were a couple of permits,**  
 17 **but I don't remember ever -- if I know**  
 18 **now that there were some, yes. Do I**  
 19 **remember processing them, no.**  
 20 **Q. And you know from reviewing**  
 21 **documents during what time period?**  
 22 **A. Just looking through when I**  
 23 **was with the Attorney General's Office a**  
 24 **few weeks ago, a couple of permits.**

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1 **Q. In preparation for this**  
 2 **deposition?**  
 3 **A. Correct.**  
 4 **MR. ATTAWAY: Should we take**  
 5 **a break?**  
 6 **MS. KELLY: Sure.**  
 7 - - -  
 8 **(A recess occurred.)**  
 9 - - -  
 10 **BY MR. ATTAWAY:**  
 11 **Q. Ms. Ehinger, do you know**  
 12 **whether DEP has ever conditioned a New**  
 13 **Jersey permit on the satisfaction of**  
 14 **Delaware's permitting process?**  
 15 **A. In reviewing these few**  
 16 **applications for depositions, I saw two**  
 17 **permits that did so. So, at that time, I**  
 18 **became aware of it.**  
 19 **Q. Which permits were those?**  
 20 **A. One was a park, Fort Mott, I**  
 21 **think Fort Mott Park. And one is a cogen**  
 22 **plant.**  
 23 **Q. Is that the Keystone**  
 24 **Project?**

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1 **A. Yes.**  
 2 **Q. Let me just introduce that**  
 3 **permit, the Keystone permit and have it**  
 4 **marked.**  
 5 - - -  
 6 **(Ehinger-7 marked for**  
 7 **identification.)**  
 8 - - -  
 9 **BY MR. ATTAWAY:**  
 10 **Q. Just let me know when you're**  
 11 **ready to proceed?**  
 12 **A. I am ready to proceed. Are**  
 13 **we going to talk about it? I can read**  
 14 **this all through or I could after you ask**  
 15 **a question.**  
 16 **Q. I'll have a few questions**  
 17 **but not about every single part of it, so**  
 18 **you can take the time to read more**  
 19 **carefully if you want.**  
 20 **A. Okay.**  
 21 **Q. This is Exhibit-7, marked**  
 22 **Ehinger-7. It's a permit from New Jersey**  
 23 **DEP to the Keystone Cogeneration System.**  
 24 **It's dated September 24, 1991. Is this**

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1 the permit to which you just referred  
 2 that you had recently reviewed?  
 3 **A. Yes.**  
 4 **Q. The last page, Page 6,**  
 5 **underneath the signature line states Ruth**  
 6 **Ehinger, Manager, Bureau of Coastal**  
 7 **Regulation.**  
 8 **A. Yes.**  
 9 **Q. Which is yourself, correct?**  
 10 **A. It is myself.**  
 11 **Q. Is that your signature?**  
 12 **A. No, it is not.**  
 13 **Q. Whose signature is that?**  
 14 **A. Bob Tudor's signature.**  
 15 **Q. What is your familiarity**  
 16 **with this permit? In other words, had**  
 17 **you seen it before reviewing it and**  
 18 **preparing for your deposition?**  
 19 **A. I don't remember seeing it**  
 20 **before that.**  
 21 **Q. Would you, in the normal**  
 22 **course of your duties, have reviewed this**  
 23 **permit?**  
 24 **A. If I were -- normal**

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1 **procedure would be I would sign a permit**  
 2 **of this type if I were in the office.**  
 3 **But if I didn't, I wasn't there and**  
 4 **someone else signed it, that means I**  
 5 **probably would not have seen it.**  
 6 **Q. Page 5 has some**  
 7 **pre-conditions for the authority to**  
 8 **construct the facility. One of those is**  
 9 **Subaqueous Land and Coastal Zone**  
 10 **Management from Delaware. Is that**  
 11 **correct?**  
 12 **A. Yes.**  
 13 **Q. Do you know how this**  
 14 **condition made it into this permit?**  
 15 **A. No.**  
 16 **Q. Is this condition consistent**  
 17 **with the statement in the 1980 Coastal**  
 18 **Management Program, which you call the**  
 19 **orange book, concerning Delaware's**  
 20 **regulatory authority over boundary**  
 21 **straddling projects?**  
 22 **If you need to look back at**  
 23 **that, I think it's on Page 20 of that.**  
 24 **That's Exhibit-5, the final version of**

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1 the orange book.  
 2 **A. That says it will coordinate**  
 3 **reviews. It doesn't specifically say**  
 4 **anything about permits.**  
 5 **Q. The middle sentence of that**  
 6 **final paragraph on Page 20, again,**  
 7 **Exhibit-5 states: Quote, the New Jersey**  
 8 **and Delaware Coastal Management agencies**  
 9 **have discussed this issue and have**  
 10 **concluded that any New Jersey project**  
 11 **extending beyond mean low water must**  
 12 **obtain coastal permits from both states,**  
 13 **end quote.**  
 14 **That's what I was meaning to**  
 15 **refer to. And I apologize I wasn't more**  
 16 **specific before.**  
 17 **A. Right. So your question is**  
 18 **what again?**  
 19 **Q. Is the condition in the**  
 20 **Keystone permit that the applicant get**  
 21 **permits from Delaware before constructing**  
 22 **the project consistent with the sentence**  
 23 **I just read from the 1980 Coastal**  
 24 **Management Plan, the orange book?**

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1 **A. Yes.**  
 2 **Q. What would have been the**  
 3 **process for this condition being**  
 4 **incorporated in the Keystone permit?**  
 5 **A. I don't know why anyone came**  
 6 **up with this condition because, as far as**  
 7 **I know, we weren't seeing many of these**  
 8 **and I wasn't even aware this was**  
 9 **happening. I can only tell you the**  
 10 **process for preparing permits in general**  
 11 **and permit conditions.**  
 12 **Q. Okay.**  
 13 **A. Which is there's a project**  
 14 **manager assigned. I think it was Dave**  
 15 **Fanz it says. And each person worked in**  
 16 **various regions, and he would have had a**  
 17 **supervisor.**  
 18 **So Dave would have put**  
 19 **together a draft permit and the**  
 20 **supervisor would have reviewed it and**  
 21 **then submitted it -- and they would have**  
 22 **had a general region which would include**  
 23 **the Delaware and then that would have**  
 24 **been submitted up to me, in this case,**

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1 for signature.  
 2 **I would have signed all the**  
 3 **permits in the whole southern half of the**  
 4 **state. By this point, I would have**  
 5 **signed Freshwater Wetlands, Stream**  
 6 **Encroachment, CAFRA, Waterfront**  
 7 **Development and Coastal Wetlands permits.**  
 8 Q. Who was Mr. Fanz's  
 9 supervisor?  
 10 A. Kevin Broderick would have  
 11 been his supervisor.  
 12 MS. KELLY: Who, I'm sorry?  
 13 THE WITNESS: Kevin  
 14 Broderick.  
 15 BY MR. ATTAWAY:  
 16 Q. So, in the normal course of  
 17 things, Mr. Fanz would have prepared the  
 18 permit including this condition that  
 19 Keystone first get permits from Delaware  
 20 before constructing the project and he  
 21 would have submitted it to Kevin  
 22 Broderick?  
 23 A. In the normal course, he  
 24 would have prepared the permit with

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1 whatever conditions he felt were  
 2 appropriate and submit it to Kevin  
 3 Broderick.  
 4 Q. Is it possible that someone  
 5 else besides Mr. Fanz could have inserted  
 6 this condition?  
 7 A. His supervisor could modify  
 8 things certainly. I mean, yes, the  
 9 reason you have these various people  
 10 reviewing is because they can change  
 11 things.  
 12 Q. And they could --  
 13 A. And they could insert or  
 14 delete or modify.  
 15 Q. And the supervisor again  
 16 would have been Kevin Broderick?  
 17 A. Right.  
 18 Q. And then what would  
 19 Mr. Broderick have done with the permit  
 20 once he thought it was in shape?  
 21 A. He would have finished the  
 22 cover sheet and sent it onto me if I was  
 23 there.  
 24 Q. On the page Bates stamped

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1 NJ04404, which it actually says Page 1  
 2 Continued of the permit, it says prepared  
 3 by David Fanz. But before Mr. Fanz's,  
 4 there's a William M. Berns. Who is  
 5 Mr. Berns and what was his role?  
 6 A. He was an engineer and he  
 7 would have reviewed any stream  
 8 encroachment permits, which this was  
 9 apparently, as well as stormwater to see  
 10 if stormwater was being properly handled.  
 11 Q. So is it likely the case  
 12 that he would not have been involved in  
 13 drafting the condition that we were  
 14 talking about, the Delaware permit  
 15 condition?  
 16 A. It is not likely he would  
 17 have been involved.  
 18 Q. You said he was an engineer,  
 19 so he was more focused on the engineering  
 20 aspects as opposed to the boundary  
 21 aspects?  
 22 A. He would be focused on  
 23 engineering aspects.  
 24 Q. Would anyone else have been

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1 involved in drafting this permit?  
 2 A. I don't know who drafted --  
 3 I mean, I don't know of anyone else who  
 4 was involved. I don't remember the  
 5 permit drafting, so I couldn't say of  
 6 anyone else.  
 7 Q. But in the normal course in  
 8 this time period, are there other  
 9 individuals who might have been involved  
 10 in drafting a permit such as this one?  
 11 A. No. It would typically be  
 12 the supervisor with the person who was  
 13 assigned to it.  
 14 Q. Are you aware of any advice  
 15 given by any representative of New Jersey  
 16 to Keystone regarding the scope of  
 17 Delaware's authority over the project?  
 18 A. No, I'm not.  
 19 Q. Do you know an attorney  
 20 named William Anderson?  
 21 A. Yes.  
 22 Q. Do you work with him a lot  
 23 or a little bit?  
 24 A. I have worked with him over

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1 the years. I don't work with him much at  
2 all now.  
3 Q. At any time has he advised  
4 your department?  
5 A. He's the attorney that  
6 handles the Tidelands, Bureau of  
7 Tidelands primarily, so he would advise  
8 there.  
9 Q. Under what circumstances  
10 would you have legal counsel review a  
11 permit that you were planning to issue?  
12 A. I don't remember them  
13 reviewing permits I was about to issue as  
14 opposed to permit applications I was  
15 about to deny.  
16 Q. What about permits that you  
17 had issued?  
18 A. Would the Attorney General's  
19 Office review them?  
20 Q. Yes.  
21 A. No.  
22 Q. Would the Keystone permit  
23 have been the type of permit that you or  
24 your division sent to the Bureau of

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1 Tidelands in conjunction with the  
2 tidelands conveyance?  
3 A. Yes, because of the dredging  
4 in the river and outfalls in the river.  
5 Q. So this Keystone permit  
6 would have been sent to the Bureau of  
7 Tidelands, correct?  
8 A. Should have been.  
9 Q. Should have been in the  
10 normal course?  
11 A. I can't say it would have  
12 been.  
13 Q. That's fine. To whom would  
14 it have been addressed during this time  
15 period?  
16 A. I imagine just to the  
17 bureau, not to an individual -- actually,  
18 let me just see if it talks about needing  
19 a tidelands conveyance.  
20 This permit doesn't, at  
21 least I don't see it saying anything  
22 about it needing a tidelands conveyance.  
23 So, in that case, it probably wouldn't  
24 have been sent, unless I'm missing it.

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1 So I don't see a condition  
2 related to tidelands, so I don't know if  
3 it would have gotten to them or not.  
4 Q. If the applicant had needed  
5 a tidelands conveyance before  
6 constructing this project, would it have  
7 been the case in the normal course that  
8 this permit would have been sent to the  
9 Bureau of Tidelands?  
10 A. It should have been sent to  
11 the Bureau of Tidelands if it needed  
12 conveyance.  
13 Q. Are you aware that  
14 Mr. Anderson submitted an affidavit in  
15 this litigation?  
16 A. I have that book that has  
17 everybody's stuff but I don't know if  
18 it's in there. Not exactly. I know I  
19 have a book of the case filing, but I  
20 haven't read through it.  
21 Q. The initial filing?  
22 A. Yes.  
23 Q. Do you recall whether or not  
24 you read Mr. Anderson's affidavit?

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1 A. No, I don't remember reading  
2 his affidavit.  
3 Q. Is it possible you read it  
4 and just don't remember it today?  
5 A. I think it's unlikely I read  
6 it.  
7 Q. Mr. James Johnson was listed  
8 in the 1980 Coastal Management Plan as  
9 being the Chief of the Tidelands Bureau.  
10 Are you aware of any advice that he  
11 purportedly gave to Keystone regarding  
12 Delaware's regulatory authority over the  
13 Keystone Project?  
14 A. No.  
15 Q. Are you aware of whether or  
16 not he had any discussions with any  
17 representative of Delaware regarding  
18 Delaware's regulatory authority over the  
19 project?  
20 A. No.  
21 Q. Are you aware of whether  
22 anyone at New Jersey had any  
23 conversations with anyone representing  
24 Delaware about the scope of Delaware's

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1 authority over the Keystone Project?  
 2 **A. No.**  
 3 **Q. This was signed by Bob**  
 4 **Tudor. Who is Mr. Tudor, and why would**  
 5 **he have signed for you during this time**  
 6 **period?**  
 7 **A. He was the division director**  
 8 **and --**  
 9 **Q. Is that above or below you?**  
 10 **A. That would have been above.**  
 11 **Q. So you reported directly to**  
 12 **Mr. Tudor?**  
 13 **A. Yes. And depending on the**  
 14 **type of permit, the authority either when**  
 15 **I wasn't there either went up to the**  
 16 **director or I could have signed someone**  
 17 **in my bureau like a supervisor.**  
 18 **Q. Would Mr. Tudor have been**  
 19 **involved in reviewing the substance of**  
 20 **the permit before he signed it?**  
 21 **A. I guess I can't say what he**  
 22 **did to sign permits.**  
 23 **Q. Did he sign a lot of permits**  
 24 **for you?**

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1 **A. I wouldn't say a lot. I**  
 2 **signed -- I mean, I was responsible at**  
 3 **this period probably for 3,000 maybe a**  
 4 **year or so, a couple thousand Coastal and**  
 5 **then Wetlands and Stream Encroachment.**  
 6 **So most of them I would sign.**  
 7 **But if I wasn't there, then**  
 8 **-- and they have deadlines. They have**  
 9 **90-day deadlines, a lot of them, so you**  
 10 **can't wait until someone shows up in the**  
 11 **office again. But I would say he**  
 12 **probably didn't sign a lot, but I don't**  
 13 **know how many.**  
 14 **Q. If this had come to you, in**  
 15 **other words, if you had been in town when**  
 16 **it was ready for signature, would you**  
 17 **have read the permit before signing it?**  
 18 **A. Yes.**  
 19 **Q. And would this condition on**  
 20 **Page 5 have given you any pause had you**  
 21 **seen it?**  
 22 **A. I would say back then I**  
 23 **would have asked about it since I wasn't**  
 24 **familiar with ever doing anything like**

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1 **that.**  
 2 **Q. Who would you have asked?**  
 3 **A. I would have first gone to**  
 4 **the supervisor and Dave Fanz, the project**  
 5 **manager, and say what's going on with**  
 6 **this.**  
 7 **Q. Anyone else?**  
 8 **A. At that point -- I mean,**  
 9 **it's hard for me to say what I would have**  
 10 **done then since I wasn't -- I mean, I**  
 11 **wasn't doing it. It's hard for me to go**  
 12 **back in time and think of what I would**  
 13 **have done had I been faced with it at**  
 14 **that time.**  
 15 **I probably would, if I had**  
 16 **been -- I would have found out what they**  
 17 **said and gone from there, I guess you'd**  
 18 **say.**  
 19 **Q. Is it possible you would**  
 20 **have had it reviewed by the Attorney**  
 21 **General's Office?**  
 22 **A. I couldn't say what I would**  
 23 **do.**  
 24 **Q. Are you aware of any efforts**

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1 **by New Jersey and Delaware to coordinate**  
 2 **review of boundary straddling projects?**  
 3 **A. In pulling files for this**  
 4 **case, I became aware of something that**  
 5 **had been underway at some point along the**  
 6 **line.**  
 7 **Q. What was that? First of all**  
 8 **--**  
 9 **A. I didn't become aware in**  
 10 **great detail. When was that?**  
 11 **Q. When did you become aware of**  
 12 **it?**  
 13 **A. I remember finding out about**  
 14 **it just when we were going through all**  
 15 **these files to say which ones to give --**  
 16 **the Attorney's General Office in the end**  
 17 **went through all our files but sort of**  
 18 **focused them in on certain drawers of**  
 19 **stuff. And that would have been after**  
 20 **the case came up, 2004, 2005, I guess.**  
 21 **Q. Let me introduce another**  
 22 **exhibit.**  
 23 **---**  
 24 **(Ehinger-8 marked for**

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1 identification.)  
 2 - - -  
 3 BY MR. ATTAWAY:  
 4 Q. So what's been marked as  
 5 Exhibit-8 is a memorandum to distribution  
 6 and then there's a list of several names  
 7 at the bottom of the page from Steven  
 8 Whitney, manager. And I take it that's  
 9 Manager of the Coastal Bureau or whatever  
 10 it was called at that time. Is that  
 11 correct?  
 12 A. I think it would be manager  
 13 of whatever the planning entity was at  
 14 that time.  
 15 Q. And this is a one-page cover  
 16 memo that attaches a draft Memorandum of  
 17 Agreement between New Jersey Department  
 18 of Environmental Protection and Delaware  
 19 Department of Natural Resources and  
 20 Environmental Control. And it's Bates  
 21 stamped DE27930 through 35.  
 22 Ms. Ehinger, is this the  
 23 document you were just talking about that  
 24 you had reviewed recently?

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1 A. I don't know if I saw the  
 2 memo. But I saw the MOA, a draft. I  
 3 don't know if there's more than one draft  
 4 either. But this is similar to it, if  
 5 not the same.  
 6 Q. The distribution list  
 7 includes your name. Is that correct?  
 8 A. That is correct.  
 9 Q. Do you recall seeing this in  
 10 1994?  
 11 A. No, I do not.  
 12 Q. Do you recall being familiar  
 13 with the substance of the document, if  
 14 not the document itself?  
 15 A. In 1994?  
 16 Q. Yes.  
 17 A. In 1994, I was doing  
 18 permits. CAFRA had just been amended and  
 19 we had spent -- July 19th it was going to  
 20 take effect, and we were going to start  
 21 regulating single family homes. And we  
 22 had to put together regulations. And I  
 23 don't have any recollection of this  
 24 coming through at that time.

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1 Q. It was a busy time?  
 2 A. It was an extremely busy  
 3 time.  
 4 Q. On Page 2 of the memorandum  
 5 toward the bottom of the page --  
 6 A. Page 2 of the memorandum,  
 7 not the --  
 8 Q. The MOA.  
 9 A. Right, not the memo.  
 10 Q. It's confusing because  
 11 there's a cover memorandum distributing  
 12 the draft MOA.  
 13 A. Okay.  
 14 Q. So I intended to refer to  
 15 Page 2 of the MOA, which is DE27932.  
 16 A. Okay.  
 17 Q. The last, full sentence on  
 18 that page states: Both agencies  
 19 recognize that each agency has the  
 20 independent authority to approve or deny  
 21 applications pursuant to its own  
 22 regulations, end quote.  
 23 Is that consistent with your  
 24 understanding at the time?

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1 A. At the time, I don't  
 2 remember any -- I had no thought to what  
 3 Delaware regulated in this area.  
 4 Q. One way or another? You  
 5 didn't think they could; you didn't think  
 6 they couldn't?  
 7 A. I don't remember thinking  
 8 about it one way or the other, that they  
 9 could or couldn't.  
 10 Q. Going back to the cover  
 11 memorandum, the distribution was, and  
 12 I'll just go down the list of names,  
 13 Sarah Cooksey at DNREC, which for the  
 14 reporter that's D-N-R-E-C, an  
 15 abbreviation for Department of Natural  
 16 Resources and Environmental Control.  
 17 Did you know Ms. Cooksey  
 18 during this time period?  
 19 A. I don't know when I met her.  
 20 I don't know if I knew her then.  
 21 Q. In what context did you  
 22 first meet her?  
 23 A. I met her at a Federal  
 24 Consistency Workshop we both attended,

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1 but I don't know when that was.  
2 Q. And what is a Federal  
3 Consistency Workshop?  
4 A. It was an all-day  
5 workshop/seminar put on by NOAA to bring  
6 in federal agencies and state and explain  
7 sort of how the federal consistency  
8 process under the Coastal Management Act  
9 worked and could work better.  
10 Q. What is a federal  
11 consistency determination?  
12 A. It's a determination by a  
13 state that a federal action, a proposed  
14 federal action is consistent with their  
15 Coastal Management Program.  
16 Q. The state's Coastal  
17 Management Program?  
18 A. Right.  
19 Q. So the federal government  
20 has to comply with the state's Coastal  
21 Management Program?  
22 A. Yes, with some caveats.  
23 Q. Fair enough. We could be  
24 here for several days discussing caveats

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1 and things like that, so we won't go  
2 there.  
3 The next name is Robert  
4 Tudor, USEPA. Is that the same Bob Tudor  
5 that signed the Keystone permit?  
6 A. Yes.  
7 Q. And I gather that between  
8 1991 and 1994 he went to the EPA?  
9 A. Yes.  
10 Q. When did he leave DEP?  
11 A. I don't know, between 1991  
12 and -- I don't know.  
13 Q. Did you say you reported  
14 directly to him?  
15 A. Yes. There was a period I  
16 reported to him while he was director in  
17 what was I think then the Division of  
18 Coastal Resources.  
19 Q. Do you know who succeeded  
20 him?  
21 A. For sure? Not for sure.  
22 Q. To the best of your  
23 recollection.  
24 A. I think Ernest Hahn, I

116

1 believe.  
2 Q. And did you report directly  
3 to Mr. Hahn --  
4 A. Yes.  
5 Q. -- after that?  
6 John Weingart is listed on  
7 here. You mentioned his name earlier in  
8 conjunction with the Coastal Management  
9 Plan. What was his role at this time?  
10 A. It's really hard for me to  
11 tell for sure where people were at given  
12 times. I could tell you one of two roles  
13 he was in. He may have been and most  
14 likely was assistant commissioner but  
15 it's -- I think he must have been that.  
16 He was a director somewhere but it must  
17 have been before that.  
18 Q. My understanding of the  
19 structure of DEP is that there is one  
20 commissioner who is at the top and is  
21 politically appointed. Is that correct?  
22 A. Yes.  
23 Q. And then below him or her  
24 would be several assistant commissioners?

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1 A. That used to be the case.  
2 It varies. There may be deputy  
3 commissioners and there may not be. And  
4 they're higher than assistant  
5 commissioners.  
6 Q. At this time, do you  
7 remember if there were any deputy  
8 commissioners?  
9 A. Who was commissioner at this  
10 time? I don't know.  
11 Q. It says at the top Robert C.  
12 Shinn, Commissioner. It's on the  
13 letterhead anyway.  
14 A. Then either there was a  
15 chief of staff that people reported to or  
16 a deputy commissioner, but I don't know  
17 which at that point.  
18 Q. Do you know what  
19 Mr. Weingart's title would have been as  
20 assistant commissioner? In other words,  
21 my understanding is there are assistant  
22 commissioners for X and Y and Z.  
23 A. Right. Do you mean do I  
24 know what -- I don't know what all he had

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1 control -- probably environmental  
2 regulation but that's a guess.  
3 Q. Do you know at that time how  
4 many assistant commissioners there were?  
5 A. No.  
6 Q. Or can you remember some of  
7 the other fields that they would have  
8 been assistant commissioner over?  
9 A. There would have been  
10 someone over Natural Resources. There  
11 would have been someone I think at this  
12 point over sort of planning types of  
13 things. There would have been someone  
14 having to deal with waste of various  
15 types, hazardous waste, I don't know, a  
16 management and budget kind of person.  
17 Q. Are any of those other  
18 assistant commissioners in the list here  
19 as far as you know, the distribution  
20 list?  
21 A. No.  
22 Q. Who is Martin Bierbaum,  
23 which is the next name on the list?  
24 A. Who was he? I can't tell

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1 you what people's roles were at given  
2 dates because it changed so much. I  
3 can't tell you what, in July of 1994, I  
4 don't know where Marty Bierbaum worked.  
5 Q. Do you remember at any point  
6 in time --  
7 A. Yes.  
8 Q. -- what his role was?  
9 A. Yes. At one point, he  
10 oversaw what I'm calling a planning  
11 entity, which at one point was in the  
12 Division of Coastal Resources and then  
13 was moved to another group, which was --  
14 I don't even know what it was called,  
15 like a watershed kind of group. And I  
16 don't know when that happened.  
17 Q. Approximate time period?  
18 Was it before or after '94 that you're  
19 talking about?  
20 A. I'm afraid I can't tell you.  
21 Q. And Ernie Hahn you  
22 mentioned. I honestly don't remember  
23 what you said about him, but you  
24 mentioned him a few minutes ago.

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1 A. He became a division  
2 director. He may have been a director at  
3 this time. Before that, he was a  
4 supervisor in the Division of Coastal  
5 Resources. And he became assistant  
6 commissioner eventually but not in '94,  
7 no, definitely not in '94.  
8 Q. What about now, is he still  
9 with the state?  
10 A. He is with the Delaware  
11 Rariton Canal Commission which is sort  
12 of, I don't know, it's one of those  
13 things it's not in the department but  
14 it's a quasi-state.  
15 Q. Is it an interstate entity?  
16 A. No, it manages the canal on  
17 the Jersey side.  
18 Q. Theresa Fowler?  
19 A. She worked in the planning,  
20 Coastal Planning Section probably for  
21 Steve Whitney.  
22 Q. Dennis Hart?  
23 A. What did he do at this  
24 point? I don't know. He was at one

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1 point a director of the group that did  
2 all the treatment works approvals, like  
3 sewer, various things related to sanitary  
4 waste management.  
5 Q. And Bill O'Sullivan?  
6 A. He would have probably been  
7 an administrator director at this point  
8 over the air permits.  
9 Q. So he would have been the  
10 top person regarding air permits?  
11 A. Possibly the top. He became  
12 the top.  
13 Q. Tom Wells?  
14 A. He was at that point with  
15 the Green Acres Program.  
16 Q. And JoAnne Cubberley?  
17 A. Would have been with the  
18 Tidelands.  
19 Q. And at that time, she was  
20 the director, whatever her title -- my  
21 understanding from what you said earlier  
22 was she was the highest person in that  
23 bureau?  
24 A. She was, presumably by '94.

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1 **As I said, I don't know the time frames**  
 2 **of all these things.**  
 3 Q. But whenever she succeeded  
 4 Mr. James Johnson, she took his position  
 5 as the top spot in the Bureau of  
 6 Tidelands, correct?  
 7 A. **Correct.**  
 8 Q. So would you say that most  
 9 of the names, if not all of them, on this  
 10 list from the DEP were fairly high up in  
 11 the department?  
 12 A. **Yes.**  
 13 Q. They were either division  
 14 chiefs or assistant commissioners or  
 15 somewhere in that realm?  
 16 A. **Bureau chiefs, not division;**  
 17 **bureau, being a lot lower than a**  
 18 **division. Most of them are bureau or**  
 19 **division.**  
 20 Q. But would you characterize  
 21 any of them as low- or even medium-level  
 22 staff?  
 23 A. **Theresa Fowler.**  
 24 Q. Anyone else?

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1 A. **As I said, I don't know when**  
 2 **they got these various jobs for sure, so**  
 3 **I would assume the others had the higher**  
 4 **titles by then. I'm not positive.**  
 5 Q. Mr. Steven Whitney submitted  
 6 an affidavit in this case in New Jersey's  
 7 initial filing. I think you said earlier  
 8 that you had a copy of at least a portion  
 9 of that initial filing. Is that correct?  
 10 A. **I have a volume that's, I**  
 11 **think, the initial filing or a portion of**  
 12 **it.**  
 13 Q. Have you read it?  
 14 A. **No.**  
 15 Q. How did you get it?  
 16 A. **From the Attorney General's**  
 17 **Office.**  
 18 Q. So you did not read  
 19 Mr. Whitney's affidavit submitted in this  
 20 case?  
 21 A. **I don't remember reading any**  
 22 **of the affidavits.**  
 23 Q. Have you spoken with  
 24 Mr. Whitney about this case?

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1 A. **No.**  
 2 Q. When is the last time you  
 3 spoke with Mr. Whitney?  
 4 A. **A long time ago, before he**  
 5 **went to Maine.**  
 6 Q. He didn't invite you to go  
 7 to Maine?  
 8 A. **No.**  
 9 MR. ATTAWAY: Now I'd like  
 10 to introduce Exhibit-9, and we can  
 11 go off the record for a moment.  
 12 - - -  
 13 (A discussion off the record  
 14 occurred.)  
 15 - - -  
 16 (Ehinger-9 marked for  
 17 identification.)  
 18 - - -  
 19 THE WITNESS: Got it.  
 20 BY MR. ATTAWAY:  
 21 Q. We've had marked as  
 22 Exhibit-9 a letter dated August 30, 1993,  
 23 and it's to the Tidelands Resource  
 24 Council through JoAnne Cubberley,

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1 Administrator, Bureau of Tidelands from  
 2 Ruth E. Ehinger, Manager of Bureau of  
 3 Coastal Regulation. And it's regarding a  
 4 Tidelands Recommendation Memo. And then  
 5 it lists several permits by number,  
 6 Freshwater Wetlands permit, Waterfront  
 7 Development permits and other permits.  
 8 And it's on letterhead of the State of  
 9 New Jersey, Department of Environmental  
 10 Protection, Land Use Regulation Program.  
 11 The text of the letter is  
 12 short. I'll just read it. It says: The  
 13 Land Use Regulation Program has reviewed  
 14 the above-referenced application and  
 15 found it consistent with the applicable  
 16 rules on Coastal Zone Management.  
 17 Therefore, a permit has been issued, a  
 18 copy of which is enclosed.  
 19 Recommendation: I,  
 20 therefore, recommend that the Tidelands  
 21 Resource Council approve this conveyance.  
 22 The program has no concerns regarding  
 23 public access at this particular site.  
 24 I gather from reading this,

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1 Ms. Ehinger, and please let me know if  
 2 you agree or not, that this is a  
 3 recommendation from you effectively to  
 4 the Tidelands Resource Council  
 5 transmitted through JoAnne Cubberley, who  
 6 was the top person in the Bureau of  
 7 Tidelands, and recommendation that the  
 8 tidelands conveyance be approved. Is  
 9 that correct?  
 10 **A. It's signed by someone else**  
 11 **for me recommending that it be approved.**  
 12 Q. Are you referring to the  
 13 handwritten initials --  
 14 **A. Correct.**  
 15 Q. -- in the From?  
 16 Do you know whose initials  
 17 those are?  
 18 **A. Kevin Broderick's.**  
 19 Q. So it says KB for next to  
 20 your name?  
 21 **A. Yes, or KJB.**  
 22 Q. But it's Kevin Broderick?  
 23 **A. Correct.**  
 24 Q. Why would this document have

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1 been prepared and sent to Tidelands  
 2 Resource Council?  
 3 **A. As we talked about before,**  
 4 **the procedure was that once we issued a**  
 5 **permit, if it needed a tidelands**  
 6 **conveyance, it would be sent, the permit**  
 7 **was to be sent to the Bureau of Tidelands**  
 8 **and there was a cover memo that went with**  
 9 **it. And this is the cover memo that**  
 10 **would have gone over, it was a form kind**  
 11 **of memo saying -- because the main thing**  
 12 **was we reviewed it under the rules, and**  
 13 **therefore, it met the rules. And,**  
 14 **secondly, we would address if there were**  
 15 **public access conditions that should be**  
 16 **included in that tidelands conveyance.**  
 17 Q. And this was a standard  
 18 letter that would have been sent letting  
 19 the Tidelands Resource Council know that  
 20 the required permits had been issued by  
 21 your division and so that they would be  
 22 free to issue the conveyance if they  
 23 otherwise found it appropriate. Is that  
 24 fair to say?

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1 **A. That's correct.**  
 2 Q. During what period of time  
 3 would you or Mr. Broderick signing for  
 4 you have sent these types of letters?  
 5 **A. It would typically have been**  
 6 **signed and sent the same day as the**  
 7 **permit was signed and sent. They would**  
 8 **have come together in a folder to sign**  
 9 **both.**  
 10 Q. I mean, during your tenure  
 11 in the business of issuing permits --  
 12 which I think you said was '79 through  
 13 2001 more or less?  
 14 **A. Right.**  
 15 Q. Throughout that time period,  
 16 is this the type of letter that would  
 17 have been sent to the Bureau of Tidelands  
 18 with respect to permits?  
 19 **A. I don't remember the early,**  
 20 **early ones. It changed somewhere along**  
 21 **the line, but this was something used for**  
 22 **a substantial period of time.**  
 23 Q. Starting approximately when,  
 24 in the '80s?

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1 **A. I really couldn't tell you**  
 2 **exactly.**  
 3 Q. Remember we talked about the  
 4 Keystone permit earlier?  
 5 **A. Yes.**  
 6 Q. That was in September of  
 7 1991 as the date on the permit. If that  
 8 had been sent to the Bureau of Tidelands,  
 9 would it have been accompanied by a  
 10 memorandum such as this?  
 11 **A. I'm sure there would be some**  
 12 **memorandum, but I really don't know if**  
 13 **the form changed over time.**  
 14 Q. It may have a different look  
 15 in format, but there would have been some  
 16 kind of transmittal?  
 17 **A. I would expect there to be a**  
 18 **transmittal.**  
 19 Q. Would that still be in your  
 20 files, a copy of it?  
 21 **A. It should be.**  
 22 Q. I'd like to ask that you  
 23 look for that and give it to your  
 24 counsel?

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1     **A. In my files personally?**  
 2     Q. Yes.  
 3     **A. I don't have any personal.**  
 4     Q. In the files of your -- what  
 5 did you understand me to ask?  
 6     **A. In the department's files,**  
 7 **which are the Division of Land Use**  
 8 **Regulation.**  
 9     MR. ATTAWAY: I'd like to  
 10 ask, and maybe I should direct  
 11 this to counsel and I'll follow-up  
 12 in writing, I'd like to ask that  
 13 you cause those files to be  
 14 searched for the cover memorandum  
 15 that could have gone with the  
 16 Keystone.  
 17     MS. KELLY: We can look into  
 18 what ones have been produced  
 19 already and we'll take that under  
 20 advisement. That was for the  
 21 Keystone permit?  
 22     MR. ATTAWAY: Correct.  
 23 BY MR. ATTAWAY:  
 24     Q. Just a couple more questions

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1 about this type of letter, if one exists,  
 2 with respect to Keystone. How would you  
 3 go about searching for a copy of that  
 4 letter in the department's files?  
 5     **A. I would go to the permit**  
 6 **application file for this file, for the**  
 7 **Keystone file number and look in it.**  
 8 **And --**  
 9     Q. How difficult would that --  
 10 please finish, I'm sorry.  
 11     **A. They could also look in the**  
 12 **Bureau of Tidelands files, if they have a**  
 13 **file on this case.**  
 14     Q. Does your department keep a  
 15 file? Would it be a file with all  
 16 documents relevant to a particular  
 17 permit?  
 18     **A. It would be a file, yes,**  
 19 **with the documents relative to these**  
 20 **permits would all be in one, actually not**  
 21 **one file but together.**  
 22     Q. So they're all located  
 23 together? They're filed together --  
 24     **A. Yes.**

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1     Q. -- under Keystone and this  
 2 file number?  
 3     **A. Under this file number with**  
 4 **Point 1, 2, 3 and 6.**  
 5     Q. How difficult would it be to  
 6 locate that?  
 7     **A. Something this old would be**  
 8 **in a warehouse. It would be in a**  
 9 **warehouse, and I've never been in the**  
 10 **warehouse thankfully. But I know they're**  
 11 **all in boxes shrink-wrapped together. It**  
 12 **wouldn't be easy.**  
 13     Q. How long would it take  
 14 someone to locate that?  
 15     **A. I don't know. I've never**  
 16 **been there.**  
 17     Q. Are there indices the  
 18 department keeps to show what box number,  
 19 for example, the Keystone permit would be  
 20 in?  
 21     **A. There are, yes. The file**  
 22 **clerk in Land Use would be the one that**  
 23 **could explain how it's all tracked and**  
 24 **searched.**

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1     Q. Have you ever requested  
 2 files to be retrieved from off site?  
 3     **A. Yes.**  
 4     Q. And what was the process  
 5 when you did that?  
 6     **A. I think there was a form we**  
 7 **would fill out. Probably I would just,**  
 8 **what do you call it, IM, instance**  
 9 **message. I would e-mail the person and**  
 10 **ask, but I know there's a form that**  
 11 **you're supposed to fill out.**  
 12     Q. And how long typically did  
 13 it take to get the documents back that  
 14 you're requesting?  
 15     **A. It would take a month. It**  
 16 **could take a long time.**  
 17     Q. Do you know where those  
 18 documents were kept, permitting documents  
 19 off site?  
 20     **A. It's either Trenton or**  
 21 **Hamilton, not exactly.**  
 22     Q. Is it in the custody, is it  
 23 a building that's operated by the state  
 24 or does the state contract with a

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1 document preservation service to keep it?  
 2 **A. I don't know. The state**  
 3 **doesn't have a document preservation**  
 4 **service, but I don't know who owns the**  
 5 **building.**  
 6 Q. So it might belong to the  
 7 State of New Jersey and it might not; you  
 8 just don't know?  
 9 **A. I don't know.**  
 10 Q. But just to reiterate, all  
 11 the documents pertaining to Keystone  
 12 would be collected in one place?  
 13 **A. These files should all be**  
 14 **filed sequentially that are listed on the**  
 15 **permit.**  
 16 Q. And the cover memorandum  
 17 transmitting this permit to Bureau of  
 18 Tidelands would, in all likelihood, be  
 19 located in that same location, correct?  
 20 **A. Everything that Land Use**  
 21 **has -- I should rephrase that. Bureau**  
 22 **Coastal Regulation or whatever it's**  
 23 **called, these files should be there.**  
 24 - - -

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1 (A recess occurred.)  
 2 - - -  
 3 **BY MR. ATTAWAY:**  
 4 Q. Are you familiar with a DEP  
 5 employee named Dorina Fritzera?  
 6 **A. Yes.**  
 7 Q. Am I pronouncing her name  
 8 correctly?  
 9 **A. Close enough.**  
 10 Q. How long did she work for  
 11 the department?  
 12 **A. I don't know.**  
 13 Q. Do you have an approximate  
 14 time?  
 15 **A. I would say approximately**  
 16 **20 years.**  
 17 Q. From starting when?  
 18 **A. I don't know.**  
 19 Q. What time period?  
 20 **A. I don't know when she**  
 21 **started. All I know is she's been here**  
 22 **quite a while.**  
 23 Q. Is she still at the  
 24 department?

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1 **A. Yes.**  
 2 Q. What is her current job  
 3 duties?  
 4 **A. Her job duties? She works**  
 5 **in my office. One of her main things is**  
 6 **responsibilities for the federal grant**  
 7 **and managing all the funds, getting the**  
 8 **grant applications in.**  
 9 Q. Is that grant applications  
 10 under the Coastal Management Plan?  
 11 **A. Yes, grant applications to**  
 12 **NOAA for federal Coastal Zone Management**  
 13 **funds.**  
 14 Q. Which is the same; it just  
 15 follows out of the 1980 orange book  
 16 document?  
 17 **A. It's funds that states are**  
 18 **eligible for because they have approved**  
 19 **Coastal Management Programs.**  
 20 Q. And the orange book is the  
 21 original approval of the Coastal  
 22 Management Program. Is that correct?  
 23 **A. Yes. So that's a big part**  
 24 **of her responsibilities. And then she**

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1 **has various other tasks that vary**  
 2 **year-to-year, depending on what our grant**  
 3 **application requires us to do or says we**  
 4 **will do.**  
 5 Q. And does she have any input  
 6 or involvement in whether to grant or  
 7 deny a permit?  
 8 **A. No.**  
 9 Q. Does she have any input or  
 10 involvement in developing policy for the  
 11 Coastal Management Division?  
 12 **A. Our office has some input in**  
 13 **developing coastal policy, and being in**  
 14 **that office, she has some. We work sort**  
 15 **of collaboratively I guess you could say.**  
 16 Q. Did she do anything besides  
 17 submit the grant applications to the  
 18 federal government?  
 19 **A. Yes.**  
 20 Q. What else did she do?  
 21 **A. She is responsible for the**  
 22 **Coastal Estuary and Land Conversation**  
 23 **Program, which is a land acquisition**  
 24 **program.**

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1           **One of the things she's**  
 2 **working on now is actually in the**  
 3 **Delaware River area we have a project for**  
 4 **mapping some of the Delaware River bay**  
 5 **bottom I guess it is. She just put on a**  
 6 **conference last week that was a submerged**  
 7 **land conference which brought people from**  
 8 **around the country, so she planned all**  
 9 **that out. And then working with the**  
 10 **Delaware Estuary Program trying to look**  
 11 **at restoration opportunities along the**  
 12 **Delaware, on our Delaware bay/shore area.**  
 13 **That's some examples.**  
 14       Q. You mentioned you were a  
 15 Manager III. Compare the level at which  
 16 Ms. Fritzera is at to the Manager III  
 17 position.  
 18       A. **It's a lower level.**  
 19       Q. Could you quantify how many  
 20 levels lower?  
 21       A. **It's not in the same series.**  
 22 **She reports to me. But I don't know --**  
 23 **it's not really a series that relates**  
 24 **specifically. It's not like you go up**

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1 **from this to Manager III.**  
 2       Q. Where do you go from where  
 3 she's at?  
 4       A. **Actually, I don't know her**  
 5 **title. She's in the Environmental**  
 6 **Scientist series which goes from a III to**  
 7 **a II to a I and then that's it unless you**  
 8 **get a manager title somewhere.**  
 9       Q. Do you know what number she  
 10 is in the Environmental Scientist series?  
 11       A. **I'm pretty sure she's a I.**  
 12       Q. She worked her way up from  
 13 III to I over the years?  
 14       A. **I don't know what she**  
 15 **started at. She might have switched in**  
 16 **from something else. I don't know.**  
 17       Q. Where do the Environmental  
 18 Scientists fit in?  
 19       Let me ask it this way: I  
 20 think it was David Fanz who was the  
 21 person that prepared the permit for  
 22 Keystone?  
 23       A. **Right.**  
 24       Q. What was his position

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1 compared to Ms. Fritzera's?  
 2       A. **You mean his title?**  
 3       Q. Yes.  
 4       A. **He was an Environmental**  
 5 **Specialist, a Principal Environmental**  
 6 **Specialist or something at that time, I**  
 7 **think, probably a Principal Environmental**  
 8 **Specialist.**  
 9       Q. And how does her title  
 10 differ or her job responsibilities is  
 11 what I'm trying to ask?  
 12       A. **Okay. She didn't do permits**  
 13 **and he did, permit application reviews,**  
 14 **so that would be the fundamental**  
 15 **difference.**  
 16       Q. Would they be on different  
 17 levels or the same level, if you could  
 18 compare them, even though one did permits  
 19 and one didn't do permits, just in terms  
 20 of level within the division?  
 21       A. **I don't know. It's all**  
 22 **Civil Service stuff. I don't know.**  
 23       Q. You mentioned the Fort Mott  
 24 Project earlier. I'd like to introduce

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1 the next exhibit, Exhibit-10.  
 2       - - -  
 3 (Ehinger-10 marked for  
 4 identification.)  
 5       - - -  
 6 (A recess occurred.)  
 7       - - -  
 8 BY MR. ATTAWAY:  
 9       Q. This Fort Mott permit is  
 10 dated January 21, 1996. It is marked as  
 11 Ehinger Exhibit No. 10. Have you had a  
 12 chance to review this, Ms. Ehinger?  
 13       A. **I did.**  
 14       Q. Is this one of the permits  
 15 that you reviewed in preparing for your  
 16 deposition?  
 17       A. **Yes.**  
 18       Q. And this is signed on the  
 19 last page, it's a three-page permit, by  
 20 it looks like Kevin Broderick, if I'm  
 21 reading it correctly, for Ruth Ehinger,  
 22 Manager, Bureau of Coastal Regulations?  
 23       A. **Yes.**  
 24       Q. When was the first time that

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1 you saw this permit?  
2 **A. First time I remember seeing**  
3 **it is when I was getting ready for**  
4 **depositions.**  
5 **Q. Within the last couple of**  
6 **weeks?**  
7 **A. Yes.**  
8 **Q. Is this something that you**  
9 **would have reviewed at the time, that is,**  
10 **in January 1996?**  
11 **A. I would review if I were in**  
12 **the office but I wouldn't review -- in**  
13 **the normal course of events, I would**  
14 **review the permits. If I'm not**  
15 **available, someone else would review the**  
16 **permits and I wouldn't have.**  
17 **Q. And that was Mr. Broderick.**  
18 **Was he still the person to whom you**  
19 **reported in 1996?**  
20 **A. No, he reported to me. Bob**  
21 **Tudor was the one previous that we**  
22 **discussed to whom I reported.**  
23 **Q. Thank you. You're correct.**  
24 **I misremembered. Kevin Broderick**

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1 reported to you; you reported to Bob  
2 Tudor in that time period?  
3 **A. Right.**  
4 **Q. In the Administrative**  
5 **Conditions on Page 2, there's a sentence**  
6 **that states: The following project**  
7 **aspects are subject to approval of the**  
8 **State of Delaware: A, installation of**  
9 **floating ferry mooring associated pilings**  
10 **and, B, removal of rip-rap against the**  
11 **crib structure below mean low water.**  
12 **Were you aware of that**  
13 **condition existing in this permit --**  
14 **A. No.**  
15 **Q. -- before reading this in**  
16 **preparation for your deposition?**  
17 **A. No.**  
18 **Q. The first page states that**  
19 **it's prepared by Bruce Stoneback. I**  
20 **gather that he performed the function**  
21 **that David Fanz performed in the Keystone**  
22 **permitting process?**  
23 **A. Right.**  
24 **Q. So Mr. Stoneback prepared**

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1 this permit and submitted it to Kevin  
2 Broderick?  
3 **A. Right.**  
4 **Q. Where do you think he would**  
5 **have gotten the information that caused**  
6 **him to insert the Administrative**  
7 **Condition No. 2 regarding required**  
8 **approvals from the State of Delaware?**  
9 **A. I don't know.**  
10 **Q. You stated that you were not**  
11 **aware of this condition in this permit**  
12 **until very recently?**  
13 **A. I do not remember this**  
14 **condition or this permit prior to that.**  
15 **Q. On this permit, the**  
16 **applicant is on Page 1 in the box on the**  
17 **top left. It states the applicant is the**  
18 **New Jersey Department of Environmental**  
19 **Protection, Division of Parks and**  
20 **Forestry.**  
21 **So is it fair to say that**  
22 **this was one division of DEP applying to**  
23 **your division of DEP for coastal permits?**  
24 **A. Yes.**

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1 **Q. Do you know whether DEP**  
2 **applied to the State of Delaware for the**  
3 **Delaware permits referenced here?**  
4 **A. I'm not sure.**  
5 **MR. ATTAWAY: Let me**  
6 **introduce Exhibit Ehinger-11.**  
7 **---**  
8 **(Ehinger-11 marked for**  
9 **identification.)**  
10 **---**  
11 **BY MR. ATTAWAY:**  
12 **Q. I've just had marked as**  
13 **Exhibit-11 a permit application. And my**  
14 **understanding is that this is an**  
15 **application from the State of New Jersey,**  
16 **Department of Environmental Protection,**  
17 **Division of Parks and Forestry, to the**  
18 **Delaware Department of Natural Resources**  
19 **and Environmental Control for a permit to**  
20 **rehabilitate the pier at Fort Mott. Does**  
21 **that seem correct to you, Ms. Ehinger?**  
22 **A. That does seem correct.**  
23 **Q. And this permit application**  
24 **spans from Delaware Bates No. 1914**

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1 through 1970, so 70 minus 14 is about 56  
 2 pages.  
 3 **A. You're talking about these**  
 4 **numbers?**  
 5 **Q. Yes, on the lower right-hand**  
 6 **corner.**  
 7 **A. Yes.**  
 8 **Q. It's a substantial permit**  
 9 **application; would you agree with that?**  
 10 **A. A substantial number of**  
 11 **papers.**  
 12 **MS. KELLY: What permit**  
 13 **application?**  
 14 **MR. ATTAWAY: Substantial in**  
 15 **length.**  
 16 **THE WITNESS: There's a lot**  
 17 **of pages here.**  
 18 **BY MR. ATTAWAY:**  
 19 **Q. How long are the permit**  
 20 **applications to your division, if you can**  
 21 **quantify?**  
 22 **A. An application form is four**  
 23 **pages, which is similar to what this is.**  
 24 **I think it's four-pages long. And then**

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1 **there's other accompanying materials,**  
 2 **like property owners, which is here; site**  
 3 **description; there's an analysis of the**  
 4 **project under the regulations. So it**  
 5 **varies depending on the scope of the**  
 6 **project.**  
 7 **Q. So the applicant here to**  
 8 **Delaware provided a lot of attachments to**  
 9 **the form of application, correct?**  
 10 **A. Yes.**  
 11 **Q. And you have not seen this**  
 12 **before?**  
 13 **A. I don't remember ever seeing**  
 14 **this.**  
 15 **Q. And does this refresh your**  
 16 **recollection as to whether you were**  
 17 **familiar with the fact of whether or not**  
 18 **New Jersey applied to Delaware for a**  
 19 **permit for Fort Mott?**  
 20 **A. I don't remember. I wasn't**  
 21 **familiar with whether we did or did not**  
 22 **apply or New Jersey DEP did or did not**  
 23 **apply.**  
 24 **MR. ATTAWAY: I'd like to**

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1 introduce Exhibit-12.  
 2 - - -  
 3 (Ehinger-12 marked for  
 4 identification.)  
 5 - - -  
 6 **BY MR. ATTAWAY:**  
 7 **Q. Exhibit-12 is the State of**  
 8 **New Jersey's application to the Land Use**  
 9 **Regulation Program for permission to**  
 10 **rehabilitate the Fort Mott Pier. Is that**  
 11 **correct?**  
 12 **A. Yes.**  
 13 **Q. And this is dated toward the**  
 14 **back of the document September 19, 1995,**  
 15 **Bates Page NJ05437. This is signed by**  
 16 **Carl Nordstrom. Who is Mr. Nordstrom, if**  
 17 **you know?**  
 18 **A. He was Deputy Director of**  
 19 **the Division of Parks and Forestry in the**  
 20 **New Jersey DEP.**  
 21 **Q. How many people would have**  
 22 **been above him in DEP?**  
 23 **A. There would be a director,**  
 24 **an assistant commissioner, maybe someone**

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1 **else and then a commissioner.**  
 2 **Q. So he was the second highest**  
 3 **person in his division, Division of Parks**  
 4 **and Forestry?**  
 5 **A. Yes.**  
 6 **Q. So deputy director, he**  
 7 **reported to the director. Do you know**  
 8 **who the director was at that time?**  
 9 **A. Darn, I can see his face.**  
 10 **Q. Could you draw it? Does the**  
 11 **reporter have an Etch-a-Sketch?**  
 12 **A. I'll think of it but I can't**  
 13 **right now.**  
 14 **Q. But then above him or her**  
 15 **about would be the assistant commissioner**  
 16 **and then the commissioner?**  
 17 **A. Right.**  
 18 **Q. And I know you mentioned**  
 19 **earlier that there at some points have**  
 20 **been deputy commissioners and you're not**  
 21 **sure whether that was true at this time?**  
 22 **A. Right.**  
 23 **Q. I don't have much on this.**  
 24 **On the second page of the exhibit which**

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1 is NJ05424, there's a typewritten entry  
 2 in the top half of the page that says --  
 3 the information requested by the permit  
 4 form is Permit Modification. And then it  
 5 says: State - Delaware Department of  
 6 Natural Resources and Environmental  
 7 Control and Federal - U.S. Army Corps of  
 8 Engineers.  
 9 Does that indicate that a  
 10 permit is required from those two  
 11 entities, the Delaware and the U.S. Army  
 12 Corps?  
 13 **A. It indicates that the**  
 14 **applicant is saying that there's an**  
 15 **application for other permits, one of**  
 16 **which is the Delaware permit.**  
 17 Q. I'll go with the Bates  
 18 numbers because there aren't page numbers  
 19 on all of the pages. NJ05428, there's  
 20 another entry for required permits for  
 21 U.S. Army Corps and Delaware Subaqueous  
 22 Lands.  
 23 Does that similarly indicate  
 24 that the applicant is applying for

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1 permits from the U.S. Army Corps and from  
 2 Delaware?  
 3 **A. Yes.**  
 4 Q. Same question with respect  
 5 to Page 5431?  
 6 **A. 31?**  
 7 Q. 5431.  
 8 **A. Do you have a question, I'm**  
 9 **sorry? Did you ask me something?**  
 10 Q. I just said the same basic  
 11 question. Does this page also indicate  
 12 that the applicant was applying to  
 13 Delaware for a subaqueous land permit?  
 14 **A. Yes.**  
 15 Q. So that's three mentions of  
 16 the application for a permit from  
 17 Delaware, correct?  
 18 **A. Correct.**  
 19 Q. And then on Page 5434 would  
 20 you agree that there's a fourth mention  
 21 of a permit application to Delaware?  
 22 **A. There's a mention of**  
 23 **discussing it with them, having**  
 24 **discussed. I see a mention of discussing**

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1 **the project with a representative.**  
 2 Q. Are you aware whether or not  
 3 Delaware issued the permits referenced to  
 4 the New Jersey Division of Parks and  
 5 Forestry?  
 6 **A. I don't know.**  
 7 Q. You didn't review any  
 8 Delaware permits in your preparation  
 9 for --  
 10 **A. I kind of vaguely think I --**  
 11 **I don't remember that specifically,**  
 12 **sorry.**  
 13 - - -  
 14 **(Ehinger-13 marked for**  
 15 **identification.)**  
 16 - - -  
 17 **THE WITNESS: Greg Marshall,**  
 18 **that's who it was. The director**  
 19 **was Greg Marshall.**  
 20 **BY MR. ATTAWAY:**  
 21 Q. Greg Marshall was the  
 22 Director of the Division of Parks and  
 23 Forestry at the time that Carl Nordstrom  
 24 was the Deputy Director?

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1 **A. Yes.**  
 2 Q. I had marked as Exhibit-13 a  
 3 letter from Carl Nordstrom, Deputy  
 4 Director, New Jersey Division of Parks  
 5 and Forestry within the DEP. It's dated  
 6 March 6, 1997. The letter is written to  
 7 David J. Hazelton, Project Assistant to  
 8 Delaware River and Bay Authority. And  
 9 it's regarding riparian/subaqueous  
 10 license/leases, Fort Mott Pier Project.  
 11 Ms. Ehinger, have you seen  
 12 this letter before?  
 13 **A. Not that I can recall.**  
 14 Q. Were you aware of any of the  
 15 matters discussed in the letter before  
 16 reading it today?  
 17 **A. No.**  
 18 Q. Do you know who Mr. David  
 19 Hazelton is?  
 20 **A. No, not other than what I**  
 21 **read here.**  
 22 Q. It suggests that he was at  
 23 the Delaware River and Bay Authority?  
 24 **A. It does.**

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1 Q. Do you know anything about  
 2 the Delaware River and Bay Authority?  
 3 A. **Did this talk about it? I**  
 4 **don't offhand know about it.**  
 5 Q. If you don't recall, you  
 6 don't need to learn it from a document  
 7 that I've shown you.  
 8 A. **I don't recall, no. They**  
 9 **might be who operated the ferry but I**  
 10 **don't know.**  
 11 Q. On Page 2 of the letter, and  
 12 it's a two-page letter, there's a  
 13 discussion which is titled Delaware  
 14 Subaqueous Lease. It states:  
 15 Quote, this lease was issued  
 16 on February 7, 1997 and expires on  
 17 February 7, 2007. Once again, as long as  
 18 the division operates this pier, quote,  
 19 unquote, for the public good, there is no  
 20 concern on our part that this lease won't  
 21 be extended beyond 2007, end quote.  
 22 What is your understanding  
 23 of this language just reading it now?  
 24 A. **That there was a lease**

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1 **issued by the State of Delaware for the**  
 2 **Fort Mott Pier Project.**  
 3 Q. And was Mr. Nordstrom  
 4 reporting on the prospect of having the  
 5 lease renewed once it expired?  
 6 A. **He indicated that he, I**  
 7 **would say he expected it would be renewed**  
 8 **or could be renewed or extended.**  
 9 Q. And it states that the lease  
 10 expires in February of 2007, correct?  
 11 A. **Correct.**  
 12 Q. So, at the time this letter  
 13 was written, Mr. Nordstrom was operating  
 14 under the understanding that Delaware was  
 15 within its rights to issue a permit for  
 16 this project?  
 17 MS. KELLY: I'm going to  
 18 object on foundation and personal  
 19 knowledge. But go ahead.  
 20 THE WITNESS: I would say he  
 21 was, I don't know if -- he had  
 22 applied for a lease apparently and  
 23 received it and felt that it could  
 24 be extended and that he was

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1 operating under it.  
 2 BY MR. ATTAWAY:  
 3 Q. And if he had thought that  
 4 there was no need to get a lease from  
 5 Delaware, would there have been any  
 6 reason to write a letter reporting --  
 7 MS. KELLY: Same objection.  
 8 BY MR. ATTAWAY:  
 9 Q. -- that Delaware would renew  
 10 the lease?  
 11 A. **I don't know -- I mean, it's**  
 12 **hard for me to say what Carl Nordstrom**  
 13 **thought. Presumably, he thought he**  
 14 **needed to do these things and that's why**  
 15 **he did them.**  
 16 Q. On the CC list, there is  
 17 Assistant Commissioner Hall. Do you or  
 18 did you know Assistant Commissioner Hall?  
 19 A. **Yes.**  
 20 Q. And what is his or her full  
 21 name?  
 22 A. **Jim, James.**  
 23 Q. Do you remember what he was  
 24 assistant commissioner of?

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1 A. **I would call it Natural**  
 2 **Resources.**  
 3 Q. And he would report directly  
 4 to the commissioner, correct?  
 5 A. **Unless there was a deputy**  
 6 **commissioner and chief of staff in**  
 7 **between.**  
 8 Q. And Director Marshall, what  
 9 was his first name?  
 10 A. **Greg.**  
 11 Q. And he was the Director of  
 12 Fish and Wildlife?  
 13 A. **No. He was the Director of**  
 14 **Division of Parks and Forestry.**  
 15 Q. There are five more names  
 16 with just a first initial and last name.  
 17 Just going down the list, tell me their  
 18 first name, if you know it, and what  
 19 their job title and responsibilities were  
 20 at the time.  
 21 A. **The only one I recognize is**  
 22 **Al Payne.**  
 23 Q. Al as in Allan?  
 24 A. **Or Albert. I don't know.**

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1 Q. But A-L?

2 A. Yes. I don't even know what

3 his -- he was in Parks and Forestry, I

4 believe. I don't know what his job

5 responsibilities would be.

6 - - -

7 (Ehinger-14 marked for

8 identification.)

9 - - -

10 BY MR. ATTAWAY:

11 Q. Exhibit Ehinger-14 is an

12 e-mail from Elaine Makatura to Ruth

13 Ehinger dated February 3, 2005. And the

14 subject line says it's regarding a BP

15 press release. Ms. Ehinger, could you

16 describe this e-mail in your own words?

17 A. It's an e-mail from Elaine

18 to me with copying in a press release

19 saying that DNREC had made a negative

20 decision on the Crown Landing Project and

21 asking if DEP had issued permits for it

22 or raised concerns about it in writing.

23 Q. Did you respond?

24 A. I probably -- I don't

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1 remember the response. Chances are I

2 responded.

3 Q. Do you know the answer to

4 the question she poses as we sit here

5 today?

6 A. Had we issued any permits,

7 no. Had we raised any concerns, we had

8 raised concerns through deficiency

9 letters through the application that was

10 to the department, to our department.

11 Q. Do you know when the first

12 deficiency letter went out?

13 A. No.

14 - - -

15 (Ehinger-15 marked for

16 identification.)

17 - - -

18 BY MR. ATTAWAY:

19 Q. What's been marked as

20 Ehinger Exhibit-15 is a letter dated

21 February 4, 2005 from David Risilia,

22 Project Manager, Office of Dredging and

23 Sediment Technology, to David Blaha,

24 Environmental Resources Management. And

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1 it's a deficiency letter for Crown

2 Landing's Waterfront Development

3 application. Have you seen this letter

4 before, Ms. Ehinger?

5 A. Yes.

6 Q. And this is 32-pages long

7 for the record. Is that correct?

8 A. Yes.

9 Q. Did you provide any input to

10 this letter?

11 A. Yes.

12 Q. What sort of input did you

13 provide and to whom did you provide it?

14 A. To Dave Risilia. What I

15 remember talking about is how to apply

16 energy policies at the Energy Facility

17 Use Rule.

18 Q. Is that Page 22?

19 A. 22 and discussions on 24 and

20 25.

21 Q. Did you provide comments on

22 any other part of this letter?

23 A. I don't remember. That was

24 the main discussion Dave and I had.

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1 Q. Turning back to Page 1, the

2 third paragraph states: Quote, the

3 project site is located in the States of

4 Delaware and New Jersey. Accordingly,

5 activities taking place from the mean low

6 waterline (MLWL) outshore are located in

7 the State of Delaware and, therefore, are

8 subject to Delaware Coastal Zone

9 Management Regulations. Activities or

10 associated impacts to New Jersey's

11 coastal resources occurring from the MLWL

12 landward are the subject of this

13 application, end quote. Do you recall

14 reading this?

15 A. I don't recall reading it.

16 Q. You received drafts of this

17 letter?

18 A. I did receive drafts or a

19 draft.

20 Q. Before it was sent out?

21 A. Yes.

22 Q. So reading this paragraph on

23 Page 1 didn't make you pause and wonder

24 whether it was accurate?



1 UNITED STATES SUPREME COURT  
2 DOCKET NO. 134, ORIGINAL  
3 - - -  
4 STATE OF NEW JERSEY, :  
Plaintiff, :  
5 :  
v. :  
6 :  
STATE OF DELAWARE, :  
7 Defendant. :  
8 - - -  
9 DEPOSITION UNDER ORAL EXAMINATION OF  
10 JAMES R. JOHNSON  
11 TRENTON, NEW JERSEY  
12 NOVEMBER 1, 2006  
13 - - -  
14 REPORTED BY: SILVIA P. WAGE, CSR  
15 - - -  
16  
17  
18  
19  
20  
21 ESQUIRE DEPOSITION SERVICES  
22 90 Woodbridge Center Drive  
Woodbridge, New Jersey 07095  
(732) 283-1008  
23  
24  
25 JOB NO. 9078

2

1 Transcript of the deposition of JAMES R.  
 2 JOHNSON, called for Oral Examination in the  
 3 above-captioned matter, said deposition taken  
 4 pursuant to Supreme Court Rules of Practice and  
 5 Procedure, by and before SILVIA P. WAGE, a Certified  
 6 Shorthand Reporter and Notary Public for the State  
 7 of New Jersey, at the RICHARD HUGHES JUSTICE  
 8 COMPLEX, 25 Market Street, Fourth Floor, Conference  
 9 Room D-1, Trenton, New Jersey, commencing at 10:19  
 10 a.m.  
 11  
 12  
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4

1 ---  
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 5 By Mr. Attaway 6  
 6 ---  
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 Conklin

3

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 25

5

1 ---  
 2 DEPOSITION SUPPORT INDEX  
 3 ---  
 4  
 5 Direction to Witness Not to Answer  
 6 Page Line Page Line Page Line  
 7 (NONE)  
 8  
 9  
 10 Request for Production of Documents  
 11 Page Line Page Line Page Line  
 12 (NONE)  
 13  
 14  
 15 Stipulations  
 16 Page Line Page Line Page Line  
 17 (NONE)  
 18  
 19  
 20 Question Marked  
 21 Page Line Page Line Page Line  
 22 (NONE)  
 23  
 24  
 25

6	<p>1 JAMES R. JOHNSON, after having been duly 2 sworn, was examined and testified as follows: 3 --- 4 DIRECT EXAMINATION BY MR. ATTAWAY 5 --- 6 Q. Good morning, Mr. Johnson. 7 A. Good morning. 8 Q. My name is Scott Attaway and I 9 represent the State of Delaware and the caption for 10 this case is New Jersey versus Delaware. It's 11 Original Number 134 filed in the United States 12 Supreme Court. 13 Before we begin, I just want to establish a 14 few ground rules so that the deposition goes 15 smoothly. 16 A. Okay. 17 Q. So, first, if you don't hear a 18 question, please, let me know and I'll repeat it. 19 And if you don't understand a question, likewise, 20 let me know and I'll try to rephrase it. 21 A. Very well. 22 Q. Because this is being taken down by a 23 court reporter it's important that only one of us 24 speak at a time. So I'll do my best not to start a 25 new question until I'm sure that you finished your</p>	8	<p>1 correct? 2 A. Yes. 3 Q. And I assume you were contacted at 4 some point by counsel for New Jersey about this 5 case, correct? 6 A. Yes. 7 Q. Okay. And I don't want to know 8 anything about was said during those conversations, 9 but when did that first contact occur? 10 A. About two weeks ago, three weeks ago. 11 Q. Okay. And was that Miss Horowitz 12 that contacted you? 13 A. No. It was -- what is her name? 14 Shes' out sick. 15 Q. Barbara Conklin? 16 A. Barbara, yes. 17 Q. How many times did you meet with 18 either Miss Conklin or Miss Horowitz or another 19 attorney for the State of New Jersey? 20 A. I did not have any meeting. Barbara 21 had called me at a place where I do consulting work 22 Q. Okay. 23 A. The name of the firm is Charles Jones 24 and she called me at that office to ask me if I 25 would testify regarding the Delaware/New Jersey</p>
7	<p>1 answer and, likewise, it's best if you wait to begin 2 your answer until I finish my question. 3 A. Agreed. 4 Q. Okay. And I see you understand the 5 instructions I've just given you, correct? 6 A. Yes, sir. 7 Q. Is there any reason of which you're 8 aware that could impede your ability today to 9 testify truthfully such as any medical or physical 10 limitations? 11 A. No, sir. 12 Q. Okay. Other than conversations with 13 counsel, what did you do to prepare for your 14 deposition today? 15 A. Very little. 16 Q. Okay. It should be quick to go 17 through that then. 18 So what did you do, did you review documents 19 or... 20 A. No. 21 Q. And other than counsel, did you talk 22 to anyone else to prepare for the deposition? 23 A. Just Rachel to tell me what the case 24 was about. 25 Q. Okay. So you're currently retired,</p>	9	<p>1 boundary line. 2 Q. Okay. And so you've talked with her 3 a little bit on the phone? 4 A. And today is the day that I met 5 Rachel. 6 Q. So just those two contacts? 7 A. Yes. 8 Q. Okay. And you didn't review any 9 documents in connection with those discussions with 10 your attorneys? 11 A. No. 12 Q. Okay. 13 All right. Have you been deposed before in 14 any other case? 15 A. Years ago. 16 Q. Okay. 17 A. In my capacity as -- with the State 18 of New Jersey and the State's tidelands program. 19 Q. Okay. What was that case about? 20 A. Offhand I cannot remember. 21 Q. What time period would it have been 22 in? 23 A. It would have been early '90s, late 24 '80s. 25 Q. Was that a court case, if you can</p>

10	<p>1 remember?</p> <p>2 A. I believe so.</p> <p>3 Q. And you gave a deposition or were</p> <p>4 deposed in that case, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Or did you testify at trial?</p> <p>7 A. I do not believe I did.</p> <p>8 Q. Okay. Were there any other instances</p> <p>9 in which you gave testimony either through a</p> <p>10 deposition, live testimony or an affidavit?</p> <p>11 A. I believe there was, but for me to</p> <p>12 recall things that happened 13, 14, 15, 20 years</p> <p>13 ago...</p> <p>14 Q. Right.</p> <p>15 So you recall only one case of giving</p> <p>16 testimony, that was a deposition you referred to,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And was that case or did</p> <p>20 that case involve in any way the boundary between</p> <p>21 New Jersey and Delaware?</p> <p>22 A. No.</p> <p>23 Q. Did it involve in any way Delaware's</p> <p>24 or New Jersey's regulatory authority over activities</p> <p>25 within the Delaware River?</p>	12	<p>1 of Navigation and it was a Civil Service position.</p> <p>2 I was taking the Civil Service test and</p> <p>3 passed another position with the Mercer County --</p> <p>4 County of Mercer New Jersey Bridge Engineering</p> <p>5 Department in the bridges division and thought I</p> <p>6 would like to -- it would be exciting to design and</p> <p>7 build bridges, but they -- before I came with</p> <p>8 government, I was working with a consulting engineer</p> <p>9 land surveying company and doing a lot of field</p> <p>10 surveys. And when the county bridge department</p> <p>11 found out that I had some surveying background, I</p> <p>12 was immediately put into the field staking out and</p> <p>13 doing as-builts on bridges, standing in a middle of</p> <p>14 a creek on December the 12th taking profiles, feet</p> <p>15 wet, half way up my legs my pants were wet.</p> <p>16 Q. As a former brick layer in Boston for</p> <p>17 a number of years, I can relate to standing in cold</p> <p>18 water.</p> <p>19 A. So about a year later I had passed</p> <p>20 another test to come back to the office that I had</p> <p>21 left a year earlier and that was the Navigation</p> <p>22 Bureau. So I went back to them in 1960 and stayed</p> <p>23 there ever since from -- between -- until 1970 when</p> <p>24 the division had appointed me the supervisor of that</p> <p>25 navigation -- of the riparian grants and leases</p>
11	<p>1 A. No, sir.</p> <p>2 Q. Do you remember geographically what</p> <p>3 area that case was concerned with?</p> <p>4 A. No, I do not.</p> <p>5 Q. Okay, fair enough.</p> <p>6 I just want to go through a little bit of</p> <p>7 your background.</p> <p>8 Did you go to college?</p> <p>9 A. Just evening college at Trenton</p> <p>10 Junior College and took some courses at Rutgers.</p> <p>11 Q. Okay. Any degrees as a result of</p> <p>12 that?</p> <p>13 A. No, no, sir.</p> <p>14 Q. What time period was that or if you</p> <p>15 remember the specific year when you ended your</p> <p>16 studies?</p> <p>17 A. It would have been in the '60s.</p> <p>18 Q. Okay. And my understanding is that</p> <p>19 you started at the Department of Environmental</p> <p>20 Protection or DEP for short in about 1970; is that</p> <p>21 correct?</p> <p>22 A. No.</p> <p>23 Q. No, okay.</p> <p>24 A. Originally, I started in 1958. I</p> <p>25 worked with -- at that time it was called the Bureau</p>	13	<p>1 section of the Bureau of Navigation. So I was more</p> <p>2 or less the head of the riparian grants and leases.</p> <p>3 (There is a discussion off the record.)</p> <p>4 A. I was in charge of the riparian</p> <p>5 grants and leases section from May of 1970 until I</p> <p>6 retired.</p> <p>7 Q. Okay.</p> <p>8 A. In different titles, I guess it's</p> <p>9 called.</p> <p>10 Q. But you were at the head of that</p> <p>11 division and structure of --</p> <p>12 A. Head of that program since May of</p> <p>13 1970, yeah, but having been somewhat the assistant</p> <p>14 from 1960 to 1970.</p> <p>15 Q. Who did you report to from 1960 to</p> <p>16 1970?</p> <p>17 A. An individual by the name of Anthony</p> <p>18 Scoppetullo, S-c-o-p-p-e-t-u-l-l-o.</p> <p>19 Q. Good memory of that spelling.</p> <p>20 Do you remember all of the different titles</p> <p>21 that you held between 1970 -- I'm sorry, I didn't</p> <p>22 ask when you retired.</p> <p>23 A. When I retired, I was the manager of</p> <p>24 the Bureau of Tidelands Management and in -- there's</p> <p>25 been so many titles that I was using.</p>

14

1 Q. Were the different titles a result of  
 2 just reorganizations that were made by DEP?  
 3 A. Yes, sir, that's what they were.  
 4 Q. Did your job responsibilities change  
 5 in any material way between 1970 and when you  
 6 retired?  
 7 A. Yes and no. In addition to being the  
 8 supervisor of grants and leases in 1970, the  
 9 division was without a supervisor of a section  
 10 called or an office called permits and licenses.  
 11 And my bureau chief at that time, a James Rankin,  
 12 R-a-n-k-i-n, said, Jim, you've been around long  
 13 enough that you kind of know, you know, all these  
 14 programs that are being run by the bureau, would you  
 15 help me out and take over the -- in addition to what  
 16 you're doing with grants and leases -- take over the  
 17 running of the permits and license section, which I  
 18 did for a while until he found someone to fill that  
 19 position, an individual by the name of Donald  
 20 Graham, G-r-a-h-a-m.  
 21 Q. Okay. Let me just back up a little  
 22 bit.  
 23 A. Yes, sir.  
 24 Q. When did you take up the permit and  
 25 licensing functions?

15

1 A. Right about May of 1970.  
 2 Q. May of 1970?  
 3 A. Yes.  
 4 Q. And how long until Mr. Graham took  
 5 that over?  
 6 A. I guess Mr. Graham came on board  
 7 maybe '71, '72.  
 8 Q. So for about one or two years?  
 9 A. Yes, about one or two years.  
 10 Q. After 1972, did you have any  
 11 involvement in issuing permits?  
 12 A. Yes.  
 13 Q. What was that involvement?  
 14 A. To review applications that were  
 15 filed with the office. I had one engineer working  
 16 with me in that program, an individual by the name  
 17 of Paul McDowell, M-c-D-o-w-e-l-l.  
 18 Q. Were you reporting to Donald Graham  
 19 at that time?  
 20 A. I was reporting then to James Rankin.  
 21 Don kind of -- Mr. Graham kind of succeeded me a  
 22 year a half, two years later.  
 23 Q. Okay.  
 24 A. Don -- Mr. Graham was at that time  
 25 when I took over the program an inspector with our

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1 division, an inspector of what they called bulkheads  
 2 and dredging and he was in our Toms River office.  
 3 Q. When you --  
 4 A. So we kind of promoted Don within the  
 5 division to be the supervisor of permits and  
 6 licenses.  
 7 Q. When you were just discussing Paul  
 8 McDowell being on your staff, was that in the 1970  
 9 to '72 time period or was that a different time  
 10 period?  
 11 A. That was in 1970, I believe.  
 12 Q. So, after 1972, did you have any  
 13 involvement in permitting?  
 14 A. No.  
 15 Q. No, okay.  
 16 Did you review permits in any way?  
 17 A. We reviewed applications for permits,  
 18 yes.  
 19 Q. Sorry, after 1972?  
 20 A. Oh, no, no.  
 21 Q. Did you receive notice of permits in  
 22 your capacity at the Bureau of Tidelands?  
 23 A. What my office would do would be when  
 24 an application was filed for a tidelands grant or  
 25 lease, we would send notice of that application to

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1 the permits group for their review and comment as to  
 2 whether or not the grant or lease should be issued  
 3 and whether or not the use for the state property  
 4 was acceptable under the rules and regulations of  
 5 the department and through the permits division.  
 6 Q. So it isn't the case that the permits  
 7 division would assess the use proposed to be made of  
 8 the lands at issue in the grant application?  
 9 A. Yes, sir, yes, sir.  
 10 Q. Okay.  
 11 A. In other words, the State of New  
 12 Jersey has been in the so-called real estate  
 13 business for a long time. One of the earliest  
 14 grants, riparian grants, issued by the State dates  
 15 back to 1804 to a group called the Associates of  
 16 Jersey, which is today known as Jersey City.  
 17 Q. A long history.  
 18 A. It's a long history.  
 19 We decided, finally, in 1970 that before the  
 20 State would convey now a formerly flowed tidelands,  
 21 that any conveyance should be in the public  
 22 interest. And the only way of determining whether  
 23 or not a grant or lease is in the public interest is  
 24 to find out how the property is going to be used, so  
 25 that from that time forward no tidelands grant,

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1 lease or license would be issued without one making  
 2 a companion application for a waterfront development  
 3 pursuant to N.J.S.A -- New Jersey Statute's  
 4 Annotated -- 12:5-3.  
 5 Q. When you said from that time and you  
 6 described the conditioning of a riparian grant on  
 7 the issuance of the waterfront development permit,  
 8 what was the time that you had in mind?  
 9 A. From 1970.  
 10 Q. From 1970, okay.  
 11 A. Yes.  
 12 I say that because the state -- as I  
 13 indicated the state has been in the so-called real  
 14 estate business as early as 1804.  
 15 Q. 1804.  
 16 A. And there were many tidelands grants,  
 17 riparian grants, issued by the State of New Jersey  
 18 without knowing how the land was going to be built  
 19 upon, improved, used, so on and so forth. Even  
 20 though there was language in all of the conveyances  
 21 or leases or licenses issued by the state that in  
 22 order to develop the land being conveyed by the  
 23 state, released by the state, that it couldn't be  
 24 built upon without first procuring a permit for the  
 25 improvements.

19

1 Q. When did that language first start  
 2 appearing in the riparian grants or leases?  
 3 A. A long time ago.  
 4 Well, the permit law, the Waterfront  
 5 Development Permit Law, was enacted in 1914. So  
 6 really at some point in time right after that the  
 7 language was being put in in the grants that any  
 8 improvements of the lands being conveyed, leased  
 9 required permits to be obtained by the grantee or  
 10 lessee after issuance.  
 11 In 1970, we finally thought that they  
 12 were -- or at least in my mind I thought of them as  
 13 being blank checks that we would sell -- the state  
 14 would convey -- I'm still using after 13 years the  
 15 term we -- that the state was selling land and then  
 16 at some point in time may have to say, well, yeah,  
 17 we sold you the land but we don't like what you want  
 18 to develop the land for.  
 19 Q. Right.  
 20 A. And it's not -- it just wasn't good  
 21 business in my personal mind to be doing that,  
 22 selling somebody a piece of land or leasing somebody  
 23 a piece of land, taking their money for the leases  
 24 or grants and then later on down the road telling  
 25 them, no, you can't build a pier that wide or you

20

1 can't build a pier that long or you can't bulkhead,  
 2 you can't fill, you can't moor boats, you can't  
 3 dredge, you can't, you know. We should know up  
 4 front what they want to do and then decide to go  
 5 through with it.  
 6 Q. So, if I understand you correctly,  
 7 someone could get -- at least prior to 1970 -- could  
 8 get a riparian grant or lease to use submerged lands  
 9 but there would be no restriction in the grant on  
 10 what they could do with the lands, correct?  
 11 A. That's right, yes.  
 12 Q. And you said that the state could  
 13 come along later and restrict the uses and say that,  
 14 oh, you can't build the pier or you can't build that  
 15 bulkhead or you --  
 16 A. Pursuant to the condition of the  
 17 grant that required them to get a waterfront  
 18 development permit --  
 19 Q. I see.  
 20 A. -- to do any activity on the lands  
 21 that were heretofore granted.  
 22 Q. And then subsequently the issuance of  
 23 the permits became a condition of getting the grant,  
 24 so the applicant couldn't get a valid grant unless  
 25 and until all the permits were in place?

21

1 A. That's right or at least have some  
 2 indication from the people that would issue the  
 3 permit that what was proposed for the lands that  
 4 were being asked to be conveyed or leased to them  
 5 was in the public interest and being done in  
 6 accordance with departmental rules and regulations.  
 7 Q. And your job throughout this period  
 8 aside from the period in 1970 to '72 was strictly on  
 9 what you called the real estate business side; is  
 10 that correct?  
 11 A. Yes, yes, sir.  
 12 Q. And so that didn't involve assessing  
 13 whether a permit was appropriate or not, correct?  
 14 A. Whether the approval of a permit was  
 15 appropriate?  
 16 Q. Yes.  
 17 A. That's true.  
 18 Q. Okay. When did you retire from the  
 19 DEP?  
 20 A. June -- July 1st, 1993.  
 21 Q. At that time what was your title? I  
 22 think you said it earlier and I apologize, if you  
 23 could just repeat it.  
 24 A. This was manager of the tidelands  
 25 management program.

22	<p>1 Q. Is that the Bureau of Tidelands, was 2 it called that then? 3 A. Yes, it could have been the Bureau of 4 Tidelands, yeah, Bureau of Tidelands Management. 5 Q. And was it your job to advise the 6 Tidelands Resource Council? 7 A. Yes, sir. 8 Q. What was the -- just briefly, what is 9 your recollection of the function and nature of the 10 Tidelands Resource Council? 11 A. The Tidelands Resource Council is 12 made up of 12 individuals all appointed by the 13 governor, confirmed by the senate. 14 They meet and review applications for the 15 grant, lease or license or permission to use state 16 owned tidelands, determine whether or not the 17 conveyance or lease or permission to use those lands 18 is in the public interest, and environmentally 19 sound. And in order to determine whether or not 20 it's in the public interest, they determine whether 21 or not the use proposed by the applicant is 22 environmentally sound and in the public interest. 23 Q. How would the Tidelands Resource 24 Council go about ensuring that the use proposed was 25 environmentally sound?</p>	24	<p>1 A. I do not, no. 2 Q. Do you know if there are any 3 documents substantiating that? 4 A. I'm trying to think. 5 I guess the best example would be to review 6 the council minutes to see at what point in time 7 they changed from making decisions on permit 8 applications to not making any further decisions on 9 permit application. 10 Q. What types of permits would they 11 assess? 12 A. They would be waterfront development 13 permit -- 14 Q. And what -- and what were the 15 standards that the Tidelands Resource Council would 16 apply in assessing those applications? 17 A. Basically, whether or not the 18 development was in the public interest and there 19 were no objections to the project. 20 Q. Are you aware of any such permit 21 applications that the Tidelands Resource Council 22 ruled on with respect to projects that straddled the 23 boundary between New Jersey and Delaware? 24 A. Not that I'm aware of. 25 Q. Can you recall any specific permit or</p>
23	<p>1 A. Recommendations would be made by the 2 permits operation whether or not the simultaneous 3 application for waterfront development permit was 4 going to be approved or was approved. 5 Q. So is it the case that the Tidelands 6 Resource Council would get notice of whether a 7 permit application had been or was going to be 8 approved but that the Tidelands Resource Council 9 itself would not rule on -- would not actually grant 10 or deny the permit application? 11 A. That's true. 12 Q. Okay. 13 A. In fact, the Tidelands Resource 14 Council would not act on an application unless and 15 until they had the recommendation from the permit 16 operation. 17 Q. Starting at what point in time was 18 that procedure in place? 19 A. From pretty much May of 1970 when I 20 took over the operation. 21 Q. But not before that? 22 A. Before that there was one point and I 23 don't recall the dates where the council actually 24 made decisions too on permit applications. 25 Q. You don't recall when that --</p>	25	<p>1 project that the Tidelands Resource Council -- with 2 respect to which the Tidelands Resource Council 3 assessed a permit application? 4 A. I do not recall, but I'm sure they 5 have. 6 Q. Since you retired, have you done any 7 work for New Jersey? 8 A. In New Jersey or for the... 9 Q. For the State of New Jersey is what I 10 meant to ask. 11 A. No, sir. 12 Q. Okay. Are you being paid for your 13 work on this case? 14 A. No, sir. 15 Q. All right. Not by New Jersey and not 16 by anyone else? 17 A. No, sir. I do a lot of things I 18 don't get paid for. 19 Q. Like being a grandfather? 20 A. Yes, yes, but I enjoy that. 21 (There is a discussion off the record.) 22 Q. You mentioned earlier that you were 23 at a consulting firm, I think. So let me just ask 24 it this way. 25 Since 1993, have you done any work for hire?</p>

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1     **A. You mean with the Charles Jones Group**  
2 **or...**  
3     **Q. I was asking more broadly with any --**  
4 **like after you retired from the state, did you go to**  
5 **work for someone else or in a self-employed**  
6 **capacity?**  
7     **A. Yeah, I've done -- helped surveyors.**  
8 **I've done application work for tideland grants on**  
9 **properties where it would not be considered in my**  
10 **opinion any kind of a conflict, but for the most**  
11 **part they were residential properties that cleared**  
12 **title if a property that was once formerly tide**  
13 **flow.**  
14     **Q. Would --**  
15     **A. In other words, being an agent for an**  
16 **application for a tidelands grant to clear a title**  
17 **to someone's residential lot.**  
18     **Q. And that's an application to the**  
19 **Bureau of Tidelands?**  
20     **A. That's an application to the Bureau**  
21 **of Tidelands.**  
22     **Q. How many of those applications have**  
23 **you been involved in in which you represented a**  
24 **private party before the Bureau of Tidelands?**  
25     **A. Maybe a dozen.**

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1     **Q. Spread out between 1993 and the**  
2 **present?**  
3     **A. Yes.**  
4     **Q. Okay. Do you have any such**  
5 **applications currently pending?**  
6     **A. Yes.**  
7     **Q. How many of those?**  
8     **A. Ten.**  
9     **Q. Ten, okay.**  
10     **Who do you normally work with at the Bureau**  
11 **of Tidelands in presenting these?**  
12     **A. Well, applications are filed with**  
13 **today Richard Castagna, C-a-s-t-a-g-n-a. He's the**  
14 **manager of the Tidelands Management Bureau.**  
15     **Q. Do you talk directly with Mr.**  
16 **Castagna in the course of prosecuting the permit**  
17 **applications?**  
18     **A. Not really, pretty standard. You**  
19 **have the property owner fill out the application**  
20 **form or have their attorney certify their title.**  
21 **The title insurance company supply copies of their**  
22 **record deed and the property owner orders a boundary**  
23 **line survey and that survey shows the areas of the**  
24 **state's claim. It's pretty simple.**  
25     **Q. Did Mr. Castagna used to work for you**

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1 in the Bureau of Tidelands?  
2     **A. Yes, yes, sir.**  
3     **Q. How for how many years?**  
4     **A. I would say around ten years.**  
5     **Q. Do you know when that ten-year period**  
6 **began, if not exactly, approximately?**  
7     **A. I would say sometime during the '80s.**  
8     **Q. You mentioned that -- I'm sorry, go**  
9 **ahead.**  
10     **A. Mr. Castagna was with the office of**  
11 **Environmental Analysis and that was the group that**  
12 **did the mapping tidelands, mapping for the State of**  
13 **New Jersey. And when that office finished their**  
14 **task of mapping all of the lands within the State of**  
15 **New Jersey that are affected by now or formerly**  
16 **flowed tidelands, the office was just disbanded and**  
17 **I took on -- my program took on about four or five,**  
18 **six members of that prior office to work in my**  
19 **office. Because prior to that time, my office was**  
20 **very, very small, about half the size of what it is**  
21 **today, if not less than that.**  
22     **Q. How many people were in your office**  
23 **at that time?**  
24     **A. Before Richard Castagna and some of**  
25 **the other people came over?**

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1     **Q. Correct.**  
2     **A. Like 10, 20 people.**  
3     **Q. And that would have been throughout**  
4 **the '70s and into '80s; is that the time period**  
5 **we're talking about?**  
6     **A. Yes, maybe even smaller in the '70s.**  
7 **I was kind of hands-on manager.**  
8     **Q. Okay.**  
9     **A. And I tried to do everything even**  
10 **though all my commissioners kept on yelling at me**  
11 **and why are you still in the office at 8:30,**  
12 **9 o'clock at night, you know.**  
13     **Q. Understood.**  
14     **A. Why are you coming in on Saturdays**  
15 **and Sundays; delegate, delegate, delegate.**  
16     **Q. And you said it was because of the**  
17 **paid hourly overtime, right?**  
18     **A. There was overtime?**  
19     **Q. Just kidding.**  
20     **A. Oh, okay.**  
21     **Q. After you left the Bureau of**  
22 **Tidelands on July 1st, 1993, who succeeded you?**  
23     **A. Joanne Cubberley, C-u-b-b-e-r-l-e-y.**  
24     **Q. Did she work under you before you**  
25 **left?**

30

1 A. Yes.  
 2 Q. For about how long?  
 3 A. A little bit more than what I said  
 4 about Rich Castagna, maybe about 10 to 12 years.  
 5 Joanne, too, was with the same office of  
 6 Environmental Analysis and when they were getting  
 7 near the end of their project, she came over to my  
 8 program.  
 9 Q. Okay. Did she report directly to you  
 10 during that 10 to 12 years?  
 11 A. Yes.  
 12 Q. There was no one in between?  
 13 A. No.  
 14 Q. So you got to know her pretty well?  
 15 A. Yes.  
 16 And then Rich Castagna succeeded Joanne when  
 17 she retired at the end of last year?  
 18 Q. And you know that because you're  
 19 still in contact with Mr. Castagna through your  
 20 permit applications?  
 21 A. Not permit applications. They're the  
 22 grant -- tideland grant application.  
 23 Q. Thanks, thanks, I misspoke.  
 24 A. But, yes, I stayed close to the  
 25 program anyway. I mean, I always thought of the

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1 program as being a family and we worked that way,  
 2 you know, as a family. We helped out each other and  
 3 things like that. So they're good people and I like  
 4 the people and will always like those people.  
 5 Q. Sounds like a nice working  
 6 relationship.  
 7 A. And when I go in there, I mean, it's  
 8 like chatting about families and things like that  
 9 more than anything else.  
 10 But I go in there at least twice a week and  
 11 I go in there because at Charles Jones where I'm  
 12 working now we try to keep our records at Charles  
 13 Jones updated, so that when someone comes to us to  
 14 ask -- at Charles Jones -- they ask questions about  
 15 whether or not a piece of property is subject to a  
 16 state tidelands ownership claim and whether or not  
 17 there's any prior conveyances that may have affected  
 18 that claim, we can give them the same answers that  
 19 hopefully the state could give them in a quicker  
 20 time.  
 21 Q. Okay. You mentioned earlier that  
 22 representing these private parties before the Bureau  
 23 of Tidelands didn't in your mind create any kind of  
 24 conflicts.  
 25 What kind of representation would it in your

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1 understanding create a conflict?  
 2 A. Well, I'm worried more about  
 3 properties that I had some independent -- or not  
 4 independent -- but I had some association in my  
 5 dealings at the state; in other words, it was a  
 6 prior application that maybe I had denied and  
 7 someone comes to me and said, you know, you're not  
 8 with the state anymore, will you reapply to the  
 9 state and try to get me a grant. Those cases as far  
 10 as I'm concerned is a clear cut conflict of interest  
 11 and I just tell them, no, don't call me, I'll call  
 12 you. So I'm pretty careful and particular about  
 13 what I agree to assist somebody on.  
 14 Q. Okay. The permits that you were  
 15 involved in issuing in '70 to '72, what types of  
 16 activities were those permit applications for?  
 17 A. They'd be for dredging, building of  
 18 docks, piling, placing piling for boat moorings,  
 19 bulkheads, revetments, things like that along the  
 20 shore front, cable companies for cable crossings of  
 21 tidal waterways for sanitary sewer pipes,  
 22 electrical, gas, some activities for bridge  
 23 building; in other words, counties, municipalities,  
 24 state department, highway department. No one is  
 25 exempted from having to get a permit or to purchase

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1 or to lease or get permission to use state owned  
 2 tidelands. So, I mean, it's a gamut of activities  
 3 that would be covered.  
 4 Q. Okay. If you issued a permit for  
 5 someone to build a dock or a wharf, would you also  
 6 get into regulating the types of cargo that would be  
 7 loaded and unloaded from that wharf?  
 8 A. Most likely.  
 9 Q. So the permits -- did you have any  
 10 permits that you can remember for any kind of  
 11 hazardous cargo?  
 12 A. Not that I recall.  
 13 Q. I'll take this in two steps, but I  
 14 wanted to ask you what statutes and regulations you  
 15 administered.  
 16 First, we can look at the 1970 to '72 period  
 17 when you were issuing permits and then I'll ask you  
 18 more broadly about the real estate business that you  
 19 mentioned.  
 20 A. Okay.  
 21 Q. So the first question is what were  
 22 the statutes and regulations that you administered  
 23 when you were reviewing permit applications?  
 24 A. The statute would have been what I  
 25 mentioned before, New Jersey Statutes Annotated

34	<p>1 12:5-3, which is the New Jersey's Waterfront                  2 Development Law dealing with activities of navigable                  3 waterways.                  4 Q. When you say development, you mean                  5 buildings on the shore?                  6 A. Buildings -- at that time it was                  7 buildings on the mean high water line or waterward                  8 thereof.                  9 (There is a discussion off the record.)                  10 A. You see in state tidelands law the                  11 mean -- the natural mean high water line is the line                  12 of demarcation between state government and private                  13 ownership. It's a property line.                  14 Q. And I'm sorry, you said                  15 geographically the law applies from mean high water                  16 line to?                  17 A. To any navigable waterway shore to                  18 shore.                  19 Q. And were you involved in reviewing                  20 any permit applications for a project that straddled                  21 the boundary between New Jersey and Delaware?                  22 A. I cannot recall. I may have and I                  23 just don't remember.                  24 Q. Okay, fair enough.                  25 That was 1970?</p>	36	<p>1 A. Pretty much earlier on. My                  2 predecessor Tony Scoppetullo and myself, we kept                  3 little notebooks in our office which had information                  4 which probably was handed down by both of our                  5 predecessors regarding the boundary line between New                  6 Jersey and Delaware and I believe there was a copy                  7 of the Compact in that notebook.                  8 Q. You said early on. Can you be a                  9 little bit more precise even if you can't be precise                  10 on it when you learned the existence of the Compact?                  11 A. I would guess we would go back to                  12 when -- back to the 1960s when I was the assistant                  13 to the supervisor at that time, Mr. Scoppetullo.                  14 Q. In what context did that come up for                  15 the first time?                  16 A. I do not recall. It may have been in                  17 connection with applications that were being filed                  18 within the 12 Mile Circle and grants being issued to                  19 applicants within that area?                  20 Q. Okay. You mentioned the 12 Mile                  21 Circle. What is the 12 Mile Circle?                  22 A. The 12 Mile Circle is what describes                  23 the boundary between New Jersey and -- yeah --                  24 between New Jersey and Delaware, the center point                  25 being, I believe, New Castle, Delaware.</p>
35	<p>1 A. That's right.                  2 Q. It was a while ago.                  3 Starting in 1972 -- and I recognize there                  4 might be some overlap back to 1970.                  5 But from 1970 or 1972 through 1993, what                  6 statutes and regulations did you administer with                  7 respect to the grants and leases?                  8 A. I guess it would be anywhere within                  9 N.J.S.A., again, Title 12:3-1 et. seq. I mean,                  10 there are numerous sections to that chapter or                  11 sections.                  12 Q. Do you know what the title of that                  13 chapter was and the statute was?                  14 A. No, I do not.                  15 Q. Do you know if it had the word                  16 riparian in it?                  17 A. I'm sure it did.                  18 Q. In your career as a regulator, were                  19 you familiar with Delaware's laws applying to the                  20 Delaware River?                  21 A. I was aware of a Compact entered into                  22 between the states of Delaware and New Jersey in 19                  23 -- Compact of 1905.                  24 Q. Okay. When did you become familiar                  25 with that?</p>	37	<p>1 Q. Okay.                  2 A. And maps would show the arc crossing                  3 the Delaware River to where the arc would intersect                  4 the low water line on the New Jersey side of the                  5 Delaware River and bay.                  6 Q. Okay. So what is your understanding                  7 of the boundary between New Jersey and Delaware                  8 within that 12 Mile Circle?                  9 A. My personal understanding would be                  10 that the low water line on the New Jersey side of                  11 the river, Delaware River or bay, would be the state                  12 boundary line. But this Compact in my opinion would                  13 allow the state to exercise its riparian                  14 jurisdiction within the Delaware boundary on the New                  15 Jersey side of the river.                  16 Q. When did you first learn the location                  17 of that boundary?                  18 A. I would guess in the 1960s.                  19 Q. Do you remember in what context that                  20 issue came up?                  21 A. No, sir.                  22 It may have been looking at an S-o                  23 (phonetic) road map.                  24 Q. Fair enough.                  25 A. Or Exxon today.</p>

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1 Q. Right.  
 2 What is your understanding of the word  
 3 riparian?  
 4 A. Riparian, I guess, would mean lands  
 5 below the mean high water line or high water line.  
 6 Q. Are you familiar with the term  
 7 riparian rights?  
 8 A. Riparian rights, yeah. That -- I  
 9 mean people toss that around almost like they -- I  
 10 recall them doing with wetlands. I mean, they would  
 11 call wetlands riparian land and riparian lands  
 12 wetlands. Sometimes they are and sometimes they're  
 13 not.  
 14 Riparian like a riparian owner could mean  
 15 someone who owns the fast land, the upland adjoining  
 16 a body of water. Riparian rights could mean that  
 17 someone has received from the State of New Jersey  
 18 the riparian rights connected with his property  
 19 which would include then the land under the waters  
 20 of the waterway adjoining his property.  
 21 Q. Would someone have a riparian right  
 22 to offload any particular kind of cargo?  
 23 MS. HOROWITZ: Objection. You're  
 24 asking for a legal conclusion.  
 25 MR. ATTAWAY: I'm asking for his

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1 understanding as a regulator.  
 2 A. You can answer.  
 3 (There is a discussion off the record.)  
 4 MS. HOROWITZ: It's based on his  
 5 understanding.  
 6 A. Could you ask me the question again?  
 7 MR. ATTAWAY: Could you read the  
 8 question back?  
 9 (Whereupon, the question is read back as  
 10 follows:  
 11 "Question: Would someone have a riparian  
 12 right to offload any particular kind of cargo?")  
 13 A. Well, if you use the term offload,  
 14 there would have to be, what, some kind of  
 15 stationary structure or vehicle, vessel in the  
 16 water?  
 17 Q. On a wharf, for example.  
 18 A. An authorized wharf --  
 19 Q. Correct.  
 20 A. -- is what you're talking about?  
 21 Q. Correct.  
 22 A. Providing when the wharf was built  
 23 that the permit that authorized the construction  
 24 didn't prohibit it or if the grant obtained from the  
 25 State of New Jersey did not prohibit that activity,

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1 if that -- I don't know if that answers your  
 2 question. It's kind of...  
 3 Q. I think you said earlier that none of  
 4 the riparian grants expressly authorized any  
 5 particular activity to occur on the lands granted or  
 6 leased under the riparian document, correct?  
 7 A. That's true for the most part. I  
 8 mean, there were -- there are of record some  
 9 riparian/tideland grants that have use restrictions  
 10 in them such as when the State of New Jersey issues  
 11 grants to the highway department, transportation  
 12 department or in some cases municipalities or county  
 13 agencies. They do so with a condition that the  
 14 lands can only be used for certain purposes.  
 15 The one thing I'm thinking of is, again,  
 16 referring to the Statutes at 12:5 -- of colon 3-33  
 17 and 34 allow governmental agencies a prior right  
 18 over one's preemptive right to apply for tideland  
 19 areas outshore of property they don't own fee simple  
 20 to providing they use the land for public purposes,  
 21 a street, highway, place of resort or public  
 22 recreation.  
 23 Q. Okay. You mentioned that the -- you  
 24 mentioned one's preemptive right. What sort of  
 25 preemptive right were you referring to?

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1 A. Under New Jersey law, the owner of  
 2 the fast land adjoining the tidelands has the right  
 3 of first refusal to apply for and obtain riparian  
 4 rights -- a tidelands grant. That's the preemptive  
 5 right, the right of first refusal to apply for the  
 6 grant.  
 7 Q. Okay. So, if I owned lands in New  
 8 Jersey that abutted the mean high water line on the  
 9 Delaware River, what kind of riparian rights would I  
 10 have as owner of that property?  
 11 MS. HOROWITZ: Objection. Again,  
 12 you're asking for a legal conclusion.  
 13 Q. I'm asking based on your  
 14 understanding as a regulator.  
 15 A. Well, as an upland owner, he could  
 16 apply for a tidelands grant, lease or license.  
 17 And under today's procedures, he would also  
 18 have to make an application for a waterfront  
 19 development permit to show the state how he would --  
 20 how he intends to use or develop lands that he is  
 21 applying for outshore of his record title exercising  
 22 his preemptive right.  
 23 Q. As the riparian owner in your  
 24 understanding as a regulator, what sorts of  
 25 activities, if any, would the riparian owner be

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1 authorized to engage in?  
 2 A. Well, under his -- within his  
 3 application for a waterfront development permit  
 4 under the rules today he'd have to show that that  
 5 activity that he's proposing is consistent with the  
 6 state's rules and policies regarding lands under  
 7 tide water or adjacent thereto.  
 8 Q. In your career at DEP, did you ever  
 9 hear of a waterfront development permit referred to  
 10 as a riparian permit?  
 11 A. You mean today or...  
 12 Q. Throughout your career at DEP.  
 13 A. Yes, yes.  
 14 Q. In what context?  
 15 A. I guess my own. I mean, I used to  
 16 call them riparian permits because they went with  
 17 riparian grants and leases and licenses and  
 18 easements. But I'm sure others have used the same  
 19 term riparian permit.  
 20 I mean, even today some of the title  
 21 insurance companies you talk to and some of the  
 22 attorneys who call them riparian permits, you know  
 23 You know, I try to get them to, you know, you got to  
 24 catch up, they're now called waterfront development  
 25 permits or coastal permits or...

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1 Q. You mentioned the term riparian  
 2 jurisdiction a little while ago. What is your  
 3 understanding of that term?  
 4 A. Riparian jurisdiction would be in  
 5 areas between the natural mean high water lines of  
 6 any tidal waterway within New Jersey's -- within New  
 7 Jersey.  
 8 (There is a discussion off the record.)  
 9 Q. You just said that in your  
 10 understanding riparian jurisdiction was between the  
 11 mean high water lines --  
 12 A. The natural mean high water lines of  
 13 any tidal waterways.  
 14 Q. Within New Jersey?  
 15 A. Yes.  
 16 Q. When you first mentioned riparian  
 17 jurisdiction, I think, it was in the context of the  
 18 1905 Compact, correct?  
 19 A. Yes, sir.  
 20 Q. What is your understanding -- well,  
 21 first of all, is that term used in the 1905 Compact?  
 22 A. That I don't recall.  
 23 Q. And what context did you learn or  
 24 first hear of the term riparian jurisdiction?  
 25 A. As I recall it, something that I've

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1 always used working in the tidelands area, tidelands  
 2 program.  
 3 Q. Do you recall how your understanding  
 4 of that term developed?  
 5 A. No, sir. It may have been on my own.  
 6 Q. Did you read the 1905 Compact?  
 7 A. At some point in time I probably did.  
 8 Q. Did you talk to others about any  
 9 specific language in the Compact throughout your  
 10 career at DEP?  
 11 A. That I don't -- I can't recall. No,  
 12 I just can't recall.  
 13 In the capacity that I was in at the  
 14 Tidelands Management Program at every meeting of the  
 15 Tidelands Resource Council we had somebody  
 16 representing the Attorney General's Office at each  
 17 and every meeting. So it may have come up during  
 18 one of the cases within that area that was being  
 19 presented where the council may have solicited the  
 20 attorney -- deputy attorney general's comments or  
 21 opinions or perhaps even the deputy may have given  
 22 information to the group, to the Tidelands Resource  
 23 Council, to assist them in their deliberation of  
 24 cases, particularly, cases I guess that were being  
 25 considered along that Delaware shorelines stretch.

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1 Q. During that time that you were at  
 2 DEP, do you remember any particular deputy attorney  
 3 general who were present at the Tidelands Resource  
 4 Council meetings?  
 5 A. From 1970 to 1993?  
 6 Q. We can take it a step at a time.  
 7 A. We had a lot of them.  
 8 Q. We can work backwards if you want, if  
 9 it's fresher in your memory.  
 10 A. Yeah, the deputy that was there in  
 11 1993 when I retired is William E., middle initial  
 12 E., Andersen, that's A-n-d-e-r-s-e-n. At times when  
 13 he would be on vacation or unable to then make  
 14 meetings, other deputies from the section would  
 15 cover for him. Steven Brower would be one, Steven  
 16 E. Brower, B-r-o-w-e-r, deputy attorney general.  
 17 Let me think. I mean, the agendas or the  
 18 minutes of each council meeting on the front page of  
 19 each set of minutes would be the deputy that  
 20 attended that meeting.  
 21 But for the most part, it was William  
 22 Andersen and, I believe, Bill Andersen succeeded the  
 23 deputy or the assistant attorney general before him  
 24 would have been Elias Abelson, A-b-e-l-s-o-n.  
 25 Q. Do you remember, approximately, when

46	<p>1 Mr. Andersen took over for Mr. Abelson?                  2 A. Early '80s, late '70s. It's just a                  3 guess.                  4 Q. Fair enough, fair enough.                  5 But to the best of your recollection, the                  6 progression was Mr. Abelson and then Mr. Andersen                  7 unless either of those were on vacation for a                  8 particular meeting if somebody was covering for                  9 them, correct?                  10 A. Yes, yes.                  11 Q. Okay, thanks.                  12 During the time that you were at DEP, were                  13 you familiar with any structures or projects that                  14 crossed the Delaware/New Jersey boundary within the                  15 12 Mile Circle?                  16 A. Am I familiar with any structures?                  17 Q. Such as wharfs.                  18 A. Huh?                  19 Q. Such as wharfs.                  20 A. I'm sure I am. But for me to recall                  21 which ones, specifically, I can't do it. I mean, if                  22 you showed me a map or an aerial and said this                  23 particular one, I might be able to say, yeah, I                  24 remember that.                  25 Q. Okay. But without having to recall</p>	48	<p>1 and head towards the New Jersey beaches?                  2 I said, no.                  3 He said not very far, so can you hurry up                  4 taking pictures?                  5 Q. I can see why that sticks in your                  6 mind.                  7 Did you ever do a fly over like that in the                  8 Delaware River?                  9 A. I'm sure I did.                  10 Q. Within the 12 Mile Circle?                  11 A. I'm sure I did, yeah.                  12 Q. Do you have any recollection of the                  13 --                  14 A. As long as it didn't interfere with                  15 the Philadelphia airport pattern, you know, incoming                  16 flights because the people flying the plane or                  17 helicopter would know where those danger zones are                  18 and he'd say, no, we can't go there.                  19 Q. Understood.                  20 A. And I would listen.                  21 Q. Do you have any recollection at all                  22 about the scope or extent of development that would                  23 cross the boundary within the 12 Mile Circle?                  24 A. No, I do not. I do not recall                  25 anything like that today.</p>
47	<p>1 the names of them, do you recall approximately how                  2 many there were at any given time?                  3 A. No, no, no.                  4 See, in addition, to the few things that I                  5 was doing in my capacity there, I loved to do                  6 inspections. So I would at times use a Fixed Plane                  7 Aircraft or a helicopter and fly the coast in order                  8 to bring the council up to date on how things were                  9 progressing and to take pictures and things like                  10 that.                  11 In fact, I recall at one point in time the                  12 commissioner calling me where New Jersey was                  13 concerned about medical waste coming out of New                  14 York, Manhattan, and they wanted to know -- see if                  15 they could pinpoint exactly where the medical waste                  16 was coming from. So somebody said, why don't you                  17 put Jim in a Fixed Wing and that's where I was.                  18 And I recall like it was today the pilot                  19 saying, Jim, you know how far off the coast we are                  20 here in the Atlantic ocean?                  21 And I said, quite a ways.                  22 And you know what altitude we're flying at?                  23 I said, no, pretty low.                  24 Do you know if we have an engine problem how                  25 far we'd get if I was able to turn the aircraft back</p>	49	<p>1 Q. Okay. You can't recall whether it                  2 was, you know, minimal on the one hand or extensive                  3 on the other?                  4 A. No, I would think it's minimal, I                  5 mean, but that's just a guess on my part.                  6 Q. Fair enough.                  7 Why don't we take a little break, five or                  8 ten minutes.                  9 (There is a short recess taken at 11:27.)                  10 (Deposition resumes at 11:58 a.m.)                  11 Q. Mr. Johnson, in the context of your                  12 job as a regulator, did you have occasion to have an                  13 understanding of New Jersey's regulatory authority                  14 within the 12 Mile Circle?                  15 A. No.                  16 Q. Then I take it you didn't have                  17 occasion to have an understanding of Delaware's                  18 regulatory authority in the 12 Mile Circle either?                  19 A. No.                  20 Q. So you didn't have any understanding                  21 as to whether New Jersey would have any authority                  22 beyond the boundary line?                  23 A. Well, under the Compact that gave New                  24 Jersey authority beyond the -- within the State of                  25 Delaware beyond the boundary line, which was the low</p>

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1 water line on the New Jersey side of the waterway.  
 2 Q. What is your understanding of that  
 3 New Jersey authority?  
 4 A. That the State of New Jersey still  
 5 had riparian authority or jurisdiction.  
 6 Q. What did you base that understanding  
 7 on?  
 8 A. I would guess both my reading of the  
 9 Compact of 1905 between the two states and advice or  
 10 guidance afforded me by the Attorney General's  
 11 Office.  
 12 Q. Okay. What was your understanding of  
 13 the scope of New Jersey's riparian jurisdiction  
 14 within Delaware?  
 15 A. The state could entertain an  
 16 application for tideland grants, leases and licenses  
 17 from property owners bordering that area to apply  
 18 for and receive tidelands instruments.  
 19 Q. What about permitting for the  
 20 activities which you mentioned earlier was a  
 21 separate matter?  
 22 A. The permitting when the separate  
 23 office was established was based upon recommendations  
 24 from the permits group given to my people to present  
 25 to the Tidelands Resource Council in their

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1 deliberations on tideland applications.  
 2 Q. And I think you said earlier you  
 3 don't recall working on a permit application for a  
 4 project that straddled the boundary between New  
 5 Jersey and Delaware; is that correct?  
 6 A. That's correct.  
 7 Q. Do you remember working on riparian  
 8 grant or lease applications for lands that extended  
 9 from New Jersey into Delaware?  
 10 A. I do remember one particular one,  
 11 which would have been a co-generation facility. I  
 12 believe that was Keystone, which was to obtain a  
 13 grant, lease or license to use state owned tidelands  
 14 outshore of a grant, an existing riparian grant,  
 15 that was issued to either a predecessor in title or  
 16 a property owner at the time they got the grant,  
 17 which I believe was Sun Oil Company or Corporation.  
 18 Q. Oh, what happened with respect to  
 19 that grant application?  
 20 A. I believe a lease was issued.  
 21 Q. Was that issued by the Tidelands  
 22 Resource Council?  
 23 A. Approved by the Tidelands Resource  
 24 Council and concurred by the then governor and  
 25 commissioner of the Department of Environmental

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1 Protection.  
 2 Q. Okay. Did New Jersey issue any  
 3 permits or did it receive a permit application for  
 4 any particular uses to be made of that property?  
 5 A. That I do not recall.  
 6 Q. You don't recall?  
 7 A. No.  
 8 Q. The Tidelands Resource Council would  
 9 have received notice of any such permit, correct?  
 10 A. Either notice of a permit or a  
 11 recommendation that there was no objection to the  
 12 issuance of the grant based upon the proposed  
 13 activity or structures, yes.  
 14 Q. Okay. Who would have sent that to  
 15 the Tidelands Resource Council in that time period?  
 16 A. What time period was it?  
 17 Q. I was just thinking maybe -- well,  
 18 did you say the Keystone permit -- well, what time  
 19 period according to your recollection was this  
 20 Keystone grant?  
 21 A. I'm thinking late '80s, 1980s.  
 22 Q. Okay.  
 23 A. Am I close?  
 24 Q. We'll get into some documents in a  
 25 little bit about that.

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1 A. Okay.  
 2 Q. Who would have sent notification of  
 3 the permit application or the grant of a permit to  
 4 the Tidelands Resource Council?  
 5 A. Back around what I'm thinking the  
 6 late '80s or middle '80s probably would have been  
 7 Steve Whitney or Ruth Ehinger.  
 8 Q. Okay.  
 9 A. They were managers of the permit unit  
 10 at that time.  
 11 Q. Did you work with them in their job  
 12 in reviewing permit applications?  
 13 A. I didn't work with them. We would  
 14 ask for their comments independently.  
 15 Q. All right. Did you during that time  
 16 period receive a copy of the permit application?  
 17 A. I may have or perhaps when the  
 18 application was filed with my group, my program,  
 19 there was an indication by the applicant's agent  
 20 that a simultaneous application had been filed with  
 21 the permits office.  
 22 Q. Okay. So the filing with your office  
 23 would have been for riparian instrument?  
 24 A. Therefore for a riparian instrument  
 25 either grant, lease or license, yes.

54	<p>1 Q. Okay. Did you ever talk with 2 Mr. Whitney or Miss Ehinger about whether or not New 3 Jersey had authority to issue permits for activities 4 to occur in Delaware? 5 A. <b>Not that I recall.</b> 6 Q. Did you have an understanding then or 7 at anytime during DEP whether New Jersey had 8 authority to regulate activities on a project that 9 straddled the boundary but the activities would be 10 occurring in Delaware? 11 A. No. 12 Q. And to be clear, I'm talking about, 13 you know, something that would happen at the end of 14 wharf that extended from the New Jersey Shore passed 15 the boundary line into Delaware; same answer? 16 A. <b>And you're talking about permits?</b> 17 Q. Correct, correct. 18 A. <b>Not tideland grants, leases or</b> 19 <b>licenses?</b> 20 Q. Exactly right, that's what I'm trying 21 to ask. 22 A. No, no. 23 <b>I had enough to do so I kind of kept --</b> 24 <b>where I finally got to where I just had proprietary</b> 25 <b>interest of the State of New Jersey, that that's</b></p>	56	<p>1 <b>you need Corp of Engineer approval.</b> 2 <b>We were forever instructing agents and</b> 3 <b>applicants and property owners that, you know, not</b> 4 <b>only do you need a state permit to build that dock</b> 5 <b>but you have to contact the Corp of Engineers and</b> 6 <b>there's two different districts and you ought to</b> 7 <b>reach out to them and file an application with them,</b> 8 <b>if it's necessary, and get their approval, if it's</b> 9 <b>necessary.</b> 10 Q. Did you ever advise them as to 11 whether or not they should apply to Delaware for a 12 permit? 13 A. <b>I don't recall.</b> 14 Q. Okay. 15 A. <b>It's been a while since I looked at</b> 16 <b>that file.</b> 17 Q. I understand. 18 A. <b>Or any file that I've handled.</b> 19 Q. Are you aware that Delaware ever 20 issued permits for activities to occur on structures 21 that extended from New Jersey into Delaware within 22 the 12 Mile Circle? 23 A. No, sir. 24 Q. Never? 25 A. Never.</p>
55	<p>1 <b>what I focused on.</b> 2 Q. Okay. So you just focused on the 3 issuance of the riparian grants and leases? 4 A. Yes. 5 Q. And not any permitting activities 6 that the other branches of the department would 7 handle, correct? 8 A. <b>That's true.</b> 9 Q. Okay. And when you were doing 10 permits, the issue of permitting for activities 11 within Delaware never came up? 12 A. <b>Not that I recall.</b> 13 Q. Did you have an understanding whether 14 Delaware would have the authority to require permits 15 for activities to occur on a structure that extended 16 from New Jersey into Delaware? 17 A. No. 18 Q. Did that issue ever come up, in your 19 recollection? 20 A. <b>I do not believe so, but I may have</b> 21 <b>instructed the applicant's agent or the applicant</b> 22 <b>that they should contact other parties to see if</b> 23 <b>they had any interest in the development being</b> 24 <b>proposed such as routinely we would tell people not</b> 25 <b>only do you need state approval to build things but</b></p>	57	<p>1 Q. Never saw or heard of any such 2 permits? 3 A. Never. 4 Q. Would it surprise you to know that 5 such permits exist? 6 A. <b>Nothing would surprise me today.</b> 7 Q. So you didn't have any reason to 8 think during your career at DEP that Delaware lacked 9 the authority to require permits for boundary 10 straddling projects that extended into Delaware? 11 A. No. 12 MR. ATTAWAY: Let's go off the record 13 and mark a couple of exhibits. 14 (There is a discussion off the record.) 15 (Johnson-1 and Johnson-2 are received and 16 marked for Identification.) 17 MR. ATTAWAY: On the record. 18 I've had premarked as Exhibits Johnson-1 and 19 Johnson-2 a May 1978 draft and an August 1978 final 20 version of the State of New Jersey Coastal 21 Management Program Bay and Ocean Shore Segment. 22 And to be clear, these are excerpts from 23 voluminous documents. 24 Q. Mr. Johnson, these documents pertain 25 to what's known as the Coastal Management Program of</p>

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1 New Jersey.  
 2 Are you familiar with that program,  
 3 generally?  
 4 A. Yes, generally.  
 5 Q. When did you first become familiar  
 6 with the Coastal Management Program?  
 7 A. I guess basically when I received a  
 8 copy of the rules. As I recall, didn't it have a  
 9 blue cover on it?  
 10 Q. I don't know what color the cover  
 11 was.  
 12 A. I think they were blue at that time  
 13 but they were voluminous for sure; I guess around  
 14 1978.  
 15 Q. Do you have an understanding of the  
 16 process of development leading up to the Coastal  
 17 Management Program?  
 18 A. I do not.  
 19 Q. Do you know what caused the State of  
 20 New Jersey to develop this Coastal Management  
 21 Program?  
 22 A. No, not really.  
 23 Q. Do you know who was involved  
 24 primarily in developing the Coastal Management  
 25 Program?

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1 A. As I recall, I believe it was a David  
 2 Kinsey and his staff.  
 3 Q. Okay. Do you remember who was on his  
 4 staff?  
 5 A. I think John Weingart was on his  
 6 staff and possibly Steve Whitney.  
 7 Q. Anyone else that comes to mind?  
 8 A. But I can't recall their names.  
 9 If I mention any names, I may be getting  
 10 them mixed up with them being part of commenting to  
 11 my office concerning these rules. The rules may  
 12 have already been done by then.  
 13 Q. When would they have commented to  
 14 your office?  
 15 A. Once the rules and regulations and  
 16 policies were adopted.  
 17 Q. Okay. So after the release?  
 18 A. Yes.  
 19 Q. I'd like to just ask you a question  
 20 or two about language on Page 18 of Exhibit 1 and 19  
 21 of Exhibit 2, which I think the language is  
 22 identical, but I won't put words in your mouth with  
 23 respect to that.  
 24 But if you'll look on Page 18 of Exhibit 1,  
 25 there is a paragraph that begins, New Jersey's Bay

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1 and Ocean Shore Segment Boundary, and that same  
 2 paragraph is on Page 19.  
 3 Have you had a chance to read those?  
 4 A. Yes, sir.  
 5 Q. Do those look in substance if not  
 6 word for word the same?  
 7 A. Yeah.  
 8 Q. This paragraph references a 1933  
 9 decision by the US Supreme Court in New Jersey  
 10 versus Delaware.  
 11 Is that something that you were familiar  
 12 with?  
 13 A. No, sir.  
 14 Q. And I just want to read a sentence or  
 15 two and I'll read from Page 19 of Exhibit 2.  
 16 And it says after the citation to the case  
 17 New Jersey versus Delaware --  
 18 (There is a discussion off the record.)  
 19 Q. Let me start over.  
 20 After the citation to New Jersey versus  
 21 Delaware this passage states, quote, "the interstate  
 22 boundary is generally along the ship channel in the  
 23 middle of Delaware Bay. However, from a point near  
 24 the northern tip of Artificial Island in Lower  
 25 Alloways Creek Township, Salem County the interstate

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1 boundary between New Jersey and Delaware extends  
 2 north at the mean low water line on the New Jersey  
 3 shoreline until the Delaware/Pennsylvania boundary.  
 4 Resolution of potential conflicts between the  
 5 coastal policies of Delaware and New Jersey will  
 6 require continued coordination and work in the first  
 7 year of program approval toward appropriate  
 8 agreements between the coastal management programs  
 9 of both states, Salem County and the affected  
 10 municipalities," end quote.  
 11 This refers to the area within the 12 Mile  
 12 Circle, correct?  
 13 A. Yes.  
 14 Q. Where the boundary is at the low  
 15 water mark on the New Jersey shoreline?  
 16 A. Um-hum.  
 17 Q. The last sentence that I read that  
 18 talks about the resolution of potential conflicts  
 19 and agreements between the coastal management  
 20 programs in both states, is that a concept that you  
 21 were familiar with --  
 22 A. No, sir.  
 23 Q. -- at this time?  
 24 A. No, sir.  
 25 Q. So you weren't familiar with any

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1 attempt to or proposed coordination between the  
 2 coastal management programs of New Jersey and  
 3 Delaware?  
 4 A. I was not.  
 5 Q. Did you subsequently become familiar  
 6 with any coordination attempts between the states?  
 7 A. No, sir, thank goodness.  
 8 Q. Were you aware of any meetings  
 9 between New Jersey representatives and Delaware  
 10 officials concerning the boundary between New Jersey  
 11 and Delaware?  
 12 A. You mean concerning these rules or  
 13 just...  
 14 Q. In this time period.  
 15 I know you mentioned something about  
 16 Keystone in the -- I guess you recall it might have  
 17 been in the late '80, but we'll get to that later  
 18 on.  
 19 But, yes, during this time period, the late  
 20 '70s, early '80s.  
 21 A. The only thing I recall is being at  
 22 this meeting that someone from the Delaware Attorney  
 23 General's Office had with the deputy attorney  
 24 general from New Jersey Bill Andersen. That's...  
 25 Q. Do you remember when that was?

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1 A. No, I do not.  
 2 Q. Was it in connection with the  
 3 Keystone project?  
 4 A. I'm not sure. It may have been.  
 5 Q. Do you think it was in the late '70s  
 6 or early '80s?  
 7 A. In the '80s, I would guess.  
 8 Q. Okay. Do you remember what the --  
 9 why was that meeting called?  
 10 A. I do not remember. It may have had  
 11 something to do with Keystone maybe contacting  
 12 Delaware or, you know, me asking the agent for the  
 13 applicant to let Delaware know what you're doing  
 14 here in New Jersey with making this application. It  
 15 may not be. I just cannot remember.  
 16 Q. Okay. You said it might have been in  
 17 connection with advice that you gave to an applicant  
 18 to let Delaware know what the applicant intended to  
 19 do; is that correct?  
 20 A. It may have been.  
 21 Q. Did you give that sort of advice to  
 22 other applicants as a general matter in the course  
 23 of your career at the DEP?  
 24 A. As I said before, I was always  
 25 telling people not only do you need approvals from

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1 New Jersey, you need approvals from the Federal  
 2 Government through the US Army Corp of Engineers,  
 3 that was -- and also with local municipalities. I  
 4 was forever telling people that, that it's not over  
 5 when you think it's over.  
 6 Q. We're not the only game in town,  
 7 right?  
 8 A. Right.  
 9 Q. Would you have said that they needed  
 10 to check with the appropriate officials in Delaware?  
 11 A. I believe I would have, yes.  
 12 Q. Okay. I'll come back to this meeting  
 13 that you were talking about with Mr. Andersen,  
 14 unless it comes back to you that that meeting  
 15 occurred within this time period.  
 16 We're talking about the 1978 coastal  
 17 management plan.  
 18 A. I just don't remember. I apologize.  
 19 Q. No, that's okay. Your memory is what  
 20 it is.  
 21 And, I mean, do you have a recollection of  
 22 whether it was likely in connection with the Coastal  
 23 Management Program or not likely that it was in  
 24 connection with that program?  
 25 A. I just don't remember.

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1 Q. Okay, fair enough.  
 2 MR. ATTAWAY: I'd like to mark  
 3 Exhibit 3 for identification.  
 4 (Johnson-3 is received and marked for  
 5 Identification.)  
 6 (There is a discussion off the record.)  
 7 MR. ATTAWAY: Okay. Back on the  
 8 record.  
 9 Q. I've marked for identification  
 10 Exhibit Johnson-3, which is a document dated  
 11 March 1979 from the Department of Environmental  
 12 Protection entitled Options for New Jersey's  
 13 Developed Coast. And it's subtitled a Preview of a  
 14 State Coastal Management Program for parts of and  
 15 then it lists a number of New Jersey counties,  
 16 including Salem County.  
 17 Mr. Johnson, have you seen this document  
 18 before?  
 19 A. I don't recall. I may have, but I  
 20 don't recall with any certainty.  
 21 Q. Okay. Turning to Pages 141 to 144,  
 22 which those constitute Appendix F, which is titled  
 23 the Delaware New Jersey Boundary Line and Interstate  
 24 Coastal Management along the Salem County shoreline.  
 25 You've had a chance just now to at least

<p style="text-align: right;">66</p> <p>1 skim these four pages, correct?                  2 A. Yes, sir.                  3 Q. Do you recall having read this at any                  4 point in your career at DEP?                  5 A. No, sir.                  6 Q. On Page 141, the first sentence                  7 states, quote, "The Delaware Coastal Zone Act of                  8 1971 includes or at least impedes major waterfront                  9 industrial development along the shoreline of Salem                  10 County, New Jersey as a result of the peculiar                  11 interstate boundary between the State of New Jersey                  12 and the State of Delaware along the Delaware River,                  13 end quote.                  14 As I read this sentence, it states that the                  15 Delaware Coastal Zone Act of 1971 applies to                  16 industrial development along the shoreline of Salem                  17 County, New Jersey. Just reading this language on                  18 the face of it, would you agree with that?                  19 MS. HOROWITZ: Objection. He's just                  20 said that he doesn't recall ever reading this --                  21 MR. ATTAWAY: That's on the record.                  22 MS. HOROWITZ: -- before.                  23 There is no foundation for your question.                  24 That's the nature of the objection.                  25 Q. You can still answer it.</p>	<p style="text-align: right;">68</p> <p>1 Coastal Zone Laws to projects that extend from New                  2 Jersey into Delaware; is that generally correct?                  3 A. That's correct.                  4 MS. HOROWITZ: I'm just a little                  5 behind with that.                  6 But, again, I'm objecting, lack of                  7 foundation.                  8 Q. But if I understand your prior                  9 testimony, you don't have any understanding one way                  10 or another as to whether the things said in here                  11 about Delaware's permitting authority are correct or                  12 incorrect; is that true?                  13 A. That's true.                  14 Q. Did you ever discuss with anyone else                  15 in the New Jersey DEP whether or not Delaware would                  16 have permitting authority over projects that extend                  17 into Delaware from New Jersey?                  18 A. I do not recall.                  19 Q. Did you have discussion or were you                  20 present at discussions with any representatives of                  21 Delaware in which the topic of Delaware's permitting                  22 authority came up?                  23 A. Again, I do not recall.                  24 MR. ATTAWAY: I think we're done with                  25 this exhibit.</p>
<p style="text-align: right;">67</p> <p>1 THE WITNESS: Would you read the                  2 question back again, please?                  3 (Whereupon, the question is read back as                  4 follows:                  5 "Question: As I read this sentence, it                  6 states that the Delaware Coastal Zone Act of 1971                  7 applies to industrial development along the shore                  8 line of Salem County, New Jersey. Just reading this                  9 language on the face of it, would you agree with                  10 that?")                  11 A. Yes.                  12 Q. Okay. Did you have an understanding                  13 of whether the Delaware Coastal Zone Act would apply                  14 to projects that extended from New Jersey into                  15 Delaware?                  16 A. Did not.                  17 Q. That was a decision to be made by the                  18 permitting folks?                  19 A. Yes, sir, yes, sir.                  20 Q. You don't have to call me sir, but I                  21 appreciate that.                  22 A. I'm sorry.                  23 Q. I should be calling you, sir.                  24 As a general matter, these four pages, Pages                  25 141 to 144, discuss the application of Delaware's</p>	<p style="text-align: right;">69</p> <p>1 I'd like to mark two additional Exhibits --                  2 stay on the record for a moment -- and these are a                  3 draft and final excerpts of the 1980 Coastal                  4 Management Program in New Jersey.                  5 And you can go off the record.                  6 (There is a discussion off the record.)                  7 (Johnson-4 and Johnson-5 are received and                  8 marked for Identification.)                  9 MR. ATTAWAY: Back on the record.                  10 Q. Mr. Johnson, you've had a chance to                  11 review Page 18 of Exhibit 4 and Page 20 of                  12 Exhibit 5?                  13 A. Yes.                  14 Q. Under the heading of seaward and                  15 interstate boundaries, there are two paragraphs. I                  16 want to ask you about the second paragraph that                  17 begins -- well, let me just read it.                  18 "In most of Salem County, the Delaware and                  19 New Jersey state boundary is the mean low water line                  20 on the eastern New Jersey shore of the Delaware                  21 River. The New Jersey and Delaware coastal                  22 management agencies have discussed this issue and                  23 have concluded that any New Jersey project extending                  24 beyond mean low water must obtain coastal permits                  25 from both states," end quote.</p>

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1 Is that language the same or similar in both  
 2 exhibits?  
 3 **A. It is.**  
 4 **Q. Okay. With respect to the last**  
 5 **sentence I read about the New Jersey and Delaware**  
 6 **Coastal Management Agencies having discussed the**  
 7 **boundary issue and concluded that any boundary**  
 8 **straddling project would have to obtain permits from**  
 9 **both states, do you have any recollection of that**  
 10 **process of discussion between the New Jersey and**  
 11 **Delaware agencies?**  
 12 **A. No, I do not.**  
 13 **Q. You didn't hear about that occurring?**  
 14 **A. No.**  
 15 **Q. Okay. And I think you said earlier**  
 16 **that you had no understanding of whether Delaware**  
 17 **would or would not have any permitting authority**  
 18 **over a boundary straddling project; is that correct?**  
 19 **A. That's true, yes.**  
 20 **Q. But that you regularly advised**  
 21 **applicants to New Jersey that they might need to**  
 22 **check with Delaware authorities to see if a permit**  
 23 **would be required, right?**  
 24 **MS. HOROWITZ: Objection. I don't**  
 25 **believe that was what he said.**

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1 **Q. If I misstated what you said before,**  
 2 **please let me know.**  
 3 **A. I always tried to inform applicants**  
 4 **dealing with my program that there were other**  
 5 **regulatory type agencies that should be contacted**  
 6 **about projects.**  
 7 **Q. And that that could include Delaware?**  
 8 **A. That could include Delaware, yes.**  
 9 **Q. Thank you.**  
 10 **Do you recall whether you provided input to**  
 11 **the 1980 Coastal Management Program?**  
 12 **A. I do not recall.**  
 13 **Q. Looking at Exhibit 5, which is the**  
 14 **final -- it's this one right here.**  
 15 **A. Okay.**  
 16 **Q. You can put four away, I think.**  
 17 **At the very end there is a two-page Appendix**  
 18 **J that is entitled preparers of the New Jersey**  
 19 **Coastal Management Program.**  
 20 **I think if you turn to the end and then go**  
 21 **back two pages, you'll find it.**  
 22 **A. Page 532?**  
 23 **Q. Correct.**  
 24 **A. Okay.**  
 25 **Q. And this appendix is just two pages**

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1 long. It's 532 and 533.  
 2 And the first page lists preparers from a  
 3 Federal agency called NOAA, N.O.A.A., the second  
 4 page lists preparers in the New Jersey DEP and the  
 5 first name is David Kinsey, who I think you  
 6 mentioned earlier --  
 7 **A. Yes.**  
 8 **Q. -- is the person you thought --**  
 9 **A. And John Weingart, too.**  
 10 **Q. Right.**  
 11 **Farther down there is a paragraph that**  
 12 **starts out, planning assistance was also provided.**  
 13 **And toward the bottom of that paragraph it mentions**  
 14 **Chief James Johnson of the Bureau of Tidelands,**  
 15 **which is yourself, correct?**  
 16 **A. Yeah, I know that guy. That is**  
 17 **correct.**  
 18 **Q. I just have to make sure there wasn't**  
 19 **another Chief James Johnson running around.**  
 20 **A. With or without Indian feathers,**  
 21 **right?**  
 22 **Q. Do you recall what sort of planning**  
 23 **assistance they might have been referring to here?**  
 24 **A. No, I do not. I mean, was it in**  
 25 **connection with the Delaware and New Jersey boundary**

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1 **or was it in relation to something else, somewhere**  
 2 **else in this voluminous document I do not recall.**  
 3 **Q. Okay. Do you think it likely that**  
 4 **you would have provided input regarding the boundary**  
 5 **issues?**  
 6 **A. I doubt it.**  
 7 **Q. Who do you think would have provided**  
 8 **input leading to the inclusion of the text that we**  
 9 **read on Page 20?**  
 10 **A. I do not know.**  
 11 **You mean among all these names that are**  
 12 **here?**  
 13 **Q. Correct.**  
 14 **Or if someone is not listed and you think**  
 15 **they might have provided input, you can tell me**  
 16 **that, too.**  
 17 **A. I don't know.**  
 18 **There may have been a deputy attorney**  
 19 **general assigned to that program, to this Coastal**  
 20 **Regulatory Program, at that time that assisted in**  
 21 **the wordings.**  
 22 **Q. Okay. Is this the type of document**  
 23 **that would have been reviewed by either counsel?**  
 24 **A. That -- I can't answer that. I don't**  
 25 **know. I would think legal counsel would be of some**

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1 assistance in preparing it, but I don't know that  
 2 for a fact.  
 3 Q. Okay. Just one more question about  
 4 this.  
 5 A. Oh, here it is, special thanks to  
 6 Deputy Attorney General John Van Dalen, way down at  
 7 the bottom.  
 8 Q. Did you work with Mr. Van Dalen?  
 9 A. On occasion, yeah, he was a deputy  
 10 attorney general in the Attorney General's Office  
 11 and the deputies that were assigned to the DEP, yes.  
 12 Q. Do you know how long he was at -- he  
 13 was a deputy attorney general?  
 14 A. He just retired about two years ago  
 15 -- or not retired. I think every time I say he got  
 16 retired, I get hollered at.  
 17 He left the Attorney General's Office. But  
 18 he goes back into the '80s, late '70s, '80s, I  
 19 believe.  
 20 Q. And was he assigned to DEP during  
 21 that time?  
 22 A. I believe he was, yes.  
 23 Q. So was the setup of the Attorney  
 24 General's Office that a particular attorney would be  
 25 assigned to advise one agency and only one agency?

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1 A. I think so. I know Jack was also --  
 2 Mr. Van Dalen was also counsel to the Hackensack  
 3 Meadowlands Development Commission, which was not  
 4 part of the Environmental Protection Department but  
 5 was within the Department of Community Affairs, I  
 6 believe.  
 7 Don't ask me about that connection.  
 8 Q. Okay, I'll take your advice.  
 9 I just have one or two more questions, and  
 10 if you can turn back -- we were at Page 532 and if  
 11 you could turn back to Page 499. But because this  
 12 is excerpted, it's basically the next page back.  
 13 A. Oh, is it?  
 14 Q. Yeah.  
 15 A. Thank you.  
 16 Q. It's before the yellow sheet.  
 17 (There is a discussion off the record.)  
 18 Q. I just want to ask you about -- if  
 19 you look at the right column, there is a passage  
 20 that begins with the number 392 and it's about Salem  
 21 County. It's about a comment that Salem County  
 22 submitted respecting this program, Coastal  
 23 Management Program document, and their response from  
 24 DEP.  
 25 A. Yes, sir.

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1 Q. Okay. Let me just read it for  
 2 clarity in the record. The comment says -- and it's  
 3 from the Salem County planning board -- it says,  
 4 Salem County is strongly opposed to the statement in  
 5 this revision that any project in the area must be  
 6 consistent with both Delaware's and New Jersey's  
 7 coastal programs and obtain permits from two states.  
 8 And the response from DEP is, this  
 9 disagreement is noted, but DEP has found no other  
 10 solution available by administrative action to  
 11 address the peculiar New Jersey/Delaware boundary in  
 12 Salem County where the Delaware state line reaches  
 13 to low tide on the New Jersey shore.  
 14 I know you testified earlier that you hadn't  
 15 been familiar about any disputes over whether  
 16 Delaware had a regulatory authority over a boundary  
 17 straddling project.  
 18 Does this refresh your recollection?  
 19 A. I was not aware of -- this is  
 20 probably something that came out of the public  
 21 hearing, I guess, before the adoption of the coastal  
 22 rules. And I was not aware of Salem County's  
 23 comments.  
 24 Q. Okay. And I think we discussed  
 25 earlier the language regarding Delaware's regulatory

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1 authority that was in the draft and the final 1980  
 2 Coastal Management Program and that didn't change  
 3 from the draft to the final, correct?  
 4 A. That's correct, yes.  
 5 Q. Okay, we're done with that exhibit.  
 6 (There is a discussion off the record.)  
 7 (There is a short recess taken at 12:48.)  
 8 (Deposition resumes at 1:03 p.m.)  
 9 MR. ATTAWAY: Back on the record.  
 10 Q. Mr. Johnson, are you aware whether  
 11 New Jersey ever placed a condition in one of its  
 12 permits that Delaware permits first be issued?  
 13 A. I am not aware of that.  
 14 Q. You mentioned the Keystone project  
 15 earlier and you said that was a co-gen facility?  
 16 A. Yes.  
 17 Q. What is a co-gen facility, please?  
 18 A. It's a facility that produces  
 19 electricity.  
 20 Q. Were you involved in issuing the  
 21 riparian instrument to Keystone?  
 22 A. Somewhere along the line, yes, sir,  
 23 represented the application to the Tidelands  
 24 Resource Council.  
 25 When it was approved, the instrument would

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<p>1 have been prepared by my office and reviewed by the                  2 Attorney General's Office and then sent to the                  3 applicant for their review and approval as to form.                  4 And once it was approved as to form, I would                  5 forward the instrument to the commissioner of the                  6 department for the commissioner's review and                  7 approval of the document. And then once his                  8 approval was obtained, the document would then be                  9 forwarded to the Office of the Attorney General who                  10 would review it, sign it and forward it to the                  11 governor for the governor's review and approval and                  12 then onto the Secretary of State for attestation of                  13 the signatures and back to my office for delivery.                  14 Q. Sounds like a very official process.                  15 A. Yes, a fail safe process.                  16 Q. In the course of forwarding the                  17 documents around to all the people that you just                  18 mentioned, would the permit file or some permitting                  19 documents have been included?                  20 A. No, sir.                  21 Q. Okay. Where would the permitting                  22 documents have come in?                  23 A. The permitting documents would have                  24 been as part of the file of the office that handles                  25 the permit applications.</p>	<p>1 Q. And Exhibit 7 is from yourself also                  2 to Richard Long dated August 1st, 1991. These are                  3 both one-page letters.                  4 I'll just let you describe in your own words                  5 what these letters signify.                  6 A. Okay. The letter marked Johnson-6 is                  7 a letter dated July 26, 1991 to a Richard Long.                  8 Richard Long would have been the agent for the                  9 applicant Sun Refining Marketing -- Sun Refining and                  10 Marketing Company who made an application to my                  11 office for a long-term lease and interim license.                  12 And this letter, basically, says that we acknowledge                  13 receipt of the application and we assigned it an                  14 application file number or a Docket Number I was                  15 calling it at that time and the file number would                  16 have been 91-0190-T. It also makes reference to                  17 permit application file numbers 0809-91-0010.1, dash                  18 .2, .3 and .4. So it's actually an acknowledgment                  19 of an application by my office.                  20 It further goes onto say that my office                  21 understands that a companion application for a                  22 waterfront development, stream encouragement,                  23 wetlands Type A and freshwater wetlands permits as                  24 designated above. And that's why you have the .1,                  25 .2, .3 and .4, they're all separate applications,</p>
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<p>1 Q. I thought you said earlier that you                  2 ensured that the permits were in place before                  3 recommending to the Tidelands Resource Council that                  4 a grant be issued?                  5 A. I don't know if I said the permits                  6 were in place. I meant that the people who make                  7 decisions on permits had reached that decision.                  8 Q. Okay. And would your office have                  9 received the actual permits?                  10 A. Either the actual permit or a copy of                  11 the letter transmitting the permit.                  12 MR. ATTAWAY: Okay. I'd like to mark                  13 for identification two exhibits. These are two                  14 one-page letters. Let's mark the letter dated                  15 July 26th as the next number.                  16 (Johnson-6 and Johnson-7 are received and                  17 marked for Identification.)                  18 MR. ATTAWAY: Back on the record.                  19 A. Even for that long ago.                  20 Q. Mr. Johnson, I've just had marked for                  21 identification Exhibits 6 and 7. Exhibit 6 is a                  22 letter dated July 26, 1991 from Richard Long to                  23 yourself -- I'm sorry -- from yourself to Richard                  24 Long.                  25 A. Yes.</p>	<p>1 that they have been filed with the Bureau of                  2 Regulation for their determination as to whether the                  3 proposed use of the tidelands area being applied for                  4 is consistent with the coastal resource and                  5 development policies.                  6 And I went onto say that these comments are                  7 required prior to scheduling your application for                  8 consideration by the Tidelands Resource Council,                  9 which I talked earlier about.                  10 Q. Right.                  11 A. Finding out if everything is going to                  12 be a go.                  13 And I sent a copy of that letter to the                  14 Bureau of Revenue. And the Bureau of Revenue is --                  15 the copy of my letter to them is what transmitted                  16 that large \$25 check of theirs in payment of the                  17 application filing fee.                  18 I also sent a copy of the application to a                  19 Kevin Broderick, who is with the Bureau of                  20 Regulations, the work that -- the office that                  21 handles the waterfront development applications. In                  22 fact, Kevin is still with the Bureau, I believe, in                  23 that same program, in the waterfront development                  24 program.                  25 And a copy of the letter went to the staff</p>

82	<p>1 appraiser in my program. At that time I had three                  2 appraisers that reviewed appraisal documents, real                  3 estate appraisal documents, that were submitted by                  4 the applicant that were subject to my programs                  5 review and advice to the Tidelands Resource Council                  6 once this application went before the council.                  7 Q. Okay.                  8 A. The second letter marked Johnson-7 is                  9 a letter dated August 1st, 1991 and again a letter                  10 from me to Richard Long, the agent for the                  11 applicant, at that time identified as Keystone                  12 Co-generation Systems.                  13 So, apparently, what Richard Long did was to                  14 submit additional documents to change the name of                  15 the application from Sun Refining and Marketing                  16 Company to Keystone Co-generation Systems, INC, and                  17 that's what I was acknowledging in my August 1st                  18 letter was the revised documents being filed with my                  19 office.                  20 Q. Okay.                  21 A. We retained the same file number                  22 91-0190-T. And, again, I copied the Bureau of                  23 Revenues so they could change their database and                  24 also send a copy to the permits office to the                  25 attention of Kevin Broderick.</p>	84	<p>1 counterpart?                  2 A. Yes, yes.                  3 Q. Copied on this letter is Dave Fanz,                  4 F-a-n-z.                  5 Do you know who Dave Fanz was?                  6 A. No.                  7 According to the letter he was the -- he                  8 worked under Steve as a project reviewer.                  9 Q. Okay. But the name is not familiar                  10 to you today?                  11 A. No.                  12 Q. The letter is addressed to Anthony P.                  13 Pratt, Division of Soil and Water Conservation at                  14 the Delaware Department of Natural Resources and                  15 Environmental Control.                  16 Did you know Mr. Pratt?                  17 A. I did not.                  18 Q. Or know of him?                  19 A. No.                  20 Q. Never heard his name before?                  21 A. Never heard his name before.                  22 Q. The first paragraph of the letter                  23 refers to an application received by the New Jersey                  24 Division of Coastal Resources for several coastal                  25 permits for coal fired co-generation facility with a</p>
83	<p>1 Q. Thank you.                  2 MR. ATTAWAY: I'd like to mark for                  3 identification Johnson-8 and this is a one-page                  4 letter from Steven Whitney to Anthony Pratt dated                  5 March 14, 1991.                  6 And we can go off the record and give                  7 Mr. Johnson a chance to review this.                  8 (Johnson-8 is received and marked for                  9 identification.)                  10 Q. Mr. Johnson, have you seen this                  11 before letter before today?                  12 A. No, I don't believe so.                  13 Q. You mentioned Steven Whitney earlier.                  14 What was his role at this point in time March 14th,                  15 1991?                  16 A. Steve Whitney was, I guess, my                  17 counterpart insofar as the office or Bureau of                  18 Regulation was concerned, what I referred to as the                  19 Waterfront Development Permit Section Wetlands                  20 Coastal Zone Management so on and so forth or CAPRA                  21 (phonetic).                  22 Q. So he was in charge of permits and                  23 you were in charge of the tidelands --                  24 A. Tidelands, yes.                  25 Q. That's what you mean by he's your</p>	85	<p>1 coal handling pier.                  2 This was the Keystone project, correct?                  3 A. I believe so, yes.                  4 Q. And, actually, I'm looking up in the                  5 regarding line of the letter and it does mention                  6 Keystone. In fact, it states, quote, "joint review                  7 of project within the States of Delaware and New                  8 Jersey, Keystone Co-generation Systems," end quote.                  9 A. Yes, it does as the subject matter of                  10 the letter of Steve Whitney's letter.                  11 Q. In the second paragraph of this                  12 letter Mr. Whitney says, considering our Federal                  13 Coastal Zone Management Grant task to produce a                  14 better coordination effort for development of this                  15 kind, I'm forwarding to you this application for                  16 your review.                  17 Do you know what he's talking about here,                  18 the Federal Coastal Zone Management Grant task to                  19 produce a better coordinated effort?                  20 A. No, I do not.                  21 Q. Do you know what Federal Coastal Zone                  22 Management Grant would be?                  23 A. No.                  24 Q. Do you know whether by submitting New                  25 Jersey's Coastal Management Program to the Federal</p>

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1 government that if approved New Jersey could get  
 2 Federal funds to implement its coastal management  
 3 program?  
 4 **A. I've heard of that, yes, but I was**  
 5 **not part of that grant request or...**  
 6 **Q. Fair enough.**  
 7 **On its face would you agree that this letter**  
 8 **by Mr. Whitney proposes coordination between New**  
 9 **Jersey and Delaware with respect to permitting**  
 10 **reviews for the Keystone project?**  
 11 **MS. HOROWITZ: Objection since he**  
 12 **didn't write the letter and he's not familiar with**  
 13 **it and it speaks for itself.**  
 14 **But you can answer it.**  
 15 **Q. You can still answer it.**  
 16 **A. It appears to be.**  
 17 **Q. Thank you.**  
 18 **Does this ring any bells with respect to any**  
 19 **coordination efforts between New Jersey and**  
 20 **Delaware?**  
 21 **A. It does not.**  
 22 **Q. Okay.**  
 23 **MR. ATTAWAY: I'd like to introduce**  
 24 **for identification Johnson-9, which is a one-page**  
 25 **memorandum, dated August 28th, 1991 from Robert**

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1 appropriateness of granting or denying the permit  
 2 application?  
 3 **A. I would think so.**  
 4 **Q. Now, this document that I've given**  
 5 **you doesn't have the attachment and this is the way**  
 6 **for the record we received it from New Jersey.**  
 7 **Do you know where the attached analysis**  
 8 **would have been stored after you received it?**  
 9 **A. Once received, I would have made it**  
 10 **part of the application file, which is the file**  
 11 **number or docket number that was identified in the**  
 12 **letters that I had or I forget the dates now.**  
 13 **Q. Right, the tidelands docket**  
 14 **numbers --**  
 15 **A. The tidelands docket numbers, yeah.**  
 16 **Q. And the file number on this is the**  
 17 **coastal permit --**  
 18 **A. That would have been the coastal**  
 19 **permit application file number.**  
 20 **MR. ATTAWAY: I would like to**  
 21 **introduce Exhibit 10, which is a multi-page summary**  
 22 **analysis of the Keystone project, dated**  
 23 **September 24, 1991.**  
 24 **And we can go off the record.**  
 25 **(Johnson-10 is received and marked for**

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1 Tudor, T-u-d-o-r, to James Johnson.  
 2 **Q. And we can go off the record and give**  
 3 **you a chance to review this, Mr. Johnson.**  
 4 **(Johnson-9 is received and marked for**  
 5 **Identification.)**  
 6 **Q. Mr. Johnson, what is your**  
 7 **understanding of this memorandum?**  
 8 **A. This would have been the -- what I've**  
 9 **been talking about is getting -- before the**  
 10 **Tidelands Resource Council makes a decision to sell**  
 11 **or at least -- or permit someone to use state owned**  
 12 **tidelands, that the council is sure that the use of**  
 13 **the area being applied for is acceptable to the DEP**  
 14 **and the State of New Jersey.**  
 15 **And this document more or less says that**  
 16 **they're recommending approval of the facility**  
 17 **pending resolution of several issues and asking that**  
 18 **the council or that I consider and present to the**  
 19 **council that there should be a public access policy**  
 20 **or public access condition in the grant.**  
 21 **Q. This mentions a -- well, the first**  
 22 **sentence says, please find attached a copy of the**  
 23 **staff preliminary analysis for this project that was**  
 24 **prepared by my staff.**  
 25 **Would that have been an analysis of the**

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1 Identification.)  
 2 (There is a discussion off the record.)  
 3 **MR. ATTAWAY: Back on the record.**  
 4 **Q. Mr. Johnson, do you remember seeing**  
 5 **this document before today?**  
 6 **A. I cannot recall.**  
 7 **Q. Okay. Just looking back briefly to**  
 8 **Johnson-9, the first sentence of that memorandum**  
 9 **which is to yourself from Robert Tudor, it claims to**  
 10 **attach a copy of the staff preliminary analysis, but**  
 11 **the memorandum is dated August 28th, 1991 and then**  
 12 **Exhibit 10 is called a summary analysis rather than**  
 13 **a staff preliminary analysis and it's dated roughly**  
 14 **a month later, September 24th, 1991.**  
 15 **Do you have any reason to think that this**  
 16 **summary analysis would in substance have been the**  
 17 **same thing that was attached to the August 28th**  
 18 **memorandum?**  
 19 **A. I would have no idea.**  
 20 **Q. Is this the type of analysis that you**  
 21 **were accustomed to receiving from the permitting**  
 22 **folks?**  
 23 **A. Most likely.**  
 24 **Q. Just backing up a step. On**  
 25 **Exhibit 9, the document is from Robert Tudor. Who**

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1 is Mr. Tudor?  
 2 A. Bob Tudor went through many titles.  
 3 I think back then he was Steve Whitney's -- Bob may  
 4 have been the director. Steve was at that time  
 5 assistant director or manager.  
 6 Q. Okay.  
 7 A. Yeah.  
 8 Q. So Bob Tudor would have been at the  
 9 top of the permitting division?  
 10 A. Yes.  
 11 Q. Who would he have reported to at that  
 12 time position-wise?  
 13 A. I believe he reported to an assistant  
 14 commissioner.  
 15 Q. And the assistant commissioner would  
 16 then report to the commissioner?  
 17 A. Yes.  
 18 Q. And there was only one commissioner  
 19 at DEP, correct?  
 20 A. Yes.  
 21 Now, if you look back at the last page,  
 22 740 --  
 23 Q. Okay.  
 24 A. -- it identifies what his title was  
 25 when this summary analysis September 24, 1999 --

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1 1991, excuse me --  
 2 Q. Right.  
 3 A. -- was issued. And he was at that  
 4 time the administrator of the Land Use Regulation  
 5 Element, which is like a director.  
 6 Q. Okay.  
 7 A. Division director.  
 8 Q. And he would have reported -- in this  
 9 title, he would have reported directly to the  
 10 assistant commissioner?  
 11 A. Yes.  
 12 Q. And just looking at the signature  
 13 page, there are three signatures on it. The one at  
 14 the bottom is Bob Tudor, which we were just  
 15 discussing.  
 16 A. Yes.  
 17 Q. And above that it says approved by  
 18 Robert A. Tudor and then it has his signature,  
 19 correct?  
 20 A. Yes.  
 21 Q. So he would have been the one that  
 22 approved this analysis by the face of this document,  
 23 correct?  
 24 A. Yes.  
 25 Q. And then above that there is a

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1 signature by Ruth Ehinger?  
 2 A. Yes.  
 3 MR. ATTAWAY: The spelling is  
 4 E-h-i-n-g-e-r, just like it sounds.  
 5 Q. And that says, approval recommended  
 6 by, so Miss Ehinger would have recommended approval  
 7 to Mr. Tudor but she wouldn't have had the authority  
 8 to make the approval I gather?  
 9 A. That's correct.  
 10 Q. And then, finally, the first  
 11 signature on here is David Fanz who we discussed  
 12 earlier that you didn't know, but it appeared from  
 13 the letter that he was a staff member of Steven  
 14 Whitney and this says, this analysis was prepared by  
 15 Mr. Fanz, correct?  
 16 A. Yes, he was the so-called project  
 17 review officer, yes.  
 18 Q. Turning back to pages -- and I'll  
 19 identify this by Bate's stamp -- oh, there actually  
 20 are page numbers. They just don't appear on every  
 21 page.  
 22 But it's Page 3 and 4 of the document, New  
 23 Jersey Bate's number 7711 and 12.  
 24 A. Yes.  
 25 Q. You've had a chance to review the two

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1 paragraphs here, there is a full paragraph and then  
 2 a carry-over paragraph?  
 3 A. Yes.  
 4 Q. And it might be easier if I just read  
 5 this.  
 6 The first paragraph states, quote, "the  
 7 proposed co-generation facility includes a barge  
 8 delivery system that encroaches into the  
 9 jurisdiction of both the State of New Jersey and the  
 10 State of Delaware. In 1905 the States of New Jersey  
 11 and Delaware entered into a Compact regarding  
 12 riparian jurisdiction for this type of situation.  
 13 Article 7 of that Compact authorizes each state on  
 14 its own side of the Delaware River to exercise  
 15 riparian jurisdiction of every kind and nature and  
 16 to make grants, leases of conveyances of riparian  
 17 lands and rights under the laws of the respective  
 18 states.  
 19 The second paragraph, as a result of that  
 20 Compact, the State of New Jersey required Keystone  
 21 Co-generation Systems to obtain a riparian  
 22 instrument for the barge unloading facility and  
 23 interim lease and license --  
 24 A. Interim.  
 25 Q. An interim license and long-term

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1 lease was issued on September 9th, 1991, and then  
 2 there's a file number," end quote.  
 3 First of all, did I read that correctly,  
 4 including your correction right at the end?  
 5 A. Yes, you did.  
 6 Q. Thank you.  
 7 A. I apologize.  
 8 Q. No, no, I appreciate that.  
 9 So is this consistent with your  
 10 understanding of the Compact, that New Jersey had  
 11 the authority to issue a riparian instrument?  
 12 A. Yes.  
 13 Q. And just refresh my memory, what was  
 14 the basis for your understanding that that's how the  
 15 Compact worked?  
 16 A. Is the September 9th, 1991 date the  
 17 actual date of delivery of the long-term lease to  
 18 Keystone?  
 19 Q. That's what it says here, but I don't  
 20 know the answer to your question.  
 21 A. Okay.  
 22 Because if I acknowledge receipt of the  
 23 application in July of 1991, then I had to go and  
 24 take the application -- wait for comments from the  
 25 project review people and they present it to the

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1 Tidelands Resource Council and type their minutes  
 2 and return them to the next meeting. I realize when  
 3 I ran the program -- I had the council meeting twice  
 4 a month whereas they meet only once a month today.  
 5 And then after the council approves their minutes  
 6 and I write to the agent and ask him for fees to  
 7 prepare the document and prepare the document and  
 8 get the Attorney General's Office to review it and  
 9 mail a copy to the agent for his review and comment  
 10 within two months I could issue a document already  
 11 signed by the governor. Man, I was good.  
 12 I'm just wondering if that's true. Was the  
 13 long-term lease issued September 9th, 1991?  
 14 Q. Well, I don't know.  
 15 A. Or was it --  
 16 Q. It says here it's interim. I don't  
 17 know what effect that has on it.  
 18 A. Well, there's actually two documents,  
 19 two applications, an interim license which would  
 20 allow somebody at their own risk to undertake  
 21 construction once it was approved by the permits  
 22 branch and at risk hoped that the long-term lease  
 23 would be dually executed -- a separate document --  
 24 executed by all of the authorized state officials  
 25 that are required to sign off on a transfer of

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1 tidelands.  
 2 I'm, like, kind of confused. Maybe he's  
 3 only talking about an interim license was issued on  
 4 September the 9th, 1991 or is September the 9th,  
 5 1991 the date that the Tidelands Resource Council  
 6 approved the application based upon a recommendation  
 7 that development of the area would be issued, so I  
 8 don't know how to respond to your question. I mean,  
 9 it's...  
 10 Q. Let's go onto the sentence that  
 11 carries over onto the next page. It says, the State  
 12 of Delaware has also assumed jurisdiction and  
 13 required a coastal zone permit and a subaqueous land  
 14 permit.  
 15 A. Where is that at?  
 16 Q. It's at the bottom in the carry-over  
 17 sentence.  
 18 A. Gotcha.  
 19 Q. Those permits were issued on  
 20 September 13th, 1991.  
 21 A. Okay.  
 22 Q. So do you recall that Delaware  
 23 assumed jurisdiction and required permits for the  
 24 Keystone project?  
 25 A. I did not.

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1 Q. Now, this entire passage, these two  
 2 paragraphs we were just discussing, on Pages New  
 3 Jersey 7711 and 12, they appear to state that it was  
 4 proper for New Jersey to issue a riparian grant but  
 5 it also notes that Delaware had assumed jurisdiction  
 6 and required permits itself.  
 7 A. Yes.  
 8 Q. Is it your understanding based on  
 9 this that New Jersey was acknowledging that Delaware  
 10 had the authority to require permit for the Keystone  
 11 project?  
 12 MS. HOROWITZ: Objection, foundation,  
 13 didn't prepare the document, the document speaks for  
 14 itself.  
 15 Q. You can still answer.  
 16 A. It appears that's how the document  
 17 reads.  
 18 Q. Turning to Page 7738, which is also  
 19 marked Page 30 of the original document, and maybe I  
 20 should refer you back to the previous page where in  
 21 a section called Section 7 Administrative  
 22 Conditions?  
 23 A. Yes.  
 24 Q. And the condition number 5 on Page  
 25 30, Bate's number 7738 states, prior to construction

98	<p>1 the permit team must submit copies of all the</p> <p>2 permits or approvals listed below to the element,</p> <p>3 which means the Land Use Regulation Element,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And condition D, 5d, is subaqueous</p> <p>7 land and coastal zone management Delaware.</p> <p>8 So is it your understanding from this that</p> <p>9 the proposal in the summary analysis was to require</p> <p>10 the issuance of Delaware permits before construction</p> <p>11 could occur under the New Jersey permits?</p> <p>12 MS. HOROWITZ: Same objection, no</p> <p>13 foundation, didn't write the document and speaks for</p> <p>14 itself.</p> <p>15 You can answer.</p> <p>16 A. Once again, that's how it reads,</p> <p>17 prior to construction the permit team must submit.</p> <p>18 Q. The condition on this permit, is that</p> <p>19 consistent with your understanding of the regulatory</p> <p>20 authority of the respective states?</p> <p>21 A. It appears to be.</p> <p>22 Q. So your understanding as a regulator</p> <p>23 in DEP was that while New Jersey had the authority</p> <p>24 to issue a riparian grant of lands within Delaware</p> <p>25 that Delaware still retained the authority to</p>	100	<p>1 A. Yes.</p> <p>2 Q. Turning to Page 5, which is Bate's</p> <p>3 stamped New Jersey 4408, there is a condition E and</p> <p>4 then one, two, three, four and I'll just read it.</p> <p>5 It says, prior to construction, the</p> <p>6 permittee must submit copies of all the permits or</p> <p>7 approvals listed below to the element.</p> <p>8 And skipping one, two and three, number 4</p> <p>9 reads, subaqueous land and coastal zone management</p> <p>10 Delaware.</p> <p>11 Is that the same condition that was</p> <p>12 recommended in the summary analysis that we just</p> <p>13 looked at in the previous Exhibit 11?</p> <p>14 MS. HOROWITZ: Objection, lack of</p> <p>15 foundation. The witness did not prepare the</p> <p>16 document. I don't believe he prepared either</p> <p>17 document that you referred to in the question.</p> <p>18 Q. Mr. Johnson, reading Exhibit 10 and</p> <p>19 11 is this condition that Delaware permits be</p> <p>20 provided to the Land Use Regulation Element, is it</p> <p>21 the identical condition in both documents?</p> <p>22 A. Yes.</p> <p>23 Q. Thank you.</p> <p>24 Do you have any recollection of how this</p> <p>25 condition made it into this permit?</p>
99	<p>1 regulate the activities and require permits for that</p> <p>2 project; is that correct?</p> <p>3 A. That's my understanding.</p> <p>4 MR. ATTAWAY: I'd like to introduce</p> <p>5 Exhibit 11 and this is the permit issued by the Land</p> <p>6 Use Regulation Element to Keystone dated</p> <p>7 September 24th, 1991.</p> <p>8 Q. And, Mr. Johnson, I'll give you</p> <p>9 whatever time you need to review this and let me</p> <p>10 know when you're ready to go back on the record.</p> <p>11 (Johnson-11 is received and marked for</p> <p>12 Identification.)</p> <p>13 MR. ATTAWAY: Back on the record.</p> <p>14 Q. Mr. Johnson, have you seen the</p> <p>15 Keystone permit before today?</p> <p>16 A. I do not recall. I may have and</p> <p>17 what's ever in the tidelands application file I have</p> <p>18 most likely seen.</p> <p>19 Q. As a matter of course, would the</p> <p>20 final permit have been transmitted to your office in</p> <p>21 order for you to fulfill your responsibility to</p> <p>22 advise the Tidelands Resource Council?</p> <p>23 A. In most cases, yes.</p> <p>24 Q. So, in the normal course, you would</p> <p>25 have received this final permit?</p>	101	<p>1 A. I do not.</p> <p>2 Q. Never discussed it with anyone?</p> <p>3 A. No.</p> <p>4 Q. Are you aware of any other New Jersey</p> <p>5 permits that had similar condition requiring</p> <p>6 Delaware permits before construction could begin?</p> <p>7 A. No.</p> <p>8 Q. Looking at Page 6, the permit was</p> <p>9 prepared for the signature of Ruth Ehinger.</p> <p>10 Do you know whether that is her signature on</p> <p>11 the line?</p> <p>12 A. No, it appears to be the signature of</p> <p>13 Robert Tudor.</p> <p>14 Q. And he's the same -- would he and</p> <p>15 Miss Ehinger sign the summary analysis we discussed</p> <p>16 in Exhibit 10, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Thank you.</p> <p>19 Do you know whether Delaware issued permits</p> <p>20 to the Keystone project?</p> <p>21 A. I do not know.</p> <p>22 Q. Do you remember ever discussing the</p> <p>23 Keystone project with the woman who became your</p> <p>24 successor, Miss Cubberley?</p> <p>25 A. I do not recall ever discussing it</p>

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1 with Miss Cubberley.  
 2 MR. ATTAWAY: I'd like to introduce  
 3 another exhibit, Exhibit 12, and this is a  
 4 memorandum from Steven Whitney to a number of people  
 5 on a distribution list dated July 7, 1994. And it  
 6 has an attachment to it.  
 7 Let's go off the record and give Mr. Johnson  
 8 some time to review this.  
 9 (Johnson-12 is received and marked for  
 10 Identification.)  
 11 (There is a discussion off the record.)  
 12 Q. Mr. Johnson, have you seen this  
 13 memorandum before today?  
 14 A. July 1994? I was gone a year before.  
 15 Q. You were gone, okay.  
 16 A. The answer is no.  
 17 Q. All right. This cover memorandum  
 18 from Mr. Whitney was sent to a distribution list and  
 19 some of the people on the distribution list are  
 20 Robert Tudor, Ruth Ehinger, and also your successor  
 21 Joanne Cubberley; is that correct?  
 22 A. That's correct.  
 23 Q. And this concerns a proposed  
 24 agreement for the New Jersey and Delaware officials  
 25 to share information regarding permitting of

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1 boundaries straddling projects; is that what this  
 2 document appears to pertain to?  
 3 A. It appears to pertain to that, yes.  
 4 Q. In the attachment to the one-page  
 5 cover memorandum, there is a four or five-page draft  
 6 memorandum of agreement between New Jersey DEP and  
 7 Delaware Department of Natural Resources and  
 8 Environmental Control.  
 9 Page 2, which is Bate's stamped Delaware  
 10 27932, has a long paragraph in a section entitled  
 11 sharing of development applications. Do you see  
 12 that?  
 13 A. Yes.  
 14 Q. Just let me give you a chance to read  
 15 that paragraph.  
 16 A. Okay.  
 17 Q. Okay. The last two sentences of that  
 18 paragraph read, quote, "Both agencies recognize that  
 19 each agency has the independent authority to approve  
 20 or deny applications pursuant to its own  
 21 regulations. DEP and DNREC -- that's D-N-R-E-C --  
 22 which share applications under the following  
 23 authorities," and then following that are a number  
 24 of laws of both New Jersey and Delaware.  
 25 Referring back to the sentence that says,

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1 both agencies recognize that each agency has the  
 2 independent authority to approve or deny  
 3 applications pursuant to its own regulations, is  
 4 that consistent with the understanding that you held  
 5 when you were at the DEP?  
 6 MS. HOROWITZ: Objection since he's  
 7 never seen the document and didn't prepare it and  
 8 the draft is dated after he left the DEP.  
 9 Q. I'm asking if the statement is  
 10 consistent with your understanding in your career as  
 11 a regulator at DEP?  
 12 A. So you're asking was it my  
 13 understanding that when an application was filed for  
 14 a tidelands grant, lease or license within this area  
 15 of Delaware/New Jersey?  
 16 Q. Right.  
 17 You can call it a boundary straddling area.  
 18 A. There was nothing written that said  
 19 it should be done. But as I indicated before, I  
 20 personally thought it was a good idea to solicit  
 21 comments from overlapping agencies such as local  
 22 municipalities as well as other departments, other  
 23 agencies, Corp of Engineers, and in this case  
 24 probably to the State of Delaware.  
 25 Q. Okay. Did you ever hear anyone

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1 throughout your career at DEP object to Delaware's  
 2 exercise of permitting an authority to a project  
 3 across from New Jersey into Delaware?  
 4 A. No.  
 5 Q. Were you aware of any earlier drafts  
 6 of this proposed memorandum of agreement between the  
 7 two states that circulated while you were still at  
 8 DEP?  
 9 A. I was not aware of any --  
 10 Q. Okay.  
 11 A. -- agreement documents.  
 12 Q. Okay. I'll represent to you that  
 13 Steven Whitney has testified in this case that this  
 14 was a multi year process beginning in 1991. And I'm  
 15 not asking you to agree with me that he did so  
 16 testify. I'm just telling you and if counsel wants  
 17 I can introduce a document that can substantiate  
 18 that, but I don't think it's necessary. I just want  
 19 to get your recollection of things.  
 20 And I want to explain to you that's why I'm  
 21 asking you about this document, even though it's  
 22 dated after you left. But it refers to a process  
 23 that may have been under -- in process for several  
 24 years.  
 25 Does that ring any bells, do you remember

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1 such a process beginning in 1991 or at anytime  
 2 during your tenure at DEP?  
 3 **A. Not that I recall.**  
 4 Q. Okay. And you never talked to Miss  
 5 Cubberley about who was copied on this memorandum  
 6 about such a proposal to share information?  
 7 **A. No.**  
 8 Q. Okay. Earlier on you testified that  
 9 -- did you have something?  
 10 **A. No, no.**  
 11 Q. I apologize. I thought you wanted to  
 12 say something.  
 13 Earlier on you mentioned that there was a  
 14 meeting that you were at. It may have been  
 15 Keystone, may not have been Keystone, but William  
 16 Andersen was there and you said that -- and there  
 17 was a Delaware deputy attorney general there as  
 18 well.  
 19 Do I have that correct?  
 20 **A. That's correct.**  
 21 Q. Tell me about that meeting.  
 22 Well, I asked you a couple of things earlier  
 23 and you said you don't remember why the meeting was  
 24 called?  
 25 **A. I do not.**

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1 Q. Okay. And you don't remember when it  
 2 was, but it might have been in the late '80?  
 3 **A. That's what I'm thinking. It was the**  
 4 **late '80, early 90s.**  
 5 Q. Is the meeting vivid in your memory  
 6 or is it vague?  
 7 **A. Very vague.**  
 8 Q. Very vague, okay.  
 9 Having looked at some of these Keystone  
 10 documents is your recollection any different now as  
 11 to the subject matter of the meeting?  
 12 **A. No.**  
 13 Q. Okay, fair enough.  
 14 **A. Still very cloudy.**  
 15 Q. Do you remember all the participants  
 16 of the meeting?  
 17 **A. I believe it was just three of us.**  
 18 Q. That would be you, Mr. Andersen and  
 19 someone else?  
 20 **A. Me, Bill Andersen and the individual**  
 21 **from Delaware.**  
 22 Q. Who was the individual from Delaware?  
 23 **A. That I do not recall.**  
 24 Q. But you're certain he or she was an  
 25 attorney?

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1 **A. I believe so.**  
 2 Q. But you're not sure whether the other  
 3 person there was a Delaware attorney?  
 4 **A. I'm not. I'm not.**  
 5 Q. You're not sure?  
 6 **A. I'm thinking he was and I'm kind of**  
 7 **thinking it wouldn't have been me reaching out to**  
 8 **set up the meeting. It was probably Mr. Andersen**  
 9 **and he was using my office to have the meeting. I**  
 10 **mean, that happened now and then. I mean, I had**  
 11 **maps and files and things like that rather than have**  
 12 **the meeting at -- over here at the Justice Complex**  
 13 **or wherever the Attorney General's Office was**  
 14 **located at that time.**  
 15 **It would be more convenient in case we had**  
 16 **to look at maps or look at files or look at**  
 17 **documents that were within the Bureau of Tidelands.**  
 18 Q. Okay.  
 19 **A. Which records date back, as I**  
 20 **indicated, a long time ago.**  
 21 Q. A long time ago, 1804.  
 22 Having taken a few depositions there, I'm  
 23 going to guess that that was at the Bureau of  
 24 Tidelands at 9 Ewing Street; is that where your  
 25 office was?

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1 **A. Yes, yes.**  
 2 **My program was the first document of that**  
 3 **building after it was renovated. Prior to that we**  
 4 **were out at -- I forget when we moved. We were out**  
 5 **in Arctic Parkway. We moved from Arctic Parkway to**  
 6 **there and before that where were we -- Five Station**  
 7 **Plaza where permits is now. It's actually occupied**  
 8 **by Green Acres because I remember the commissioner**  
 9 **telling me -- he called me over when we were going**  
 10 **to get moved out of Trenton to Arctic Parkway and he**  
 11 **said, you know, you're the only program that seems**  
 12 **to run itself, so I'm thinking about moving you out**  
 13 **there.**  
 14 **I said, well, I've got to go back and talk**  
 15 **to my people first before I give you any answer. So**  
 16 **I went back.**  
 17 **And they were worried about are we still**  
 18 **going to be invited to the Christmas party, are we**  
 19 **going to be invited to the picnic, are we going to**  
 20 **get our paychecks.**  
 21 Q. They are all strong and valid  
 22 concerns.  
 23 So back to this meeting that was attended by  
 24 you and Mr. Andersen and someone who may or may not  
 25 have been Delaware attorney.

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1 What's your recollection of that  
 2 conversation?  
 3 **A. Basically, I recall talking about --**  
 4 **we were talking about the Compact of 1905 and I**  
 5 **believe he had no idea that such a Compact existed.**  
 6 Q. He meaning?  
 7 **A. He the visitor from -- the person**  
 8 **other than Bill Andersen.**  
 9 Q. Do you know how long this person had  
 10 been working for Delaware?  
 11 **A. If, in fact, the person was from**  
 12 **Delaware, no, I do not.**  
 13 Q. So you're not sure if this person was  
 14 a representative of Delaware?  
 15 **A. Not positive but I believe he was.**  
 16 Q. You said the subjects of the Compact  
 17 came up. How did that arise?  
 18 **A. I don't recall. It may have**  
 19 **something to do with New Jersey assuming they had**  
 20 **jurisdiction.**  
 21 Q. To do what?  
 22 **A. To do anything at all, I guess,**  
 23 **wlthin the State of Delaware.**  
 24 Q. Was the conversation focused around  
 25 your real estate program, as you called it earlier?

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1 **A. Yes.**  
 2 Q. Or was it about permits?  
 3 **A. No, it would have just been about the**  
 4 **real estate program.**  
 5 Q. So just about whether New Jersey  
 6 under the Compact at issue --  
 7 **A. Could issue a tidelands grant, assert**  
 8 **any type of --**  
 9 Q. And --  
 10 **A. -- instrument that would convey an**  
 11 **interest in title.**  
 12 Q. All right. What was said at that  
 13 meeting?  
 14 **A. I do not recall.**  
 15 Q. Did you say anything to the person  
 16 who you think but aren't sure was from Delaware  
 17 about New Jersey's rights under the Compact?  
 18 **A. No, I think most of the conversation**  
 19 **was between that person and Bill Andersen.**  
 20 Q. Okay. What did Mr. Andersen say?  
 21 **A. I'm sorry, but I don't remember.**  
 22 Q. So all you remember is that the  
 23 subject of the Compact came up?  
 24 **A. Yes.**  
 25 Q. And nothing beyond that?

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1 **A. Not that I recall.**  
 2 Q. So you don't remember Mr. Andersen  
 3 saying one way or another how the Compact should be  
 4 interpreted?  
 5 **A. No.**  
 6 Q. So, as you put it before, your memory  
 7 on that meeting is very vague?  
 8 **A. Yes, very, very vague, with a double**  
 9 **very.**  
 10 Q. I'd like to introduce another  
 11 exhibit. It's going to be Johnson-13 and this is a  
 12 letter from counsel for New Jersey to counsel for  
 13 Delaware and it's about subjects that you would be  
 14 knowledgeable about.  
 15 (Johnson-13 is received and marked for  
 16 Identification.)  
 17 **A. Okay.**  
 18 Q. This is a letter dated October 20th,  
 19 2006 from Barbara Conklin, Deputy Attorney General  
 20 from New Jersey, to Collins J. Seitz, who is Special  
 21 Counsel for Delaware.  
 22 Have you seen this letter before?  
 23 **A. No.**  
 24 Q. So you didn't see it in draft form  
 25 before it went out?

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1 **A. No.**  
 2 Q. Below your name and address there is  
 3 a long paragraph with a lot of semicolons that  
 4 carries over from the first page to the second that  
 5 starts out, expected testimony colon and I just want  
 6 to go through this sequentially.  
 7 The first part says, as supervisor of the  
 8 Office of Riparian Lands Management within the  
 9 Division of Marine Services now the Bureau of  
 10 Tidelands Management between 1970 and 1993, Mr  
 11 Johnson shall testify that he reviewed applications  
 12 for licenses to occupy New Jersey tidelands which  
 13 were approved or denied by the Board of riparian  
 14 commissioners, semicolon.  
 15 Do you agree with that statement?  
 16 **A. So this is talking about applications**  
 17 **prior to 1970?**  
 18 Q. Well, it states between 1970 and  
 19 1993.  
 20 **A. That I was -- yeah, between 1970 and**  
 21 **1993 I was the supervisor of the Tidelands**  
 22 **Management Program for New Jersey.**  
 23 Q. And you reviewed applications for  
 24 licenses?  
 25 **A. And I reviewed applications for**

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1 grants -- well, licenses, yes.  
 2 Q. So that statement is accurate?  
 3 A. Yes.  
 4 But then you get into which were approved or  
 5 denied by the Board of Riparian Commissioners?  
 6 Q. Do you know what the Board of  
 7 Riparian Commissioners is?  
 8 A. Well, when somebody says Riparian  
 9 Commissioners, they're going back to like 1914,  
 10 1912.  
 11 So, yeah, I probably looked at some of them,  
 12 you know; all of them, I doubt it but...  
 13 Q. Was the Board of Riparian  
 14 Commissioners succeeded by the Tidelands Resource  
 15 Council?  
 16 A. Tidelands Resource Council.  
 17 Q. Do you know about when that happened?  
 18 A. No.  
 19 I'm trying to think.  
 20 Q. That's okay. It's not important.  
 21 A. Yeah, I can't -- I don't remember.  
 22 Q. Let's move on through this.  
 23 The next clause says, that he issued permits  
 24 for activities in such areas until the permitting  
 25 program was transferred to another part of NJ DEP in

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1 later 1970s.  
 2 Should that really read 1972 based on your  
 3 previous testimony?  
 4 A. Yeah.  
 5 Q. Okay. You didn't review any permits  
 6 after 1972, correct?  
 7 A. No, no, not at all.  
 8 Q. And then next it says that you were  
 9 aware of the Compact of 1905 while supervisor.  
 10 That's what you testified to before?  
 11 A. Yes.  
 12 Q. And then next it says, that it was  
 13 his understanding of the Compact of 1905 provided  
 14 the New Jersey Board of Riparian Commissioners  
 15 authority to issue grants and licenses within the 12  
 16 Mile Circle and outshore of the mean low water line.  
 17 Is that statement accurate?  
 18 A. Yes.  
 19 Q. Next, that he was present at a  
 20 meeting at the Bureau of Tidelands in Trenton in the  
 21 early 1990s at which an attorney representing the  
 22 State of Delaware was informed that the Compact of  
 23 1905 authorized New Jersey to issue licenses and  
 24 permits to occupy and utilize areas below the MLWL  
 25 within the 12 Mile Circle.

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1 Is that statement accurate?  
 2 A. Well, again, I believe but I am not  
 3 positive that the attorney I met with with Bill  
 4 Andersen was an attorney representing the State of  
 5 Delaware. I'm not positive about that.  
 6 Q. Okay. So you couldn't testify with  
 7 certainty that the person there was an attorney  
 8 representing the State of Delaware?  
 9 A. No, no, I couldn't.  
 10 Q. And you also couldn't testify with  
 11 certainty that the person represented Delaware in  
 12 any capacity, correct?  
 13 A. Could not.  
 14 Q. In fact, that person may have just  
 15 been a private party and not employed by the State  
 16 of Delaware at all, correct?  
 17 A. Again, I don't believe I set the  
 18 meeting up. It was set up by Bill Andersen.  
 19 Q. So Mr. Andersen would --  
 20 A. He'd have to tell you about how the  
 21 meeting was arranged or who the person was or, in  
 22 fact, the person was representing the State of  
 23 Delaware.  
 24 Q. But you don't know whether the person  
 25 was even employed in any way by the State of

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1 Delaware?  
 2 A. I don't know.  
 3 MS. HOROWITZ: Objection. That's  
 4 been asked and answered a number of times.  
 5 Q. Your answer was that you don't know?  
 6 A. I don't know.  
 7 Q. And, also, it says that the meeting  
 8 was at the Bureau of Tidelands in the early 1990s.  
 9 Based on what you said earlier, I gather  
 10 it's the case that you're not sure of the time  
 11 period?  
 12 A. Not sure, late -- I think I said late  
 13 1980, early 1990s.  
 14 Q. And your recollection of this meeting  
 15 was, I think you put it, double very vague?  
 16 A. Yes.  
 17 Q. Okay. Part of the statement at the  
 18 end, as I recall it, roughly, the second half where  
 19 it says that this person who as we just discussed  
 20 may or may not have represented Delaware in any  
 21 capacity was informed that the Compact of 1905  
 22 authorized New Jersey to issue licenses and permits  
 23 to occupy and utilize areas below the MLWL within  
 24 the 12 Mile Circle.  
 25 I gather based on what you just testified to

118

1 that you don't have a recollection of whether or not  
 2 that was said at that meeting, correct?  
 3 A. I do not.  
 4 Q. This is written in the passive voice.  
 5 It says that the attorney representing the State of  
 6 Delaware was informed of these things.  
 7 Who is it that did the informing?  
 8 A. It would have been Bill -- Bill,  
 9 Mr. Andersen.  
 10 Q. But sitting here today, you don't  
 11 recall whether this is what Mr. Andersen told this  
 12 other person?  
 13 A. I do not.  
 14 Q. The very last clause states, and that  
 15 a copy of the 1905 Compact was provided to Delaware  
 16 counsel at that time.  
 17 Do you have any recollection of whether that  
 18 is true or not?  
 19 A. I believe it was but not with any  
 20 certainty.  
 21 Q. Did you know counsel for New Jersey  
 22 was going to write a letter like this and send it to  
 23 Delaware?  
 24 A. No.  
 25 MR. ATTAWAY: Just give me a couple

119

1 of minutes.  
 2 Q. Do you recall the last time you spoke  
 3 with Mr. Andersen?  
 4 A. It may have been a week or two ago.  
 5 Q. Okay.  
 6 A. See, I get down -- like I indicated I  
 7 think earlier, a couple of days a week stop at  
 8 tidelands and update the database for Charles Jones  
 9 and to pick up copies of documents that tidelands  
 10 issues, particularly, licenses and copies of grants  
 11 that perhaps we can't read out of what we had  
 12 scanned and now have so that we can reproduce it  
 13 right there in the shop. So it might have been last  
 14 week, week before last.  
 15 Q. Okay. Did you talk about this case  
 16 at all?  
 17 A. No.  
 18 Q. Have you talked about this case at  
 19 all with Mr. Andersen?  
 20 A. He was trying to refresh --  
 21 Q. And I don't want to know what you...  
 22 A. I'm sorry.  
 23 What?  
 24 Q. Is it your understanding that you're  
 25 represented by the State of New Jersey's counsel?

120

1 A. Yes.  
 2 Q. Okay. And you said that you did talk  
 3 to Mr. Andersen about this case, correct?  
 4 A. The only conversation I had with him  
 5 was he was trying to -- he asked me if I recall  
 6 meeting with somebody regarding the 1905 Compact  
 7 between the two states and I said, yeah, I recall  
 8 that. And I may have said to him I thought it was  
 9 an attorney from the State of Delaware. And he said  
 10 do you remember the name. And I said, no, Bill,  
 11 that was so far back, you know. And that was it.  
 12 He didn't say anymore.  
 13 Q. Okay. So just one conversation?  
 14 A. Yes.  
 15 Q. Okay. Thank you very much for your  
 16 time.  
 17 I don't have any further questions.  
 18 A. Thank you.  
 19 (Witness excused.)  
 20 (Deposition concluded at approximately 2:16  
 21 p.m.)  
 22  
 23  
 24  
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121

1 CERTIFICATE  
 2  
 3 I, SILVIA P. WAGE, a Notary Public  
 4 and Certified Shorthand Reporter of the State of New  
 5 Jersey, do hereby certify that prior to the  
 6 commencement of the examination, JAMES R. JOHNSON  
 7 was duly sworn by me to testify to the truth, the  
 8 whole truth and nothing but the truth.  
 9 I DO FURTHER CERTIFY that the  
 10 foregoing is a verbatim transcript of the testimony  
 11 as taken stenographically by and before me at the  
 12 time, place and on the date hereinbefore set forth,  
 13 to the best of my ability.  
 14 I DO FURTHER CERTIFY that I am  
 15 neither a relative nor employee nor attorney nor  
 16 counsel of any of the parties to this action, and  
 17 that I am neither a relative nor employee of such  
 18 attorney or counsel, and that I am not financially  
 19 interested in the action.  
 20  
 21  
 22  
 23 \_\_\_\_\_  
 24 SILVIA P. WAGE, CSR  
 25 Notary Number: 2097352  
 Notary Expiration: August 9, 2007  
 CSR Number: XI01827  
 Dated: November 3, 2006

122

1                    **LAWYER'S NOTES**

2 **PAGE LINE**

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1                    -----

2                    **ERRATA**

3                    -----

3 **PAGE LINE CHANGE**

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1                    **ACKNOWLEDGMENT OF DEPONENT**

2

3                    I, \_\_\_\_\_, do hereby

4 certify that I have read the foregoing pages, 1 -

5 120 PGS, and that the same is a correct

6 transcription of the answers given by me to the

7 questions therein propounded, except for the

8 corrections or changes in form or substance, if any,

9 noted in the attached Errata Sheet.

10

11 \_\_\_\_\_

12 **JAMES R. JOHNSON**                    **DATE**

13

14

15 **Subscribed and sworn**

16 **to before me this**

17        day of \_\_\_\_\_, 19 \_\_\_\_\_.

18 **My commission expires:**

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IN THE SUPREME COURT  
OF THE UNITED STATES

- - -

STATE OF NEW JERSEY :

:

V. :

:

STATE OF DELAWARE : NO. 134, Original

- - -

October 11, 2006

- - -

Oral deposition of MARTIN J.  
McHUGH, held at the Bureau of Tidelands,  
9 Ewing Street, Trenton, New Jersey,  
08625 commencing at 9:34 a.m. on the  
above date, before Teresa M. Beaver, a  
Registered Professional Reporter and a  
Notary Public in the Commonwealth of  
Pennsylvania.

- - -

ESQUIRE DEPOSITION SERVICES

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1600 JFK Boulevard

12th Floor

Philadelphia, Pennsylvania 19103

(215) 988-9191

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2

1 APPEARANCES :

2

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8 P.O. Box 093

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11 Counsel for the Plaintiff

12

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2 DEPOSITION SUPPORT INDEX

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5 Direction to Witness Not to Answer

6 Page Line Page Line

7 None

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10 Request For Production of Documents

11 Page Line Page Line

12 None

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15 Stipulations

16 Page Line Page Line

17 None

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20 Questions Marked

21 Page Line Page Line

22 None

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3 I N D E X

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5 WITNESS PAGE NO.

6 MARTIN J. McHUGH

7 By Mr. Attaway 5

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9

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11 E X H I B I T S

12

13 NO. DESCRIPTION PAGE NO.

14 1 New Jersey Coastal

15 Management Program 1980

16 Final Environmental

17 Impact Statement 41

18 2 Memo dated 3/31/05 58

19 3 Letter dated 4/19/05 58

20 4 Letter dated 2/04/05 96

21

22

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4 MARTIN J. McHUGH, after

5 having been duly sworn, was

6 examined and testified as follows:

7

8

9 EXAMINATION

10

11

12 BY MR. ATTAWAY:

13 Q. Good morning, Mr. McHugh.

14 A. Good morning.

15 Q. Thanks for coming today. My

16 name is Scott Attaway and I represent the

17 State of Delaware in this case, which is

18 New Jersey versus Delaware, original

19 number 134, filed in the United States

20 Supreme Court.

21 Before we begin, I just want

22 to establish a few ground rules so the

23 deposition goes smoothly.

24 First, if you don't hear a

question, just say so and I'll repeat it.

Second, if you don't understand a

question, also let me know and I'll

repeat it.

<p style="text-align: right;">6</p> <p>1 Because this is being taken                  2 down by a court reporter, I'll need your                  3 answers to be verbal as opposed to a nod                  4 of the head or a shake of the head;                  5 because the court reporter can't take                  6 down hand or facial gestures.                  7 <b>A. Right.</b>                  8 <b>Q. And finally, be sure to let</b>                  9 <b>me finish my question before you start to</b>                  10 <b>answer; so the court reporter is not</b>                  11 <b>having to take down two people speaking</b>                  12 <b>at one time.</b>                  13 <b>Do you understand the</b>                  14 <b>instructions I've just given?</b>                  15 <b>A. Yes, I do.</b>                  16 <b>Q. Is there any reason which</b>                  17 <b>you're aware that might impede your</b>                  18 <b>ability to testify truthfully;</b>                  19 <b>medications, for example?</b>                  20 <b>A. No.</b>                  21 <b>Q. Other than conversations</b>                  22 <b>with counsel, what did you do to prepare</b>                  23 <b>for your deposition today?</b>                  24 <b>A. Looked at a couple of old</b></p>	<p style="text-align: right;">8</p> <p>1 <b>A. No.</b>                  2 <b>Q. Have you read any of the</b>                  3 <b>pleadings in this case?</b>                  4 <b>A. No.</b>                  5 <b>Q. Have you read transcripts of</b>                  6 <b>any of the previous depositions that have</b>                  7 <b>been taken?</b>                  8 <b>A. No.</b>                  9 <b>Q. Did you meet with counsel to</b>                  10 <b>prepare for this deposition?</b>                  11 <b>A. Yes.</b>                  12 <b>Q. I don't want to know</b>                  13 <b>anything that was said during those</b>                  14 <b>conversations, but just how long did you</b>                  15 <b>meet and with whom?</b>                  16 <b>A. With counsel here sitting at</b>                  17 <b>the table; probably about for a half an</b>                  18 <b>hour.</b>                  19 <b>Q. Okay. Have you given</b>                  20 <b>testimony in any case before; either a</b>                  21 <b>deposition or live testimony in court?</b>                  22 <b>A. No.</b>                  23 <b>Q. Have you submitted an</b>                  24 <b>affidavit in the proceeding?</b></p>
<p style="text-align: right;">7</p> <p>1 <b>documents that I either were copied on or</b>                  2 <b>was a part of, you know, preparing,</b>                  3 <b>finalizing.</b>                  4 <b>Q. Do you remember what those</b>                  5 <b>documents were?</b>                  6 <b>A. Letters to FERC and I can't</b>                  7 <b>remember what the other one was.</b>                  8 <b>Q. So, a letter to FERC from</b>                  9 <b>yourself?</b>                  10 <b>A. No, I don't think it was</b>                  11 <b>from me. It was something that was</b>                  12 <b>prepared by the department but, you know,</b>                  13 <b>that we had some input into.</b>                  14 <b>Q. Okay.</b>                  15 <b>A. Or that they used our</b>                  16 <b>comments on.</b>                  17 <b>Q. Who sent that letter from</b>                  18 <b>the department?</b>                  19 <b>A. Last name starts with a K.</b>                  20 <b>I can't remember how to -- I think</b>                  21 <b>Koschek or something like that.</b>                  22 <b>Q. Other than counsel, did you</b>                  23 <b>talk to anyone to prepare for the</b>                  24 <b>deposition?</b></p>	<p style="text-align: right;">9</p> <p>1 <b>A. Not that I can recall.</b>                  2 <b>Q. Just a little background.</b>                  3 <b>Let's start with your college education.</b>                  4 <b>What was your college degree</b>                  5 <b>in?</b>                  6 <b>A. Economics and environmental</b>                  7 <b>studies from Rutgers University.</b>                  8 <b>Q. Any postgraduate studies?</b>                  9 <b>A. I went to Seton Hall Law</b>                  10 <b>School.</b>                  11 <b>Q. When did you graduate from</b>                  12 <b>Seton Hall?</b>                  13 <b>A. 1985.</b>                  14 <b>Q. Did you practice law after</b>                  15 <b>that?</b>                  16 <b>A. Yes, I did.</b>                  17 <b>Q. Where at?</b>                  18 <b>A. In-house attorney to DEP,</b>                  19 <b>for, I don't know, somewhere between four</b>                  20 <b>and five years.</b>                  21 <b>Q. Was that straight out of law</b>                  22 <b>school?</b>                  23 <b>A. Yes. And then after that I</b>                  24 <b>worked in the Attorney General's office</b></p>

10

1 for probably four years ago.  
 2 I'm not sure of the year.  
 3 Q. What were your duties  
 4 in-house at DEP?  
 5 A. Well, at the time, there was  
 6 a unit within DEP that was staffed mostly  
 7 by attorneys called the Office of  
 8 Regulatory Services which became the  
 9 Division of Regulatory Affairs which  
 10 basically serviced all the different  
 11 programs within the department.  
 12 So, I was fortunate enough  
 13 to have a chance to work with a number of  
 14 those divisions representing them as kind  
 15 of in-house counsel; not litigating  
 16 anything but, you know, assisting the  
 17 programs to promulgate rules, to handle  
 18 real estate transactions, to negotiate  
 19 settlements in air pollution, water  
 20 pollution, hazardous waste site cases.  
 21 I represented the -- as  
 22 in-house counsel, the Division of Fish  
 23 and Wildlife for a couple of years; of  
 24 those years that I was in-house counsel,

11

1 because of my background from my  
 2 undergraduate work.  
 3 So, in every aspect of the  
 4 Division of Fish and Wildlife, I  
 5 represented whatever they were doing;  
 6 whether it's regulations, hearings, you  
 7 know, things like that.  
 8 Q. Okay.  
 9 A. Enforcement cases.  
 10 Q. And at the AIG's office,  
 11 were you Deputy Attorney General?  
 12 A. Yes.  
 13 Q. What were your duties there?  
 14 A. I was in hazardous site  
 15 litigation section and I negotiated  
 16 settlements -- litigated cases, CERCLA  
 17 cases, nonCERCLA state, hazardous site  
 18 cases, probably some water pollution and  
 19 most notably, natural resource damage,  
 20 oil spill cases. That was kind of the  
 21 primary thing.  
 22 Q. In your time as an attorney  
 23 at DEP and as a Deputy Attorney General,  
 24 did you have occasion ever to look at the

12

1 implications of the boundary between New  
 2 Jersey and Delaware?  
 3 A. Not really, no.  
 4 Q. After -- I assume you left  
 5 the Attorney General's office at some  
 6 point? Because I think you're not there  
 7 now?  
 8 A. Right.  
 9 Q. But I'll let you tell me  
 10 what happened after that.  
 11 A. Well, we had a number of  
 12 large successes in the oil spill case  
 13 arena and I proposed that the department,  
 14 as a whole, establish a program for the  
 15 consistent approach to oil spills and  
 16 hazardous sites to collect natural  
 17 resource damages; since that's what we  
 18 were doing in these cases, mostly, in  
 19 addition to penalties.  
 20 So, beyond cleanup, we were  
 21 collecting natural resource damages.  
 22 So, the department said,  
 23 it's a good idea. We should be doing  
 24 this on a regular basis and also I

13

1 propose that they should do it for  
 2 hazardous waste sites because under the  
 3 law we were, you know, it was something  
 4 that we were supposed to be doing and so  
 5 they said yes; it's a good idea. They  
 6 said why don't you run the program, so I  
 7 started a program.  
 8 I left the Attorney  
 9 General's office. I came to work for the  
 10 DEP as a nonattorney, you know, manager,  
 11 of a new program which I established  
 12 called the Office of Natural Resource  
 13 Damages.  
 14 Q. Okay.  
 15 A. Which is today called the  
 16 Office of Natural Resource Restoration.  
 17 And our job was to go to oil  
 18 spills and look at, you know, large  
 19 hazardous waste sites; both under CERCLA  
 20 and under state law, to assess injuries  
 21 to natural resources and help the  
 22 department recover those damages for  
 23 natural resource injuries.  
 24 Q. Okay. And what --

14

1 approximately what year did you establish  
 2 the Office of Natural Resource Damages?  
 3 A. I think it was around 1993  
 4 or '94.  
 5 Q. What was your next job  
 6 change after that?  
 7 A. Well, because of my work in  
 8 that unit, I came into contact a lot with  
 9 the federal folks; NOAA and U.S. Fish and  
 10 Wildlife Service.  
 11 And NOAA, National Oceanic  
 12 and Atmospheric Administration, they are  
 13 within the Department of Commerce -- we  
 14 worked together on oil spill response and  
 15 national resource damage cases.  
 16 And they asked if I would be  
 17 interested in something called an IPA,  
 18 which is essentially a loan program  
 19 between the state and the federal  
 20 government, where I would go and work for  
 21 the federal government for a period of  
 22 two years and assist them to help them  
 23 establish kind of a natural resource  
 24 damage program in the Great Lakes region.

15

1 So, the department approved  
 2 of that, DEP approved of that. And the  
 3 Commissioner Shin at the time was very  
 4 supportive of it and he said go forth and  
 5 help the midwest and so I was in Chicago,  
 6 Illinois at the EPA offices for two years  
 7 working on natural resource damage issues  
 8 in the Great Lakes for NOAA.  
 9 I also worked a little bit  
 10 to help New Jersey with some harbor  
 11 issues.  
 12 Q. All right. And the New York  
 13 harbor area?  
 14 A. Yeah.  
 15 Q. After that, what happened?  
 16 A. The assistant director's job  
 17 became available, close to the end of my  
 18 two years with NOAA, at Fish and Wildlife  
 19 back in the state here at DEP and I  
 20 applied for the assistant director's job  
 21 because my two-year stint with NOAA was  
 22 coming up and I was hired as assistant  
 23 director.  
 24 Q. What year was that?

16

1 A. 2000. Was it 2000? I have  
 2 to remember when my son was born; yeah,  
 3 2000.  
 4 Q. How long were you assistant  
 5 director of Fish and Wildlife?  
 6 A. I think it was two years.  
 7 Q. What were your duties there?  
 8 A. I was in charge of the kind  
 9 of the administrative side of the  
 10 division, which is kind of a misnomer  
 11 because I was also in charge of the  
 12 Endangered Species Program and the  
 13 Conservation Officer Program, Bureau of  
 14 Law Enforcement.  
 15 So, my duties ranged from  
 16 managing the budget, representing the  
 17 director in many different things,  
 18 overseeing Endangered Species Program,  
 19 the Bureau of Law Enforcement program,  
 20 the Land Use Program, the Environmental  
 21 Review Program and that was it.  
 22 Q. Okay.  
 23 A. I'm pretty sure.  
 24 Q. And you reported to the

17

1 director of Fish and Wildlife?  
 2 A. Right, who was then Robert  
 3 McDowell.  
 4 Q. I take it the director of  
 5 Fish and Wildlife was at the top of that  
 6 division or bureau or whatever the proper  
 7 term is?  
 8 A. Right.  
 9 Q. Who did the director report  
 10 to?  
 11 A. To the assistant  
 12 commissioner for natural and historic  
 13 resources.  
 14 Q. And then the assistant  
 15 commissioner reports to?  
 16 A. The commissioner.  
 17 Q. And there's one commissioner  
 18 at DEP?  
 19 A. Right.  
 20 Q. How did the assistant  
 21 commissioners get their jobs? Are they  
 22 hired as employees or is it a political  
 23 appointment?  
 24 A. Some are appointed from the

<p style="text-align: right;">18</p> <p>1 outside, some rise through the ranks. My 2 current boss, Assistant Commissioner 3 Skazel started out as a hazardous waste 4 inspector. Actually, Jim Hall who was 5 the assistant commissioner at the time, 6 started out in forestry. 7 So, it depends. 8 Q. Are they appointed by the 9 governor? 10 A. I think, I'm pretty sure, 11 that -- I'm not clear. It depends. I'm 12 not really sure how they all get 13 appointed. 14 I think the commissioner has 15 a large say in obviously, you know, the 16 team; that is her cabinet basically or 17 his cabinet. 18 Q. How many assistant 19 commissioners are there in DEP? 20 A. Right now, I think there are 21 six. I think I might be missing 22 somebody; and there are two deputy 23 commissioners. 24 Q. Okay. During the time</p>	<p style="text-align: right;">20</p> <p>1 A. No. After this most recent 2 January, I switched positions. I'm -- I 3 left the director's job and I work 4 directly for the assistant commissioner 5 for compliance and enforcement; in his 6 office. 7 Q. What are your duties there? 8 A. I coordinate large 9 enforcement cases that kind of span 10 different program areas; such as a case 11 that would have an air pollution issue 12 associated with it; a hazardous waste 13 pollution, solid waste, you know, 14 pesticides or land use. 15 My job is to kind of get all 16 the programs kind of on one page and help 17 them, you know, either be litigation 18 support for the Attorney General's office 19 or help negotiate a settlement in various 20 cases; if that's an appropriate way we're 21 going on a case. 22 Q. Okay. 23 A. I also help the assistant 24 commissioner develop policies, implement</p>
<p style="text-align: right;">19</p> <p>1 you've been at DEP, have there always 2 been approximately six assistant 3 commissioners? 4 A. No. In the course of my 21 5 years, it's been, depending on how the 6 structure of the organization was, the 7 organization has changed, you know, a 8 couple of times. 9 Q. So, at one time were there 10 more than six assistants? 11 A. There may have been more, 12 there may have been less at different 13 times during my 21 years. 14 Q. Okay. After 2002, what was 15 your next job? 16 A. Well then the director's job 17 became available as Director McDowell was 18 retiring and I applied for that. And I 19 was selected. 20 Q. That was in 2002? 21 A. Well, end of 2002, beginning 22 of 2003. 23 Q. And was there another change 24 after that or are you still director?</p>	<p style="text-align: right;">21</p> <p>1 policies, new programs, review documents 2 for him; those kinds of things. 3 Q. Okay. Are you still a 4 member of the bar? 5 A. Yes. I'm a member of the 6 bar but at the moment I am not 7 practicing, so to speak; retired from the 8 practice. 9 Q. Is your status active? 10 A. No, it's inactive. That's 11 my status. 12 Q. When did you go from active 13 to inactive? 14 A. I became inactive when I 15 took the job at the natural -- for the 16 Office of Natural Resource Damages when I 17 started that program. 18 Q. Okay. And that will -- 19 remind me again what year was that 20 approximately? 21 A. That was approximately 1993. 22 Q. So, in all your jobs, 23 starting in 1993, you haven't been 24 practicing law for the department?</p>

22

1       **A. No.**  
 2       **Q. What is your understanding**  
 3 **of the boundary between New Jersey and**  
 4 **Delaware?**  
 5       **A. Well, from what I see on the**  
 6 **map and from my experience, you know, the**  
 7 **last 21 years, there is a portion of the**  
 8 **Delaware River that is more within the**  
 9 **jurisdiction of Delaware than the State**  
 10 **of New Jersey; although the State of New**  
 11 **Jersey does exert authority over certain**  
 12 **issues there within that area.**  
 13       **Q. Okay.**  
 14       **A. I think it's up to the mean**  
 15 **low water line that the Delaware**  
 16 **jurisdiction kind of extends.**  
 17       **Q. Okay. When did you come to**  
 18 **that understanding?**  
 19       **A. Well, I guess I first became**  
 20 **aware of it -- I'm sure I first became**  
 21 **aware of it at some point during my early**  
 22 **tenure with the department; whether it be**  
 23 **in a water pollution case or whatever,**  
 24 **but I became more in contact with the**

23

1 **issue as I became assistant director for**  
 2 **the Division of Fish and Wildlife,**  
 3 **considering the fact that we manage**  
 4 **natural resources that are migratory and**  
 5 **come through there and that, you know,**  
 6 **our law enforcement staff has to be on**  
 7 **the river and has to, you know, check**  
 8 **hunters and fishermen and things like**  
 9 **that.**  
 10       **Q. Okay. Are you familiar with**  
 11 **something called the 12 mile circle?**  
 12       **A. Yeah; that's the area that I**  
 13 **assume that we're talking about. I guess**  
 14 **I'm familiar with it in that way.**  
 15       **Q. Okay. What is your**  
 16 **understanding of the 12 mile circle?**  
 17       **A. That there is a circle that**  
 18 **is -- emanates from the State of Delaware**  
 19 **at a certain point that touches the banks**  
 20 **of the New Jersey side of the river and**  
 21 **that, within that area, there is**  
 22 **certain -- within that area, there are**  
 23 **certain kind of agreed-upon**  
 24 **jurisdictional issues that are within the**

24

1 **State of Delaware, that are with the**  
 2 **State of Delaware.**  
 3       **And I'm not that familiar**  
 4 **with exactly what those are.**  
 5       **Q. Okay. What is your**  
 6 **understanding of the regulatory authority**  
 7 **of the respective states within the 12**  
 8 **mile circle?**  
 9       **A. Well, as -- when I was**  
 10 **assistant director, our enforcement staff**  
 11 **was not enforcing the fish and wildlife**  
 12 **laws within that circle; however, they**  
 13 **were enforcing it on the banks of the**  
 14 **State of New Jersey, I guess down to the**  
 15 **mean low water line.**  
 16       **Q. Okay.**  
 17       **A. But beyond the circle, of**  
 18 **course, we were enforcing those laws.**  
 19       **Q. Was Delaware enforcing fish**  
 20 **and wildlife laws up to mean low water**  
 21 **line on the New Jersey shore?**  
 22       **A. It's my understanding they**  
 23 **were, yes.**  
 24       **Q. In your career at DEP, have**

25

1 **you ever heard anyone at DEP or with the**  
 2 **State of New Jersey claim that Delaware**  
 3 **lacked regulatory authority up to the**  
 4 **mean low water line on the New Jersey**  
 5 **shore?**  
 6       **A. With respect to fish and**  
 7 **wildlife laws, no.**  
 8       **Q. With respect to any other**  
 9 **laws?**  
 10       **A. No.**  
 11       **Q. Are you familiar with**  
 12 **Delaware's coastal zone laws?**  
 13       **A. Not really.**  
 14       **Q. Are you familiar with New**  
 15 **Jersey coastal zone laws?**  
 16       **A. Somewhat.**  
 17       **Q. Just very generally, what**  
 18 **are those laws for New Jersey?**  
 19       **A. Well, you know, we have the**  
 20 **Waterfront Development Act; we have the**  
 21 **Coastal Zone Management Act. We have the**  
 22 **Coastal Wetlands Law.**  
 23       **Any building that is going**  
 24 **to take place in the coastal zone**

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1 requires various permits; under either  
 2 CAFRA or -- CAFRA is Coastal Area  
 3 Facilities Review Act or the waterfront  
 4 development or both.  
 5 And any activity on the  
 6 banks, you know, whether a bulkhead or  
 7 boat ramp or things of those nature  
 8 require certain permits.  
 9 Q. If the bulkhead or the boat  
 10 ramp extended beyond the boundary line,  
 11 what state would have regulatory  
 12 authority in your understanding as a  
 13 regulator?  
 14 A. Well, it was always my  
 15 understanding that everywhere, as long as  
 16 the dock or the -- whatever was being  
 17 built was going into the waters from the  
 18 shoreline, that we would have authority  
 19 over.  
 20 Q. Was it your understanding  
 21 that Delaware would have regulatory  
 22 authority over the portion of the project  
 23 extending beyond the boundary?  
 24 A. Extending beyond -- I'm not

27

1 sure I understand the question.  
 2 Q. If there is a project that  
 3 began, let's say it's a pier or a wharf,  
 4 that begins on the New Jersey shore and  
 5 extends into the water but goes past the  
 6 mean low water line into Delaware, in  
 7 other words, it straddles the boundary,  
 8 what is your understanding about the  
 9 scope of Delaware's regulatory authority  
 10 over the portion that lies in Delaware?  
 11 A. You know, I was not familiar  
 12 with that whole issue. I was kind of  
 13 surprised that Delaware did have  
 14 authority over that; since it emanated  
 15 from our shoreline.  
 16 Q. Was that an issue that you  
 17 ever had occasion to address?  
 18 A. No. No.  
 19 Q. Okay. Did you ever talk to  
 20 other people in the department that did  
 21 address that issue?  
 22 A. With respect to that  
 23 specific kind of morphing issue that you  
 24 are talking about, no.

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1 Q. Just didn't come up in the  
 2 scope of your responsibilities?  
 3 A. The only way -- the only  
 4 time it came up is when we were -- and I  
 5 guess I became aware of it when we  
 6 started dealing with the issue of the  
 7 natural gas plant that, you know, the  
 8 permit was being applied for and that we  
 9 commented on, that we were part of the  
 10 comment process on.  
 11 Q. That's Crown Landing that  
 12 you are referring to?  
 13 A. Right, Crown Landing.  
 14 Q. What year did you first  
 15 become aware of that project?  
 16 A. Maybe it was late 2004;  
 17 maybe early 2005.  
 18 Q. Okay.  
 19 A. I don't remember.  
 20 Q. And how did you get involved  
 21 in that?  
 22 A. Well, my staff, in the  
 23 environmental review program, was -- as  
 24 they do for all permits, that could

29

1 potentially have an impact on natural  
 2 resources, was putting together comments,  
 3 and in this particular case, I would  
 4 assume it was some sort of environmental  
 5 impact statement or some sort of permit  
 6 or both, requirement.  
 7 And in all cases, you know,  
 8 our staff -- to look at the impacts of  
 9 natural resources and give our comments  
 10 to land use program, which was kind of a  
 11 rote thing.  
 12 Q. And then land use would take  
 13 your comments and what would they do with  
 14 them?  
 15 A. They would either pass them  
 16 on, I assume in this case, or if it was  
 17 just an internal case in New Jersey, they  
 18 would take them into consideration and  
 19 make a decision whether to grant or deny  
 20 a permit or adjust conditions of a  
 21 permit; because of our concerns for  
 22 natural resources require changes to the  
 23 project; those kinds of things.  
 24 Q. Okay. Were you familiar

30

1 with an interstate compact between New  
 2 Jersey and Delaware that was entered in  
 3 1905?  
 4 A. I'm not familiar with it,  
 5 but I'm aware of it.  
 6 Q. When did you first become  
 7 aware of it?  
 8 A. You know, I may have become  
 9 aware of it at some point as an in-house  
 10 counsel to DEP, but I guess I really  
 11 became aware of it in this particular  
 12 matter when we started hearing of the  
 13 issue between the State of Delaware and  
 14 New Jersey with respect to this  
 15 particular application for a plant site.  
 16 Q. What can you remember about  
 17 your initial encounter with the compact  
 18 as your case as in-house counsel?  
 19 A. The main issue was, as I  
 20 guess I was representing the division,  
 21 was the issue of the enforcement of our  
 22 fish and wildlife laws within that zone.  
 23 That probably came up in that context.  
 24 Q. Do you remember if it came

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1 up in the context of any structure, such  
 2 as a wharf that straddled the boundary?  
 3 A. No.  
 4 Q. Just the fish and wildlife  
 5 laws?  
 6 A. Right.  
 7 Q. Could those laws conceivably  
 8 be enforced on the wharf?  
 9 A. Our fish and wildlife? I'm  
 10 not sure I understand the question.  
 11 Q. Let me rephrase it.  
 12 A. Okay.  
 13 Q. Could New Jersey's -- well,  
 14 does New Jersey enforce its fish and  
 15 wildlife laws on structures emanating  
 16 from New Jersey?  
 17 A. Yes.  
 18 Q. And in what way?  
 19 A. Well, I assume that in cases  
 20 where the COs are going out to do water  
 21 fowl checks, during water fowl season,  
 22 which is beginning very soon --  
 23 Q. What is a CO?  
 24 A. Conservation officer.

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1 Q. Thanks.  
 2 A. They are within the Bureau  
 3 of Law Enforcement. They are basically  
 4 our police force in the Division of Fish  
 5 and Wildlife; they have full police  
 6 powers to not only enforce the fish and  
 7 wildlife laws, but speeding, everything  
 8 else, you know, whatever a regular police  
 9 officer would do; they have full police  
 10 powers but their main job is to enforce  
 11 fish and wildlife laws.  
 12 And in the context of a  
 13 water fowl check, if somebody was coming  
 14 in off of the water with, you know, ducks  
 15 that they had taken during the season,  
 16 they would be subject to, you know, on a  
 17 dock, they'd be subject to a check by our  
 18 conservation officers and if they were  
 19 over their limit, they would be issued,  
 20 you know, a ticket. And be a subject of  
 21 an enforcement action.  
 22 The same would probably  
 23 apply to whether it's a fin fisherman or  
 24 a shell fisherman. I don't think there

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1 are shellfish in that area, but I'm not  
 2 quite sure.  
 3 And, you know, they would be  
 4 subject to a check there.  
 5 So, yes, they would be doing  
 6 that kind of work there on our wharfs.  
 7 Q. Do you know how many wharfs  
 8 there are within the 12 mile circle?  
 9 A. I have no idea.  
 10 Q. Any idea of how many wharfs  
 11 within a 12 mile circle that cross the  
 12 boundary?  
 13 A. I do not know.  
 14 Q. Do you have any knowledge at  
 15 all of any enforcement incident such as  
 16 the ones you described that have actually  
 17 occurred on a wharf within a 12 mile  
 18 circle?  
 19 A. I have no direct knowledge.  
 20 Q. Have you heard of the phrase  
 21 riparian jurisdiction?  
 22 A. Of course.  
 23 Q. When did you first hear of  
 24 it?

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1       **A. In law school.**  
 2       **Q. What is your**  
 3 **understanding -- what was your**  
 4 **understanding then of the scope of**  
 5 **riparian jurisdiction?**  
 6       **A. Well --**  
 7       **MS. CHUDZIK: I'm going to**  
 8 **interpose an objection in terms of**  
 9 **he's here as a fact witness and**  
 10 **certainly not as a legal expert.**  
 11       **To the extent it calls for a**  
 12 **legal opinion, I object.**  
 13 **BY MR. ATTAWAY:**  
 14       **Q. I'm asking for your**  
 15 **understanding as a regulator.**  
 16       **A. As a regulator, my**  
 17 **understanding is that the state has**  
 18 **certain rights that are associated --**  
 19 **that have come from, way back when the**  
 20 **state came into the union, that are**  
 21 **associated with the riparian areas, in**  
 22 **tidally flowed waterways, that they have**  
 23 **jurisdiction over those waterways, as a**  
 24 **result of the riparian rights that were**

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1 **granted down from the King of England to,**  
 2 **you know, to -- and were distributed**  
 3 **amongst the states, so to speak.**  
 4       **Q. So, the state has the**  
 5 **riparian rights? Is that what you are**  
 6 **saying?**  
 7       **A. To regulate -- I don't want**  
 8 **to finish your question, go ahead.**  
 9       **Q. I just wanted to clarify.**  
 10 **You were saying it's the state that hold**  
 11 **the riparian rights?**  
 12       **A. Yes; unless granted.**  
 13       **Q. How would the state grant a**  
 14 **riparian right?**  
 15       **A. Well, we're in the building**  
 16 **here, Tidelands Resource Council, I**  
 17 **assume has jurisdiction over these,**  
 18 **granting of these rights and they would**  
 19 **either give a license or, you know, an**  
 20 **actual grant of rights which I don't know**  
 21 **if it occurs anymore, but they usually**  
 22 **grant licenses to individuals to, you**  
 23 **know, use the riparian area, so to speak,**  
 24 **or build on them.**

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1       **Q. If someone had -- are those**  
 2 **called riparian grants?**  
 3       **A. I'm pretty sure, yeah, or**  
 4 **tidelands resource grants maybe today.**  
 5       **Q. If somebody had a tidelands**  
 6 **resource grant, would they be able to do**  
 7 **anything they wanted to on that land**  
 8 **without getting further approvals?**  
 9       **A. Well, most tidelands**  
 10 **resource grants are pretty specifically**  
 11 **written, I would imagine.**  
 12       **I haven't seen one in**  
 13 **probably a long time but I'm sure they**  
 14 **have specific conditions; it doesn't just**  
 15 **give you full sway to do whatever you**  
 16 **like.**  
 17       **Q. So, if someone needed a**  
 18 **permit form from Fish and Wildlife, for**  
 19 **example, they would still have to get**  
 20 **that even though they had a tidelands**  
 21 **resource grant?**  
 22       **A. For Fish and Wildlife? I'm**  
 23 **not sure I understand.**  
 24       **Q. Do you issue permits in the**

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1 **Fish and Wildlife Department?**  
 2       **A. Yeah, certain commercial**  
 3 **fishing permits, we issue hunting**  
 4 **licenses, we issue certain hunting**  
 5 **permits for various game animals.**  
 6       **Q. Okay. Did you, in your**  
 7 **tenure at DEP, did you work on any other**  
 8 **types of permits?**  
 9       **A. I'm sure I did; many**  
 10 **permits. I can't tell you exactly which**  
 11 **programs. I'd have to really think about**  
 12 **it.**  
 13       **Q. So, predominantly fish and**  
 14 **wildlife then?**  
 15       **A. Well, air pollution --**  
 16 **excuse me -- air pollution permits;**  
 17 **wetlands permits, NJPEDS permits, that's**  
 18 **New Jersey Pollution Elimination**  
 19 **Discharge System Permits.**  
 20       **Q. How do you pronounce that**  
 21 **acronym?**  
 22       **A. NJPEDS.**  
 23       **MS. CHUDZIK: Off the**  
 24 **record.**

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1                   - - -  
 2                   (Whereupon, there was an  
 3                   off-the-record discussion.)  
 4                   - - -  
 5 BY MR. ATTAWAY:  
 6                   Q. If someone had a riparian  
 7 grant from the Tidelands Resource  
 8 Council, would they still have to obtain  
 9 an air pollution permit or a wetlands  
 10 permit, if those laws otherwise applied?  
 11                   A. I would assume yes,  
 12 depending on the operation that they were  
 13 seeking, you know, approval for to build.  
 14                   Q. In your understanding as a  
 15 regulator, are air pollution permits and  
 16 wetlands permits, are they riparian  
 17 permits?  
 18                   A. No.  
 19                   Q. When you first learned about  
 20 the 1905 compact, which I believe you  
 21 said was probably during your term as  
 22 in-house counsel, did you have occasion  
 23 to read the compact?  
 24                   A. No.

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1                   Q. You just talked about it and  
 2 read about it?  
 3                   A. Just became aware of it.  
 4                   Q. What was your understanding  
 5 of what the compact provided?  
 6                   A. That there was some sort of  
 7 decision about how we were going to  
 8 manage various resources within that 12  
 9 mile circle; because there are resources  
 10 that migrate up and down the river.  
 11                   The State of Delaware and  
 12 New Jersey have jurisdiction over those  
 13 resources and we needed to some way  
 14 coordinate how we were going to do things  
 15 within that circle; frankly, outside of  
 16 that circle, too.  
 17                   So, as things move  
 18 throughout.  
 19                   Q. When you say resources, do  
 20 you mean fish and wildlife?  
 21                   A. Water.  
 22                   Q. Water.  
 23                   A. Water, fish and wildlife,  
 24 access, commerce, I would assume;

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1                   **although I haven't read the compact.**  
 2                   Q. Did you have any discussions  
 3 about the impact the compact would have  
 4 on regulation of a structure that  
 5 straddled the boundary line?  
 6                   A. No.  
 7                   Q. Are you familiar with New  
 8 Jersey's coastal management plan?  
 9                   A. I'm aware of it. I'm not  
 10 familiar with it.  
 11                   Q. So, you've never -- have you  
 12 ever read it?  
 13                   A. No.  
 14                   Q. What is the extent of your  
 15 awareness of the coastal management plan?  
 16                   A. That it's a plan that  
 17 basically sets forth goals and objectives  
 18 for managing resources within the coastal  
 19 areas to maximize sustainable use of  
 20 those areas; to prevent, you know,  
 21 destruction, to permit public access,  
 22 those kinds of lofty objectives and  
 23 goals. Regulate activities, those kinds  
 24 of things.

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1                   Q. Do you know when the coastal  
 2 management plan was developed?  
 3                   A. I'm sure there are different  
 4 iterations of it.  
 5                   I think that the original  
 6 plan came to being in the '70s some time.  
 7                   Q. I'd like to introduce one  
 8 exhibit.  
 9                   - - -  
 10                   (Whereupon, the exhibit was  
 11 marked McHugh-1 for  
 12 identification.)  
 13                   - - -  
 14 BY MR. ATTAWAY:  
 15                   Q. I know it's a lot of pages.  
 16 I'm only going to have a few questions.  
 17                   A. Very interesting.  
 18                   Q. If I ask you a question and  
 19 you need to stop and read something more  
 20 carefully, then you should take the time  
 21 you need to give the best answer from the  
 22 best of your knowledge.  
 23                   I've introduced as Exhibit  
 24 1, excerpts of a voluminous document,

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1 which is more than 500 pages, which is  
 2 why I've excerpted it, it's the New  
 3 Jersey Coastal Management Program,  
 4 August, 1980, Final Environmental Impact  
 5 Statement.  
 6 Mr. McHugh, have you seen  
 7 this document?  
 8 A. I probably have sitting on a  
 9 shelf somewhere, yes.  
 10 Q. With a thick spine?  
 11 A. A very thick spine.  
 12 Q. Do you know whether you've  
 13 ever read parts of this?  
 14 A. I don't believe I've ever  
 15 read parts of it.  
 16 Q. Let's turn to Page 20 of the  
 17 report, which -- there's a Bates stamp in  
 18 the lower right-hand corner, which I  
 19 assume you're familiar with Bates stamps,  
 20 given your background, Delaware 20382.  
 21 There's a section at the bottom of the  
 22 page that's entitled Seaward and  
 23 Interstate Boundaries. It has two  
 24 paragraphs. I'll give you a chance to

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1 read those and let me know when you're  
 2 ready for a question.  
 3 The second paragraph states  
 4 "In most of Salem County, the  
 5 Delaware/New Jersey state boundary is the  
 6 mean low water line on the eastern (New  
 7 Jersey) shore of the Delaware River. The  
 8 New Jersey and Delaware coastal  
 9 management agencies have discussed this  
 10 issue and have concluded that any New  
 11 Jersey project extending beyond mean low  
 12 water must obtain coastal permits from  
 13 both states. New Jersey and Delaware,  
 14 therefore, will coordinate reviews of  
 15 their proposed development that would  
 16 span the interstate boundary to insure  
 17 that no development is constructed unless  
 18 it would be consistent with both state  
 19 coastal management programs."  
 20 Have you ever read this  
 21 passage before?  
 22 A. No, I haven't.  
 23 Q. Have you -- this middle  
 24 sentence states that the New Jersey and

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1 Delaware coastal management agencies have  
 2 discussed the boundary issue and  
 3 concluded that any project straddling the  
 4 boundary would have to obtain coastal  
 5 permits from both states.  
 6 Is that consistent with your  
 7 understanding as a regulator at DEP?  
 8 A. Consistent with my  
 9 understanding of what?  
 10 Q. Of the respective regulatory  
 11 authority of New Jersey and Delaware over  
 12 a project that straddled the boundary?  
 13 A. Well, to be honest with  
 14 you -- not that I wouldn't be since I'm  
 15 on the record -- it's really the first  
 16 that I've seen this in writing, or ever,  
 17 and my past experience, working with the  
 18 State of Delaware on various things, was  
 19 that we would generally coordinate  
 20 anywhere within the river with respect to  
 21 natural resources.  
 22 So, it appears to me that  
 23 this is just a general statement of that  
 24 same desire to make sure that we

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1 coordinate along the riverfront.  
 2 And I don't know if this has  
 3 any kind of meaning beyond just a general  
 4 statement that we should coordinate.  
 5 Q. What about the middle  
 6 sentence that says that "Any New Jersey  
 7 project extending beyond mean low water  
 8 must obtain coastal permits from both  
 9 states"?  
 10 A. Well, it looks like it's a  
 11 policy that, at the time, Commissioner  
 12 English would like to have in place; just  
 13 as all of these policies that are  
 14 probably set forth in this document,  
 15 which I just looked at for the first  
 16 time, are general statements of things  
 17 that the State of New Jersey would like  
 18 to do in order to obtain the funding, the  
 19 grants through the federal coastal zone  
 20 management program.  
 21 That's the whole purpose of  
 22 this, I'm pretty sure, of this document.  
 23 We needed to establish the  
 24 coastal zone program of our zone so that

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1 we could take advantage of the Federal  
 2 Coastal Zone Management Act.  
 3 This is kind of a statement  
 4 of general policies.  
 5 Q. Was the federal funding  
 6 substantial?  
 7 A. I'm not sure what this --  
 8 what the federal funding levels are; but  
 9 I'm sure that, you know, it's very  
 10 helpful to our programs to manage natural  
 11 resources and, you know, the coastal  
 12 zones.  
 13 Q. You said the point of  
 14 submitting the coastal management plan to  
 15 the federal government was to get federal  
 16 funding; correct?  
 17 A. I'm pretty sure that's what  
 18 it's about.  
 19 That's one of the purposes  
 20 of the coastal zone.  
 21 Q. Do you know what the other  
 22 purposes would be?  
 23 A. Well, it's to set forth, you  
 24 know, general statements of policy about

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1 how we're going to handle things in the  
 2 coastal zone area.  
 3 It's -- to kind of educate  
 4 people about how the department does work  
 5 in the coastal zone area.  
 6 In the beginning of this  
 7 document it talks about all the different  
 8 laws that apply within the coastal zone,  
 9 waterfront development, the wetlands law,  
 10 tidelands management, how that occurs,  
 11 Hackensack Meadowlands Development  
 12 Commission, which is in the coastal zone,  
 13 which I forgot. And how things would go  
 14 with respect to the green acres purchases  
 15 within the area and, you know, probably  
 16 about how certain local grants are given  
 17 as a pass-through from the Federal  
 18 Coastal Zone Management Act.  
 19 Q. Would you say that this was  
 20 an important document for New Jersey?  
 21 A. Oh, yeah. As a statement of  
 22 policies, I think it's a pretty important  
 23 document, especially with respect to  
 24 the -- especially, the need for funding

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1 within the state for our various  
 2 environmental programs in the coastal  
 3 areas.  
 4 Q. So, would it have been  
 5 important for this document to have been  
 6 accurate in the representations made to  
 7 the federal government?  
 8 A. In their statement of the  
 9 general policies, I would imagine that  
 10 the federal government would want to see  
 11 it to be accurate, yes.  
 12 Q. I want to ask you a question  
 13 or two about Pages 254 to 255, which  
 14 are -- I've had yellow sheets placed  
 15 between where there are missing pages, so  
 16 the excerpting is clear.  
 17 A. Right.  
 18 Q. There's a passage at the  
 19 bottom, this says liquefied natural gas;  
 20 there are two paragraphs.  
 21 A. Okay.  
 22 Q. Mr. McHugh, the first  
 23 paragraph under the heading liquefied  
 24 natural gas, quotes some language from

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1 the National Energy Plan?  
 2 A. Uh-huh.  
 3 Q. The second paragraph  
 4 discusses liquefied natural gas or LNG  
 5 terminals. Let me read that paragraph.  
 6 "The New Jersey coastal program states  
 7 that LNG terminals are discouraged unless  
 8 they are constructed so as to neither  
 9 unduly endanger human life nor property  
 10 nor otherwise impair the public health,  
 11 safety and welfare and comply with the  
 12 coastal resource and development  
 13 policies.  
 14 "Because the tinkering of  
 15 LNG could pose potential risk to life and  
 16 property adjacent to New Jersey's  
 17 waterways, which also serve as boundaries  
 18 with the states of Pennsylvania and  
 19 Delaware along the Delaware River and the  
 20 State of New York and the Port of New  
 21 York and New Jersey, the state considers  
 22 decisions concerning the citing of LNG  
 23 terminals to be an interstate matter."  
 24 Have you had occasion to

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1 read this passage before today?  
 2 A. No.  
 3 Q. Are you familiar with the  
 4 policy that is discussed in this package,  
 5 regarding the statement toward the end  
 6 that the citing of LNG terminals is  
 7 considered by New Jersey to be an  
 8 interstate matter?  
 9 A. No. It's the first time  
 10 I've seen that.  
 11 Q. You are aware of the Crown  
 12 Landing -- proposed Crown Landing  
 13 facility?  
 14 A. I'm aware of it.  
 15 Q. That's an LNG terminal;  
 16 correct?  
 17 A. Yes.  
 18 Q. Did you have discussions  
 19 with anyone regarding whether approval of  
 20 the LNG terminal would be an interstate  
 21 matter?  
 22 A. No.  
 23 Q. Let's turn to -- you can  
 24 skip actually to the end of this excerpt,

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1 533, Bates stamp Delaware 19043.  
 2 A. I'm sorry? It's in the --  
 3 Q. Go all the way to the end.  
 4 A. The very last --  
 5 Q. And then go back. That last  
 6 segment, I misspoke, I'd like you to look  
 7 at Pages 532 and 33, which is Appendix J,  
 8 preparers of the New Jersey Coastal  
 9 Management Program and Final  
 10 Environmental Statement.  
 11 The first page lists some  
 12 folks from NOAA. The second page lists  
 13 folks from New Jersey and I want to ask  
 14 you questions about whether you know  
 15 those people or not.  
 16 A. Okay.  
 17 Q. Starting at the top, there's  
 18 a David Kinsey, director listed. Do you  
 19 know Mr. Kinsey?  
 20 A. No. I've heard of him but I  
 21 don't know him.  
 22 Q. John Weingart?  
 23 A. Know him.  
 24 Q. You do?

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1 A. Yes.  
 2 Q. What is his -- is he still  
 3 with the department?  
 4 A. No, he is with the Highlands  
 5 Commission, New Jersey Highlands  
 6 Commission right now. I think he's the  
 7 executive director.  
 8 Q. Do you know when he left the  
 9 DEP?  
 10 A. It would be a guess, but I  
 11 would say some time in the late '80s,  
 12 early '90s. He was the division -- at  
 13 the time that I knew him, he was the  
 14 director of the Division of Coastal  
 15 Resources.  
 16 Q. And Alan Campbell?  
 17 A. Don't know him.  
 18 Q. Jane Darden?  
 19 A. Don't know her.  
 20 Q. Adelle Gravitz?  
 21 A. Don't know her.  
 22 Q. Michael Hichman?  
 23 A. Nope.  
 24 Q. Richard Kantor?

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1 A. I know Richard.  
 2 Q. And in what capacity?  
 3 A. I know that he was in the  
 4 land use program. He was actually  
 5 married to one of my employees when I was  
 6 running the Office of Natural Resource  
 7 Damages.  
 8 Q. When did you know him in the  
 9 land use division?  
 10 A. Mostly at the time that I  
 11 was running the Office of Natural  
 12 Resource Damages.  
 13 Q. And that was starting in  
 14 '94?  
 15 A. I think it was the end of  
 16 '93, beginning of '94.  
 17 Q. Do you know what his  
 18 position was before then?  
 19 A. No, I don't.  
 20 Q. Barbara Kauffman?  
 21 A. Don't know her.  
 22 Q. Stuart McKenzie?  
 23 A. No.  
 24 Q. David Stern?

54	<p>1 A. The name sounds familiar but                  2 I don't know him.                  3 Q. Saul Wiener?                  4 A. No.                  5 Q. Neal Yoskin?                  6 A. I know Neal.                  7 Q. And in what capacity?                  8 A. He is outside counsel --                  9 he's a private attorney representing                  10 various clients before the department.                  11 Q. When did you first meet or                  12 become aware of Mr. Yoskin?                  13 A. As in-house counsel to DEP,                  14 I probably came across him, but more                  15 recently, when I was assistant director                  16 for the Division of Fish and Wildlife.                  17 Q. Okay. Did you just say he                  18 was outside counsel for DEP?                  19 A. No. I meant to say he was a                  20 counsel for private clients, private, you                  21 know, outside attorney for private                  22 clients representing their interest                  23 before the department.                  24 Q. That's what I thought you</p>	56	<p>1 before the department?                  2 A. Right. He may have been                  3 working in the Attorney General's Office                  4 or as in-house counsel previous to that                  5 but I'm not -- you know, I think he may                  6 have been. There have been a number of                  7 attorneys on the outside who started                  8 within the agency.                  9 Q. The next paragraph says                  10 "Planning assistance was also provided by                  11 Chief Steven Whitney."                  12 Do you know Mr. Whitney?                  13 A. Yes.                  14 Q. In what capacity?                  15 A. I'm pretty sure he was --                  16 this refers to him as chief but he was in                  17 charge of New Jersey's coastal management                  18 program at some point. And has retired.                  19 Q. Did you ever work with him?                  20 A. Tangentially, probably.                  21 Q. I won't go through all these                  22 names. What about Ruth Ehinger?                  23 A. She currently works in the                  24 department. I know Ruth.</p>
55	<p>1 said.                  2 A. To clarify.                  3 Q. That's what I thought you                  4 said the first time.                  5 A. Yeah.                  6 Q. So, you knew him more as a                  7 director. What about before then? What                  8 about when you were first joining the                  9 department?                  10 A. I probably had enforcement                  11 matters or negotiations with him in                  12 various areas.                  13 But I knew him.                  14 Q. Was he a private attorney?                  15 A. He was a private attorney at                  16 the time.                  17 Q. And you started at the                  18 department in 1986?                  19 A. '85.                  20 Q. '85. And as best you can                  21 recall, he was a private attorney at that                  22 time?                  23 A. I'm pretty sure, yeah.                  24 Q. And representing clients</p>	57	<p>1 Q. When did you first meet                  2 Ms. Ehinger?                  3 A. Again, you know, having been                  4 with the department for 21 years, my                  5 recollection on when I met her is a                  6 little bit lacking, but I'm sure it was                  7 during the time I was in-house counsel.                  8 She's been around a while as well.                  9 Q. Did you ever have occasion                  10 to work directly with her?                  11 A. Only recently.                  12 Q. How recent was that?                  13 A. You know, in the last year,                  14 I've been working on some coastal,                  15 Atlantic coastal enforcement issues that                  16 she's been in meetings on.                  17 Q. Atlantic?                  18 A. Atlantic coastal issues;                  19 enforcement issues.                  20 Q. Have you worked with her in                  21 connection with this case?                  22 A. No.                  23 Q. Have you had any discussions                  24 with her about it?</p>

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1       A. No.

2       Q. Have you had any discussions

3 with her about BP's proposed Crown

4 Landing project?

5       A. No.

6       MR. ATTAWAY: I think this

7 would be a good time to take a

8 break.

9       Before we do that, let me

10 premark a couple of exhibits and

11 maybe we could take a ten-minute

12 break.

13       - - -

14       (Whereupon, the exhibit was

15 marked McHugh-2 and 3 for

16 identification.)

17       - - -

18       (Whereupon, there was a

19 recess commencing at 10:34 a.m.

20 and concluding at 10:41 p.m.)

21       - - -

22 BY MR. ATTAWAY:

23       Q. I've had marked as Exhibits

24 McHugh-2 and McHugh-3 two letters on the

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1 State of New Jersey DEP letterhead. The

2 first one, Exhibit 2, is a memorandum

3 from Martin J. McHugh to Ken Koschek

4 dated March 31st, 2005.

5       And Exhibit 3 is a letter

6 dated April 19th, 2005, from Ken Koschek

7 to Federal Energy Regulatory Commission

8 or FERC, F-E-R-C.

9       Have I correctly described

10 those, in general?

11       A. Yes.

12       Q. I want to look at Exhibit 2

13 first.

14       This is a letter from you;

15 correct?

16       A. Uh-huh, yes.

17       Q. And as I understand it, this

18 provides comments, your comments to

19 Mr. Koschek regarding the environmental

20 and other impacts of the Crown Landing

21 project; correct?

22       A. Yes.

23       Q. Just to lay some foundation,

24 I think you've said you first became

60

1 aware of the proposed Crown Landing

2 project in late 2004, early 2005 period?

3       A. Right.

4       Q. Does this letter refresh

5 your recollection any? Is that still --

6       A. That's probably still --

7 maybe it was a little bit earlier in

8 2004, but I would say the fall of 2004.

9       Q. Did you write any memoranda

10 or letters regarding the project prior to

11 March 31st, 2005?

12       A. No.

13       Q. Did you write any after

14 this?

15       A. No.

16       Q. So, this is the only one?

17       A. Yes.

18       Q. On the first page of your

19 letter, again, Exhibit 2, there's a

20 section entitled citing of the proposed

21 plant.

22       The first paragraph, the

23 last sentence talks about impacts to

24 natural resources.

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1       A. Yes.

2       Q. What were the impacts to

3 natural resources that you found

4 problematic?

5       A. Well, let me start by saying

6 that these are not my direct comments but

7 kind of a culmination of all the comments

8 of my environmental review staff, you

9 know, working with the rest of our staff

10 within the fish -- within the Division of

11 Fish and Wildlife.

12       I want to make that clear.

13       Although I do support all of

14 these comments and rely upon the staff

15 that I did to submit these comments.

16       So, the concerns that we had

17 were pretty significant, considering what

18 was being proposed.

19       The concerns were with

20 respect to migratory fishes, in

21 particular how this would impact

22 short-nosed sturgeon, Atlantic sturgeon

23 and other migratory fishes; whether they

24 be striped bass, herring, shad, whatever

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1 is migrating through there.  
 2 Also, it's my recollection,  
 3 looking at this, that we have bald eagle  
 4 foraging habitat; and it's my  
 5 understanding that there is bald eagle  
 6 foraging habitat on the area where this  
 7 facility is being proposed.  
 8 We had concerns about access  
 9 to natural resources, which are important  
 10 to the Division of Fish and Wildlife;  
 11 whether it be access to shore line or  
 12 access to waterways; and the potential  
 13 for impeding that public access to those  
 14 areas, for the purpose of fishing and  
 15 other recreating or commercial fishing  
 16 activity.  
 17 There were also issues with  
 18 respect to the ballast, intake and the  
 19 discharge of ballast; whether we'd be  
 20 introducing easives as well as whether  
 21 we would be taking in fish larva within  
 22 the ballast. Apparently there was some  
 23 significant potential for the intake of  
 24 ballast, considering the size of these

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1 vessels.  
 2 Also, there was, you know,  
 3 the dredging issues, dredging maintenance  
 4 issues.  
 5 I think I mentioned the  
 6 navigation channel that is also access,  
 7 closing of a navigation area so that, you  
 8 know, impeding commercial or recreational  
 9 fishing boats.  
 10 All those kinds of issues.  
 11 General statement of the use  
 12 of natural resources and not only just  
 13 the use, but the health of those natural  
 14 resources, which we were concerned about  
 15 at the Division of Fish and Wildlife that  
 16 are in that area.  
 17 Q. Thank you. Have your  
 18 concerns been addressed by the Crown  
 19 Landing project?  
 20 A. I don't know if they've been  
 21 addressed. I know that they've been --  
 22 our concerns have been well aired up the  
 23 chain in both DEP and obviously to FERC,  
 24 the Federal Energy Regulatory Commission.

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1 I don't know where the  
 2 application is in the process, with  
 3 respect to the natural gas plant. But I  
 4 know that they are -- our concerns have  
 5 been made, you know, everyone has been  
 6 made aware of those concerns.  
 7 Q. To your knowledge, has Crown  
 8 Landing filed documents with the  
 9 department addressing these concerns?  
 10 A. After this letter was  
 11 issued, this memo that I signed off on to  
 12 Ken Koschek, and then it was -- a lot of  
 13 these comments were referred to in this  
 14 letter from the department to FERC, I --  
 15 Q. Just to be clear, that's  
 16 Exhibit 3 that you are talking about?  
 17 A. Exhibit 3. I lost touch  
 18 with the issue.  
 19 Our job was to put the  
 20 issues on the table and make sure that  
 21 they were aired.  
 22 Q. If proposals by Crown  
 23 Landing were presented to the department  
 24 to address these comments, would those

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1 proposals go to you?  
 2 A. I'm no longer the director  
 3 of Fish and Wildlife.  
 4 Q. Okay.  
 5 A. So -- no, they wouldn't go  
 6 to me.  
 7 Q. Would they have gone to you  
 8 during the time you were still director?  
 9 A. I would probably be made  
 10 aware of those responses, because our  
 11 staff would be involved in the  
 12 development of the permits for -- and the  
 13 commenting on the permits as they went  
 14 through the process.  
 15 Q. And I think you said you  
 16 left the director's position, was it  
 17 January of '04?  
 18 A. Yes, January of '04.  
 19 Q. And this letter was written  
 20 March 31st, '05 and you said the comments  
 21 were incorporated in substance in  
 22 Mr. Koschek's April 19th letter to FERC,  
 23 which is Exhibit 3 here.  
 24 So, between April 19th, 2005

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1 and the end of 2005 you were never made  
 2 aware of any attempts by Crown Landing to  
 3 address your concerns?  
 4 **A. I was aware that my staff**  
 5 **was working with the Division of Land Use**  
 6 **Regulation to address the ongoing issue.**  
 7 **This is a long, drawn out**  
 8 **process, I would imagine, considering**  
 9 **it's a complicated issue to cite a liquid**  
 10 **natural gas plant.**  
 11 **So, I was aware that my**  
 12 **staff was still working on it.**  
 13 **Q. But I think you said if your**  
 14 **staff had received proposals to address**  
 15 **these comments, would you have been made**  
 16 **aware of those proposals?**  
 17 **A. I probably would have been**  
 18 **made aware of them. I don't recall if**  
 19 **that ever happened.**  
 20 **Q. Just going to the second**  
 21 **paragraph, or the last paragraph on the**  
 22 **first page, maybe an easier way to**  
 23 **describe it, the first sentence notes**  
 24 **that "There appears to be significant**

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1 local opposition to the proposed plant  
 2 due to the threats to public safety and  
 3 loss of public use of the river."  
 4 **Just taking those one at a**  
 5 **time, what were the threats to public**  
 6 **safety that were significant in your**  
 7 **view?**  
 8 **A. Well, from the point of view**  
 9 **of the Division of Fish and Wildlife, the**  
 10 **threats to public safety included**  
 11 **potential contaminant issues associated**  
 12 **with dredge materials; suspension of**  
 13 **dredge materials and natural resources**  
 14 **that would, you know, accumulate up the**  
 15 **food chain and also the navigational**  
 16 **issues associated with berthing such a**  
 17 **large vessel and the closure of the**  
 18 **waterways, obviously that's something**  
 19 **that the Division of Fish and Wildlife**  
 20 **was concerned with; the prevention of**  
 21 **boating accidents or mishaps associated**  
 22 **with the vessels that, you know, were**  
 23 **either commercial or recreationally**  
 24 **fishing or hunting on the river.**

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1 **And I assume that's what**  
 2 **that is referring to in the most part.**  
 3 **Q. Okay. And the next sentence**  
 4 **says, "Additional safety concerns are**  
 5 **raised by the length of the pier,**  
 6 **extending approximately 2000 feet into**  
 7 **the Delaware River and adding an**  
 8 **additional 1,500 foot homeland security**  
 9 **buffer."**  
 10 **Explain the implications of**  
 11 **having a 2000 foot pier plus an**  
 12 **additional 1,500 foot homeland security**  
 13 **buffer?**  
 14 **A. Well, let me qualify my**  
 15 **answer by the fact that I am not an**  
 16 **expert on navigation or boating vessel**  
 17 **traffic.**  
 18 **But our concern was that we**  
 19 **were going to basically, if this was**  
 20 **going to be built to this extent, as it**  
 21 **was being proposed, that it was going to**  
 22 **funnel traffic, boat traffic into a more**  
 23 **narrow area on the river, which could,**  
 24 **you know, result in bottleneck and**

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1 **potential hazards for, you know,**  
 2 **recreational, commercial fishing boaters.**  
 3 **Q. Is there any other existing**  
 4 **project on the Delaware River that has**  
 5 **had similar implications?**  
 6 **A. Similar to --**  
 7 **Q. Similar to the ones that you**  
 8 **raise here in the letter?**  
 9 **A. All of the implications?**  
 10 **Q. Well, the implications of**  
 11 **blocking the boating traffic that you**  
 12 **were just talking about.**  
 13 **A. I can't think of any.**  
 14 **Q. Anywhere else in New Jersey,**  
 15 **on the Hudson River, for example?**  
 16 **A. I can't think of any.**  
 17 **Q. Is it fair to say that the**  
 18 **scope of the project, in terms of the**  
 19 **length that it would extend out into the**  
 20 **Delaware River and its effect on**  
 21 **navigation is much different in quality**  
 22 **than any other project of which you're**  
 23 **aware in New Jersey?**  
 24 **A. That was a long statement;**

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1 could you just repeat it? I don't want  
 2 to mischaracterize.  
 3 Q. Sure. You said that you're  
 4 not aware of any other projects that  
 5 extend so far out into the river, whether  
 6 it's the Delaware River or the Hudson  
 7 River, that it would impede recreational  
 8 and other boat traffic in the same way  
 9 that this proposed project would impede  
 10 such boat traffic; is that correct?  
 11 A. Yes. I'm not aware of any.  
 12 Q. Okay.  
 13 A. There may exist but I'm not  
 14 aware of any.  
 15 Q. Toward the bottom of the  
 16 page -- well, let me back up.  
 17 What is the 1,500 foot  
 18 homeland security buffer?  
 19 A. My understanding, from staff  
 20 was because of the nature of liquefied  
 21 natural gas, and the hazards it presents,  
 22 that we needed an additional buffer area  
 23 to prevent potential terrorist threats  
 24 and so that was my understanding of what

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1 the 1,500 foot buffer was for homeland  
 2 security.  
 3 Q. And when would that -- what  
 4 is the buffer? What impact does it have  
 5 on other boating traffic in the river?  
 6 A. Well, as I stated, it  
 7 basically would again restrict the  
 8 navigation area that you could use; if  
 9 you placed that kind of a buffer in that  
 10 area.  
 11 Q. So, does it mean that when  
 12 one of these supertankers is either  
 13 docking or leaving the proposed pier or  
 14 while it's there, that boats basically  
 15 can't pass up and down the channel  
 16 because the buffer covers the navigable  
 17 portion of the river?  
 18 A. I'm not sure if they can't  
 19 pass the channel; because I'm not that  
 20 familiar with exactly the logistics of  
 21 the channel.  
 22 But I know from my  
 23 recollection that we were concerned about  
 24 the restrictions to the traffic.

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1 Q. And those restrictions you  
 2 thought were very significant?  
 3 A. My staff thought they were  
 4 significant and I was relying upon my  
 5 staff and yes, so, I signed the comments  
 6 and I was forwarding those comments on,  
 7 yes. I believe they would be  
 8 restrictive.  
 9 Q. Toward the bottom of the  
 10 page, it says "This closure of public  
 11 water forcing recreational boaters into  
 12 possible harms way in the federal  
 13 channel, is unacceptable to the DFW,"  
 14 meaning I assume the Department of Fish  
 15 and Wildlife?  
 16 A. Division of Fish and  
 17 Wildlife.  
 18 Q. Division. Okay.  
 19 How would recreational  
 20 boaters be forced into possible harms way  
 21 under the -- by the proposed project?  
 22 A. Well, as I said, if you are  
 23 going to restrict the navigation channel,  
 24 depending on the time of year, when there

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1 are recreational boaters out there, maybe  
 2 the winter months wouldn't be something  
 3 you'd be concerned about but during the  
 4 time of year where fish are running or  
 5 people are moving to where the fish are  
 6 through the area, we would be concerned  
 7 that recreational boaters would be forced  
 8 into a navigation zone that is going to  
 9 be shared by much larger vessels like  
 10 tankers or other commercial large  
 11 vessels; whether they be container ships  
 12 or whatever.  
 13 Q. Do those vessels create a  
 14 big wake?  
 15 A. I'm not an expert on  
 16 vessels, large vessels, except to know  
 17 that I would assume they create large  
 18 wakes.  
 19 Q. I was just wondering why  
 20 having a small boat in the same channel  
 21 as the larger boats would be dangerous to  
 22 the small boats? Is it because of the  
 23 wake or is it because of collision  
 24 possibilities?

74	<p>1       <b>A. I would assume, I would</b>  2 <b>imagine that it would be maybe both.</b>  3       <b>Q. Or maybe getting run over if</b>  4 <b>the bigger ship doesn't see them?</b>  5       <b>A. Potentially.</b>  6       <b>Q. Okay.</b>  7       <b>A. Depending on the weather.</b>  8       <b>Q. You mentioned that you</b>  9 <b>were -- your concern was especially the</b>  10 <b>time when the fish were running. Did I</b>  11 <b>hear that correctly?</b>  12       <b>A. Yes.</b>  13       <b>Q. When do the fish run?</b>  14       <b>A. It depends on what you're</b>  15 <b>fishing for. Shad run in the spring.</b>  16 <b>Herring run in the spring. Striped bass</b>  17 <b>run, lately, most of the year, although</b>  18 <b>they are kind of hauled up in their</b>  19 <b>nursery areas in the river in the</b>  20 <b>early -- or late winter.</b>  21       <b>So, also there's, you know,</b>  22 <b>water fowling going on in the area,</b>  23 <b>potentially.</b>  24       <b>So, I would say mostly from</b></p>	76	<p>1       <b>Q. New Jersey 1077; there's a</b>  2 <b>section called recreational boating</b>  3 <b>access.</b>  4       <b>It looks to me that this is</b>  5 <b>a little bit more detailed elaboration</b>  6 <b>from what we were just talking about from</b>  7 <b>Page 1 of your letter and you can tell me</b>  8 <b>if you agree with that or not.</b>  9       <b>A. Yes.</b>  10       <b>Q. And then just looking at --</b>  11 <b>comparing those two paragraphs under the</b>  12 <b>heading recreational boating access with</b>  13 <b>the two paragraphs in Mr. Koschek's</b>  14 <b>letter, Page 3, also titled recreational</b>  15 <b>boating access, does it look like</b>  16 <b>Mr. Koschek incorporated your comments,</b>  17 <b>in substance if not word for word into</b>  18 <b>his letter?</b>  19       <b>A. Yes.</b>  20       <b>Q. Just a couple more questions</b>  21 <b>on this.</b>  22       <b>Looking at your letter, the</b>  23 <b>recreational boating access portion on</b>  24 <b>Page 3.</b></p>
75	<p>1 <b>the late winter on through the early part</b>  2 <b>of the fall, you know, there would be</b>  3 <b>concerns about recreational fishing and</b>  4 <b>hunting as well as maybe commercial</b>  5 <b>fishing.</b>  6       <b>Q. Okay. So, more than half</b>  7 <b>the year it sounds like?</b>  8       <b>A. Right.</b>  9       <b>Q. Just comparing the two</b>  10 <b>paragraphs that we were discussing at the</b>  11 <b>bottom of Page 1 of your letter with the</b>  12 <b>two paragraphs and Mr. Koschek's letter,</b>  13 <b>Exhibit 3, which are on Pages 1 and 2, is</b>  14 <b>it fair to say that your two paragraphs</b>  15 <b>were incorporated in substance, if not</b>  16 <b>word for word, in Mr. Koschek's letter to</b>  17 <b>FERC?</b>  18       <b>A. It appears that our comments</b>  19 <b>were generally taken by Mr. Koschek and</b>  20 <b>reiterated in his letter of April 19th.</b>  21       <b>Q. And on Page 3 of your</b>  22 <b>letter, which is actually not numbered,</b>  23 <b>but there's a Bates stamp on it?</b>  24       <b>A. Right.</b></p>	77	<p>1       <b>The middle states that</b>  2 <b>"Delays of up to two to three hours may</b>  3 <b>be encountered during the berthing of the</b>  4 <b>LNG ship when it will be necessary to</b>  5 <b>limit traffic up and down the river."</b>  6       <b>Does that mean that for two</b>  7 <b>to three hours that no traffic could pass</b>  8 <b>that portion of the river to go north or</b>  9 <b>south?</b>  10       <b>A. I don't think that's what it</b>  11 <b>means. I think it means that some</b>  12 <b>traffic might not be able to get up;</b>  13 <b>depending on the restriction in the</b>  14 <b>channel and then some traffic would be</b>  15 <b>kind of waiting to pass through.</b>  16       <b>Q. When you say restriction in</b>  17 <b>the channel, do you mean that the -- if</b>  18 <b>the ship were of a certain size that --</b>  19 <b>and it were restricted from navigating</b>  20 <b>the deep portion of the channel, that it</b>  21 <b>might thereby be restricted from passing?</b>  22       <b>A. Right; yes.</b>  23       <b>Q. So, this would delay or</b>  24 <b>impede not only recreational traffic but</b></p>

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1 also commercial traffic carried in larger  
 2 container ships and such?  
 3 **A. As it was proposed, what we**  
 4 **were commenting on, we believed that the**  
 5 **operation would impede, yes.**  
 6 **Q. And you called this, in the**  
 7 **first sentence of the second paragraph, a**  
 8 **tremendous loss of public access to the**  
 9 **Delaware River?**  
 10 **A. Yes, we did.**  
 11 **Q. And you mentioned that**  
 12 **the -- and just to clarify, this letter**  
 13 **comments on the draft, environmental**  
 14 **impact statement that was released by**  
 15 **FERC; is that correct?**  
 16 **A. Yes.**  
 17 **Q. This says "Mitigation for**  
 18 **the tremendous loss of public access to**  
 19 **the Delaware River was also not found in**  
 20 **the DEIS."**  
 21 **Do you know whether Crown**  
 22 **Landing has proposed any such mitigation?**  
 23 **A. I do not know.**  
 24 **Q. You're not aware of any?**

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1 **A. I'm not aware of any.**  
 2 **Q. You likely would have become**  
 3 **aware of any such proposal, as long as**  
 4 **you were director; is that correct?**  
 5 **A. Yes.**  
 6 **Q. Okay.**  
 7 **A. At some point in the**  
 8 **process.**  
 9 **Q. Okay. The bottom half of**  
 10 **the first paragraph under recreational**  
 11 **boating access states "Based on the**  
 12 **proposed number of ships utilizing this**  
 13 **facility, the river may be cumulatively**  
 14 **blocked for up to an unacceptable 18**  
 15 **hours per week."**  
 16 **Actually, let me read the**  
 17 **next sentence.**  
 18 **"It is expected that some of**  
 19 **the blockage will occur during the**  
 20 **weekend when recreational boating**  
 21 **activity is highest."**  
 22 **What significance is 18**  
 23 **hours per week?**  
 24 **A. I'm not sure what you mean,**

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1 **what significance.**  
 2 **Q. What makes it unacceptable?**  
 3 **A. Well, what we were stating**  
 4 **was that it's a long time for boaters to**  
 5 **be held up or inconvenienced from moving**  
 6 **through the area at a time when there**  
 7 **might be resources that they were either**  
 8 **pursuing or trying to get to in the area.**  
 9 **And that it was a -- it was**  
 10 **a burden on the public access.**  
 11 **Q. Is there a lot of traffic up**  
 12 **and down the Delaware River on this**  
 13 **portion?**  
 14 **A. According to my staff,**  
 15 **there's, you know, there is significant**  
 16 **traffic. I'm not personally familiar**  
 17 **with it, though.**  
 18 **Q. But that's your**  
 19 **understanding, based on your staff's**  
 20 **input?**  
 21 **A. Right.**  
 22 **Q. Do you know how much of the**  
 23 **traffic proportionally is recreational**  
 24 **versus commercial traffic?**

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1 **A. No, I don't.**  
 2 **Q. Is it your understanding**  
 3 **that a lot of ships travel up the river**  
 4 **with commercial cargo?**  
 5 **A. I'm aware of that, yes.**  
 6 **Q. On Page 4 of your letter, at**  
 7 **the very end it says "If there are any**  
 8 **questions concerning these comments, feel**  
 9 **free to contact Donald Wilkinson of my**  
 10 **staff."**  
 11 **Who is Mr. Wilkinson?**  
 12 **A. Mr. Wilkinson was the**  
 13 **primary staff member who was in my**  
 14 **environmental review program that was**  
 15 **pulling together these comments from the**  
 16 **rest of my staff in the Division of Fish**  
 17 **and Wildlife.**  
 18 **And it was his**  
 19 **responsibility to put together these**  
 20 **comments for me to send on to land use,**  
 21 **in this and many other land use matters.**  
 22 **Q. And copied, there are a**  
 23 **number of names. If you could just tell**  
 24 **me briefly who those folks are and**

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1 whether they work under you or somewhere  
 2 else?  
 3 **A. Yes; Andrew Diadun, A.**  
 4 **Diadun is Andrew Diadun. He is retired**  
 5 **and he used to be in charge of the office**  
 6 **of environmental review, where**  
 7 **Mr. Wilkinson works.**  
 8 **K. Clark, is Kathy Clark.**  
 9 **She is a biologist within the endangered**  
 10 **species program in the Division of Fish**  
 11 **and Wildlife; the endangered and nongame**  
 12 **species program.**  
 13 **She is primarily an expert**  
 14 **on eagles and avian species.**  
 15 **R. Allen, stands for Russell**  
 16 **Allen. He is a biologist in the**  
 17 **Divisions Bureau of Marine Fisheries and**  
 18 **his area of expertise with respect to**  
 19 **this and other matters in the Delaware**  
 20 **are in dealing with marine fisheries,**  
 21 **such as herring, shad, striped bass,**  
 22 **American eagle.**  
 23 **And -- and sturgeon.**  
 24 **M. Boriek, stands for Mark**

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1 **Boriek and he is with the Bureau of Fresh**  
 2 **Water Fisheries and he would be**  
 3 **interested in the fisheries issues**  
 4 **associated with freshwater species.**  
 5 **And I think his area of**  
 6 **concern or interest in this overlapped**  
 7 **with Russell Allen's in the sturgeon**  
 8 **area.**  
 9 **And of course there's Don**  
 10 **Wilkinson.**  
 11 **Q. Right. Thank you.**  
 12 **Turning back to Page 2 of**  
 13 **your letter, at the top there's a heading**  
 14 **that's in bold titled dredging and pier**  
 15 **issues?**  
 16 **A. Yes.**  
 17 **Q. To be clear, this is Bates**  
 18 **stamped New Jersey 1076.**  
 19 **The first subheading under**  
 20 **the dredging and pier issues is**  
 21 **Intertidal Shallows Impacts. I'll just**  
 22 **read the first couple of sentences.**  
 23 **"At the present time, the**  
 24 **State of Delaware has characterized this**

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1 project as not being in compliance with  
 2 Delaware's coastal regulations. Since  
 3 the State of Delaware has not  
 4 relinquished review of this phase of the  
 5 project, we will not comment further,  
 6 except to say that the DFW is concerned  
 7 about the loss of" -- and then it goes on  
 8 to list the number of concerns regarding  
 9 natural resources.  
 10 **And then the final sentence**  
 11 **says "The construction of the plant must**  
 12 **be tied to Delaware's approval of the**  
 13 **berth."**  
 14 **How did you come to an**  
 15 **understanding that the construction of**  
 16 **the plant must be tied to Delaware's**  
 17 **approval of the berth, and I gather that**  
 18 **berth is referring to the pier, the pier**  
 19 **where the ships are going to dock?**  
 20 **A. Well, my staff has always**  
 21 **worked kind of in conjunction or**  
 22 **coordination with the staffs of both**  
 23 **Pennsylvania and Delaware, with respect**  
 24 **to any natural resource issues; whether**

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1 **they be in this particular area of the 12**  
 2 **miles that we are talking about or north**  
 3 **or south of that.**  
 4 **And so, as in the past, in**  
 5 **other issues, whether they be oil spills**  
 6 **or restoration issues, regional**  
 7 **restoration issues, you know, we're**  
 8 **always trying to work with the other**  
 9 **state's staff.**  
 10 **And so, that's the kind of**  
 11 **the general background that I would**  
 12 **assume was part of this whole effort to**  
 13 **work with Delaware to kind of come up**  
 14 **with a, you know, coordinated approach to**  
 15 **this as we've done with oil spills, et**  
 16 **cetera.**  
 17 **My general charge, in all of**  
 18 **these cases, whether they be oil spills,**  
 19 **regional restoration to the staff was, to**  
 20 **always work with the other states.**  
 21 **So, Mr. Wilkinson was**  
 22 **under -- was understanding -- I'm not**  
 23 **sure how much his understanding of the**  
 24 **agreement between Delaware and New Jersey**

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1 was at the time, but because there was an  
 2 issue, we wanted to make sure that we  
 3 were coordinating with Delaware before  
 4 we, you know -- before we said one way or  
 5 the other whether we would agree with  
 6 this particular project.  
 7 Q. Okay.  
 8 A. So, that's kind of where  
 9 this statement is coming from.  
 10 MR. ATTAWAY: Can you read  
 11 back the last couple of sentences?  
 12 - - -  
 13 (Whereupon, the following  
 14 portion of the record was read by  
 15 the court reporter:  
 16 "ANSWER: So, Mr. Wilkinson  
 17 was under -- was understanding --  
 18 I'm not sure how much his  
 19 understanding of the agreement  
 20 between Delaware and New Jersey  
 21 was at the time, but because there  
 22 was an issue, we wanted to make  
 23 sure that we were coordinating  
 24 with Delaware before we, you

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1 know -- before we said one way or  
 2 the other whether we would agree  
 3 with this particular project.")  
 4 - - -  
 5 BY MR. ATTAWAY:  
 6 Q. You mentioned because there  
 7 was an issue. What was the issue that  
 8 you found at the time?  
 9 A. Well, the issue had come up  
 10 at the time that, you know, whose  
 11 authority was it to permit, I guess, the  
 12 facility or, you know, whether it was a  
 13 joint issue or not.  
 14 But our general work with  
 15 other states on the river was to  
 16 coordinate.  
 17 Q. Okay.  
 18 A. The only thing that we never  
 19 really coordinated was, you know, the  
 20 enforcement of marine fisheries or other  
 21 wildlife laws within that 12 mile. That  
 22 was within the jurisdiction of the State  
 23 of Delaware.  
 24 Q. In what other ways did you

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1 coordinate with Delaware in the past  
 2 besides on fish and wildlife?  
 3 A. On oil spills, if there was  
 4 an oil spill, we would work together to  
 5 jointly assess the injury to damages,  
 6 because of the nature of the spill. It  
 7 could be in Delaware one day and New  
 8 Jersey the other day or up the river or  
 9 down the river and with, you know, with  
 10 staff being the way they are -- in terms  
 11 of limits on what they can do, you know,  
 12 sometimes we would cover certain areas of  
 13 the river and Delaware would cover  
 14 certain areas of the river and  
 15 Pennsylvania would cover certain areas of  
 16 the river in oil spills so we could come  
 17 to some kind of joint assessment and  
 18 pursue the responsibilities for the  
 19 damages to natural resources.  
 20 We have a long standing kind  
 21 of relationship with not just Delaware  
 22 but Pennsylvania, and also in the New  
 23 York Harbor with New York on coordination  
 24 with respect to port natural resource

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1 issues such as this.  
 2 Q. And this project is the  
 3 construction of a pier; is that correct?  
 4 A. Right.  
 5 Q. And --  
 6 A. It's more than just that;  
 7 it's the whole operation that you just  
 8 referred to.  
 9 Q. But the sentence in your  
 10 memo says the construction of the plant  
 11 must be tied to Delaware's approval of  
 12 the berth of the actual structure.  
 13 How did you come to that  
 14 understanding?  
 15 A. I'm not -- I don't quite  
 16 recall that particular part of this memo,  
 17 but my response would be based on my  
 18 general charge to staff, that when there  
 19 is an issue between the states, whether  
 20 it's Delaware or Pennsylvania or New  
 21 Jersey or New York, that, you know, we  
 22 coordinate with that, with that state  
 23 before we take a, you know, a position on  
 24 anything that would impact resources that

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1 the state shares, that New Jersey shares  
 2 with that state.  
 3 In this particular matter,  
 4 there was an issue as to the permitting  
 5 of the structure and we were just trying  
 6 to outline what our natural resource  
 7 concerns were and I guess that is just a  
 8 statement of -- I'm qualifying this again  
 9 because it's been a while since I've  
 10 looked at this, but I guess that's just a  
 11 statement of the fact that there was an  
 12 issue and that we wanted to make sure  
 13 that we coordinated our position with  
 14 Delaware.  
 15 Q. Okay. Thank you.  
 16 A little bit further down  
 17 understand the dredging and pier issues,  
 18 there's a subheading dredge material  
 19 testing and it reads "The DFW realizes  
 20 that this part of the project is in the  
 21 State of Delaware and it may not be  
 22 overseen by DEP's Office of Dredging and  
 23 Sediment Technology."  
 24 How did you come to the

91

1 understanding that it may not -- the  
 2 dredging may not be overseen by the DEP?  
 3 A. Because we were aware of the  
 4 fact that Delaware has certain riparian  
 5 rights associated with the 12-mile area  
 6 and that when dredging goes, you know,  
 7 dredging goes on within that 12-mile  
 8 area, that's within Delaware's purview  
 9 under the compact; as well.  
 10 Q. How did you develop that  
 11 understanding of the meaning of the  
 12 compact?  
 13 A. This has probably been  
 14 developed through the agency for years.  
 15 And I mean the agency in the Division of  
 16 Fish and Wildlife; working with the State  
 17 of Delaware on various other projects.  
 18 Let me clarify that.  
 19 I'm not quite sure where it  
 20 came from, but I think it's kind of a  
 21 general statement of our, you know,  
 22 in-house agency knowledge of how things  
 23 work within that area.  
 24 Q. Okay. What is your

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1 understanding of the extent of the  
 2 dredging that would be required by the  
 3 proposed Crown Landing project?  
 4 A. Again, my understanding  
 5 derives from comments of the staff, but  
 6 considering the size of the ship, the  
 7 draft that it would take, the draft, you  
 8 know, how much water it requires, and --  
 9 and the maintenance of the berth area, it  
 10 would require a certain amount of  
 11 dredging for a ship of that size to get  
 12 from the navigation channel to the berth  
 13 and then back. And to maneuver within  
 14 that area.  
 15 Q. What size ships would be  
 16 servicing this pier, if it were built?  
 17 A. What size ships would be  
 18 servicing the pier?  
 19 Q. Yes.  
 20 A. I'd have to read.  
 21 Q. Maybe I can ask it another  
 22 way.  
 23 A. Okay. I don't recall.  
 24 Q. The ships that would be

93

1 docking and unloading liquefied natural  
 2 gas at Crown Landing are commonly known  
 3 as supertankers; is that correct?  
 4 A. I wasn't aware of that but I  
 5 know what a supertanker is.  
 6 Q. Well, these ships that would  
 7 be docking here are really big ships?  
 8 A. Really big.  
 9 Q. Would you agree with that?  
 10 A. I would agree with that.  
 11 Q. All right.  
 12 A. If they are taking on 8,000  
 13 gallons of ballast water per ship, yes,  
 14 they are very big.  
 15 Q. Are you aware of any other  
 16 ships that currently traverse the  
 17 Delaware River are of comparable size?  
 18 A. I don't know of any. I know  
 19 that oil tankers do traverse the Delaware  
 20 River; having been involved in oil  
 21 spills. I don't know if they are  
 22 considered supertankers. I don't think  
 23 I've ever seen a supertanker so I don't  
 24 have personal knowledge of that.

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1 Q. Okay. Let's just look at  
 2 Mr. Koschek's letter.  
 3 This is Exhibit 3 for the  
 4 record.  
 5 At the bottom of that page,  
 6 there is a heading, there's a site to  
 7 some regulations and then it says "dredge  
 8 material placement on land" and then  
 9 about halfway down in the bottom  
 10 paragraph it says "Coupled with the  
 11 initial dredging and disposal of 800,000  
 12 cubic yards of dredged material this  
 13 would consume 3.2 million cubic yards or  
 14 40 percent of the available permitted  
 15 capacity of the sole regional disposal  
 16 facility, the Weeks Marine/Whites Basin  
 17 facility."  
 18 Are you familiar with the  
 19 facts described in this passage?  
 20 A. Only as they are set forth  
 21 here in this memo.  
 22 Q. Do you have an understanding  
 23 of the scope of dredging that would be  
 24 required to build Crown Landing as

95

1 compared to other projects in the  
 2 Delaware River, other dredging?  
 3 A. As compared to other  
 4 projects, I am not aware of, you know,  
 5 how big this is -- this compares to other  
 6 projects.  
 7 But based on our comments  
 8 that we submitted on March 31st, and what  
 9 is in this particular memo to FERC, it  
 10 was a significant amount of dredging that  
 11 was required to allow these vessels to  
 12 come into berth.  
 13 Q. Who in the department would  
 14 be best placed to compare the dredging  
 15 required for this project to compare the  
 16 dredging required for other projects?  
 17 A. I would imagine somebody  
 18 from our dredging office. I can't recall  
 19 what it's called.  
 20 I'm not sure who's in charge  
 21 of that now, but whoever is -- whoever is  
 22 overseeing dredging work along the  
 23 Delaware River, I would say would be in a  
 24 good position to make a comparison.

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1 Q. Okay. Further up on Page 5,  
 2 there's a section called permitting.  
 3 A. Uh-huh.  
 4 Q. And it refers in the first  
 5 sentence to a deficiency letter to Crown  
 6 Landing on February 4th.  
 7 Do you recall having seen  
 8 that letter?  
 9 A. No, I don't think I saw this  
 10 letter.  
 11 Q. I think I have it here; I'd  
 12 like to introduce I as Exhibit 4.  
 13 - - -  
 14 (Whereupon, the exhibit was  
 15 marked McHugh-4 for  
 16 identification.)  
 17 - - -  
 18 BY MR. ATTAWAY:  
 19 Q. Does this refresh your  
 20 recollection?  
 21 A. Yes, it does.  
 22 Q. So, I will ask you again,  
 23 have you seen this February 4th letter  
 24 before?

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1 A. I saw this letter just  
 2 briefly yesterday in my short preparation  
 3 for this proceeding.  
 4 Q. Do you know if your staff  
 5 considered this letter in giving you  
 6 input for your March 31st memorandum?  
 7 A. Mr. Wilkinson is a very  
 8 thorough employee and staffer and I am  
 9 not sure of it, but I would imagine that  
 10 he did see this.  
 11 Q. I'm just going to ask you a  
 12 question about Page 1. I know it's a  
 13 long letter.  
 14 A. Okay.  
 15 Q. Just for the record, I  
 16 should have done this when I introduced  
 17 it.  
 18 This is a letter from David  
 19 Risilia, project manager, Office of  
 20 Dredging and Sediment Technology to  
 21 Mr. David Blaha, environmental resources  
 22 management.  
 23 It's a deficiency letter for  
 24 waterfront development application and it

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1 gives the file number and applicant as  
 2 Crown Landing.  
 3 And I would also note that  
 4 this letter doesn't have a letterhead or  
 5 signature on it.  
 6 It does, however, have New  
 7 Jersey Bates numbers and in a prior  
 8 deposition, counsel assured me that this  
 9 was the same letter that was filed at the  
 10 Federal Energy Regulatory Commission.  
 11 I'm not asking you to  
 12 believe or disbelieve me unless you have  
 13 knowledge of that but I just wanted that  
 14 on the record.  
 15 The third paragraph on Page  
 16 1 refers to Delaware's regulatory  
 17 authority over this project.  
 18 I will give you a chance to  
 19 read that short paragraph before I ask a  
 20 question.  
 21 A. Okay.  
 22 Q. This short paragraphs states  
 23 "The project site is located in the  
 24 States of Delaware and New Jersey.

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1 Accordingly, activities taking place from  
 2 the mean low water line (MLWL) out shore  
 3 are located in the State of Delaware and  
 4 therefore are subject to Delaware coastal  
 5 zone management regulations. Activities  
 6 or associated impacts to New Jersey's  
 7 coastal resources occurring from the MLWL  
 8 landward are the subject of this  
 9 application."  
 10 Since you said earlier that  
 11 you hadn't seen this letter personally, I  
 12 think I know what your answer is going to  
 13 be but I'll ask, have you read this  
 14 paragraph before --  
 15 A. No.  
 16 Q. -- you reviewed this letter  
 17 I think you said yesterday?  
 18 A. Yeah, but yesterday, I  
 19 hadn't seen this.  
 20 Q. Okay. You said earlier that  
 21 you're working understanding was that  
 22 Delaware would have regulatory authority  
 23 over projects located partially in  
 24 Delaware and partially in New Jersey; is

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1 that correct?  
 2 A. Yes, that we would  
 3 coordinate projects in that area.  
 4 Q. And is this passage  
 5 consistent with your working  
 6 understanding?  
 7 A. It actually goes beyond what  
 8 I believe to be our respective  
 9 authorities in that area.  
 10 I was always under the  
 11 impression that we just generally  
 12 coordinated with Delaware in that area  
 13 and until this whole issue came to light,  
 14 I didn't even know that there was a  
 15 concern about, you know, or I wasn't  
 16 completely aware of a concern associated  
 17 with our respective authorities to wharf.  
 18 So, having first read this,  
 19 our initial concern from the Division of  
 20 Fish and Wildlife was the natural  
 21 resource issues within the 12-mile zone  
 22 and frankly, south and north of it. And  
 23 that's what those -- that's what these  
 24 memos were geared -- these comments, the

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1 comments being incorporated were geared  
 2 towards.  
 3 So, beyond that, I really  
 4 didn't have an understanding of, you  
 5 know, the main issue that this case  
 6 surrounds.  
 7 The statement is also -- the  
 8 last sentence, activities are associated  
 9 impacts to New Jersey coastal resources,  
 10 occurring from the mean low water line  
 11 landward are the subject of this  
 12 application. I'm not sure where the  
 13 writer of this gets that from, but, you  
 14 know, we are also concerned with the  
 15 resources that occur in the waters, you  
 16 know, out into the Delaware zone and as  
 17 in the past, oil spills, we coordinated  
 18 on those issues as well.  
 19 So, you know, the Division  
 20 of Fish and Wildlife was obviously  
 21 concerned with natural resource issues  
 22 beyond the mean low water line.  
 23 Q. Okay. Because the oil and  
 24 fish and water fowl can travel?

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1       **A. Right.**  
 2       **Q. Through the water?**  
 3       **A. Right.**  
 4       **Q. Okay. Just give me a**  
 5 **moment, please.**  
 6           When the dispute surrounding  
 7 the Crown Landing facility arose, did you  
 8 at that time get a copy of the compact  
 9 and read it?  
 10       **A. No.**  
 11           **MR. ATTAWAY: I have no**  
 12 **further questions.**  
 13           - - -  
 14           (Whereupon, the deposition  
 15 concluded at 11:33 a.m.)  
 16           - - -  
 17  
 18  
 19  
 20  
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 22  
 23  
 24

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1           **INSTRUCTIONS TO WITNESS**  
 2  
 3           Please read your deposition  
 4 over carefully and make any necessary  
 5 corrections. You should state the reason  
 6 in the appropriate space on the errata  
 7 sheet for any corrections that is made.  
 8           After doing so, please sign  
 9 the errata sheet and date it.  
 10          You are signing same subject  
 11 to the changes you have noted on the  
 12 errata sheet, which will be attached to  
 13 your deposition.  
 14          It is imperative that you  
 15 return the original errata sheet to the  
 16 deposing attorney within thirty (30) days  
 17 of receipt of the deposition transcript  
 18 by you. If you fail to do so, the  
 19 deposition transcript may be deemed to be  
 20 accurate and may be used in court.  
 21  
 22  
 23  
 24

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1           **CERTIFICATE**  
 2  
 3           I hereby certify that the  
 4 proceedings and evidence noted are  
 5 contained fully and accurately in the  
 6 notes taken by me on the deposition of  
 7 the above matter, and that this is a  
 8 correct transcript of the same.  
 9  
 10  
 11  
 12  
 13  
 14           -----  
 15           Teresa M. Beaver, RPR  
 16  
 17  
 18           (The foregoing certification of  
 19 this transcript does not apply to any  
 20 reproduction of the same by any means,  
 21 unless under the direct control and/or  
 22 supervision of the certifying shorthand  
 23 reporter.)  
 24

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1           -----  
 2           **ERRATA**  
 3           -----  
 4           **PAGE    LINE    CHANGE**  
 5           \_\_\_\_\_  
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 24          \_\_\_\_\_

1 ACKNOWLEDGEMENT OF DEPONENT

2  
3 I, \_\_\_\_\_, do  
4 hereby certify that I have read the  
5 foregoing pages, \_\_\_\_\_ and that the  
6 same is a correct transcription of the  
7 answers given by me to the questions  
8 therein propounded, except for the  
9 corrections or changes in form or  
10 substance, if any, noted in the attached  
11 Errata Sheet.

12 \_\_\_\_\_  
13 DATE SIGNATURE

14  
15 Subscribed and sworn to before me this  
16 \_\_\_\_\_ day of \_\_\_\_\_,  
17 200\_\_.  
18 My commission expires: \_\_\_\_\_  
19 Notary Public  
20  
21  
22  
23  
24

1 LAWYER'S NOTES

2  
3 PAGE LINE

4	_____	_____	_____
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IN THE SUPREME COURT  
OF THE UNITED STATES

- - -  
STATE OF NEW JERSEY : NO. 134, Original  
:  
v. :  
:  
STATE OF DELAWARE :

- - -  
OCTOBER 20, 2006  
- - -

Oral deposition of BETH S.  
REDDY, taken pursuant to notice, was held  
at the offices of the Department of  
Environmental Protection, 9 Ewing Street,  
Trenton, NJ 08609, commencing at 10:00  
a.m., on the above date, before Kimberly  
S. Gordon, a Registered Professional  
Reporter and Notary Public in the State  
of New Jersey.

- - -  
ESQUIRE DEPOSITION SERVICES  
Four Penn Center, 12th Floor  
1600 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
(215) 988-9191

ESQUIRE DEPOSITION SERVICES

2	<p>1 APPEARANCES:</p> <p>2</p> <p>3</p> <p>4 STATE OF NEW JERSEY</p> <p>5 DEPARTMENT OF LAW &amp; PUBLIC SAFETY</p> <p>6 DIVISION OF LAW</p> <p>7 BY: ELLEN B. BALINT, ESQUIRE</p> <p>8 AMY DONLON, ESQUIRE</p> <p>9 R.J. Hughes Justice Complex</p> <p>10 25 Market Street</p> <p>11 Trenton, New Jersey 08625</p> <p>12 (609) 984-5065</p> <p>13 Representing the Plaintiff</p> <p>14</p> <p>15</p> <p>16 CONNOLLY BOVE LODGE &amp; HUTZ LLP</p> <p>17 BY: MAX B. WALTON, ESQUIRE</p> <p>18 The Nemours Building, 9th Floor</p> <p>19 1007 North Orange Street</p> <p>20 Wilmington, Delaware 19899</p> <p>21 (302) 888-6297</p> <p>22 Representing the Defendant</p> <p>23</p> <p>24</p>	4																																							
3	<p>1</p> <p>2 INDEX</p> <p>3</p> <p>4 Testimony of:</p> <p>5 BETH S. REDDY</p> <p>6 PAGE</p> <p>7</p> <p>8 By Mr. Walton 5, 101</p> <p>9 By Ms. Balint 93</p> <p>10</p> <p>11</p> <p>12 EXHIBITS</p> <p>13</p> <p>14</p> <table border="0"> <thead> <tr> <th>15 NO.</th> <th>DESCRIPTION</th> <th>PAGE</th> </tr> </thead> <tbody> <tr> <td>17 Reddy-1</td> <td>Declaration</td> <td>14</td> </tr> <tr> <td>18 Reddy-2</td> <td>40 C.F.R. Section 302.4</td> <td>14</td> </tr> <tr> <td>19 Reddy-3</td> <td>40 C.F.R. Part 355</td> <td>14</td> </tr> <tr> <td>20 Reddy-4</td> <td>N.J.A.C. 7:1E-1.4</td> <td>20</td> </tr> <tr> <td>21 Reddy-5</td> <td>42 U.S.C.A. Section 11004</td> <td>49</td> </tr> <tr> <td>22 Reddy-6</td> <td>42 U.S.C.A. Section 9603</td> <td>54</td> </tr> <tr> <td>23 Reddy-7</td> <td>40 C.F.R. Section 302.6</td> <td>55</td> </tr> <tr> <td>24 *Reddy-8</td> <td>Flash Fax dated 6/6/05</td> <td>58</td> </tr> <tr> <td></td> <td>*Reddy-9 Flash Fax dated 12/29/05</td> <td>62</td> </tr> <tr> <td></td> <td>Reddy-10 Enforcement Action</td> <td>75</td> </tr> <tr> <td></td> <td>Reddy-11 DNREC Enforcement Action</td> <td>78</td> </tr> <tr> <td></td> <td>* marked confidential</td> <td></td> </tr> </tbody> </table>	15 NO.	DESCRIPTION	PAGE	17 Reddy-1	Declaration	14	18 Reddy-2	40 C.F.R. Section 302.4	14	19 Reddy-3	40 C.F.R. Part 355	14	20 Reddy-4	N.J.A.C. 7:1E-1.4	20	21 Reddy-5	42 U.S.C.A. Section 11004	49	22 Reddy-6	42 U.S.C.A. Section 9603	54	23 Reddy-7	40 C.F.R. Section 302.6	55	24 *Reddy-8	Flash Fax dated 6/6/05	58		*Reddy-9 Flash Fax dated 12/29/05	62		Reddy-10 Enforcement Action	75		Reddy-11 DNREC Enforcement Action	78		* marked confidential		5
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3	<p>1</p> <p>2 BETH S. REDDY, after having</p> <p>3 been duly sworn, was examined and</p> <p>4 testified as follows:</p> <p>5</p> <p>6 EXAMINATION</p> <p>7</p> <p>8 BY MR. WALTON:</p> <p>9 Q. Good morning, Ms. Reddy.</p> <p>10 Could you just state your full name for</p> <p>11 the record?</p> <p>12 A. Beth S. Reddy.</p> <p>13 Q. And just for the record,</p> <p>14 when we came in this morning, I was set</p> <p>15 up in a conference room on the third</p> <p>16 floor here. And before Ellen arrived,</p> <p>17 Ms. Reddy came in and I introduced myself</p> <p>18 and then asked her who her attorney would</p> <p>19 be on the case. I just wanted to confirm</p> <p>20 that we didn't talk about any of the</p> <p>21 substance of the case at that time.</p> <p>22 A. Correct.</p> <p>23 Q. Thank you. Ms. Reddy, have</p> <p>24 you ever been deposed before?</p>	5																																							

<p>6</p> <p>1 A. No.</p> <p>2 Q. Have you ever testified in a</p> <p>3 trial before?</p> <p>4 A. No.</p> <p>5 Q. This is a deposition, and</p> <p>6 the court reporter is going to take down</p> <p>7 everything you say. And just a few</p> <p>8 ground rules to start off with:</p> <p>9 First, I'm a little</p> <p>10 soft-spoken at times. So if you can't</p> <p>11 hear me or don't understand a question,</p> <p>12 please let me know. You must speak</p> <p>13 clearly because the court reporter can</p> <p>14 only take down what you say, not nods of</p> <p>15 the head or uh-huhs or uh-uhs or those</p> <p>16 sort of things.</p> <p>17 Remember that you are under</p> <p>18 oath. The court reporter swore you in</p> <p>19 when we started. And when you give an</p> <p>20 answer to one of my questions, please try</p> <p>21 to give full and complete answers to the</p> <p>22 question that I asked. Do you</p> <p>23 understand --</p> <p>24 A. Yes.</p>	<p>8</p> <p>1 <b>Manager in 1991, which is a program run</b></p> <p>2 <b>at that time through Rutgers and our</b></p> <p>3 <b>Department of Personnel. And I'm a</b></p> <p>4 <b>Certified Hazardous Materials Manager, a</b></p> <p>5 <b>certification that I received in 2002.</b></p> <p>6 Q. I'd like to talk about your</p> <p>7 certification as a Certified Hazardous</p> <p>8 Materials Manager. Can you tell me what</p> <p>9 that program is about?</p> <p>10 A. It's a program that there's</p> <p>11 an institute for hazardous materials</p> <p>12 management that maintains the -- the word</p> <p>13 escapes me. They sort of establish the</p> <p>14 guidelines for what needs to be done in</p> <p>15 order to do that.</p> <p>16 There's a testing process</p> <p>17 that you have to go through. There's an</p> <p>18 educational component that you have to</p> <p>19 have the education in order to take the</p> <p>20 test. And there's an ongoing education</p> <p>21 requirement for that that every five</p> <p>22 years you have to be re-certified.</p> <p>23 And it covers all aspects of</p> <p>24 hazardous materials. It looks at federal</p>
<p>7</p> <p>1 Q. -- those instructions?</p> <p>2 One other thing: For the</p> <p>3 court reporter's sake and for the sake of</p> <p>4 the transcript, please try to wait until</p> <p>5 I finish my question because it's hard to</p> <p>6 take down the words of counsel and your</p> <p>7 answers when we sort of speak over each</p> <p>8 other. Okay?</p> <p>9 A. Okay.</p> <p>10 Q. One last sort of</p> <p>11 introductory matter: Are you taking any</p> <p>12 medications or are you sick or is there</p> <p>13 anything that would impede you answering</p> <p>14 all the questions I ask today truthfully?</p> <p>15 A. No.</p> <p>16 Q. Let me just start out real</p> <p>17 quick and ask you about your educational</p> <p>18 history?</p> <p>19 A. I have a degree in chemistry</p> <p>20 from Moravian College which I earned in</p> <p>21 1981. I have a Master's degree in</p> <p>22 chemical engineering from Clarkson</p> <p>23 University which I received in 1984.</p> <p>24 I became a Certified Public</p>	<p>9</p> <p>1 <b>regulations that cover radiation,</b></p> <p>2 <b>hazardous substances, petroleum,</b></p> <p>3 <b>requirement for Environmental Impact</b></p> <p>4 <b>Statements, doing due diligence inquiries</b></p> <p>5 <b>at sites that are being sold or purchased</b></p> <p>6 <b>or redeveloped, so it encompasses all</b></p> <p>7 <b>aspects of hazardous materials.</b></p> <p>8 Q. In that hazardous materials</p> <p>9 training, did you have training in</p> <p>10 CERCLA?</p> <p>11 A. CERCLA is one of the things</p> <p>12 that they cover in the testing.</p> <p>13 Q. Just for the clarity of the</p> <p>14 transcript, CERCLA stands for?</p> <p>15 A. Comprehensive</p> <p>16 Environmental --</p> <p>17 Q. Response and Liability Act?</p> <p>18 A. -- Response -- there's</p> <p>19 another C in there.</p> <p>20 MS. BALINT: Cleanup?</p> <p>21 BY MR. WALTON:</p> <p>22 Q. Response, Compensation and</p> <p>23 Liability Act?</p> <p>24 A. I get so used to acronyms.</p>

10

1 Q. Let me say it one more. Is  
2 CERCLA the Comprehensive Environmental  
3 Response, Compensation and Liability Act?  
4 A. Yes.  
5 Q. And from here on out, I'm  
6 going to refer to it as CERCLA. Okay?  
7 A. Yes.  
8 Q. In your training, did you  
9 also have in your hazardous materials  
10 training that we just discussed, did you  
11 have any training in the Emergency  
12 Planning and Community Right-to-Know law?  
13 A. Yes.  
14 Q. And what kind of training  
15 did you have in those two laws?  
16 A. Actually, the New Jersey  
17 Community Right-to-Know program which is  
18 delegated authority under -- but it's  
19 also called SARA, the Superfund  
20 Amendments and Reauthorization Act,  
21 because that's when the Community  
22 Right-to-Know program was added to that.  
23 It's like a sister program.  
24 We reside right next to

11

1 them. I know a lot of people in there.  
2 I talk to them a lot about what their  
3 program entails, and actually, the last  
4 time that the department gave the  
5 training for the test I was the person  
6 who presented the module on Emergency  
7 Planning and Community Right-to-Know.  
8 Q. When you say the module on  
9 planning, could you just explain that for  
10 me?  
11 A. We run a training course for  
12 people who are planning on taking the  
13 exam. Each module covers a particular  
14 aspect of hazardous materials that is  
15 covered in the test. It may take,  
16 usually takes somewhere between  
17 45 minutes and an hour and-a-half to  
18 present the material in a given module.  
19 They're pretty much broken down along the  
20 lines of federal regulations.  
21 Q. So you have taught, at least  
22 in that module, elements of the Emergency  
23 Planning and Community Right-to-Know law?  
24 A. Yes.

12

1 Q. Have you done any teaching  
2 with respect to CERCLA requirements?  
3 A. No.  
4 Q. Are you familiar with CERCLA  
5 requirements, federal CERCLA  
6 requirements?  
7 A. Some of them, because we use  
8 the CERCLA list as part of our overall  
9 list in our program.  
10 Q. And when you say the CERCLA  
11 list, what do you mean by that?  
12 A. There's a list of hazardous  
13 chemicals that's contained in the federal  
14 regulations at 40 C.F.R. 302.4, which is  
15 incorporated into our overall list of  
16 hazardous substances for the state. So I  
17 have some knowledge of CERCLA through the  
18 use of that list and referring to it and,  
19 therefore, looking at the federal  
20 regulations.  
21 Q. Just to educate me a little  
22 bit on your CERCLA list: 302.4, when you  
23 talk about the overall list, that's the  
24 hazardous substances?

13

1 A. That's the hazardous  
2 substances list for the State of New  
3 Jersey under the Spill Compensation and  
4 Control Act.  
5 Q. Just so I understand, the  
6 federal list is incorporated into New  
7 Jersey's list?  
8 A. Yes.  
9 Q. The 302.4 list?  
10 A. Yes.  
11 Q. And have you ever heard of  
12 the term extremely hazardous substances?  
13 A. Yes.  
14 Q. And tell me about what the  
15 differentiation between hazardous  
16 substances and extremely hazardous  
17 substances is.  
18 A. Extremely hazardous  
19 substances have additional notification  
20 requirements associated with them. It's  
21 a much smaller list than the hazardous  
22 substance list. I think it's about  
23 somewhere between four and 500 chemicals.  
24 Q. And that list comes from

14

1 what law, do you know?  
2 **A. That's also promulgated**  
3 **under SARA 313. And I believe it's part**  
4 **of the EPCRA, Emergency Planning and**  
5 **Community Right-to-Know Act.**  
6 Q. And I'll try to use that  
7 acronym. I'm not familiar with that.  
8 You called the Emergency Planning and  
9 Community Right-to-Know law, what did you  
10 refer to that as?  
11 **A. EPCRA, Emergency Planning**  
12 **and Community Right-to-Know Act.**  
13 Q. Thank you.  
14 - - -  
15 (Reddy-1 through Reddy-3 marked  
16 for identification.)  
17 - - -  
18 BY MR. WALTON:  
19 Q. Just for the record, I have  
20 marked three exhibits. The first exhibit  
21 is the Declaration of Beth S. Reddy dated  
22 October 2, 2006, Bates stamped NJ06530  
23 through 6535.  
24 Reddy-2 is 40 C.F.R. Section

15

1 302.4, and in the middle of the page, it  
2 says Table, List of Hazardous Substances  
3 and Reportable Quantities. Ms. Reddy, do  
4 you agree with that?  
5 **A. Yes, sir.**  
6 Q. On the third one, Reddy-3,  
7 it's 40 C.F.R. Part 355, Appendix A.  
8 Ms. Reddy, I'm going to  
9 refer you to Reddy No. 2, the document  
10 entitled C.F.R. Section 302.4, the one I  
11 described List of Hazardous Substances  
12 and Reportable Quantities. I believe  
13 this is what we were discussing  
14 previously about the list of substances  
15 under CERCLA that you discussed, and I  
16 believe you mentioned 302.4. Is this the  
17 list of hazardous substances?  
18 **A. For CERCLA, yes.**  
19 Q. And I'm going to send you  
20 over to Reddy-3. Is that the list of  
21 hazardous substances under EPCRA?  
22 **A. Yes.**  
23 MS. BALINT: Just for the  
24 record, it is the list of

16

1 extremely hazardous substances for  
2 EPCRA.  
3 MR. WALTON: Pardon me,  
4 extremely hazardous substances.  
5 Thank you.  
6 BY MR. WALTON:  
7 Q. Just so I have it  
8 straight, -- and thank you, Ellen, for  
9 the help with the record -- with respect  
10 to Reddy-2, that's the list of hazardous  
11 substances under CERCLA?  
12 **A. Yes.**  
13 Q. And Reddy-3 is the list of  
14 extremely hazardous substances under  
15 EPCRA?  
16 **A. Yes.**  
17 Q. Now, do you know if the list  
18 of extremely hazardous substances under  
19 Reddy-3 are also included within 40  
20 C.F.R. 302.4?  
21 **A. I believe they are. The**  
22 **CERCLA list is, in a way, a compilation**  
23 **list. They put a lot of things in here**  
24 **from other laws into one, overall list.**

17

1 Q. Let me just switch and talk  
2 about sort of your program and your  
3 responsibilities. What is your official  
4 job title?  
5 **A. My official job title? My**  
6 **official department personnel job title**  
7 **is Research Scientist I.**  
8 Q. Is there another title  
9 you're commonly referred to?  
10 **A. Yes. My functional job**  
11 **title is Section Chief.**  
12 Q. Section Chief of what?  
13 **A. Of the Engineering Review**  
14 **Section within the Bureau of Release**  
15 **Prevention.**  
16 Q. And what are your job  
17 responsibilities generally?  
18 **A. I am responsible for the**  
19 **management of the section of the program**  
20 **which reviews Discharge Prevention**  
21 **Containment and Countermeasures and**  
22 **Discharge Cleanup and Removal plans that**  
23 **are submitted to the department for**  
24 **approval.**

18

1 I assign the work, track  
 2 that it's being completed, review things  
 3 in a consistent manner and that we meet  
 4 our timelines for review and approval and  
 5 final dispensation of the documents. I'm  
 6 also responsible for rule development for  
 7 the program.  
 8 Q. When you say the program, is  
 9 that New Jersey's program?  
 10 A. Right, the Discharge  
 11 Prevention program.  
 12 Q. When you talk about the  
 13 Discharge Prevention program, I assume  
 14 when you make those rules and follow  
 15 those guidelines you have to act in  
 16 accordance with federal standards?  
 17 A. No.  
 18 Q. Give me an example.  
 19 A. The program is entirely  
 20 based on state law.  
 21 Q. When you say the program is  
 22 entirely based upon state law, what do  
 23 you mean by that?  
 24 Let me put a sharper point

19

1 on my question. When you're basing your  
 2 law, do you have to follow the  
 3 requirements of CERCLA?  
 4 A. No.  
 5 Q. No requirement to follow  
 6 CERCLA?  
 7 A. No.  
 8 Q. And no requirement to follow  
 9 the mandates of EPCRA?  
 10 A. No.  
 11 Q. If someone submits a policy  
 12 or plan to your particular program, an  
 13 emergency planning document, are they  
 14 required to follow state and federal law?  
 15 A. No.  
 16 Q. Is the applicant relieved of  
 17 their responsibility to follow federal  
 18 law in submitting plans or in emergency  
 19 responses or notifications?  
 20 A. No.  
 21 Q. Can you expand on that a  
 22 little bit?  
 23 A. We specifically state in our  
 24 regulations that submitting and getting

20

1 approval from our plan does not exempt a  
 2 facility from complying with any other  
 3 state or federal regulations.  
 4 - - -  
 5 (Reddy-4 marked for  
 6 identification.)  
 7 - - -  
 8 BY MR. WALTON:  
 9 Q. I'm going to show you a  
 10 regulation marked Reddy-4. When you say  
 11 under your regulations, I've just handed  
 12 you something, at least a Westlaw cite.  
 13 It's N.J.A.C. 7:1E-1.4. Is that a  
 14 regulation that you followed in your  
 15 program?  
 16 A. Yes.  
 17 Q. And can you just give me an  
 18 explanation of what that group of  
 19 regulations deals with?  
 20 MS. BALINT: Objection to  
 21 the form of the question.  
 22 BY MR. WALTON:  
 23 Q. Can you tell me what this  
 24 statute I've handed you, where it's

21

1 codified?  
 2 A. Just this particular --  
 3 Q. Yes.  
 4 A. As you stated, it's a New  
 5 Jersey Administrative Code, Chapter 7,  
 6 Title 1E.  
 7 Q. And I believe you were  
 8 talking about state and federal  
 9 requirements before. Is this the  
 10 regulation you were referring to?  
 11 A. That states that they're not  
 12 exempted from -- yes, this is the section  
 13 of the regulation that states that.  
 14 Q. So just so I'm clear, an  
 15 applicant or an applicant or someone who  
 16 submits an emergency planning document of  
 17 some kind, for example, a Discharge  
 18 Cleanup and Removal plan or a Discharge  
 19 Prevention Contaminant and Countermeasure  
 20 plan, would still need to follow federal  
 21 law?  
 22 A. Yes.  
 23 Q. I'm sorry to take us off  
 24 track a little bit. I believe you said

22

1 you were a supervisor. Do you have  
 2 people who work for you?  
 3 **A. Yes.**  
 4 **Q. How many people do you**  
 5 **supervise?**  
 6 **A. I currently supervise eight**  
 7 **people.**  
 8 **Q. Just generally, do they all**  
 9 **have the same job responsibilities? What**  
 10 **are their job responsibilities?**  
 11 **A. The majority of their job**  
 12 **responsibilities entail reviewing and**  
 13 **recommending for approval the plans that**  
 14 **are submitted by our regulated community.**  
 15 **We currently also have a large**  
 16 **responsibility in the domestic security**  
 17 **arena for chemical and petroleum plants**  
 18 **within the state.**  
 19 **MR. WALTON: Can I have that**  
 20 **answer read back? I don't think I**  
 21 **caught a word.**  
 22 - - -  
 23 (The court reporter read the  
 24 pertinent part of the record.)

23

1 - - -  
 2 **BY MR. WALTON:**  
 3 **Q. Could you explain to me what**  
 4 **you mean by a role in the domestic**  
 5 **security arena?**  
 6 **A. We have an Office of**  
 7 **Homeland Security and Preparedness who**  
 8 **has overall responsibility within the**  
 9 **state. They've divided the critical**  
 10 **infrastructure within the state up into**  
 11 **24 sectors. Two of those sectors,**  
 12 **chemical and petroleum, are the**  
 13 **responsibility of our bureau in terms of**  
 14 **ensuring that they're meeting the best**  
 15 **standards practices that have been**  
 16 **adopted by the Office of Homeland**  
 17 **Security for the state.**  
 18 **We go out and do inspections**  
 19 **at those facilities to make sure that**  
 20 **they've done security vulnerability,**  
 21 **assessments and have addressed the**  
 22 **security issues at the facility.**  
 23 **Q. Beyond security issues, do**  
 24 **you do similar inspections of sites for**

24

1 other reasons?  
 2 **A. Overall, as part of our**  
 3 **program, we do inspect the sites for**  
 4 **compliance with the approved plans,**  
 5 **compliance with the regulations to**  
 6 **determine whether they are major**  
 7 **facilities and should be regulated by us.**  
 8 **Q. I'm just trying to put this**  
 9 **together. When you say approved plans,**  
 10 **what do you mean?**  
 11 **A. When a facility receives**  
 12 **approval of their Discharge Prevention**  
 13 **Containment and Countermeasures plans,**  
 14 **DPCC, and their Discharge Cleanup and**  
 15 **Removal plan, DCR, they're good for three**  
 16 **years.**  
 17 **During the interim two years**  
 18 **when the approved plan is in place, we**  
 19 **have a Field Verification Section which**  
 20 **goes out and inspects the facility to**  
 21 **ensure that things haven't changed and**  
 22 **that they're still complying with what**  
 23 **they've written in their plan.**  
 24 **Q. Do you work with federal**

25

1 regulatory agencies with your program?  
 2 **A. On an informal basis.**  
 3 **Q. When you say on an informal**  
 4 **basis, what does that mean?**  
 5 **A. We have contacts within**  
 6 **Region 2 for their SPCC program.**  
 7 **Q. I'm sorry, I didn't mean to**  
 8 **interrupt you. When you say Region 2, is**  
 9 **that EPA Region 2?**  
 10 **A. Yes, EPA Region 2.**  
 11 **Q. I'm sorry to interrupt. Go**  
 12 **ahead. What other contacts?**  
 13 **A. That's mostly it, the SPCC**  
 14 **program and the Facility Response**  
 15 **Program, FRP, which are both under the**  
 16 **Oil Pollution Act of 1990 regulations**  
 17 **that were adopted by the federal**  
 18 **government.**  
 19 **Those programs aren't**  
 20 **delegateable, so we don't have any**  
 21 **responsibility for those federal**  
 22 **programs. But our program overlaps with**  
 23 **theirs in terms of facilities that are**  
 24 **regulated, so we try to coordinate our**

26

1 work at times. They will inform us of  
 2 things that they find, and we inform them  
 3 of things we find.  
 4 Q. When you say your programs  
 5 overlap, could you explain that to me?  
 6 A. The federal program deals  
 7 specifically with oil, and they define  
 8 oil to include all kinds of petroleum  
 9 products, vegetable oils and animal fats  
 10 and greases. The Discharge Prevention  
 11 program within New Jersey covers  
 12 petroleum, so strictly petroleum oils, no  
 13 animal fats, no vegetable fats and then  
 14 the list of about 1,500 chemicals and  
 15 chemical categories.  
 16 Q. Please forgive me if I'm  
 17 incorrectly characterizing your prior  
 18 testimony. I believe you said there were  
 19 some programs that were delegatable and  
 20 there were some programs that were  
 21 non-delegatable. What did you mean by  
 22 that?  
 23 A. Under federal law, the  
 24 National Pollution Discharge Elimination

27

1 System program is often delegated to a  
 2 state agency to implement at the state  
 3 level. The federal SPCC program cannot  
 4 be delegated to a state program to  
 5 implement and enforce.  
 6 MS. BALINT: Max, I'm sorry,  
 7 I'm just going to insert an  
 8 objection to legal expert  
 9 questions that we're getting into.  
 10 Ms. Reddy has not been offered as  
 11 a legal expert.  
 12 And we can do a few more of  
 13 these. But any prolonged effort  
 14 on this is beyond the scope of her  
 15 being offered as a witness.  
 16 MR. WALTON: I'm just asking  
 17 her understanding what she can  
 18 answer to.  
 19 Can I have the last answer  
 20 read back?  
 21 - - -  
 22 (The court reporter read the  
 23 pertinent part of the record.)  
 24 - - -

28

1 BY MR. WALTON:  
 2 Q. Beyond the NPDES program,  
 3 just your understanding, are there other  
 4 programs that are delegated to the state?  
 5 A. One I specifically know  
 6 about is the RMP, Risk Management Plan  
 7 program, which deals with extraordinarily  
 8 hazardous substances.  
 9 Q. Are there any others that  
 10 you're aware of?  
 11 A. Not that I'm aware of.  
 12 Q. Just going back to your  
 13 office, I believe you stated that your  
 14 office reviews plans that are  
 15 submitted, -- I'm going to try to use the  
 16 appropriate terms -- the Discharge  
 17 Cleanup and Removal plans and the  
 18 Discharge Prevention Contaminant and  
 19 Countermeasures plans. Is that correct?  
 20 A. We generally just refer to  
 21 them as the DPCC and DCR plans.  
 22 Q. I'll try to use those terms.  
 23 DPCC and DCR plans, does your office  
 24 review those plans?

29

1 A. Yes.  
 2 Q. And those plans are  
 3 submitted by whom?  
 4 A. They're submitted by our  
 5 regulated community, which is the major  
 6 facilities within the State of New  
 7 Jersey.  
 8 Q. When you say a major  
 9 facility, what's your understanding of  
 10 what a major facility is?  
 11 A. A major facility is  
 12 established based on a threshold quantity  
 13 of storage as established in our Spill  
 14 Compensation and Control Act. For  
 15 hazardous substances, that threshold is  
 16 20,000 gallons total aggregate. When you  
 17 include petroleum and petroleum products,  
 18 it's 200,000 gallons is the threshold.  
 19 Q. Do you have an enforcement  
 20 grant or is that all done through your  
 21 office?  
 22 A. We have two sections within  
 23 the program.  
 24 Q. Can you explain what those

30

1 two sections are?

2 **A. The Engineering Review**

3 **Section is the section that I'm in charge**

4 **of that I've already explained.**

5 **The other is our Field**

6 **Verification Section. They go out and do**

7 **periodic inspections, mostly annually, at**

8 **all of our regulated facilities. They'll**

9 **do other types of inspections such as if**

10 **we come across a facility that we think**

11 **may be above the threshold but has not**

12 **submitted a plan; we'll inspect them to**

13 **see if they're required to submit one.**

14 **And then they also do all of**

15 **our enforcement. They write up Notices**

16 **of Violation, follow through with our**

17 **formal enforcement actions, do case**

18 **management and settlement or work with**

19 **the Attorney General's office on**

20 **contested cases.**

21 **Q. Do you know what police**

22 **authority the other section has, if any?**

23 **A. Outside of the general**

24 **authority that we have within the DEP, we**

31

1 **have a right to go in and inspect at a**

2 **given facility. The way we have it set**

3 **up in our regulations it's during normal**

4 **business hours or at any time that we**

5 **feel a violation is occurring. The**

6 **little cards we get with our badges say**

7 **we have the authority to enforce any**

8 **departmental regulation.**

9 **Q. And when you say**

10 **departmental regulation, that would be --**

11 **A. That would be all the**

12 **program regulations within the**

13 **department, solid waste, hazardous waste,**

14 **air, not that we would but it's sort of**

15 **been delegated to all enforcement**

16 **personnel that way.**

17 **Q. I'm going to ask you to flip**

18 **over to Reddy-1, which is your**

19 **Declaration you filed in this case, and**

20 **specifically Paragraph 7 to start with.**

21 **Can you read that first sentence for me?**

22 **A. I am aware that the portions**

23 **of Logan Township, Oldman's Township,**

24 **Penns Grove Borough, Carney's Point**

32

1 **Township, Pennsville Township and**

2 **Elsinboro Township all front along a**

3 **portion of the Delaware River within an**

4 **area called the Twelve-Mile Circle.**

5 **Q. What is your understanding**

6 **of what the Twelve-Mile Circle is?**

7 **A. It's the portion of New**

8 **Jersey where the jurisdictional boundary**

9 **between New Jersey and Delaware comes**

10 **over to the waterline on the New Jersey**

11 **side of the Delaware.**

12 **Q. I'm going to make this a**

13 **little easier for you. I'm not going to**

14 **mark this as an exhibit but I'll just**

15 **state for the record -- can we go off the**

16 **record for a minute?**

17 **- - -**

18 **(A discussion off the record**

19 **occurred.)**

20 **- - -**

21 **BY MR. WALTON:**

22 **Q. Ms. Reddy, I'm going to show**

23 **you a document that's six pages. It's**

24 **marked DE28987 through DE28992. I'll**

33

1 **represent to you that it's a map.**

2 **I'm going to point the**

3 **boundary point marker, and this is the**

4 **northern tip of Delaware. Now, going**

5 **down, do you know, taking from the north,**

6 **can you walk me through where these**

7 **townships are located that you discussed**

8 **in your affidavit?**

9 **A. You mean the order they are**

10 **down?**

11 **Q. Yes.**

12 **A. Quite frankly, no.**

13 **Q. Would you be able to**

14 **identify what facilities exist, and you**

15 **can consult your affidavit, within the**

16 **Twelve-Mile Circle that extend into**

17 **Delaware?**

18 **A. So specifically the ones**

19 **that are along the waterfront?**

20 **Q. Yes.**

21 **A. Because within those**

22 **townships, there are other major**

23 **facilities that we regulate.**

24 **Q. Correct. Just the ones that**

34

1 cross over the mean low watermark and  
 2 into Delaware territory?  
 3 **A. Logan Generating Station,**  
 4 **which is in the Township of Logan.**  
 5 **Q.** If I represented to you that  
 6 this is the Logan Generating Station on  
 7 DE28987, would you have any reason to  
 8 dispute that?  
 9 **A. No.**  
 10 **Q.** This water is Oldman's  
 11 Creek, if that helps you. I'm going to  
 12 go through the other ones. Let's go to  
 13 the document marked DE28969. I will  
 14 represent to you that on here this is  
 15 depicting the Delaware Memorial Bridge.  
 16 Does that help you locate any facility?  
 17 **A. This is DuPont Deepwater or**  
 18 **Chambers Works it's referred to as.**  
 19 **Q.** Just for the record, you're  
 20 pointing to the area just north of the  
 21 Delaware Memorial Bridge on this map?  
 22 **A. Yes.**  
 23 **Q.** And is there any other  
 24 facility that you're aware of, a major

35

1 facility on this map?  
 2 **A. Sort of under the bridge is**  
 3 **Conectiv Deepwater Generating Station.**  
 4 **Q.** Just south of the bridge?  
 5 **A. It kind of goes all the way**  
 6 **but yes.**  
 7 **Q.** South but sort of under the  
 8 bridge?  
 9 **A. Yes.**  
 10 **Q.** And going down, are you  
 11 aware of any other facilities, major  
 12 facilities within the Twelve-Mile Circle?  
 13 **A. Along the waterfront, no.**  
 14 **Q.** I just wanted to represent  
 15 for the record this line here is the mean  
 16 low watermark as it existed in 1934, the  
 17 yellow marker that goes all the way down.  
 18 Just to clarify, those are  
 19 the only three structures or major  
 20 facilities that exist within the  
 21 Twelve-Mile Circle?  
 22 **A. Yes.**  
 23 **Q.** Now, going back to the map  
 24 just real quickly, the Logan Generating

36

1 Station which we pointed to here, if  
 2 there was a vessel parked at that dock,  
 3 would you agree that that would be in  
 4 Delaware?  
 5 **A. Yes.**  
 6 **Q.** And anything that went  
 7 beyond the mean low watermark of the  
 8 Jersey shore, that would be in Delaware?  
 9 **A. Yes.**  
 10 **Q.** And if there was a  
 11 contaminant hazardous substance and  
 12 extremely hazardous substance that was  
 13 spilled from a shipper off the dock,  
 14 would that affect Delaware?  
 15 **A. Yes.**  
 16 **Q.** And I would assume the  
 17 answer would be the same with DuPont if  
 18 there was a ship docked at DuPont?  
 19 **A. Yes.**  
 20 **Q.** Let me ask a better  
 21 question. If there was a ship docked at  
 22 DuPont and there was a spill off the ship  
 23 that was unloading or at the dock at the  
 24 DuPont, I assume that would affect

37

1 Delaware?  
 2 **A. Yes.**  
 3 **Q.** And going on down to  
 4 Conectiv, if there was a ship docked at  
 5 the Conectiv dock and there was a spill  
 6 of a hazardous substance or an extremely  
 7 hazardous substance, that would affect  
 8 Delaware?  
 9 **A. Yes.**  
 10 **Q.** Let's walk through the  
 11 Keystone facilities. I believe you said  
 12 that the Keystone facility was a major  
 13 facility?  
 14 **A. Keystone?**  
 15 **Q.** Logan Generating Station,  
 16 excuse me. You use a lot of acronyms. I  
 17 always refer to this sort of as a slang  
 18 term as Keystone. But it is called the  
 19 Logan Generating Station, so my apologies  
 20 for that.  
 21 Are there chemicals or  
 22 substances, hazardous chemicals stored or  
 23 produced or used at that facility?  
 24 **A. Yes.**

38

1 Q. How about DuPont Chambers  
 2 Works, are there hazardous chemicals or  
 3 substances stored or produced or used at  
 4 that facility?  
 5 A. Yes.  
 6 Q. And how about the Conectiv  
 7 property, are there hazardous chemicals  
 8 or substances stored, produced or used at  
 9 that facility?  
 10 A. Yes.  
 11 Q. And is that the reason that  
 12 they have to file with your office DPCC  
 13 and DCR plans?  
 14 A. The threshold is based  
 15 specifically on storage capacity, so it  
 16 has to be that they store those hazardous  
 17 substances.  
 18 Q. And is it your understanding  
 19 that they do store those hazardous  
 20 substances?  
 21 A. Yes.  
 22 Q. And they do have to under,  
 23 at least New Jersey regulations, have to  
 24 file those plans because they store those

39

1 substances?  
 2 A. Yes.  
 3 Q. And where are those  
 4 substances stored? Let's take the Logan  
 5 Generating Station for the start. Again,  
 6 they're not stored on the dock, are they?  
 7 A. No.  
 8 Q. All I'm looking for is  
 9 they're stored in the facility on land.  
 10 Is that correct?  
 11 A. Yes.  
 12 Q. And same with the DuPont  
 13 facility; the substances are stored on  
 14 land and they're not in the dock?  
 15 Substances aren't stored on the dock that  
 16 you're aware of?  
 17 A. Not that I'm aware.  
 18 Q. And how about with Conectiv,  
 19 the hazardous substances are not stored  
 20 on the dock at the Conectiv property?  
 21 A. Correct.  
 22 Q. So to the best of your  
 23 knowledge, there are no hazardous  
 24 substances stored in Delaware at any of

40

1 those three facilities?  
 2 A. Correct.  
 3 Q. And the reason that they  
 4 have to file the plans with your office  
 5 is because those facilities store those  
 6 hazardous chemicals of a certain  
 7 quantity?  
 8 A. Yes.  
 9 MR. WALTON: Can I stop for  
 10 a minute?  
 11 MS. BALINT: Sure.  
 12 - - -  
 13 (A recess occurred.)  
 14 - - -  
 15 BY MR. WALTON:  
 16 Q. Just to go back to something  
 17 that you testified earlier: When we talk  
 18 about the Logan Generating Station, the  
 19 DuPont facility at Chamber Works and the  
 20 Conectiv properties, those entities must  
 21 comply with federal law, correct?  
 22 A. Yes.  
 23 Q. It's sort of a process  
 24 question: Under EPCRA, are you familiar

41

1 with the establishment of State Emergency  
 2 Response Commissions or SERCs?  
 3 A. Yes.  
 4 Q. Can you explain what a SERC  
 5 is and why it was created?  
 6 A. SERCs have overall  
 7 responsibility within the state for doing  
 8 emergency planning for all kinds of  
 9 emergencies. And they establish Local  
 10 Emergency Planning Committees for  
 11 planning at the local level for hazardous  
 12 materials incidents. Actually, they're  
 13 also used for natural disasters and  
 14 various kinds of emergencies.  
 15 In New Jersey, the State  
 16 Emergency Response Committee consists of  
 17 the State Police, Office of Emergency  
 18 Management, the Department of  
 19 Environmental Protection, the Department  
 20 of Health. They have open quarterly  
 21 meetings where they discuss emergency  
 22 planning issues for the state.  
 23 They've established that  
 24 Local Emergency Planning Committees in

42

1 **New Jersey will be established at the**  
 2 **municipality level.**  
 3 Q. Now, do you have any  
 4 participation in the -- I'm sorry, I call  
 5 it the Local Emergency Planning  
 6 Commission. I call them LEPCs. And for  
 7 the State Emergency Response Commission,  
 8 I call them SERCs. Is that the normal  
 9 terminology for those?  
 10 A. Yes.  
 11 Q. With respect to SERCs or the  
 12 SERC for New Jersey, do you have any  
 13 involvement in that process or does your  
 14 office have any involvement in the SERC  
 15 process?  
 16 A. We do have someone who  
 17 attends the meetings. The primary  
 18 responsibility under SERC within the  
 19 department falls to our Emergency  
 20 Response Group.  
 21 Q. And how about with LEPCs?  
 22 A. No.  
 23 Q. Are you aware of who the  
 24 LEPCs are for, and I'm going to go back

43

1 to Section 7 of your Declaration again,  
 2 for Logan Township?  
 3 A. You mean the specific  
 4 person?  
 5 Q. Not the person but what the  
 6 local -- let me put a sharper point on my  
 7 question. Are there districts where  
 8 LEPCs are located? Are they assigned  
 9 specific districts?  
 10 A. Each municipality within New  
 11 Jersey is required to have an LEPC.  
 12 Q. So if you were a small town  
 13 or a county, you each have an LEPC?  
 14 MS. BALINT: Objection to  
 15 the form of the question. It's  
 16 not what she said.  
 17 BY MR. WALTON:  
 18 Q. Just phrase it in your  
 19 words. Let me ask the question again  
 20 just so I make sure that I have it right.  
 21 Is an LEPC used on a municipal level, set  
 22 up on a municipal level?  
 23 A. Yes.  
 24 Q. And what breakdown of

44

1 municipality would be required to have an  
 2 LEPC?  
 3 MS. BALINT: Objection to  
 4 the form of the question. There's  
 5 not a breakdown of the  
 6 municipality. In New Jersey, a  
 7 municipality is a specific local  
 8 governmental unit.  
 9 MR. WALTON: I'll ask the  
 10 witness.  
 11 BY MR. WALTON:  
 12 Q. Is a county a municipality?  
 13 A. No.  
 14 Q. So would a township be a  
 15 municipality?  
 16 A. Yes.  
 17 Q. So LEPCs would not be set up  
 18 for a county?  
 19 A. They're not required to be  
 20 set up for a county.  
 21 Q. Are you aware of instances  
 22 where they are set up for a county?  
 23 A. Yes.  
 24 Q. For my own edification, what

45

1 county might that be?  
 2 A. Middlesex County has a  
 3 specific unit at the county level. I  
 4 believe Union County also has one.  
 5 Q. Just going back, I'm just  
 6 trying to get the process just right.  
 7 Along the Twelve-Mile Circle, those who  
 8 border Delaware on the river, each of the  
 9 municipalities down the river within the  
 10 Twelve-Mile Circle would have an LEPC?  
 11 A. Yes.  
 12 Q. And I'm just going to ask  
 13 you because I don't know if you know. Do  
 14 you know who the SERC is for Delaware or  
 15 what agency functions as a SERC for  
 16 Delaware?  
 17 A. No, I don't.  
 18 Q. And do you know of any LEPCs  
 19 in Delaware --  
 20 A. No.  
 21 Q. -- that border the river?  
 22 I'd like to turn back to  
 23 Reddy-2 and Reddy-3 again, if you don't  
 24 mind. Once again, just so we can get it

46

1 straight, Reddy-2 is 40 C.F.R. 302.4.  
 2 And what is listed in 40 C.F.R. 302.4?  
 3 MS. BALINT: Objection to  
 4 the question, asked and answered.  
 5 MR. WALTON: I'm just trying  
 6 to clarify.  
 7 BY MR. WALTON:  
 8 Q. Go ahead. You can answer.  
 9 A. **It's the list of hazardous**  
 10 **substances for CERCLA.**  
 11 Q. And Reddy-3 is the extremely  
 12 hazardous substances under the Community  
 13 Right-to-Know Act?  
 14 A. Yes.  
 15 Q. Do you know if there are  
 16 reporting requirements under CERCLA?  
 17 Do you know if there are  
 18 notification requirements under CERCLA?  
 19 A. Yes.  
 20 Q. Do you know if there's  
 21 notification requirements under EPCRA?  
 22 A. Yes.  
 23 Q. Can you tell me your  
 24 understanding of the notification

47

1 requirements under CERCLA?  
 2 A. **Under CERCLA, if there is a**  
 3 **discharge of one of the substances on the**  
 4 **list which exceeds the threshold quantity**  
 5 **established within the list, it has to be**  
 6 **reported to the National Response Center.**  
 7 Q. Let's talk about the  
 8 National Response Center. So is that the  
 9 facility needs to report it to the  
 10 National Response Center?  
 11 A. **The person responsible for**  
 12 **the discharge.**  
 13 Q. And what does the National  
 14 Response Center then do with that once  
 15 they have a report?  
 16 A. **I know in the case of New**  
 17 **Jersey they generally pass that report**  
 18 **onto the state Communications Center.**  
 19 Q. Does that report go to your  
 20 Enforcement Section, do you know?  
 21 A. **Not specifically.**  
 22 Q. Have you ever heard of the  
 23 term Flash Fax from the National Response  
 24 Center?

48

1 A. No.  
 2 Q. Do you know if the National  
 3 Response Center notifies the New Jersey  
 4 authority of emergency responders in  
 5 writing or by telephone?  
 6 A. **Since those reports come**  
 7 **into our Communications Center, I don't**  
 8 **have any personal knowledge.**  
 9 Q. And what is your  
 10 understanding of the reporting  
 11 requirements under EPCRA?  
 12 A. **EPCRA has a couple of**  
 13 **different reporting requirements. There**  
 14 **is a yearly requirement to report**  
 15 **everything that's been stored on site for**  
 16 **the past year and then there's the**  
 17 **requirement to report all releases to all**  
 18 **media that have occurred in the past year**  
 19 **for only a given subset of facilities,**  
 20 **which I believe is also based on their**  
 21 **storage or use of those compounds.**  
 22 Q. Do you know if there's any  
 23 reporting requirements for emergency  
 24 notifications?

49

1 A. **I believe there is, but I**  
 2 **can't recall them currently.**  
 3 MR. WALTON: I'd like to  
 4 mark this as Reddy-5.  
 5 - - -  
 6 (Reddy-5 marked for  
 7 identification.)  
 8 - - -  
 9 MS. BALINT: I'm going to  
 10 repeat my prior objection about  
 11 the continued line of questioning  
 12 into legal expertise and hope that  
 13 it has some relevance to this case  
 14 somewhere into the line of  
 15 questioning.  
 16 BY MR. WALTON:  
 17 Q. I've handed you a document  
 18 titled 42 U.S.C.A. 11004. Have you ever  
 19 read this before?  
 20 A. **Not that I recall.**  
 21 Q. I'd like you to flip over to  
 22 Section B. And could you read Section  
 23 b(1) for me?  
 24 A. **Notice required under**

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1 subsection (a) of this section shall be  
2 given immediately after the release by  
3 the owner or operator of a facility (by  
4 such means as telephone, radio, or in  
5 person) to the community emergency  
6 coordinator for the Local Emergency  
7 Planning Committees, if established  
8 pursuant to Section 11001(c) of this  
9 title, for any area likely to be affected  
10 by the release and to the State Emergency  
11 Planning Commission of any state likely  
12 to be affected by the release.  
13 Q. That's enough. I believe  
14 you testified earlier, and I'm going to  
15 go back to my maps, I believe you  
16 testified earlier that Logan Generating  
17 Station, the end of the pier is in  
18 Delaware. Is that correct?  
19 A. Yes.  
20 Q. And under that subsection,  
21 it provided that the facility is a major  
22 facility under Subsection (a). Would you  
23 agree that under this section that  
24 Delaware is required to be notified of an

51

1 emergency release?  
2 MS. BALINT: Objection to  
3 the form of the question.  
4 BY MR. WALTON:  
5 Q. You can answer.  
6 MS. BALINT: I object on the  
7 basis that the question was too  
8 vague to answer. You really ought  
9 to make it more specific.  
10 MR. WALTON: I'll ask  
11 another question.  
12 BY MR. WALTON:  
13 Q. If there is a ship that  
14 makes a release or the Keystone facility  
15 makes a release that's in the water or  
16 affects the water, would you agree that  
17 the State Emergency Planning Commission  
18 of Delaware would be required to be  
19 notified of that release?  
20 MS. BALINT: Objection to  
21 the form of the question as it  
22 calls for a legal conclusion.  
23 BY MR. WALTON:  
24 Q. You can answer to the best

52

1 of your knowledge.  
2 A. Based on what I just read,  
3 yes.  
4 Q. And that would be the same  
5 for the Logan Generating Station?  
6 A. Yes.  
7 Q. And the Conectiv property?  
8 A. Yes.  
9 Q. And the DuPont facility?  
10 A. Yes.  
11 MS. BALINT: Just for the  
12 record, I repeat my objections for  
13 all those questions.  
14 BY MR. WALTON:  
15 Q. Are you aware of any penalty  
16 provisions regarding failure of a  
17 facility to notify an appropriate LEPC or  
18 a State Emergency Planning group?  
19 A. Under this, under the  
20 federal?  
21 Q. Under the federal.  
22 A. Under the federal, no.  
23 Q. Do you have penalty  
24 provisions for failure to notify in New

53

1 Jersey?  
2 A. Yes.  
3 Q. And what are those  
4 penalties?  
5 A. We have a requirement that  
6 the state be notified of certain  
7 discharges within 15 minutes of the  
8 person responsible knowing that the  
9 discharge occurred. So there are  
10 penalties for failure to notify at all.  
11 There are penalties to notify within  
12 15 minutes. But the specific quantities  
13 I'd have to look up in our rules.  
14 Q. That's fair. Do you know if  
15 the New Jersey penalties are similar or  
16 the same as federal penalties?  
17 A. No.  
18 Q. I believe you testified  
19 earlier, and please correct me if I'm  
20 wrong, that certain releases of hazardous  
21 substances need to be reported to the  
22 National Response Center?  
23 A. Yes.  
24 Q. I'm going to just show you

54

1 this. I'll mark that Reddy-6.  
2 - - -  
3 (Reddy-6 marked for  
4 identification.)  
5 - - -  
6 BY MR. WALTON:  
7 Q. Is that law, Paragraph (a),  
8 to the best of your knowledge the  
9 requirement to notify the National  
10 Response Center?  
11 MS. BALINT: Objection to  
12 the form of the question. You  
13 need to establish a foundation for  
14 the question.  
15 BY MR. WALTON:  
16 Q. You can answer, if you  
17 understand it.  
18 A. It looks like it's the  
19 responsibility to notify the National  
20 Response Center under CERCLA.  
21 Q. And under CERCLA, do you  
22 know if there's any federal regulations  
23 that are promulgated under CERCLA  
24 regarding reporting of notifications?

55

1 A. Yes.  
2 - - -  
3 (Reddy-7 marked for  
4 identification.)  
5 - - -  
6 BY MR. WALTON:  
7 Q. I've handed you a copy of  
8 something, 40 C.F.R. Section 302.6. And  
9 could you read Section (a) for me?  
10 A. Any person in charge of a  
11 vessel or an offshore or an onshore  
12 facility shall, as soon as he or she has  
13 knowledge of any release (other than a  
14 federally permitted release or  
15 application of a pesticide) of a  
16 hazardous substance from such vessel or  
17 facility in a quantity equal to or  
18 exceeding the reportable quantity  
19 determined by this part in any 24-hour  
20 period, immediately notify the National  
21 Response Center at 800-424-8802.  
22 Q. You don't have to read all  
23 the numbers. I'll spare you of that. So  
24 your understanding under this

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1 notification requirement, and I just want  
2 to make sure I got it right: If there's  
3 a hazardous substance released above a  
4 reportable quantity as identified in  
5 Reddy-2, that list, would you agree that  
6 the National Response Center would need  
7 to be notified?  
8 MS. BALINT: Objection to  
9 the form of the question. That  
10 regulation is what it is, and the  
11 witness's understanding of the  
12 regulation is irrelevant.  
13 BY MR. WALTON:  
14 Q. You can answer the question,  
15 if you understand it.  
16 A. Could you repeat it?  
17 - - -  
18 (The court reporter read the  
19 pertinent part of the record.)  
20 - - -  
21 THE WITNESS: Yes.  
22 BY MR. WALTON:  
23 Q. Have you ever seen a  
24 response or a fax from the National

57

1 Response Center?  
2 MS. BALINT: Objection to  
3 the form of the question.  
4 MR. WALTON: I'll rephrase.  
5 BY MR. WALTON:  
6 Q. After the National Response  
7 Center is notified pursuant to 40 C.F.R.  
8 302.6, do you know what happens next?  
9 What do they do?  
10 A. I know in the case of New  
11 Jersey they give that information over to  
12 our Communications Center. They enter  
13 that in our incident database, which is  
14 available through our departmental  
15 database to any person within the  
16 department to look at.  
17 MR. WALTON: I need to  
18 designate this portion of the  
19 transcript and this particular  
20 exhibit as confidential and so it  
21 will be marked confidential and  
22 the exhibit will remain  
23 confidential.  
24 - - -

58

1 (Reddy-8 marked for  
 2 identification.)  
 3 - - -  
 4 MR. WALTON: The exhibit has  
 5 been marked Confidential,  
 6 S.Ct.134, and the Bates Number is  
 7 DE29834 through 29836.  
 8 MS. BALINT: Max, that  
 9 number S.Ct.134, that's a separate  
 10 confidentiality Bates stamp?  
 11 MR. WALTON: That is under  
 12 the Case Management Order of  
 13 Special Master. I have to mark it  
 14 that way. Instead of doing it  
 15 later, I was trying to designate  
 16 the transcript now.  
 17 BY MR. WALTON:  
 18 Q. Ms. Reddy, have you ever  
 19 seen a document like this before?  
 20 A. Like this, yes.  
 21 Q. And what is it?  
 22 A. It's an incident report.  
 23 Q. And up at the top, it says  
 24 National Response Center - Flash Fax?

59

1 A. Yes.  
 2 Q. Does this refresh your  
 3 recollection about what a Flash Fax is?  
 4 MS. BALINT: Objection to  
 5 the form of the question. The  
 6 witness never indicated that she  
 7 had any idea what a Flash Fax was.  
 8 MR. WALTON: Exactly. She  
 9 said she didn't know, so I offered  
 10 it to refresh her recollection.  
 11 THE WITNESS: I'm saying I  
 12 have seen similar documents, not  
 13 necessarily this particular  
 14 document.  
 15 BY MR. WALTON:  
 16 Q. I understand. But does it  
 17 refresh your recollection as to what a  
 18 Flash Fax or communication from the  
 19 National Response Center might look like?  
 20 MS. BALINT: Same objection.  
 21 THE WITNESS: Like I said,  
 22 I've seen the data that comes from  
 23 the National Response Center. I  
 24 don't know necessarily that it's

60

1 in this format.  
 2 BY MR. WALTON:  
 3 Q. That's a fair answer. I'm  
 4 not -- and I understand. But this is  
 5 similar to the data that comes from the  
 6 National Response Center. Is that  
 7 correct?  
 8 A. Yes.  
 9 Q. Now, if you look about  
 10 halfway down the page, it says Incident  
 11 Location.  
 12 A. Yes.  
 13 Q. It says 800 Billingsport  
 14 Road, Gloucester. What does that mean?  
 15 Where is Gloucester County?  
 16 A. Gloucester County is along  
 17 the Delaware aft Salem County.  
 18 Q. And are there Incident  
 19 Details on here on this fax?  
 20 A. Yes.  
 21 Q. And those Incident Details  
 22 are kind of at the bottom of the page  
 23 just above Damages?  
 24 A. Yes.

61

1 Q. I'd like you to flip over to  
 2 DE29835. At the bottom, it says  
 3 Notifications By, looks like NRC at the  
 4 bottom. Do you see that?  
 5 A. Yes.  
 6 Q. And NRC would be the  
 7 National Response Center?  
 8 A. In this case, yes.  
 9 Q. I'd like you to go down. It  
 10 says Notifications By NRC. Now, is  
 11 Delaware Emergency Management Agency  
 12 listed?  
 13 A. Yes.  
 14 Q. And is Delaware State Police  
 15 listed?  
 16 A. Yes.  
 17 Q. Is the Delaware Department  
 18 of Natural Resource and Environmental  
 19 Control listed?  
 20 A. Yes.  
 21 Q. So based upon this document,  
 22 would you agree that the National  
 23 Response Center notified Delaware on this  
 24 occasion?

62

1       A. Yes.  
 2       - - -  
 3       **(Reddy-9 marked for**  
 4       **identification.)**  
 5       - - -  
 6       MR. WALTON: Reddy-9 stays  
 7       confidential.  
 8       BY MR. WALTON:  
 9       Q. I'm going to show you a  
 10      document that's been marked DE29831. At  
 11      the top, would you agree that it says  
 12      National Response Center - Lash Fax in  
 13      this case?  
 14      A. Yes.  
 15      Q. I believe that means Flash  
 16      Fax but I think the letter got cut off.  
 17      Could you go down to the Incident  
 18      Location that's about halfway down the  
 19      page?  
 20      A. Yes.  
 21      Q. And that's in Salem County,  
 22      would you agree?  
 23      A. Yes.  
 24      Q. City, Penns Grove?

63

1       A. Yes.  
 2       Q. State, New Jersey?  
 3       A. Yes.  
 4       Q. And then the description of  
 5      the incident just a little below that  
 6      says caller is reporting an abandon (sic)  
 7      55-gallon drum against a bulkhead in a  
 8      marina. I paraphrased that. Does that  
 9      accurately reflect what was stated there?  
 10     MS. BALINT: Objection to  
 11     the form of the question. The  
 12     document says what it says, and  
 13     what it says is not clear.  
 14     BY MR. WALTON:  
 15     Q. Could you read that for me?  
 16     A. **Caller is reporting an**  
 17     **abandon (sic) 55-gallon drum at (sic) is**  
 18     **up against a bulkhead in the marina. No**  
 19     **material is releasing from E (sic) drum.**  
 20     Q. So I'm going to paraphrase  
 21     that again. Would you agree that that  
 22     basically says that there's a 55-gallon  
 23     drum against the bulkhead in the marina?  
 24     A. Yes.

64

1       Q. And that would be in Penns  
 2      Grove, New Jersey?  
 3       A. That's what the document  
 4      says.  
 5       Q. I'd like you to flip over to  
 6      Notifications By NRC, the second page.  
 7      Would you agree that based upon this  
 8      document the Delaware Emergency  
 9      Management Agency was notified?  
 10     A. Yes.  
 11     Q. And the Delaware State  
 12     Police were notified?  
 13     A. Yes.  
 14     Q. And the Delaware Department  
 15     of Natural Resources and Environmental  
 16     Control was notified?  
 17     A. Yes.  
 18     Q. So going back to my map over  
 19     here -- Penns Grove, I always get  
 20     confused. Penns Grove is the upper one  
 21     on the river and Pennsville is the lower  
 22     or is that reversed? Which one is more  
 23     north, Penns Grove or Pennsville?  
 24     A. I'm not certain.

65

1       MS. BALINT: I just ought to  
 2      put a note on the record that when  
 3      Max has been referring to these  
 4      maps he's really referring to  
 5      large, aerial photographs.  
 6       MR. WALTON: That is  
 7      correct. And the same Bates  
 8      numbers I gave at the very  
 9      beginning.  
 10     BY MR. WALTON:  
 11     Q. If I represented to you that  
 12     on DE28988 and on DE28990 -- right now I  
 13     cannot remember, but one is Pennsville or  
 14     Penns Grove and one is Pennsville or  
 15     Penns Grove. In either case, would the  
 16     barrel described in Reddy-9, would that  
 17     have been in the Delaware River in the  
 18     Twelve-Mile Circle most likely?  
 19     MS. BALINT: Objection to  
 20     the form of the question.  
 21     BY MR. WALTON:  
 22     Q. If you can answer, you can.  
 23     A. **I can't, because I don't**  
 24     **know where the bulkhead is.**

66

1 Q. That's fair.  
2 MR. WALTON: End of  
3 confidential portion.  
4 BY MR. WALTON:  
5 Q. Are you familiar with  
6 Delaware reporting requirements for  
7 hazardous substances released?  
8 A. No.  
9 Q. Do you know if Delaware has  
10 hazardous substances reporting release  
11 requirements either through CERCLA or  
12 either through programs delegated under  
13 EPCRA or other programs?  
14 A. I have no knowledge.  
15 Q. If there was a spill or  
16 release of a hazardous substance or an  
17 extremely hazardous substance, water were  
18 in the mean low waterline within the  
19 Twelve-Mile Circle, would you agree with  
20 me that Delaware law would apply?  
21 MS. BALINT: Objection to  
22 the form of the question. It  
23 calls for a legal conclusion.  
24 BY MR. WALTON:

67

1 Q. You can answer.  
2 A. It would seem so.  
3 Q. Does your office regulate  
4 what happens in Delaware?  
5 A. In what way?  
6 Q. In any way.  
7 A. We do have a requirement  
8 that notifications have to be made to the  
9 state if something happens outside of New  
10 Jersey but will impact New Jersey in  
11 terms of releases.  
12 Q. So that's a notification.  
13 But you don't attempt to regulate  
14 Delaware if I said affects New Jersey in  
15 some way?  
16 A. Are you referring to the  
17 river or the state?  
18 Q. I'm sorry, I don't  
19 understand.  
20 MS. BALINT: Objection to  
21 the form of the question. If the  
22 witness doesn't understand it, it  
23 ought to be rephrased.  
24 BY MR. WALTON:

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1 Q. Does your office, besides  
2 the notification requirement that you  
3 just mentioned, attempt to regulate any  
4 other activity that occurs in Delaware?  
5 A. With the current activity  
6 that occurs there, no.  
7 Q. When you say occurs there,  
8 what do you mean?  
9 A. If there was active marine  
10 transfers occurring at any of the docks,  
11 we would require that they put a boom  
12 around that vessel before the new  
13 transfer occurred.  
14 Q. That's because it would be  
15 going into New Jersey?  
16 A. That would have a  
17 possibility of impacting New Jersey.  
18 Q. But other than that, you  
19 wouldn't attempt to regulate activities  
20 that occurred in Delaware?  
21 A. No.  
22 Q. Can I ask you to flip over  
23 to Reddy-1, please? We've talked a lot  
24 about this. I'll try to get through this

69

1 rather quickly.  
2 Is it correct that your  
3 affidavit does not address federal  
4 reporting requirements under CERCLA or  
5 under EPCRA at the DuPont, Logan or  
6 Conectiv plans have, does not -- that was  
7 a terrible question. Let me rephrase.  
8 Would you agree that your  
9 Declaration does not address Conectiv,  
10 Logan or DuPont's notification  
11 requirements under EPCRA or CERCLA. Is  
12 that correct?  
13 A. It would address them only  
14 in as far as they have consolidated their  
15 notification requirements into one policy  
16 or procedure that they're going to do at  
17 the facility and, therefore, have  
18 incorporated that into their plan.  
19 Q. But if there was a release  
20 that happened above a reportable quantity  
21 of either an extremely hazardous or  
22 hazardous substance, would you agree that  
23 the facilities would still be required to  
24 notify as required by federal law?

70

1       **A. Yes.**  
2       **Q. And that requirement is not**  
3 **discussed in your Declaration. Is that**  
4 **correct?**  
5       **A. Correct.**  
6       **Q. I believe you testified you**  
7 **didn't know about Delaware's reporting**  
8 **requirements. Is that correct?**  
9       **A. Yes.**  
10       **Q. And your Declaration does**  
11 **not address any Delaware reporting**  
12 **requirements. Is that correct?**  
13       **A. Correct.**  
14       **Q. And would you agree that**  
15 **even under the New Jersey program, and**  
16 **I'm going to direct your attention to**  
17 **Paragraph 14, even under the report for**  
18 **DuPont that is filed with your office,**  
19 **you say that DuPont is required to**  
20 **contact the Delaware Natural and Resource**  
21 **Environmental Control group?**  
22       **A. This is based on what DuPont**  
23 **has in their plan as opposed to my**  
24 **personal knowledge of what the**

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1 **requirements are.**  
2       **Q. But in DuPont's plan that**  
3 **you reviewed, would you agree that there**  
4 **is at least a requirement in that plan**  
5 **that they are required to contact the**  
6 **National Response Center's hotline and**  
7 **the Delaware Natural Resource and**  
8 **Environmental Control department?**  
9       **A. Yes, they have listed that**  
10 **responsibility.**  
11       **Q. And would you agree if there**  
12 **is a release of a hazardous substance by**  
13 **any one of those facilities above a**  
14 **reportable quantity they would have to**  
15 **notify the National Response Center?**  
16       **A. Yes.**  
17       **Q. And do you know if the**  
18 **National Response Center notifies**  
19 **Delaware with respect to releases that**  
20 **occurred from those facilities?**  
21       **A. Based on the information**  
22 **that you provided today, that appears to**  
23 **be the case.**  
24       **Q. Can I ask you about**

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1 something a little off the subject? How  
2 do you keep track of sort of events,  
3 complaints, responses, enforcement  
4 actions within your office?  
5       **A. I guess I'll deal with each**  
6 **separately since they are done slightly**  
7 **differently. For releases, there's a**  
8 **requirement that they be reported to our**  
9 **Communications Center. The**  
10 **Communications Center then has an**  
11 **electronic database that they enter that**  
12 **information into. It's part of our New**  
13 **Jersey Environmental Management System**  
14 **database, and anybody with access to that**  
15 **database has access to that information.**  
16       **Q. That's for releases?**  
17       **A. That's for releases, yes.**  
18 **For a major facility which has had a**  
19 **release which is reported to the**  
20 **Communications Center, they're required**  
21 **to do a 30-day follow-up report. That**  
22 **report comes into our bureau. It's**  
23 **reviewed by the Field Verification**  
24 **Section.**

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1       **That data is entered into a**  
2 **separate database maintained by our**  
3 **program called Facility and Chemical**  
4 **Inventory Tracking System, FACITS. And**  
5 **we enter data into there as to what was**  
6 **affected by the discharge, i.e., water,**  
7 **land, what date it occurred, what**  
8 **equipment or processes were involved,**  
9 **what chemicals were discharged and the**  
10 **quantities.**  
11       **Other programs within the**  
12 **department who may respond or have**  
13 **involvement with it keep their own data.**  
14 **I don't know how or where necessarily**  
15 **they do that. All of our inspections are**  
16 **recorded in the NJEMS database.**  
17       **Q. What database was that?**  
18       **A. New Jersey Environmental**  
19 **Management System; it's NJEMS. We just**  
20 **usually say NJEMS because it's quicker.**  
21       **So the results of those**  
22 **inspections are recorded there, including**  
23 **any violations that are found. Then**  
24 **enforcement actions are also in that**

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1 database in terms of if we take something  
2 from a Notice of Violation up to a formal  
3 enforcement action, penalty amounts and  
4 whatnot. I believe those were the three  
5 things you asked for.  
6 Q. And are there similar, if  
7 you know, are there similar records kept  
8 from your Enforcement Section -- pardon  
9 me, let me lay a little foundation.  
10 I believe at the beginning  
11 you testified you had a section; there  
12 was a separate Enforcement Section in  
13 your program. Is that correct?  
14 A. Yes.  
15 Q. And are there similar  
16 records kept for the Enforcement Section,  
17 do you know?  
18 A. Yes. We're basically one  
19 bureau, and we interact all the time with  
20 our field people.  
21 Q. So theirs would go into  
22 similar databases?  
23 A. The same database.  
24 Q. Have you or you caused your

75

1 staff to look for any documents  
2 pertaining to enforcement actions that  
3 occur at any facility along the river  
4 within the Twelve-Mile Circle?  
5 A. No.  
6 - - -  
7 (Reddy-10 marked for  
8 identification.)  
9 - - -  
10 BY MR. WALTON:  
11 Q. I'd just like you to look at  
12 this, and it's a document provided very  
13 recently by New Jersey. It's Bates  
14 stamped NJ06847 through NJ06850. Are you  
15 at all familiar with this enforcement  
16 action?  
17 A. No.  
18 Q. Do you know who in your  
19 office might have been involved in this  
20 enforcement action?  
21 A. In our office, no one.  
22 Q. Can you explain why?  
23 A. It's not our bureau. It's  
24 not our program.

76

1 Q. So what program would this  
2 have been through?  
3 A. The Hazardous Waste  
4 Compliance and Enforcement.  
5 Q. Could you explain the  
6 difference between the two programs and  
7 what they deal with that are different?  
8 A. The Hazardous Waste program  
9 deals specifically with generators of  
10 hazardous waste as, I guess, defined  
11 under Resource Conservation and Recovery  
12 Act, RCRA.  
13 And they do inspections at  
14 those facilities, make sure they're not  
15 storing things more than 90 days, if  
16 they're not permitted for that and  
17 enforce the RCRA regulations within New  
18 Jersey. So they're dealing with that  
19 particular program. We're working with  
20 the Spill Compensation and Control Act.  
21 Q. You deal with the Spill  
22 Compensation and Control Act. What was  
23 the act that this other group deals with?  
24 A. They do certain things under

77

1 solid waste. They do have some authority  
2 under certain sections of the Spill Act  
3 as well. And they do federal RCRA stuff.  
4 Q. Let's say that there was a  
5 spill of a hazardous substance or  
6 extremely hazardous substance at a  
7 facility. How would you determine which  
8 group would handle that issue?  
9 A. The first one would be  
10 whether it's a major facility or not. If  
11 it's not a major facility, we generally  
12 don't deal with it with our program.  
13 Q. So on this enforcement  
14 action dealing with Rhodia Pharma  
15 Solutions, Inc., this would not be  
16 considered a major facility likely?  
17 A. I haven't heard of them, so  
18 I doubt it.  
19 Q. If there was a spill even if  
20 it wasn't from a major facility and it  
21 was above a reportable quantity, would  
22 your office be notified?  
23 A. Specifically my program or  
24 do you mean the department?

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1 Q. Your program and/or the  
2 department.

3 A. No. The department would  
4 be. Our program is not specifically.

5 Q. When you say the department,  
6 just clarify for me what you mean by  
7 that?

8 A. We have one central  
9 Communications Center to which all  
10 notifications go.

11 - - -  
12 (Reddy-11 marked for  
13 identification.)  
14 - - -

15 BY MR. WALTON:  
16 Q. I just had a document Bates  
17 stamped DE21809 through 21816 handed to  
18 Ms. Reddy. And I will represent to you  
19 that those are DNREC enforcement actions  
20 taken in the Delaware River.

21 And my question is: Do you  
22 have a similar list of enforcement  
23 actions, does your office or agency?  
24 MS. BALINT: If you know.

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1 BY MR. WALTON:  
2 Q. If you know.  
3 A. As far as I know, we don't  
4 keep any list of actions taken  
5 specifically in the Delaware River or  
6 associated with the Delaware River.

7 Q. As far as you know. So you  
8 wouldn't keep any record of events that  
9 occurred within the Twelve-Mile Circle?

10 MS. BALINT: Objection to  
11 the form of the question. It's my  
12 understanding that this document  
13 was created for the purpose of  
14 this litigation. And the  
15 foundation to your question  
16 represented it as a list that's  
17 kept by your department, which I  
18 think is an inaccurate foundation.

19 MR. WALTON: Could you read  
20 my question back again, please?  
21 - - -  
22 (The court reporter read the  
23 pertinent part of the record.)  
24 - - -

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1 THE WITNESS: We have it  
2 that all our enforcement actions  
3 are all in our database. They can  
4 be retrieved in any kind of way  
5 you want to do it. The general  
6 public can do it through our Web  
7 site even.

8 BY MR. WALTON:  
9 Q. Do you have any personal  
10 knowledge of any enforcement actions that  
11 have taken place within the Twelve-Mile  
12 Circle by your office or your department?

13 A. Our equivalent of the RMP  
14 program.  
15 Q. What's RMP?  
16 A. Risk Management Plan  
17 program, which in New Jersey it's called  
18 the Toxic Catastrophe Prevention Act  
19 program, or TCPA, recently took an action  
20 at DuPont which is currently being  
21 settled. They were fined \$95,000 for  
22 violations of the requirements under  
23 TCPA.  
24 Q. And what are those

81

1 requirements?  
2 A. They have to deal with  
3 chemicals that if released cause instant  
4 death or incapacitation, so they require  
5 training of all operators who are  
6 involved with those kinds of chemicals.  
7 And they had a lot of people they hadn't  
8 trained in the past year, so it was a  
9 certain amount per each one of those  
10 people.

11 There are certain  
12 maintenance requirements. They have  
13 management of change requirements. So it  
14 was a lot of violations. It wasn't like  
15 one, big amount for one violation. It  
16 was a lot of things that added up to a  
17 large penalty.

18 Q. To the best of your  
19 knowledge, were any of those violations  
20 related to anything that occurred in the  
21 Delaware River within the Twelve-Mile  
22 Circle?  
23 A. Within the Delaware, no.  
24 Q. I'm sorry, was that a no?

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1       **A. Yes, that was a no.**  
 2       **Q. From your personal**  
 3 **knowledge, if something happens on a ship**  
 4 **or a vessel in the Twelve-Mile Circle,**  
 5 **you had a fire or release of a hazardous**  
 6 **substance or anything, do you know if the**  
 7 **Coast Guard is called?**  
 8       **A. Yes.**  
 9       **Q. And do you have any**  
 10 **understanding of what the Coast Guard's**  
 11 **protocols are for who gets notified about**  
 12 **it?**  
 13       **A. No.**  
 14       - - -  
 15       **(A recess occurred.)**  
 16       - - -  
 17 **BY MR. WALTON:**  
 18       **Q. I'm going to refer you back**  
 19 **to Reddy-10. I just wanted to clarify.**  
 20 **Did you have any involvement in the**  
 21 **Rhodia Pharmaceutical case?**  
 22       **A. No.**  
 23       **Q. Just some general questions:**  
 24 **Are you involved in any way with coastal**

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1 **zone consistency determinations?**  
 2       **A. No.**  
 3       **Q. Do you ever have occasion to**  
 4 **review riparian rights or grants?**  
 5       **A. No.**  
 6       **Q. In your job or otherwise?**  
 7       **A. No.**  
 8       **Q. Have you ever reviewed the**  
 9 **1905 Compact?**  
 10       **A. No.**  
 11       **Q. Do you have any personal**  
 12 **knowledge regarding police responses**  
 13 **within the Twelve-Mile Circle?**  
 14       **A. No.**  
 15       **Q. Do you have any knowledge of**  
 16 **fire responses in Delaware territory**  
 17 **within the Twelve-Mile Circle?**  
 18       **A. No.**  
 19       **Q. Do you know if any area**  
 20 **within the Twelve-Mile Circle is within**  
 21 **any New Jersey fire district?**  
 22       **A. No.**  
 23       **Q. Do you know if any area**  
 24 **within the Twelve-Mile Circle is within**

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1 **any New Jersey police district?**  
 2       **A. No.**  
 3       **Q. Do you know if any area**  
 4 **within the Twelve-Mile Circle is within**  
 5 **any New Jersey emergency response**  
 6 **district?**  
 7       **A. That I'm not certain of.**  
 8       **Q. Do you have any personal**  
 9 **knowledge?**  
 10       **A. Personal knowledge, no.**  
 11       **Q. Do you know if there are any**  
 12 **response boats for police, fire,**  
 13 **emergency that are assigned to the area**  
 14 **that's known as the Twelve-Mile Circle?**  
 15       **A. No.**  
 16       **Q. Does your office have any**  
 17 **boats that could respond to an event or**  
 18 **an emergency within the Twelve-Mile**  
 19 **Circle?**  
 20       **A. You mean specifically my**  
 21 **bureau?**  
 22       **Q. Yes.**  
 23       **A. We have no boats.**  
 24       **Q. And do you know of any other**

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1 **bureau or department or designation,**  
 2 **however you want to phrase it, that has**  
 3 **boats that could respond to a fire or any**  
 4 **other emergency within the Twelve-Mile**  
 5 **Circle?**  
 6       **A. There could, yes.**  
 7       **Q. And who would those be?**  
 8       **A. We have a Marine Police Unit**  
 9 **within the state.**  
 10       **Q. And where are they located,**  
 11 **do you know?**  
 12       **A. Specifically where they keep**  
 13 **their equipment, I don't know.**  
 14       **Q. From your personal**  
 15 **knowledge, is there any other division**  
 16 **besides the Marine Police Unit who would**  
 17 **have a boat who could respond to**  
 18 **emergencies within the Twelve-Mile**  
 19 **Circle?**  
 20       **A. I believe our emergency**  
 21 **response people contract out for boats.**  
 22 **And any others that are owned by the**  
 23 **department are used for specific**  
 24 **environmental purposes, not response.**

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1 Q. When you say specific  
2 environmental purposes, what do you mean?  
3 A. **Sampling in the ocean,**  
4 **getting biological water samples, things**  
5 **like that.**  
6 Q. It's your understanding that  
7 there are other boats that are contracted  
8 out for particular uses or needs?  
9 A. **It's my understanding that**  
10 **our emergency response people have**  
11 **contractors through whom they get what**  
12 **equipment is necessary for a given**  
13 **response.**  
14 Q. Do you know if any of those  
15 contractors are assigned specifically to  
16 the area known as the Twelve-Mile Circle?  
17 A. **I have no specific**  
18 **knowledge.**  
19 Q. Any general knowledge?  
20 A. **Generally that no, no one is**  
21 **assigned specifically anywhere as far as**  
22 **I know.**  
23 Q. Do you know how many fire  
24 boats New Jersey has that patrol the

87

1 Delaware River, --  
2 A. No.  
3 Q. -- if any?  
4 A. No.  
5 Q. Have you personally gone  
6 down the Delaware River within the  
7 Twelve-Mile Circle ever?  
8 A. **Actually out on the water?**  
9 Q. Yes.  
10 A. **Not that I can remember.**  
11 Q. So you couldn't personally  
12 testify to what structures were out  
13 there?  
14 A. No.  
15 Q. I suppose then you couldn't  
16 testify to what outfalls or intakes are  
17 out there as well?  
18 A. **Beyond what would be**  
19 **recorded on the general site plans that**  
20 **are required to be submitted with our**  
21 **plans, no.**  
22 Q. And when you say with your  
23 plans, I just want to get my phraseology  
24 correct, that would be Discharge

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1 Prevention Containment (sic), DPCC, and  
2 Discharge Cleanup and Removal plan. Is  
3 that correct?  
4 A. Yes.  
5 Q. I'd like to turn your  
6 attention to Reddy-1, which is your  
7 Declaration, if you recall. If I wanted  
8 to look up those plans that you referred  
9 to, specifically the DuPont, the Logan  
10 and the Conectiv plans, could I obtain a  
11 copy from your office?  
12 A. **Say as a private citizen?**  
13 Q. Yes.  
14 A. No.  
15 Q. Is there some sort of a  
16 confidential designation?  
17 A. Yes.  
18 Q. Could you explain just sort  
19 of the process or why it's given  
20 confidentiality?  
21 A. **When the state passed their**  
22 **Open Public Records Act legislation a**  
23 **couple of years ago, the governor issued**  
24 **an Executive Order which specifically**

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1 **exempted certain types of information**  
2 **from being available to the public. And**  
3 **the plans, the DPCC, DCR plans that my**  
4 **program receives, were specifically**  
5 **included in that exemption.**  
6 Q. If someone violated their  
7 plan or their plan was insufficient in  
8 some way and some sort of enforcement  
9 action would have to be taken, could you  
10 sort of walk me through that process what  
11 would happen?  
12 A. **If we go out and identify a**  
13 **violation, if the violation is something**  
14 **that's discovered during inspection, a**  
15 **Notice of Violation is written out on the**  
16 **spot. A copy is given to the facility.**  
17 **A copy is kept by the inspector. They**  
18 **bring that back to the office and record**  
19 **that in the database.**  
20 We have a grace period law  
21 which says certain violations are  
22 designated as being minor or not minor.  
23 If it's a minor violation, they're given  
24 a period of time in which they can

90

1 correct the violation without a penalty.  
2       **So if it's minor, we'll wait**  
3 **until the time period they have is up, go**  
4 **out and re-inspect to make sure that**  
5 **they're now in compliance and then it's**  
6 **closed out. If it's not minor, it's**  
7 **raised to an Administrative Order and**  
8 **Notice of Civil Administrative Penalty**  
9 **Assessment.**  
10       Q. And then how did that  
11 process then go once that Administrative  
12 Order is issued?  
13       A. It's issued with a deadline  
14 associated with it; this has to be  
15 corrected within this period of time and  
16 this is the amount of money that you have  
17 to pay. They have 20 days in which to  
18 appeal the order to say no, we didn't do  
19 it or we weren't that bad or whatever.  
20       **If they don't appeal, then**  
21 **when the time period is up within the**  
22 **document we, as before, go out, check,**  
23 **make sure that they're now in compliance,**  
24 **that they've paid their penalty and then**

91

1 we close it out.  
2       **If they appeal, we'll go**  
3 **through a settlement process, try to sit**  
4 **down with them, work it out. If we can't**  
5 **do that, it gets turned over to the**  
6 **Attorney General's Office and a DAG is**  
7 **assigned and we go through the contested**  
8 **case process within the Office of**  
9 **Administrative Law.**  
10       **Sometimes there will then**  
11 **also be, once the attorneys get involved,**  
12 **sometimes there's a settlement.**  
13 **Sometimes it goes all the way to there**  
14 **being a hearing in front of an**  
15 **administrative judge.**  
16       Q. When you get into this  
17 process, I'm not speaking either the  
18 minor violation or the major violation,  
19 when there's some action taken by your  
20 department, are those records then  
21 confidential under OPRA?  
22       A. The records of our  
23 inspections and enforcement actions are  
24 not confidential.

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1       Q. Appeals wouldn't be  
2 confidential?  
3       A. Until the case is settled.  
4 **I understand it is confidential. Once**  
5 **it's settled, then it becomes a public**  
6 **document.**  
7       Q. So with respect to the  
8 Logan, Conectiv, DuPont facilities, are  
9 you aware of any violations at those  
10 facilities?  
11       A. Other than the one that I  
12 mentioned earlier with TCPA and DuPont?  
13       Q. Other than the one you  
14 mentioned before.  
15       A. I believe in the past we  
16 have issued some violations against  
17 DuPont. I don't recall specifically what  
18 they are. I'd have to go back and look  
19 it up. The other two, I don't remember  
20 there being any but that doesn't mean  
21 there hasn't been.  
22       Q. But those would be  
23 accessible?  
24       A. Yes.

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1       Q. And based upon your  
2 knowledge, none of those occurred or none  
3 of those violations occurred with  
4 anything happening on a dock to the best  
5 of your knowledge?  
6       A. Correct.  
7       Q. With respect to the  
8 Keystone, DuPont and Conectiv facilities,  
9 just to be clear, is it your testimony  
10 that hazardous chemicals are produced,  
11 used or stored at those facilities?  
12       A. Yes.  
13       MR. WALTON: That's all I  
14 have.  
15       MS. BALINT: I have a few  
16 points of clarification that I  
17 need to ask about.  
18       - - -  
19       EXAMINATION  
20       - - -  
21 BY MS. BALINT:  
22       Q. Is one of the issues that  
23 the DPCC program requires a major  
24 facility to address the off site

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1 consequences which could result from an  
2 incident at the facility?  
3 **A. Yes.**  
4 **Q. Just for the record, what is**  
5 **an off site consequence?**  
6 **A. Depending on what chemicals**  
7 **are stored at a given facility, there**  
8 **could be impacts to water, wetlands,**  
9 **vegetation, animals in the area, so that**  
10 **they have to look at specifically what's**  
11 **around their facility. And based on what**  
12 **they have on site, they determine what**  
13 **kinds of consequences there could be.**  
14 **Q. And in what ways are the**  
15 **facilities required to address off site**  
16 **consequences?**  
17 **A. They're required to map the**  
18 **area around the facility. They do a**  
19 **thousand feet around. It's like a buffer**  
20 **zone showing what's in the immediate area**  
21 **that might need to be addressed.**  
22 **And then they have to do**  
23 **topographic maps covering environmental**  
24 **sensitive areas that cover an area as far**

95

1 **as the discharge could go or 15 miles,**  
2 **whichever is the smaller of the two. But**  
3 **a lot of them just go 15 miles because**  
4 **it's the easiest thing to figure out.**  
5 **And we have a list of things**  
6 **that have to be mapped within that area**  
7 **that need to be addressed if there is a**  
8 **discharge. They use that information**  
9 **then to develop the response plan for the**  
10 **facility, on site and off site responses,**  
11 **with what equipment and personnel are**  
12 **necessary to deal with the given**  
13 **situation that they're looking at.**  
14 **And so that they have to**  
15 **look at if it gets into the water which**  
16 **way is it going to go, where are we going**  
17 **to go to, either catch it or stop it,**  
18 **clean it up on land, where will it go, is**  
19 **it going to sink into the soil, are we**  
20 **going to need to do some digging, some**  
21 **neutralization, whatever. They**  
22 **incorporate that all into the plan and**  
23 **submit it to us.**  
24 **Q. If a facility is located**

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1 adjacent to a state border, whether it be  
2 New York, Pennsylvania or Delaware, does  
3 the DPCC program exempt the mapping of  
4 the off site consequences beyond a state  
5 border?  
6 **A. Yes.**  
7 **Q. You exempt it? You allow**  
8 **them not to map those?**  
9 **A. No, we don't require them to**  
10 **map beyond the state border.**  
11 **Q. Do you require them to plan**  
12 **for potential cleanup beyond a state**  
13 **border?**  
14 **A. It's not specifically**  
15 **required, so they do what they need to**  
16 **do.**  
17 **Q. For the three facilities**  
18 **we've been discussing today that are**  
19 **adjacent to the Delaware River, do their**  
20 **DPCC and DCR plans address off site**  
21 **consequences which could occur from the**  
22 **travel of spill pollutants into the**  
23 **Delaware River?**  
24 **A. I believe they all address**

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1 **within their mapping and whatnot seasonal**  
2 **sensitivity of the river, which would**  
3 **include things like the shad run, when**  
4 **the horseshoe crabs are going to be**  
5 **around and things like that because you**  
6 **have a different response in those**  
7 **situations than you might have at another**  
8 **time of the year, so they would have that**  
9 **in their plan.**  
10 **Q. When a facility submits a**  
11 **DPCC or DCR plan to your bureau and your**  
12 **bureau is evaluating that plan, are there**  
13 **minimum regulatory requirements that your**  
14 **review requires?**  
15 **A. We establish within our**  
16 **regulations what has to be in a plan and**  
17 **has to at least meet what's listed as**  
18 **being part of a plan.**  
19 **Q. Does your bureau receive**  
20 **some plans which include additional**  
21 **policies or procedures that go above and**  
22 **beyond the DPCC minimum requirements?**  
23 **A. Yes. And we sometimes**  
24 **receive plans that incorporate several**

98

1 **programs, emergency response requirements**  
 2 **within one document.**  
 3 Q. And are some of those  
 4 additional policies or procedures the  
 5 result of company policy?  
 6 A. Sometimes, yes.  
 7 Q. Are they sometimes the  
 8 result of federal law requirements?  
 9 A. Yes.  
 10 Q. Is the plan acceptable to  
 11 the DPCC program with those additional  
 12 elements so long as the plan meets the  
 13 DPCC regulatory minimums?  
 14 A. Yes.  
 15 Q. Earlier you discussed a  
 16 recent TCPA enforcement action at the  
 17 DuPont plant, the Toxic Catastrophe  
 18 Prevention Act. Did any or all of those  
 19 TCPA violations relate to the prevention  
 20 of potential releases which could affect  
 21 the Delaware River?  
 22 A. I don't know that they would  
 23 affect the Delaware River since the  
 24 majority of what they deal with is gases

99

1 **that go up into the air. I guess if it**  
 2 **was raining it would affect the river but**  
 3 **specifically probably not.**  
 4 Q. Depending on the wind  
 5 conditions, could those gashes of  
 6 emissions travel to Delaware air?  
 7 A. Yes.  
 8 Q. Does the DPCC program treat  
 9 the major facilities that are located on  
 10 the Delaware River within the Twelve-Mile  
 11 Circle any differently than it treats  
 12 other major facilities that are located  
 13 along the Delaware River?  
 14 A. No.  
 15 Q. When you were discussing the  
 16 various databases that the DPCC program  
 17 records its data, you mentioned  
 18 inspection data, violations data and  
 19 enforcement action data that would be  
 20 entered into the NJEMS database. Is that  
 21 correct?  
 22 A. Yes.  
 23 Q. Are those subsets of data  
 24 that you mentioned going into the NJEMS

100

1 the data that would be recorded by the  
 2 Field Verification Section of your  
 3 bureau?  
 4 A. Both sections record  
 5 information in NJEMS.  
 6 Q. Right. But there's the  
 7 Engineering Section of which you're the  
 8 chief?  
 9 A. Right.  
 10 Q. And the other section is  
 11 called what?  
 12 A. Field Verification.  
 13 Q. And the Field Verification  
 14 Unit is tasked with the enforcement  
 15 responsibilities for the section, for the  
 16 bureau?  
 17 A. Actually, it's whoever finds  
 18 the violation is responsible for doing  
 19 all the data entry, case management,  
 20 whatnot. There are violations that are  
 21 found during the plan review process, and  
 22 those would also be recorded in NJEMS in  
 23 the same way.  
 24 Q. And all of the violations

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1 that would be recorded would be shown  
 2 publicly on NJEMS which is available over  
 3 the Internet to the public?  
 4 A. Yes.  
 5 MS. BALINT: I have no  
 6 further questions.  
 7 MR. WALTON: A couple of  
 8 follow-ups just on that.  
 9 - - -  
 10 EXAMINATION  
 11 - - -  
 12 BY MR. WALTON:  
 13 Q. Start with the Enforcement  
 14 Section which we were just talking about.  
 15 Are you aware of any violation occurring  
 16 on a dock or a pier within the  
 17 Twelve-Mile Circle?  
 18 A. No.  
 19 Q. And when we talked about the  
 20 facilities, counsel talked about the  
 21 facilities and sometimes in their plans  
 22 they have additional policies and  
 23 procedures. For the DuPont facility, for  
 24 the Keystone facility and for the

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1 Conectiv facility, even if they put  
 2 additional procedures into their plan,  
 3 that doesn't exempt any of those  
 4 facilities from following federal law,  
 5 does it?  
 6 A. No.  
 7 Q. And going back to the DuPont  
 8 and the air emissions, are you familiar  
 9 with the notification requirements for  
 10 air emissions for affected states?  
 11 A. I guess it would be under  
 12 what --  
 13 Q. Under any --  
 14 A. Because a lot of the  
 15 chemicals that are in CERCLA, are  
 16 gaseous, become air emissions. There's  
 17 requirements for reporting exceedances of  
 18 your permits received from the air  
 19 program. There's gaseous things on our  
 20 list that have to be notified for, so  
 21 there could be all kinds of things that  
 22 apply.  
 23 Q. Let's just take the CERCLA  
 24 piece for just right now. With respect

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1 to that, if the air emissions affected  
 2 Delaware, if there was an air emission  
 3 above a reportable quantity under CERCLA,  
 4 it would have to be reported to the  
 5 National Response Center. Is that  
 6 correct?  
 7 A. Yes.  
 8 Q. And the National Response  
 9 Center would notify affected agencies.  
 10 Is that correct?  
 11 A. Yes.  
 12 Q. So would it be likely that  
 13 if an air emission, a hazardous substance  
 14 was released and there was an air  
 15 emission and it was going to affect  
 16 Delaware that the National Response  
 17 Center would notify Delaware emergency  
 18 response authorities?  
 19 A. It would seem so.  
 20 MR. WALTON: Thank you.  
 21 That's all I have.  
 22 MS. BALINT: We're done.  
 23 MR. WALTON: That concludes  
 24 the deposition. Thank you.

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1  
 2 CERTIFICATE  
 3  
 4  
 5 I HEREBY CERTIFY that the  
 6 witness was duly sworn by me and that the  
 7 deposition is a true record of the  
 8 testimony given by the witness.  
 9  
 10  
 11  
 12  
 13 Kimberly S. Gordon, a  
 14 Registered Professional Reporter  
 15 and Notary Public  
 16 Dated: OCTOBER 25, 2006  
 17  
 18  
 19  
 20 (The foregoing certification of  
 21 this transcript does not apply to any  
 22 reproduction of the same by any means,  
 23 unless under the direct control and/or  
 24 supervision of the certifying reporter.)

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IN THE SUPREME COURT  
OF THE UNITED STATES

\* \* \*

STATE OF NEW JERSEY, : NO. 134, Original  
Plaintiff, :

-vs-

STATE OF DELAWARE, :  
Defendant. :

\* \* \*

Wednesday, October 4, 2006

\* \* \*

Oral deposition of DAVID Q.  
RISILIA, held in the offices of NEW  
JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, BUREAU OF TIDELANDS, 9 Ewing  
Street, Trenton, New Jersey, on  
Wednesday, October 4, 2006, beginning at  
9:36 a.m., before Kimberly A. Cahill, a  
Registered Professional Reporter and  
Notary Public in and for the State of New  
Jersey.

\* \* \*

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2

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5

1 \* \* \*  
 2 DAVID Q. RISILIA, after  
 3 having been first duly sworn, was  
 4 examined and testified as follows:  
 5 \* \* \*  
 6 EXAMINATION  
 7 \* \* \*  
 8 BY MR. ATTAWAY:  
 9 Q. Good morning, Mr. Risilia.  
 10 A. Good morning.  
 11 Q. My name is Scott Attaway and  
 12 I represent the State of Delaware in this  
 13 case, which is New Jersey versus  
 14 Delaware, number 134, original, filed in  
 15 the Supreme Court.  
 16 Before we begin, I just want  
 17 to establish a few ground rules so that  
 18 the deposition goes smoothly.  
 19 If you don't hear a  
 20 question, please say so and I'll repeat  
 21 it.  
 22 A. Okay.  
 23 Q. And if you don't understand  
 24 a question, say so and I'll try to

<p style="text-align: right;">6</p> <p>1 rephrase it.</p> <p>2 A. (Witness nods head.)</p> <p>3 Q. And please give a verbal</p> <p>4 answer, because the court reporter can't</p> <p>5 take down a nod of the head.</p> <p>6 A. Okay.</p> <p>7 Q. And, also, be sure to let me</p> <p>8 finish my question before you start to</p> <p>9 answer so the court reporter will have an</p> <p>10 easier time taking down both of --</p> <p>11 everything that each of us says.</p> <p>12 A. Okay.</p> <p>13 Q. Do you understand the</p> <p>14 instructions I've just given you?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Okay.</p> <p>17 Is there any reason of which</p> <p>18 you are aware that would prevent you from</p> <p>19 testifying truthfully today, medications,</p> <p>20 for example?</p> <p>21 A. No, there is no reason.</p> <p>22 Q. Okay.</p> <p>23 Have you been deposed</p> <p>24 before?</p>	<p style="text-align: right;">8</p> <p>1 deposition?</p> <p>2 A. No, I did not.</p> <p>3 Q. Did you give any other</p> <p>4 testimony in that case?</p> <p>5 A. No, I didn't.</p> <p>6 Q. Okay.</p> <p>7 Other than conversations</p> <p>8 with counsel, what did you do to prepare</p> <p>9 for your deposition today?</p> <p>10 A. For today's deposition?</p> <p>11 That's really it. I just was, you know,</p> <p>12 given instructions, general instructions,</p> <p>13 by counsel.</p> <p>14 Q. Okay.</p> <p>15 Did you review any documents</p> <p>16 in preparation for the deposition?</p> <p>17 A. No.</p> <p>18 Q. Have you read any pleadings</p> <p>19 in this case?</p> <p>20 A. No, I have not.</p> <p>21 Q. Did you talk to anyone else</p> <p>22 to prepare for the deposition besides</p> <p>23 counsel?</p> <p>24 A. No.</p>
<p style="text-align: right;">7</p> <p>1 A. Yes, I have.</p> <p>2 Q. How many times?</p> <p>3 A. One -- one time.</p> <p>4 Q. Okay.</p> <p>5 In what case was that?</p> <p>6 A. It was a freshwater wetlands</p> <p>7 case that I was involved with at the land</p> <p>8 use regulation program. I don't remember</p> <p>9 the name of the case.</p> <p>10 Q. Okay.</p> <p>11 Do you remember what it was</p> <p>12 about?</p> <p>13 A. It was about a wetland</p> <p>14 interpretation. A third party was</p> <p>15 appealing a wetland interpretation that I</p> <p>16 had performed.</p> <p>17 Q. Okay.</p> <p>18 And when did you testify?</p> <p>19 A. I don't really recall. It</p> <p>20 had to be at least approximately nine</p> <p>21 years ago.</p> <p>22 Q. Okay.</p> <p>23 And did that -- did you</p> <p>24 testify in court after that, after the</p>	<p style="text-align: right;">9</p> <p>1 Q. And when you spoke with your</p> <p>2 counsel -- I don't want to know anything</p> <p>3 about the substance of what was said, but</p> <p>4 just tell me, when you prepared, first of</p> <p>5 all, when you met with counsel.</p> <p>6 A. I met with them on two</p> <p>7 occasions, yesterday and, I believe,</p> <p>8 earlier in the week, like Tuesday.</p> <p>9 Q. Okay.</p> <p>10 For about how long each</p> <p>11 time?</p> <p>12 A. A couple hours on the first</p> <p>13 time and maybe an hour the second time.</p> <p>14 Q. And who was there at the</p> <p>15 meeting? Again, I don't want to know</p> <p>16 what they said.</p> <p>17 A. Barb Conklin and Eileen to</p> <p>18 my left.</p> <p>19 Q. Okay.</p> <p>20 At both meetings?</p> <p>21 A. At the second meeting. At</p> <p>22 the first meeting, it was Eileen and Bill</p> <p>23 Anderson.</p> <p>24 Q. Okay.</p>

10	<p>1 I just want to go over your 2 background briefly -- 3 A. Sure. 4 Q. -- before we get started. 5 Let's see. I guess we can 6 start with your college education and go 7 forward from there. So -- 8 A. Okay. I have a degree in 9 biological science that I received from 10 Rowan University in 1988. 11 Q. And any postgraduate 12 degrees? 13 A. No. 14 Q. Or studies? 15 A. No. 16 Q. After college, where did you 17 work? 18 A. I worked at -- I worked at 19 the Department of Environmental 20 Protection here in Trenton. 21 Q. So straight out of college? 22 A. Yes. 23 Q. So when did you start at the 24 DEP?</p>	12	<p>1 A. As a project manager there, 2 I was assigned and I evaluated projects 3 under the Freshwater Wetlands Protection 4 Act, the Stream Encroachment Act, the 5 uses of coastal zone management under the 6 Waterfront Development Act. 7 Q. So the -- okay. 8 And what was your title in 9 the land use regulation program? 10 A. I believe it started out as 11 an environmental specialist and then I 12 went to a principal environmental 13 specialist. 14 Q. You mentioned a few of the 15 coastal zone rules and laws. Was it your 16 duty to read those laws and rules and 17 implement them? 18 A. Yes, it was. 19 Q. Okay. 20 Starting approximately when? 21 A. When I began there. 22 Q. In 1991? 23 A. Yes. 24 Q. Okay.</p>
11	<p>1 A. I started at the DEP, I 2 believe it was 1989. 3 Q. And what was your title and 4 job duties at that time? 5 A. When I began in 1989, I 6 believe I was an environmental specialist 7 trainee and I worked -- I worked in the 8 water resources program. 9 Q. Okay. 10 And then after -- I assume 11 you've had other positions in the 12 department since then? 13 A. Yes, I did. 14 Q. What would be the next 15 position that you had? 16 A. After approximately two 17 years, which probably would have been 18 like around 1991, I transferred to the 19 land use regulation program. I was an 20 environmental specialist and I worked 21 there for approximately nine -- nine or 22 ten more years there. 23 Q. What were your duties at 24 land use regulation?</p>	13	<p>1 And that would be the 2 Waterfront Development Act, which you 3 mentioned. What about the CAFRA? I 4 think it's Coastal Area Facilities Review 5 Act, if I've got that right? 6 A. Yes, you do have that right. 7 I -- I also worked under that act. The 8 same governing rules apply for waterfront 9 development and for CAFRA, which were the 10 rules on coastal zones -- rules on 11 coastal zone management. 12 So I did BP projects that 13 were CAFRA applications as well as 14 waterfront development applications, 15 stream encroachment applications, and 16 freshwater wetlands applications. 17 Q. Okay. 18 So you said you were there 19 for about nine or ten years starting in 20 1991. So I gather that in approximately 21 2001 or '2, you went to another position? 22 A. Yes. 23 Q. Okay. 24 Can you tell me about that?</p>

14	<p>1 A. Yes. I went to the Office 2 of Dredging &amp; Sediment Technology. 3 Q. And do you remember 4 approximately when that was, what year? 5 A. It was about nine years ago, 6 right after -- it would have probably 7 been around 2000 -- yeah, right around -- 8 it was probably around 2000, 2001. 9 Q. Okay. 10 A. Which would make it less 11 than nine years. 12 Q. I thought you meant nine 13 years after you started at land use, so 14 -- which is what you said earlier. 15 A. Well, I worked at land use 16 for nine years; and then when I went land 17 use, I went directly to my present -- my 18 present location, which is the Office of 19 Dredging &amp; Sediment Technology. 20 Q. Do you still have the same 21 title now that you had when you joined 22 the -- it's called the ODST. Right? 23 A. Correct. 24 Q. Okay.</p>	16
15	<p>1 A. Yes, I'm principal 2 environmental specialist. 3 Q. And that was your title in 4 2001? 5 A. Yes, when I left land use 6 regulation, it was. 7 Q. Okay. 8 And it's your title now as 9 well? 10 A. Yes. 11 Q. As principal environmental 12 specialist at ODST for the last five 13 years, what have been your duties and 14 responsibilities in that position? 15 A. Similar to my task and 16 responsibilities at land use regulation, 17 I was charged with the review of -- of 18 projects, principally dredging projects, 19 that were applications for projects that 20 were submitted under the waterfront 21 development rules or under CAFRA and also 22 for federal projects that were submitted 23 for federal consistency determinations. 24 Q. What is a federal</p>	17
14	<p>1 consistency determination? 2 A. It's a permit equivalent 3 that is applicable to federal projects. 4 Q. When you say it's a permit 5 equivalent, do you mean that it's a 6 permit issued by the Department of 7 Environmental Protection of New Jersey? 8 A. Well, it's not actually a 9 permit. It is -- the Federal Government, 10 I believe, has some sovereign rights. 11 They don't have to obtain permits, per 12 se. They request consistency 13 determinations, which is a finding that 14 that federal activity would be consistent 15 with the rules on coastal zone 16 management. 17 So that's what a federal 18 consistency is and that's -- 19 Q. So are you in -- in 20 assessing the federal consistency, are 21 you assessing consistency with federal 22 law of a particular project? 23 A. No. 24 Q. Okay.</p>	17
15	<p>1 I guess I'm just not 2 following you, so can you try to explain 3 again what you mean by federal 4 consistency determination? 5 A. Okay. If the Federal 6 Government is engaging in an activity 7 that's occurring in state waters, for 8 instance, they're dredging a federal 9 channel that's in the State of New 10 Jersey, the Federal Government needs to 11 demonstrate that they are compliant with 12 our rules on coastal zone management, 13 which are the same rules that we use for 14 waterfront development applications for 15 the private sector, but because they're 16 the Federal Government, they are not 17 required to -- to apply for -- they don't 18 pay a fee. They don't obtain a 19 waterfront development permit. 20 They seek -- they get a -- 21 if they are consistent, they get a 22 federal consistency determination, which 23 is a finding that they are consistent 24 with the coastal zone management rules,</p>	17

18

1 N.J.A.C. 7:7E, et seq, which are the  
 2 rules that govern waterfront development  
 3 and CAFRA.  
 4 Q. So is it fair to say that  
 5 under that determination, while the  
 6 Government wouldn't submit a permit  
 7 application, you would effectively do the  
 8 same analysis that you would do for a  
 9 private party applying to do the same  
 10 thing?  
 11 A. Yes.  
 12 Q. What is the difference  
 13 between the land use regulation program  
 14 and the Office of Dredging & Sediment  
 15 Technology, which I -- I gather are both  
 16 divisions within Department of  
 17 Environmental Protection?  
 18 A. We do -- both -- both  
 19 offices do similar work, but the Office  
 20 of Dredging & Sediment Technology, ODST,  
 21 specializes in dredging projects. We  
 22 exclusively review projects that involve  
 23 dredging or port or maritime commerce  
 24 facilities.

19

1 Whereas, land use regulation  
 2 also deals with stream encroachment  
 3 issues, freshwater wetland matters, and  
 4 other marina activities that don't entail  
 5 dredging.  
 6 Q. Are you familiar with  
 7 Delaware's coastal zone laws?  
 8 A. No.  
 9 Q. In the performance of your  
 10 duties as a New Jersey regulator, do you  
 11 interact with Delaware officials?  
 12 A. Occasionally.  
 13 Q. In what context has that  
 14 happened?  
 15 A. It occurred in -- I attended  
 16 some oyster management meetings that were  
 17 involving the lower estuary, and there  
 18 were biologists from the State of  
 19 Delaware there as well as New Jersey.  
 20 Q. Anything else that you can  
 21 recall?  
 22 A. Yes. In the -- in  
 23 prescoping meetings that were held for  
 24 the BP LNG facility, there were members

20

1 of the State of Delaware present in some  
 2 of those meetings.  
 3 Q. You call these prescoping  
 4 meetings. Can you explain what that  
 5 means?  
 6 A. As part of the -- the FERC  
 7 process for seeking an application, the  
 8 FERC has -- directs applicants to engage  
 9 various regulatory agencies in -- in  
 10 meetings in advance of the application.  
 11 And they -- they have these  
 12 meetings in order to basically present  
 13 the project before it's -- before it's  
 14 formally applied for or during the early  
 15 process of application.  
 16 Q. Do you remember who you met  
 17 with at -- from the State of Delaware?  
 18 A. No, I don't.  
 19 Q. About when would that have  
 20 happened?  
 21 A. I -- I don't recall for  
 22 certain, but it had to be over two years  
 23 ago.  
 24 Q. How many meetings?

21

1 A. What kind of meetings?  
 2 Q. Prescoping meetings.  
 3 A. I'm not certain, but there  
 4 had to be at least -- I -- I -- at least  
 5 three.  
 6 Q. Were you present at each of  
 7 those meetings?  
 8 A. Yes.  
 9 Q. Were there other meetings  
 10 that you're aware of that you were not in  
 11 attendance at?  
 12 A. No, I'm not aware of  
 13 meetings that I wasn't attending -- that  
 14 I didn't attend.  
 15 Q. What was the nature of  
 16 Delaware's involvement in those  
 17 prescoping meetings?  
 18 A. As I recall, which was  
 19 several years ago, I believe they had  
 20 biologist staff there and people who  
 21 administer their coastal zone rules,  
 22 listening to the presentation of the  
 23 applicant.  
 24 Q. Did you speak with any of

22	<p>1 these people from Delaware?</p> <p>2 A. I may have.</p> <p>3 Q. Who was it that you would</p> <p>4 have spoken to?</p> <p>5 A. If I had spoken to any of</p> <p>6 them, it would have probably been one of</p> <p>7 their fisheries biologists.</p> <p>8 Q. Can you recall his or her</p> <p>9 name?</p> <p>10 A. No, I don't recall.</p> <p>11 Q. Were there any discussions</p> <p>12 at that meeting about Delaware's</p> <p>13 regulatory jurisdiction over the BP</p> <p>14 project?</p> <p>15 A. No, there weren't.</p> <p>16 Q. When you say "Not a word,"</p> <p>17 do you mean not at the meetings in which</p> <p>18 you were in attendance?</p> <p>19 A. Oh, I'm sorry. I said, no,</p> <p>20 there were not --</p> <p>21 Q. I thought you said "Not a</p> <p>22 word." If I misunderstood, please</p> <p>23 correct me.</p> <p>24 A. No, there were not. There</p>	24	<p>1 project?</p> <p>2 A. I don't know. I mean, I --</p> <p>3 they -- they had staff there.</p> <p>4 Q. Their environmental staff</p> <p>5 were there?</p> <p>6 A. Correct.</p> <p>7 Q. Do you remember how many</p> <p>8 people were there from Delaware?</p> <p>9 A. I think there may have been</p> <p>10 two.</p> <p>11 Q. And do you remember the name</p> <p>12 of either person?</p> <p>13 A. No, I don't.</p> <p>14 Q. I gather that you're</p> <p>15 familiar with what the known as the 12</p> <p>16 Mile Circle?</p> <p>17 A. Yes, I --</p> <p>18 Q. What is your understanding</p> <p>19 of the 12 Mile Circle?</p> <p>20 A. The extent of my</p> <p>21 understanding is that there's a circle</p> <p>22 that's circumscribed around the State of</p> <p>23 Delaware that comes up to New Jersey</p> <p>24 shore that -- that reaches the New Jersey</p>
23	<p>1 were no discussions.</p> <p>2 Q. Okay.</p> <p>3 And when you say there were</p> <p>4 no discussions, I assume you mean no</p> <p>5 discussions at the meetings that you</p> <p>6 attended.</p> <p>7 A. Correct.</p> <p>8 Q. Were there small breakout</p> <p>9 groups? Were there small discussions</p> <p>10 that weren't in the full group of</p> <p>11 attendees?</p> <p>12 A. The meeting that I attended,</p> <p>13 one of the meetings was a fishery summit</p> <p>14 and that -- that -- it was represented by</p> <p>15 individuals from New Jersey and Delaware</p> <p>16 and their -- their -- and staff, like</p> <p>17 fisheries biologists.</p> <p>18 So that was -- that was the</p> <p>19 meeting in which I recall Delaware being</p> <p>20 present.</p> <p>21 Q. Okay.</p> <p>22 So is it fair to say that</p> <p>23 Delaware was interested in the</p> <p>24 environmental effects of the proposed BP</p>	25	<p>1 mean and low waterline.</p> <p>2 Q. How did you come to that</p> <p>3 understanding?</p> <p>4 A. Well, for one, it's depicted</p> <p>5 on maps, state maps. That's how I</p> <p>6 visually saw where the line was.</p> <p>7 And then later, I have been</p> <p>8 -- been informed of it by -- by counsel.</p> <p>9 Q. When were you so informed by</p> <p>10 counsel?</p> <p>11 A. I don't remember the exact</p> <p>12 date, but sometime -- like, it had to be</p> <p>13 after -- after February of '05.</p> <p>14 Q. February of?</p> <p>15 A. 2005.</p> <p>16 Q. Before February 2005, were</p> <p>17 you aware of the 12 Mile Circle?</p> <p>18 A. No, I wasn't.</p> <p>19 Can I -- can I elaborate on</p> <p>20 that?</p> <p>21 Q. Sure.</p> <p>22 A. I was aware -- prior to</p> <p>23 February 2005, I was aware that the</p> <p>24 Delaware state line was at the New Jersey</p>

26	<p>1 mean low waterline, but I didn't really                  2 -- I didn't really know about the circle.                  3 I just knew that the state line had been                  4 -- was landward toward New Jersey.                  5 Q. That brings us to my next                  6 question.                  7 A. Okay.                  8 Q. What is your understanding                  9 of the boundary between New Jersey and                  10 Delaware within the 12 Mile Circle?                  11 A. It's really not -- my -- my                  12 understanding is limited, but I just                  13 understand that there is some -- a --                  14 some charter that dates back into the                  15 1800s that established this 12-mile                  16 radius.                  17 And apparently everything on                  18 one side of that line is State of                  19 Delaware; and on the other side, it's the                  20 State of New Jersey.                  21 Q. Do you know where the                  22 boundary lies between New Jersey and                  23 Delaware?                  24 A. I only -- I don't know the</p>	28	<p>1 Delaware River somewhere.                  2 Let me try asking again, do                  3 you know where in the Delaware River lies                  4 the boundary between New Jersey and                  5 Delaware?                  6 A. At what discrete locale?                  7 Q. Well, let's give an example.                  8 At the location of the BP project.                  9 A. I -- I know that at the BP                  10 project -- or I believe, based on maps,                  11 that at the BP site, the Crown Landing                  12 site, that the -- the state line between                  13 New Jersey and Delaware lies at the mean                  14 low waterline.                  15 I believe I said that                  16 earlier. I'm not --                  17 Q. And that would be the mean                  18 low waterline on the New Jersey shore?                  19 A. Correct.                  20 Q. When did you come to that                  21 understanding?                  22 A. I came to that understanding                  23 several years ago.                  24 Q. Was it before or after BP</p>
27	<p>1 specifics of where the boundary lies. I                  2 -- I know -- I've just seen it on a map.                  3 Q. Can you -- what is your                  4 understanding -- well, let me back up.                  5 Is the boundary between New                  6 Jersey and Delaware within the 12 Mile                  7 Circle somewhere in the Delaware River?                  8 A. Yes.                  9 Q. Do you have an understanding                  10 of where in the Delaware River the                  11 boundary is?                  12 A. Not really. It's a 12-mile                  13 radius, so that's a huge area. I mean,                  14 it's a pretty large area. I don't --                  15 along -- and it's a radial line, so I                  16 don't know where that boundary is at                  17 along its entire breadth.                  18 Q. So is it your understanding                  19 that the Delaware River flows in the                  20 shape of a circle?                  21 A. No.                  22 Q. You said earlier that your                  23 understanding was that the boundary                  24 between New Jersey and Delaware is in the</p>	29	<p>1 applied -- or before or after BP proposed                  2 its Crown Landing project?                  3 MS. CONKLIN: I'm going to                  4 ask you to clarify the term                  5 "proposed."                  6 BY MR. ATTAWAY:                  7 Q. Well, let me just try the                  8 same question again.                  9 When did you come to the                  10 understanding that the boundary between                  11 New Jersey and Delaware is at the mean                  12 low waterline on the New Jersey shore?                  13 A. I initially came to                  14 understand that in approximately 2001.                  15 Q. How did that come about?                  16 A. I was involved in another                  17 project that -- in -- I was involved in a                  18 project called the DuPont Chambers Works                  19 facility.                  20 Q. What was the nature of that                  21 project?                  22 A. That was an environmental                  23 remediation project.                  24 Q. What sort of remediation?</p>

30

1 A. There was contaminated  
2 material that had originated on the  
3 upland and had migrated waterward into  
4 the river.  
5 Q. And what sort of remediation  
6 was done to correct that?  
7 A. There was dredging performed  
8 and excavation.  
9 Q. How was the boundary between  
10 New Jersey and Delaware relevant to that  
11 remediation project?  
12 A. It was relevant in that  
13 apparently that area is also within the  
14 12 Mile Circle and, therefore, the -- the  
15 State of Delaware's jurisdiction was at  
16 the mean low waterline of that locality.  
17 Q. Did you talk to Delaware  
18 officials in the course of reviewing the  
19 remediation project for Chamber Works?  
20 A. Yes.  
21 Q. Who did you talk to?  
22 A. I don't recall.  
23 Q. What was the nature of your  
24 discussions?

31

1 A. I -- I inquired as to  
2 whether Delaware would -- had any  
3 interest in this project, because it was  
4 partially in the State of Delaware.  
5 Q. What was Delaware's  
6 response?  
7 A. They told me they had no  
8 interest in the project.  
9 Q. Did they say why?  
10 A. No.  
11 Q. You don't remember who told  
12 you that?  
13 A. Someone in their coastal  
14 management program.  
15 Q. Do you know if Delaware has  
16 ever issued a permit for any activities  
17 at the Chamber Works facility?  
18 A. The only thing I'm aware of  
19 is that they issued some kind of riparian  
20 instrument, but I'm not aware of any  
21 permits that were issued.  
22 Q. So you've been in the office  
23 of dredging for about five years; is that  
24 correct?

32

1 A. Yeah.  
2 Q. Where geographically are the  
3 projects that you review in that  
4 position?  
5 A. The -- our office is  
6 regionally organized and I cover the  
7 Delaware River from Trenton to Cape May  
8 and from Cape May along the Eastern coast  
9 seaboard to approximately -- to Atlantic  
10 County.  
11 Q. Okay.  
12 And -- so basically the  
13 Delaware River and the Atlantic coast; is  
14 that fair to say?  
15 A. And part of the Atlantic  
16 coast.  
17 Q. Part of the Atlantic coast.  
18 I don't know where Atlantic County is.  
19 A. Atlantic City would be --  
20 Q. Oh, okay. I know where that  
21 is.  
22 A. -- a good reference point.  
23 Q. So largely, speaking  
24 geographically, it looks like your duties

33

1 are focused in the Delaware River.  
2 A. Well, there's a significant  
3 amount of projects that I get that are on  
4 the Eastern seaboard, so I'm not limited  
5 to Delaware River.  
6 Q. Proportionally, is the  
7 greater focus of your efforts inside or  
8 outside of the 12 Mile Circle?  
9 A. Outside.  
10 Q. Is there a lot more  
11 development outside the 12 Mile Circle  
12 than inside?  
13 A. It just happens that most of  
14 the projects I get are outside of the 12  
15 Mile Circle.  
16 Q. But you would get any  
17 project that involved dredging; is that  
18 correct?  
19 A. Within that geographic area,  
20 yes.  
21 Q. Within the office of  
22 dredging, can you just briefly describe  
23 the chain of command from yourself up to  
24 the top?

34	<p>1 A. Yes. We have a chief. Her 2 name is Suzanne Dietrick. She's my 3 supervisor. 4 Q. So you report directly to 5 Miss Dietrick? 6 A. Yes. 7 Q. How long has that been the 8 case? 9 A. Since she became chief, 10 which has been approximately four years. 11 Q. And before Miss Dietrick 12 became chief, who did you report to? 13 A. Lawrence Baler, B-A-I-E-R. 14 Q. Was he also the chief? 15 A. Yes, preceded Suzanne 16 Dietrick. 17 Q. I gather he was the chief 18 when you came to ODST? 19 A. Correct. 20 Q. And when you came, you 21 reported directly to him? 22 A. Yes, I did. 23 Q. Are there other people that 24 report directly to the chief in ODST?</p>	36	<p>1 between the states within the 12 Mile 2 Circle shall be at the low watermark as 3 it existed in 1934? 4 A. I'm aware that -- the 5 instrument known as the Compact of 1905. 6 Q. This would be different. 7 Are you aware of anything? 8 A. I'm only aware of the 9 Compact of 1905 and that there is, I 10 believe, a second Supreme Court ruling or 11 finding that -- after 1905, but I haven't 12 read that, so I'm -- I don't know the 13 details of it. 14 Q. Are you familiar with the 15 structures that exist in the Delaware 16 River that extend from the New Jersey 17 shoreline into Delaware territory? 18 A. I imagine there's thousands 19 of them. I -- can you be more specific? 20 Q. What do you base that 21 understanding on? 22 A. Well, did you say from New 23 Jersey into Delaware? 24 Q. Right.</p>
35	<p>1 A. There are four other members 2 of staff besides myself. 3 Q. Are they all, if I can 4 remember your title -- was it principal 5 environmental specialist? 6 A. I'm not aware of what each 7 individual's title is. 8 Q. Do they perform similar 9 duties or different duties? 10 A. Similar. 11 Q. Who are the other people in 12 ODST? 13 A. Mark Davis; Jeff Thein, 14 T-H-E-I-N; Gary Nickerson -- I'm sorry -- 15 and myself, so a total of five including 16 my section chief. 17 Q. Are you aware of an 18 agreement between New Jersey and Delaware 19 establishing the boundary between the 20 states? 21 A. Can you be more specific? 22 Q. Are you aware of an 23 interstate compact between New Jersey and 24 Delaware that specifies that the boundary</p>	37	<p>1 A. Oh, I'm sorry. I thought 2 you meant from New Jersey into the river. 3 Q. In other words, similar to 4 the proposed Crown Landing facility, it 5 would be a structure -- for example, a 6 wharf or a pier -- that starts on the 7 upland in New Jersey and extends out in 8 the water and crosses the boundary line 9 and goes into Delaware beyond the mean 10 low waterline. 11 A. I -- I understand now. 12 There is a cogeneration pier 13 that's called, I believe, Keystone that's 14 directly upriver of the Crown Landing BP 15 site. 16 Q. Okay. 17 Did you have any involvement 18 in issuing permits to Keystone? 19 A. No, I didn't. 20 Q. Any other structures that 21 you know of? 22 A. Yes. I am aware of the 23 DuPont Chambers Works facility that I 24 spoke of earlier that resulted in a</p>

<p style="text-align: right;">38</p> <p>1 structure and a bulkhead that's in -- in 2 the river. 3 Q. When were those structures 4 installed? 5 A. The latter -- the DuPont 6 facility? 7 Q. Right. 8 A. I believe the permit was 9 issued in around 2001. 10 Q. Do you know what that permit 11 was for? 12 A. Yes. That was for the 13 remediation of contamination, the removal 14 of contaminated soil and sediment and for 15 the construction of a sheet pile bulkhead 16 in the Delaware River. And there was 17 some other upland cleanup also involved 18 in that. 19 Q. Which I assume would have 20 been in New Jersey? 21 A. Yes. 22 Q. Not in Delaware? 23 Any other structures? 24 MS. CONKLIN: Counsel, I'm</p>	<p style="text-align: right;">40</p> <p>1 gone over this ground a little bit, but 2 -- I take it you have occasion to have an 3 understanding of New Jersey's and 4 Delaware's regulatory authority within 5 the 12 Mile Circle. 6 A. My understanding of the 7 regulatory authority is limited to where 8 the state boundaries are. 9 Q. What is your understanding 10 of the effect of the state boundary on 11 each state's respective regulatory 12 authority? 13 A. Can you say that again? 14 Q. Okay. 15 What is your understanding 16 of the effect of the state boundary on 17 Delaware's and New Jersey's regulatory 18 authority? 19 A. My understanding is that our 20 regulations, the Coastal Zone Management 21 Rules, start with jurisdiction; and 22 jurisdictions are based on boundaries, so 23 activities falling within given 24 boundaries are subject to various, you</p>
<p style="text-align: right;">39</p> <p>1 sorry. I've lost my train of 2 thought. Are we talking about in 3 the entire Delaware River or -- 4 MR. ATTAWAY: Within the 12 5 Mile Circle. 6 MS. CONKLIN: Thank you. 7 THE WITNESS: Thanks. 8 They're the only two 9 projects that I'm aware of. 10 BY MR. ATTAWAY: 11 Q. So as far as you know, 12 currently, there are two structures 13 extending from New Jersey into Delaware 14 within the 12 Mile Circle? 15 A. Yes, to my knowledge. 16 Q. Are you aware of any other 17 structures that might have existed at a 18 previous point in time, but no longer 19 exist? 20 A. There could be some derelict 21 piers, but I don't have any direct 22 knowledge of them. 23 Q. In the context of your job 24 as a regulator -- again, I know we've</p>	<p style="text-align: right;">41</p> <p>1 know -- the various regulations. 2 Q. Is it your understanding 3 that Delaware would have regulatory 4 authority on its side of the boundary? 5 A. I don't really -- yeah, I 6 imagine. I don't really know how 7 Delaware's Coastal Zone Management Rules 8 are structured, but generally speaking, 9 we -- we establish jurisdiction based on 10 boundaries. 11 Q. Okay. 12 And has that been your 13 understanding throughout your tenure at 14 DEP, both at the ODST and the Land Use 15 Department? 16 A. Generally, I have -- the 17 projects that I've been involved with 18 were always in New Jersey, with the 19 exception of the DuPont Chambers Works 20 and this project, so I have not 21 encountered boundaries prior to that. 22 I'd like to clarify 23 something, please? 24 Q. Sure.</p>

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1       **A. When I spoke of boundaries**  
2 **and jurisdictions, it's always been my**  
3 **understanding that jurisdictions are**  
4 **established based on a state limit.**  
5       **But after I came to**  
6 **understand the Compact of 1905, it was**  
7 **brought to my attention that New Jersey's**  
8 **jurisdiction was beyond what was defined**  
9 **as the state boundary.**  
10       **Q. Okay.**  
11       **When did you first become**  
12 **aware of the Compact of 1905?**  
13       **A. Sometime after February of**  
14 **2005.**  
15       **Q. Who brought that to your**  
16 **attention?**  
17       **A. Our attorney -- our Attorney**  
18 **General's office.**  
19       **Q. When did that occur?**  
20       **A. Probably March or -- March**  
21 **or April of 2005.**  
22       **Q. So what is your**  
23 **understanding of how the compact of the**  
24 **-- what is your understanding of the**

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1 **effect the Compact has on New Jersey's**  
2 **jurisdiction within the 12 Mile Circle?**  
3       **A. Well, I'm not a lawyer, and**  
4 **the Compact is a legal document, so in**  
5 **general terms, I understood or -- that it**  
6 **-- it establishes that New Jersey has --**  
7 **have rights to govern activities that**  
8 **originate from its shoreline that enter**  
9 **into the -- that go within -- within and**  
10 **encompass the riparian areas.**  
11       **Q. What is your understanding**  
12 **of the effect of the Compact on**  
13 **Delaware's regulatory authority within**  
14 **the 12 Mile Circle?**  
15       **A. I have limited understanding**  
16 **of Delaware's interest in it.**  
17       **Q. Please explain whatever the**  
18 **limits of your understanding are.**  
19       **A. Well, in general, I**  
20 **understand the same thing applies to**  
21 **projects originating on the Delaware side**  
22 **of the river.**  
23       **So if a project is located**  
24 **on -- on the opposite shoreline, like on**

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1 **Wilmington, and it extends riverward,**  
2 **then I -- I believe that Delaware has**  
3 **jurisdiction over riparian areas that**  
4 **extend out from that shoreline.**  
5       **Q. What is your understanding**  
6 **of the word "riparian"?**  
7       **A. As I understand it, it -- it**  
8 **means areas flowed or formerly flowed by**  
9 **tide water that originate from a bank or**  
10 **a shoreline.**  
11       **Q. When did you come to that**  
12 **understanding?**  
13       **A. I don't -- I don't know**  
14 **exactly when.**  
15       **Q. Was it recently?**  
16       **A. No.**  
17       **Q. Approximately what year?**  
18       **A. When I began early in my**  
19 **career doing -- reviewing waterfront**  
20 **development permits.**  
21       **Q. So riparian is part of the**  
22 **jargon that -- was riparian part of the**  
23 **jargon that you worked with at that time?**  
24       **A. Yes.**

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1       **Q. And in what context did the**  
2 **word "riparian" come up?**  
3       **A. In the context of reviewing**  
4 **waterfront development permits,**  
5 **applicants are required to demonstrate**  
6 **that they have ownership of those**  
7 **riparian areas.**  
8       **So, therefore, it's a**  
9 **requirement that the -- that an applicant**  
10 **showed that they have an instrument,**  
11 **which is a grant, lease, or license.**  
12       **So we frequently use**  
13 **riparian -- in virtually all of our**  
14 **waterfront development permits, there is**  
15 **language and reference to the Bureau of**  
16 **Tidelands and riparian rights.**  
17       **Q. So you mentioned riparian**  
18 **grants. Is that what you're referring**  
19 **to?**  
20       **A. Riparian instruments, which**  
21 **include grants, leases, and licenses.**  
22       **Q. Okay.**  
23       **Are you or have you ever**  
24 **been involved in issuing the riparian**

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1 instruments?  
 2 A. No, I don't get involved in  
 3 that.  
 4 Q. In reviewing the  
 5 applications for a riparian instrument?  
 6 A. No.  
 7 Q. Who reviews and approves or  
 8 denies an application for a riparian  
 9 instrument?  
 10 A. The Bureau of Tidelands.  
 11 Q. So aside from the  
 12 requirement that -- well, let me just  
 13 make sure I understand you.  
 14 If I understand your  
 15 testimony, you said that before you can  
 16 issue or your department can issue a  
 17 permit under the waterfront development  
 18 law or CAFRA or the other wetlands laws,  
 19 the applicant first must get a riparian  
 20 instrument from the Bureau of Tidelands.  
 21 Did I understand that  
 22 correctly or not?  
 23 A. Not exactly.  
 24 Q. Okay.

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1 If you could clarify it for  
 2 me, I'd appreciate it.  
 3 A. A requirement of approval  
 4 for waterfront development permits is  
 5 that the applicant must have applied for  
 6 and subsequently receive a riparian  
 7 instrument from the Bureau of Tidelands.  
 8 Q. Does that mean that the  
 9 applicant has to -- the applicant could  
 10 apply for a permit from your department  
 11 with a tidelands application on file that  
 12 had not yet been acted on. Is that what  
 13 you're saying?  
 14 A. That's correct.  
 15 Q. Okay.  
 16 A. Yes.  
 17 Q. And then in order for your  
 18 permit to be valid, the riparian  
 19 instrument has to be granted.  
 20 A. Yes.  
 21 Q. And why is that?  
 22 A. That's -- that's the way our  
 23 laws are written.  
 24 Q. As a regulator, I -- for the

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1 past 15 years in New Jersey or perhaps  
 2 longer, I gather you have an  
 3 understanding of the logic behind that  
 4 rule. If you do have an understanding,  
 5 I'd like to hear it.  
 6 A. That's the rule. I mean --  
 7 I -- I presume that it's basically  
 8 designed to assure that someone owns the  
 9 area in which the work is being  
 10 authorized to occur.  
 11 Q. So is the purpose of getting  
 12 a riparian instrument to give the permit  
 13 applicant property rights in the land on  
 14 which the activities proposed in the  
 15 permit application will be conducted?  
 16 MS. CONKLIN: Excuse me.  
 17 I'm sorry. We're not establishing  
 18 a foundation here for this  
 19 question.  
 20 He -- he keeps saying that  
 21 he knows that the law requires  
 22 this, but now you're asking him  
 23 what the -- what the law means and  
 24 I'm going to have to object to

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1 that.  
 2 Maybe -- you want to try and  
 3 rephrase that?  
 4 MR. ATTAWAY: Okay.  
 5 BY MR. ATTAWAY:  
 6 Q. What right does the riparian  
 7 instrument give the recipient?  
 8 A. It gives them a right to  
 9 conduct the authorized activity in the  
 10 subject area.  
 11 Q. The riparian instrument  
 12 does.  
 13 A. Yes.  
 14 Q. Can they conduct an activity  
 15 that would require a permit from your  
 16 department without applying for a permit  
 17 from your department?  
 18 A. I don't understand that.  
 19 Q. If an applicant has a  
 20 riparian instrument, can they just go off  
 21 and do anything they want on those -- on  
 22 the lands covered by the riparian  
 23 instrument?  
 24 A. If the -- if it's a

50	<p>1 regulated activity pursuant to the                  2 waterfront development rules, then it                  3 would require a permit to be done.                  4 Q. Okay.                  5 For example, BP could get a                  6 riparian instrument for the lands                  7 involved, but would that, without more,                  8 authorize them under New Jersey's laws to                  9 build a proposed Crown Landing project?                  10 A. No. They would also need a                  11 waterfront development permit and                  12 whatever other requisite state and -- and                  13 local permits are required.                  14 Q. Okay.                  15 Is it your understanding                  16 that there are multiple such permits that                  17 would be required?                  18 A. In what case?                  19 Q. In the BP case.                  20 A. Yes.                  21 Q. Are you familiar with the                  22 phrase "riparian rights"?                  23 A. Just generally.                  24 Q. And what is your</p>	52	<p>1 In reviewing and approving                  2 permits in the Land Use Division where                  3 you were formerly and in the ODST where                  4 you are currently, did you have occasion                  5 to assess the scope of someone's riparian                  6 rights in evaluating the permit                  7 application?                  8 A. Occasionally.                  9 Q. In what context?                  10 A. For instance, if someone was                  11 proposing a pier or to dredge in the                  12 water, we would ask that they show us the                  13 footprint of their -- their -- of their                  14 instrument area, the leased or licensed                  15 area.                  16 So there would be a                  17 depiction in the water or on a plan of                  18 this riparian area -- sometimes they                  19 refer to it as riparian rights area or                  20 riparian grant area -- and we would look                  21 at the activity within that area to be                  22 sure that the work was within the subject                  23 area.                  24 Q. Aside from making sure that</p>
51	<p>1 understanding?                  2 A. Well, I've always -- I                  3 believe that riparian rights are clumped                  4 under the term of instruments, which is a                  5 lease, grant, or a license.                  6 Q. What kind of right is a                  7 riparian right in your understanding as a                  8 regulator?                  9 A. I don't administer                  10 activities. I don't administer the                  11 riparian instruments, so I'm not familiar                  12 with what kind of rights would be                  13 associated with an instrument.                  14 I believe that they are                  15 listed in a specific instrument, whether                  16 it be a lease, license, or a grant, so                  17 the activities that are authorized under                  18 those instruments are subject to the                  19 Bureau of Tidelands and I don't -- we                  20 don't regularly see the final product of                  21 what comes out of a riparian instrument.                  22 When I say "we," I mean our                  23 office, the Office of Dredging &amp; --                  24 Q. Right.</p>	53	<p>1 the permit application concerned only the                  2 geographic areas that were covered by the                  3 riparian instrument, did you have any                  4 other occasion to look at or think about                  5 riparian rights?                  6 A. Seldom. Principally what we                  7 looked at was the footprint of where the                  8 work was proposed with respect to that                  9 riparian instrument.                  10 Q. In assessing the activities                  11 that were proposed in the permit                  12 application, did you ever have occasion                  13 to consider the intersection of those                  14 activities and -- and riparian rights,                  15 aside, again, from making sure that the                  16 activities are going to be conducted                  17 geographically within the scope of the                  18 riparian instrument?                  19 A. There may have been an                  20 occasion where there was two property --                  21 two properties abutting each other in the                  22 water that had dots that were either                  23 overlapping or near each other in which                  24 one party disputed the extent of the</p>

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1 riparian right of the other party.  
 2 And -- and we may have -- on  
 3 occasion, I may have tried to look at the  
 4 riparian language, but in most cases --  
 5 in all those cases, it was always  
 6 referred to the Bureau of Tidelands for  
 7 resolution.  
 8 Q. So when you say that one  
 9 party with a wharf would perhaps dispute  
 10 the riparian rights of another owner of  
 11 shore land, do you mean that they would  
 12 dispute the scope of their riparian  
 13 instrument geographically?  
 14 A. Either the scope or the  
 15 activity occurring within one of those  
 16 areas.  
 17 Q. Have you ever heard the  
 18 phrase "riparian jurisdiction"?  
 19 A. Yes.  
 20 Q. When did you first hear  
 21 that?  
 22 A. I don't recall.  
 23 Q. Do you recall a year?  
 24 A. No.

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1 Q. Was it recently?  
 2 A. No. I -- that's a term  
 3 that, if I've heard it, it's been used  
 4 intermingled with riparian grants or  
 5 riparian claims or riparian rights, so,  
 6 you know, I don't have a direct recall of  
 7 that specific term.  
 8 Q. Is that a term that you work  
 9 with regularly in your duties as a  
 10 regulator?  
 11 A. Riparian jurisdiction? Not  
 12 really, no.  
 13 Q. So is it fair to say that  
 14 you might have heard the term once or  
 15 twice, but it's not something that  
 16 impacts your job in any real way?  
 17 And when I say "your job," I  
 18 mean your day-to-day performance of your  
 19 activities.  
 20 A. I don't know how to answer  
 21 that question, because I believe riparian  
 22 jurisdiction has been referred to in a  
 23 broad manner with making other references  
 24 to riparian claims or in areas owned by

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1 the State, so I -- I don't have a --  
 2 there's not a clear distinction in where  
 3 that term applied versus the other -- the  
 4 other issues, the riparian instruments  
 5 and riparian claims.  
 6 Q. What is your understanding  
 7 of what the term means?  
 8 MS. CONKLIN: Which term?  
 9 MR. ATTAWAY: Riparian  
 10 jurisdiction. Thanks.  
 11 THE WITNESS: I don't really  
 12 -- I don't apply that, so I don't  
 13 really have an opinion on what it  
 14 means -- or an understanding, I  
 15 should say, of what it means.  
 16 BY MR. ATTAWAY:  
 17 Q. You mentioned the 1905  
 18 Compact earlier, and I believe you said  
 19 that it was brought to your attention in  
 20 March or April of 2005.  
 21 Has your department -- well,  
 22 okay. Has ODSST ever relied on the 1905  
 23 Compact to assert that Delaware lacks  
 24 jurisdiction to regulate a project that

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1 begins in New Jersey and extends into  
 2 Delaware?  
 3 MS. KELLY: I'm going to  
 4 object to that. That's kind of  
 5 vague and -- you're talking about  
 6 his specific department?  
 7 MR. ATTAWAY: Yes.  
 8 MS. KELLY: Okay.  
 9 THE WITNESS: Can you ask me  
 10 that again? Can you repeat that?  
 11 MR. ATTAWAY: Sure. I'd be  
 12 happy to.  
 13 BY MR. ATTAWAY:  
 14 Q. Has ODSST ever relied on the  
 15 1905 Compact to assert that Delaware  
 16 lacks regulatory authority over a project  
 17 extending from New Jersey into Delaware?  
 18 A. No.  
 19 Q. Do you know whether the DEP  
 20 or anyone else in DEP has relied on the  
 21 1905 Compact to assert that Delaware  
 22 lacks regulatory authority over a project  
 23 that extends from New Jersey into  
 24 Delaware?

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1       **A. Well, I believe that the**  
 2 **Division of Law has asserted -- asserted**  
 3 **that through their lawsuit, and I believe**  
 4 **the Bureau of Tidelands has made that**  
 5 **assertion that the Compact -- that**  
 6 **Delaware lacks jurisdiction to regulate a**  
 7 **specific project.**  
 8       **Q. I'll take those one at a**  
 9 **time.**  
 10       **When did the Division of Law**  
 11 **assert that Delaware lacked such**  
 12 **authority?**  
 13       **A. When they provided guidance**  
 14 **back to me that included the Compact.**  
 15       **Q. And that was in March or**  
 16 **April of 2005, as far as you can recall?**  
 17       **A. Yeah, I believe that's when**  
 18 **it was.**  
 19       **Q. What about the Bureau of**  
 20 **Tidelands? When did they assert that**  
 21 **Delaware lacks such jurisdiction?**  
 22       **A. Approximately the same time.**  
 23       **Q. Do you know whether the**  
 24 **Division of Law or the Bureau of**

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1 **Tidelands ever asserted that claim before**  
 2 **March or April of 2005?**  
 3       **A. I don't know.**  
 4       **Q. You have no knowledge of --**  
 5 **you've never heard of such a claim.**  
 6       **MS. CONKLIN: Wait a minute.**  
 7       **You just -- I'm sorry. Are we**  
 8 **talking about his knowledge of**  
 9 **when the Division of Law ever**  
 10 **asserted this claim; is that the**  
 11 **question?**  
 12       **MR. ATTAWAY: That is.**  
 13       **THE WITNESS: I -- I**  
 14 **wouldn't -- you know, I'm not**  
 15 **aware of when they have -- if they**  
 16 **have done that in the past.**  
 17 **BY MR. ATTAWAY:**  
 18       **Q. Okay.**  
 19       **And you're similarly not**  
 20 **aware whether or not the Bureau of**  
 21 **Tidelands has asserted that Delaware**  
 22 **lacks jurisdiction within the 12 Mile**  
 23 **Circle in Delaware?**  
 24       **A. I'm not aware.**

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1       **Q. Are you aware of any other**  
 2 **New Jersey governmental entity that has**  
 3 **made that claim?**  
 4       **A. No.**  
 5       **MR. ATTAWAY: This would be**  
 6 **a good time to take a break for**  
 7 **me.**  
 8       **MS. CONKLIN: Sure.**  
 9       **MR. ATTAWAY: If you guys**  
 10 **are ready.**  
 11       **MS. CONKLIN: Sure.**  
 12       \* \* \*  
 13       **(Whereupon, a recess was**  
 14 **taken from 10:37 a.m. until 10:49**  
 15 **a.m.)**  
 16       \* \* \*  
 17 **BY MR. ATTAWAY:**  
 18       **Q. I want to ask some questions**  
 19 **about the Crown Landing project now.**  
 20       **Just --**  
 21       **MS. CONKLIN: Counsel, I'm**  
 22 **terribly sorry, but when we talk**  
 23 **about Crown Landing, we're also**  
 24 **talking about the project known as**

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1       the -- also known as the BP  
 2 project, the LNG project, which is  
 3 currently pending before -- an  
 4 application which is currently  
 5 pending before DEP; correct?  
 6       **MR. ATTAWAY: That's**  
 7 **correct.**  
 8       **The BP project and Crown**  
 9 **Landing project, I use**  
 10 **interchangeably; but if there's**  
 11 **one that you prefer to use, we can**  
 12 **take one and stick with it.**  
 13       **THE WITNESS: No, we can**  
 14 **just refer to it as the Crown**  
 15 **Landing.**  
 16       **MR. ATTAWAY: Okay.**  
 17 **BY MR. ATTAWAY:**  
 18       **Q. So what is your**  
 19 **understanding of the nature and scope of**  
 20 **the Crown Landing project?**  
 21       **A. Well, I understand that**  
 22 **there's an application that's been**  
 23 **pending since January 2005 and it's for a**  
 24 **container facility to receive liquefied**

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1 natural gas ships that are to make port  
 2 there and off-load their contents, which  
 3 is then distributed through several gas  
 4 pipelines, into the gas pipeline system.  
 5 Q. Does part of the proposed  
 6 project extend into Delaware?  
 7 A. Yes.  
 8 Q. What is your understanding  
 9 of the portion of the project that  
 10 extends into Delaware?  
 11 A. That there is a -- a pier  
 12 proposed within that locality and that  
 13 there's dredging in that location, and I  
 14 understand that the ship would be --  
 15 would be docked there.  
 16 Q. How is the LNG off-loaded?  
 17 A. It's pumped off by cryogenic  
 18 -- it's a liquid, so it's pumped off in  
 19 -- into unloading arms that contain --  
 20 that would contain a cryogenic pipe and  
 21 which the pipe makes landfall.  
 22 And then the -- the product  
 23 is then pumped into tanks that would be  
 24 -- or proposed to be located on the site.

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1 Q. Describe the cryogenic  
 2 unloading arms.  
 3 A. They're a mechanical arm,  
 4 like a boom or a derrick. It's a  
 5 mechanical arm that would extend out from  
 6 the dock to the -- to the ship, and there  
 7 is a connection that's made between the  
 8 -- between the arm and the ship.  
 9 And then the material -- the  
 10 -- the liquefied natural gas would be  
 11 pumped up into the arms and then conveyed  
 12 into the pipeline that would extend along  
 13 the pier onto the land.  
 14 Q. Is there any processing  
 15 equipment on the pier to enable this to  
 16 happen?  
 17 A. I don't believe so.  
 18 Q. What -- just give me a  
 19 description of what the portion of the  
 20 pier will look like -- the portion that's  
 21 used to unload the LNG.  
 22 A. It would be a linear  
 23 structure, pile supported.  
 24 Q. Any structures on the end of

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1 it?  
 2 A. There would be a -- a welded  
 3 cryogenic pipeline with a concrete trough  
 4 that would contain any spilled or lost  
 5 product. That would extend along the  
 6 length of the pier to the terminal end at  
 7 which there would be those arms that I  
 8 just described or derricks that are swung  
 9 over to the ship, connecting the ship to  
 10 the pier.  
 11 Q. So when the ship pulls up,  
 12 it connects to the cryogenic arms?  
 13 A. Yes, as part of the  
 14 unloading process, it would.  
 15 Q. How common is it to have the  
 16 product spilled or lost, as you mentioned  
 17 when you were talking about the concrete  
 18 trough?  
 19 A. I don't know -- I don't  
 20 believe that it is common. That's a  
 21 safety precaution that the FERC is  
 22 requiring of the -- of the applicant,  
 23 Crown Landing.  
 24 Q. Okay.

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1 So the gas is in the form of  
 2 a liquid at that stage, so if any leaked  
 3 out, it would still be in the form of a  
 4 liquid; is that correct?  
 5 A. Yes.  
 6 Q. And would -- the plan is to  
 7 contain it within the concrete trough?  
 8 A. The concrete trough is  
 9 essentially -- acts as an aqueduct or  
 10 viaduct. If material -- if liquefied  
 11 natural gas spilled into it, it's a  
 12 liquid and it would just flow by gravity  
 13 in the containment trough to a sump,  
 14 where it would be recovered and pumped  
 15 into the tanks on -- that are located on  
 16 shore.  
 17 Q. Where is the sump located?  
 18 A. At the -- the landside end  
 19 of the pier.  
 20 Q. So the trough goes the full  
 21 length of the pier?  
 22 A. As proposed, the -- the  
 23 trough would -- yes, it would run the  
 24 entire length of the pipeline.

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1           Now, I don't know if it goes  
 2 the entire length of the pier, because at  
 3 some point, the pipe might come off the  
 4 pier.  
 5           Obviously, it does. It --  
 6 the trough actually would extend longer  
 7 than the pipe -- longer than the pipe  
 8 scope on the pier, because the trough  
 9 would go onto shore.  
 10         Q. So the concrete trough would  
 11 be as long as the pier, plus enough to  
 12 get it onto the upland?  
 13         A. I believe so, yes.  
 14         Q. And the theory is that the  
 15 gas -- the spilled gas would flow in  
 16 liquid form down the trough and then  
 17 would be pumped in New Jersey on the  
 18 shore into some tank?  
 19         A. Yes.  
 20         Q. Some sort of tank?  
 21         A. Yes, generally.  
 22         MR. ATTAWAY: We can go off  
 23 the record.  
 24           \* \* \*

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1           (Whereupon, a discussion was  
 2 held off the record.)  
 3           \* \* \*  
 4           (Whereupon, a document was  
 5 marked for identification as  
 6 Risilia-1.)  
 7           \* \* \*  
 8 BY MR. ATTAWAY:  
 9         Q. Okay, Mr. Risilia. You've  
 10 had a chance to look at what we've just  
 11 had marked as Risilia Exhibit No. 1?  
 12         A. Yes.  
 13         Q. And please describe your  
 14 understanding of this document?  
 15         A. The document appears to be a  
 16 deficiency letter for the Crown Landing  
 17 BP LNG application. It's dated February  
 18 4, 2005, but it's unsigned.  
 19         Q. Is there a signed version?  
 20         A. Yes.  
 21         Q. Do you notice that this has  
 22 what are called -- do you know what Bates  
 23 numbers are? It's what the lawyers use  
 24 to refer to documents that have been

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1 numbered for a particular case.  
 2         Do you see that, in the  
 3 lower right-hand corner, these are marked  
 4 NJ, for New Jersey, and it's 1036 through  
 5 1067?  
 6         A. Yes, I --  
 7         Q. Is that correct?  
 8         A. I see that.  
 9         Q. This document, I'll  
 10 represent to you, was produced to  
 11 Delaware by New Jersey in discovery, and  
 12 I realize that it doesn't have a  
 13 signature, but it is the one that we were  
 14 given by New Jersey.  
 15         Can you look at this letter  
 16 and tell whether this is the letter that  
 17 was sent?  
 18         A. It appears to be, although  
 19 the one -- the one I'm familiar with has  
 20 the signatures -- has my signature.  
 21         Q. Do you have a copy of that?  
 22         A. I don't have it with me.  
 23         Q. In your office?  
 24         A. Yes.

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1           MR. ATTAWAY: Okay. Would  
 2 you mind giving it to your  
 3 counsel?  
 4           And I would ask New Jersey  
 5 counsel to transmit to Delaware  
 6 with Bates stamps the signed  
 7 version of this letter.  
 8           I'll also represent to you  
 9 that I went to the FERC web site  
 10 and this letter is also produced  
 11 there, and I believe Delaware has  
 12 produced this in discovery with  
 13 Delaware Bates numbers, but it's  
 14 also unsigned and it doesn't have  
 15 a letterhead.  
 16           That's my recollection. I  
 17 think that's correct, but the  
 18 record is what it is.  
 19           Okay. Well, if -- if after  
 20 the deposition you discover that  
 21 this letter is not the final --  
 22 doesn't have the same text as the  
 23 signed one, I'd appreciate it if  
 24 you would tell your counsel and

70	<p>1 that counsel would let me know.                  2 THE WITNESS: Okay. Sure.                  3 MS. CONKLIN: Just for the                  4 record, we have no reason to                  5 believe that this is -- that there                  6 is any other form of this letter.                  7 This is the final form of                  8 the letter that we are aware of                  9 that Mr. Risilia did actually                  10 issue, but I'm going to instruct                  11 -- instruct you, since you are the                  12 author of the letter, if you see                  13 something in there that is                  14 unfamiliar to you or causes you --                  15 makes you pause, please let us                  16 know.                  17 But to our knowledge, this                  18 was the letter that was actually                  19 sent out.                  20 THE WITNESS: It could be                  21 that this letter was conveyed                  22 electronically initially --                  23 MS. CONKLIN: Yes.                  24 THE WITNESS: -- and</p>	72	<p>1 And I think you just said that it was; is                  2 that correct?                  3 A. Yes.                  4 Q. And it's a letter from you                  5 dated February 4th, 2005 to Mr. David                  6 Blaha, Environmental Resources Management                  7 in Annapolis, Maryland.                  8 Do I have that correct?                  9 A. Yes.                  10 Q. Who is Mr. David Blaha?                  11 A. He's the lead environmental                  12 consultant representing Crown Landing.                  13 Q. And his company is                  14 Environmental Resources Management, I                  15 gather from the letter?                  16 A. Yes.                  17 Q. Did you have frequent                  18 dealings with Environmental Resource                  19 Management?                  20 A. In the context of this                  21 application, I did, yes.                  22 Q. Yes. That's what I meant to                  23 ask. Thanks for the clarification.                  24 It's a 32-page letter; is</p>
71	<p>1 therefore you do not have the one                  2 that was signed.                  3 MS. CONKLIN: But we will                  4 get it for Delaware and we will                  5 get it for you as well.                  6 THE WITNESS: Because when                  7 we filed -- when we filed with                  8 FERC, it was done electronically,                  9 when we conveyed this letter to                  10 FERC. So that would account for                  11 it. It wasn't scanned. It was                  12 sent as a file.                  13 MS. CONKLIN: Understood.                  14 THE WITNESS: So that could                  15 be why it was not signed. I don't                  16 know for certain. I'm just --                  17 MR. ATTAWAY: Yeah, it                  18 happens. Yeah --                  19 THE WITNESS: -- offering a                  20 --                  21 MR. ATTAWAY: Okay.                  22 BY MR. ATTAWAY:                  23 Q. So -- well, one of my                  24 questions was, was this filed at FERC?</p>	73	<p>1 that correct?                  2 A. Yes.                  3 Q. Would it be fair to say that                  4 a lot of work went into producing this                  5 letter?                  6 A. Yes.                  7 Q. And it's signed by you. Was                  8 it prepared exclusively by you?                  9 A. Yes.                  10 Q. Did you get input from                  11 anyone else?                  12 A. Yes.                  13 Q. From whom?                  14 A. From my Division of Fish &amp;                  15 Wildlife, from our -- from the                  16 department's air program. I may have                  17 gotten comments -- editorial comments                  18 from my supervisor, who it went through,                  19 and other members of management who it                  20 went through before it was issued.                  21 Q. And your supervisor at the                  22 time was Miss Dietrick?                  23 A. Yes.                  24 Q. So you got comments from</p>

74	<p>1 Miss Dietrick on the letter before it 2 went out? 3 A. Yes. 4 Q. And you just mentioned some 5 other folks and I didn't catch it. I'm 6 sorry. 7 Earlier, you mentioned fish 8 and wildlife. 9 A. Yes. 10 Q. And then more recently you 11 said something else. 12 A. It went through the division 13 -- I received comments from the Division 14 of Fish &amp; Wildlife and I received 15 comments from our air program, which -- 16 let me refer -- the bureau of -- I'm 17 reading from page 28 of the document, 18 01063, the Bates number, and the program 19 is the Bureau of Air Quality Planning. 20 There may be other agencies 21 that provided comment to me as well. I 22 -- 23 Q. Is it fair to say that this 24 letter was widely circulated within DEP</p>	76	<p>1 the Commissioner's office and assists the 2 Commissioner. I don't know what his job 3 duties entail. 4 Q. Okay. 5 Do you know whether he's a 6 lawyer? 7 A. I don't know whether he is 8 or is not. 9 Q. Did he provide comments on 10 this letter? 11 A. No. 12 Q. Did any of the Commissioners 13 provide comments on the draft letter 14 before it was sent out? 15 A. Not to my knowledge. 16 Q. Would comments have gone to 17 someone else for insertion into the 18 letter without your knowledge? 19 MS. CONKLIN: I'm sorry. 20 I'm not -- I'm unclear about that. 21 You receive comments from 22 people. You don't send comments 23 to people. I'm -- could you 24 rephrase that?</p>
75	<p>1 before it was sent out and filed at FERC? 2 A. Yes. 3 Q. Was it reviewed by any 4 counsel? 5 A. No. Not to my knowledge. 6 Q. Just looking at page 32, the 7 last page of the document, there's a list 8 at the bottom of -- it says C, colon. I 9 assume these are people that were copied 10 on the letter. 11 There's a Daniel Ryan, New 12 Jersey DEP Special Assistant to the 13 Commissioner. 14 Who is Mr. Ryan? 15 A. He's employed by the 16 department -- 17 Q. Oh, she? 18 A. He. I'm sorry. 19 Q. I'm sorry. It must be the 20 jackhammer outside. Okay. 21 What is his -- I know it 22 says special assistant. What does that 23 mean? 24 A. I believe he -- he works in</p>	77	<p>1 Could you rephrase your 2 question? 3 MR. ATTAWAY: Sure. 4 MS. CONKLIN: Because he 5 didn't say he sent comments out. 6 He's been receiving comments. 7 MR. ATTAWAY: That's what I 8 meant to say. Maybe I misspoke. 9 MS. CONKLIN: Yeah. 10 MR. ATTAWAY: Okay. 11 BY MR. ATTAWAY: 12 Q. Did you receive -- let me 13 just back up. 14 You said that you're not 15 aware that you received comments from any 16 of the Commissioners; is that correct? 17 A. That's what I said, and we 18 only have one Commissioner. I mean, 19 there are -- if you're making reference 20 to Assistant Commissioners -- I don't -- 21 Q. How many Commissioners are 22 there? 23 A. There's only one 24 Commissioner.</p>

78	<p>1 Q. And how many Assistant 2 Commissioners? 3 A. There are numerous 4 Commissioners. 5 Q. Numerous? More than five? 6 A. Probably. I don't know for 7 certain. I know there is an Assistant 8 Commissioner of the site remediation 9 program that I work under, and I believe 10 he reviewed this -- this before it was 11 sent. 12 Q. Who is the Assistant 13 Commissioner for site remediation? 14 A. Presently, it's Irene Kropp. 15 Q. Is that the person that 16 reviewed this? 17 A. No. 18 Q. Who was the Assistant 19 Commissioner that reviewed this letter 20 that you just mentioned? 21 A. Joseph Seebode. 22 Q. Did Mr. Seebode provide 23 comments? 24 A. Yes.</p>	80	<p>1 earlier that you did not have an 2 understanding of the scope of Delaware's 3 regulatory authority within the 12 Mile 4 Circle. 5 But if I'm reading this 6 correctly, this letter signed by you says 7 that anything beyond the mean low 8 waterline is located in the State of 9 Delaware and therefore is subject to 10 Delaware coastal zone management 11 regulations. 12 Is that your -- is the text 13 in the letter -- does this refresh your 14 recollection as to your understanding of 15 Delaware's authority? 16 MS. CONKLIN: Pursuant to 17 what? 18 MR. ATTAWAY: Well, as I 19 recall, Mr. Risilia testified that 20 he -- that he didn't have an 21 understanding about whether 22 Delaware had regulatory authority 23 within the 12 Mile Circle. 24 MS. CONKLIN: He didn't --</p>
79	<p>1 Q. Did his comments concern in 2 any way the scope of Delaware's 3 regulatory authority over the project? 4 A. No. 5 Q. Turning to page 1 of the 6 document, the third paragraph reads -- 7 and I just want to read it into the 8 record and I'd like you to either confirm 9 that I read it correctly or correct me if 10 I misread it -- it says, "The project 11 site is located in the States of Delaware 12 and New Jersey. Accordingly, activities 13 taking place from the mean low waterline, 14 open paren, capital MLWL, close paren, 15 offshore are located in the State of 16 Delaware and therefore are subject to 17 Delaware Coastal Zone Management 18 Regulations. Activities or associated 19 impacts to New Jersey's coastal resources 20 occurring from the MLWL landward are the 21 subject of this application." 22 Did I read that correctly? 23 A. Yes. 24 Q. I believe you testified</p>	81	<p>1 well, whatever you think he 2 testified to is -- I can't stop 3 you from phrasing it that way. Go 4 ahead. 5 MR. ATTAWAY: If he 6 remembers -- you know, if he has a 7 different recollection, he can say 8 so. 9 THE WITNESS: I believe -- 10 I'm sure that I testified that I 11 was not aware of the scope of 12 Delaware's regulation or authority 13 within -- within New Jersey's -- 14 or within 12 Mile Circle, but I 15 was aware that -- that the -- the 16 project was occurring in the State 17 of Delaware. 18 MR. ATTAWAY: Okay. 19 BY MR. ATTAWAY: 20 Q. And you had said that your 21 working assumption at that time was that 22 anything within Delaware was subject to 23 the jurisdiction of Delaware. 24 A. That's -- yeah, that's</p>

<p style="text-align: right;">82</p> <p>1 correct.</p> <p>2 Q. Okay.</p> <p>3 And so this letter is</p> <p>4 consistent with that understanding.</p> <p>5 A. The understanding at that</p> <p>6 time, yes.</p> <p>7 Q. Turning to page 11 of the</p> <p>8 document, which for the record is Bates</p> <p>9 NJ 01046, there's a paragraph that's all</p> <p>10 in bold near the bottom of the page. And</p> <p>11 I'll give you a moment to read that.</p> <p>12 It's about three sentences.</p> <p>13 (PAUSE)</p> <p>14 THE WITNESS: Okay. I've</p> <p>15 read it.</p> <p>16 BY MR. ATTAWAY:</p> <p>17 Q. The last sentence states,</p> <p>18 "The applicants' response to this Rule</p> <p>19 may be limited to the portions of the</p> <p>20 pier located in New Jersey."</p> <p>21 Let me just back up to lay a</p> <p>22 better foundation. It starts out -- it</p> <p>23 says, "This Rule requires" -- and it's</p> <p>24 referring to a rule under New Jersey</p>	<p style="text-align: right;">84</p> <p>1 paragraph 3.</p> <p>2 A. Paragraph 3, page 1, yes, I</p> <p>3 believe that was in -- I mean, I believe</p> <p>4 that was unchanged.</p> <p>5 Q. Okay.</p> <p>6 And, similarly, on page 11</p> <p>7 is the statement that we just discussed.</p> <p>8 Was that paragraph in the</p> <p>9 draft that you circulated internally to</p> <p>10 various people?</p> <p>11 A. I believe so.</p> <p>12 Q. And turning to page 13,</p> <p>13 there's a paragraph all in bold at the</p> <p>14 bottom of the page. It carries over to</p> <p>15 page 14.</p> <p>16 I'm just going to ask you a</p> <p>17 question about the first sentence, so</p> <p>18 take your time to read as much as you</p> <p>19 would like for context and let me know</p> <p>20 when you're ready.</p> <p>21 (PAUSE)</p> <p>22 THE WITNESS: Okay. I'm</p> <p>23 ready.</p> <p>24 BY MR. ATTAWAY:</p>
<p style="text-align: right;">83</p> <p>1 regulation -- New Jersey rule "requires</p> <p>2 that the length and width of a dock or</p> <p>3 pier be limited to only what is necessary</p> <p>4 for the proposed use."</p> <p>5 And then the last sentence</p> <p>6 of that paragraph says, "The applicants'</p> <p>7 response to this Rule may be limited to</p> <p>8 the portions of the pier located in New</p> <p>9 Jersey."</p> <p>10 I gather that's consistent</p> <p>11 with the statement we just looked at on</p> <p>12 page 1, that anything beyond mean low</p> <p>13 waterline would be subject to the</p> <p>14 regulation of Delaware and not New</p> <p>15 Jersey; is that correct?</p> <p>16 A. At the time of that writing,</p> <p>17 yes, it was my understanding.</p> <p>18 Q. When you sent the draft out</p> <p>19 for review, was the statement that we</p> <p>20 just discussed on page 1 in the draft</p> <p>21 that you sent?</p> <p>22 A. The statement in paragraph</p> <p>23 3?</p> <p>24 Q. On page 1 -- yes, I'm sorry,</p>	<p style="text-align: right;">85</p> <p>1 Q. The first sentence of that</p> <p>2 passage states that the dredging</p> <p>3 associated with this project is located</p> <p>4 outside of New Jersey's tidal waters;</p> <p>5 however, impacts associated with, or</p> <p>6 stemming from, dredging work are subject</p> <p>7 to State purview via certain CZM rules.</p> <p>8 What does CZM stand for?</p> <p>9 A. Coastal zone management.</p> <p>10 Q. And that's New Jersey's</p> <p>11 Coastal Zone Management Rules?</p> <p>12 A. Yes.</p> <p>13 Q. So is this paragraph taking</p> <p>14 the position that your department would</p> <p>15 review the dredging located outside of</p> <p>16 New Jersey because it would have effects</p> <p>17 inside New Jersey?</p> <p>18 A. This paragraph, as I</p> <p>19 understand it, it indicates that -- that</p> <p>20 the State of New Jersey could have</p> <p>21 regulatory concern about activities</p> <p>22 occurring outside of its state boundary.</p> <p>23 Q. Okay.</p> <p>24 Did your draft letter --</p>

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1 your draft of this February 4th, 2005  
 2 letter, was that also sent to the  
 3 Commissioner of DEP?  
 4 **A. I don't -- I don't recall**  
 5 **transmitting it to the Commissioner.**  
 6 Q. Do you know if someone else  
 7 did?  
 8 **A. I -- I have no -- no way of**  
 9 **knowing.**  
 10 Q. Do you know if some people  
 11 that you circulated the draft to then  
 12 forwarded the draft on to additional  
 13 persons for review?  
 14 **A. I have no means of knowing.**  
 15 Q. Well, were there any  
 16 forwarding messages that you were copied  
 17 on?  
 18 **A. I -- if I circulated the**  
 19 **draft -- or when I circulated the draft,**  
 20 **I believe I circulated a paper copy to**  
 21 **Assistant Commissioner and to my**  
 22 **supervisor.**  
 23 **But they -- but my**  
 24 **supervisor had -- I'm pretty sure she had**

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1 **an electronic copy. She could have --**  
 2 **she could have forwarded it to others**  
 3 **that I would not be aware of.**  
 4 Q. Okay.  
 5 Do you have a draft -- the  
 6 draft that you circulated for review?  
 7 **A. No.**  
 8 Q. What happened to it?  
 9 **A. It was probably thrown out.**  
 10 Q. Did you have an electronic  
 11 draft?  
 12 **A. I don't know if I retained**  
 13 **it, because I didn't want to confuse the**  
 14 **final draft with -- the final letter with**  
 15 **-- with previous drafts, so I -- I don't**  
 16 **know that I still have that.**  
 17 Q. Did you use a computer to  
 18 create the letter?  
 19 **A. Yes.**  
 20 Q. What software program?  
 21 **A. Microsoft Word.**  
 22 Q. And what is your document  
 23 storage -- how is your document storage  
 24 system configured in the sense, is it

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1 capable of saving drafts so that you have  
 2 successive versions?  
 3 **A. It's -- it's capable.**  
 4 Q. What is your practice? Do  
 5 you save drafts of letters as a record so  
 6 you can go back and see what you sent  
 7 around to people before you made  
 8 additional changes to the letter?  
 9 **A. My practice generally is to**  
 10 **save the draft until the document is**  
 11 **final and then get rid of the drafts.**  
 12 Q. And you circulated the draft  
 13 not by e-mail, you said?  
 14 **A. I believe that I circulated**  
 15 **a hard copy to my supervisor, Suzanne**  
 16 **Dietrick, and I believe to Joe --**  
 17 **Assistant Commissioner Seebode.**  
 18 **Suzanne Dietrick -- because**  
 19 **it was a large document and I was**  
 20 **concerned about it getting lost, I**  
 21 **believe I sent her an e-mail attachment**  
 22 **of the document, too, that she may have**  
 23 **reviewed on line, you know, or -- or --**  
 24 **or the hard copy.**

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1 Q. In your e-mail, do you keep  
 2 your sent messages?  
 3 **A. My sent messages.**  
 4 Q. Messages -- e-mail messages  
 5 that you've sent?  
 6 **A. Yeah.**  
 7 Q. So would you still have a  
 8 record of the -- a copy of the e-mail  
 9 that you sent Miss Dietrick attaching the  
 10 draft?  
 11 **A. I believe that I transmitted**  
 12 **to Division of Law the e-mail log of all**  
 13 **-- of all correspondence that had BP or**  
 14 **LNG or Crown Landing attached to it, and**  
 15 **I gave them everything I had.**  
 16 Q. So you no longer have  
 17 possession of it?  
 18 **A. It may still be on the hard**  
 19 **-- on the mainframe, but I don't -- I**  
 20 **don't know if I have direct possession of**  
 21 **it.**  
 22 Q. Okay.  
 23 **A. The department may.**  
 24 **MR. ATTAWAY: All right.**

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1 I'd like to request from counsel a  
 2 production of the draft of this  
 3 letter by Mr. Risilia.  
 4 MS. CONKLIN: Any drafts of  
 5 this?  
 6 MR. ATTAWAY: Yes.  
 7 MS. CONKLIN: Okay. We  
 8 consider that privileged material,  
 9 but you can make the request and  
 10 we will respond in writing.  
 11 MR. ATTAWAY: Okay. What  
 12 privilege are you asserting?  
 13 MS. CONKLIN: Advisory,  
 14 consultative, and deliberative  
 15 privilege.  
 16 MR. ATTAWAY: He just said  
 17 he didn't send it to counsel.  
 18 MS. CONKLIN: No. It is an  
 19 ongoing application. It is agency  
 20 work and internal work on an  
 21 application, advisory,  
 22 consultative, and deliberative.  
 23 MR. ATTAWAY: All right.  
 24 Well, we'll take that up later.

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1 MS. CONKLIN: Exactly. Feel  
 2 free.  
 3 BY MR. ATTAWAY:  
 4 Q. Was this letter ever  
 5 transmitted to the Division of Law?  
 6 Let me clarify. Was this  
 7 letter ever transmitted to the Division  
 8 of Law either in draft or final form?  
 9 A. Yes, I'm -- I'm quite  
 10 certain the Division of Law received at  
 11 least a hard final copy of this -- the  
 12 letter that we're speaking of.  
 13 Q. And when would they have  
 14 received that?  
 15 A. Presumably after it was  
 16 sent, and I don't know the exact date.  
 17 I believe it was probably  
 18 sent shortly after -- after the letter  
 19 was sent to the applicant.  
 20 Q. So within a few days?  
 21 A. I don't really know the  
 22 exact time frame of when it was  
 23 transmitted to the Division of Law.  
 24 Q. Would you have a record in

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1 your documents of when that occurred?  
 2 A. No, not if it was -- you  
 3 know, if it was transmitted via paper  
 4 copy, it would have gone interoffice  
 5 mail, so I wouldn't -- that doesn't  
 6 generate a record of transaction.  
 7 Q. Did you transmit it to the  
 8 Division of Law through interoffice mail?  
 9 A. I don't recall if I did or  
 10 not.  
 11 Q. What is your practice with  
 12 respect to letters that get filed at FERC  
 13 in terms of sending a copy to the  
 14 Division of Law?  
 15 A. There isn't a set practice  
 16 or policy that I'm aware of. We don't --  
 17 we don't get very many FERC -- projects  
 18 that involve FERC, so there's no  
 19 procedure that I'm aware of.  
 20 Q. What type of documents do  
 21 you as a matter of course send to the  
 22 Division of Law?  
 23 A. Projects that are either  
 24 under litigation, such as, like, an

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1 appeal to a denial or a -- a matter that  
 2 has some legal -- that requires legal  
 3 interpretation.  
 4 Q. Okay.  
 5 MR. ATTAWAY: I'd like to  
 6 mark Exhibit 2.  
 7 We can go off the record for  
 8 a moment if you'd like.  
 9 \* \* \*  
 10 (Whereupon, the  
 11 above-mentioned document was  
 12 marked for identification as  
 13 Risilia-2.)  
 14 \* \* \*  
 15 (PAUSE)  
 16 BY MR. ATTAWAY:  
 17 Q. I've had marked as Risilia  
 18 Exhibit 2 a letter from Kenneth C.  
 19 Koschek, K-O-S-C-H-E-K, to Magalie Salas,  
 20 Secretary of the Federal Energy  
 21 Regulatory Commission or FERC, dated  
 22 April 19th, 2005.  
 23 And it's on letterhead of  
 24 the State of New Jersey, Department of

<p style="text-align: right;">94</p> <p>1 Environmental Protection, Environmental                  2 Regulation, Office of Pollution                  3 Prevention and Right To Know.                  4 Is that an accurate                  5 description of this document?                  6 <b>A. Yes.</b>                  7 <b>Q. So the letter we were just</b>                  8 <b>looking at, Exhibit 1, was February 4th.</b>                  9 <b>This letter is two and a half months</b>                  10 <b>later, correct, April 19th, 2005?</b>                  11 <b>A. Yes.</b>                  12 <b>Q. Describe the Office of</b>                  13 <b>Permit Coordination and Environmental</b>                  14 <b>Review, which is -- which is in the first</b>                  15 <b>sentence of the letter.</b>                  16 <b>A. Describe their function?</b>                  17 <b>Q. Please.</b>                  18 <b>A. As I understand that office,</b>                  19 <b>they -- they act as a liaison between</b>                  20 <b>applicants and the department on projects</b>                  21 <b>that are multi -- have -- require</b>                  22 <b>multiple permits or oversight by multiple</b>                  23 <b>department programs.</b>                  24 <b>So this -- the applicant,</b></p>	<p style="text-align: right;">96</p> <p>1 <b>Division of Law, which is under, what,</b>                  2 <b>Department of Law &amp; Safety?</b>                  3 <b>I'm not sure. You could ask</b>                  4 <b>my counsel to my left. But they are</b>                  5 <b>under a separate agency.</b>                  6 <b>Q. I can't make them answer any</b>                  7 <b>questions on the record --</b>                  8 <b>MS. CONKLIN: We're not</b>                  9 <b>talking. You can't make us.</b>                  10 <b>(PAUSE)</b>                  11 <b>BY MR. ATTAWAY:</b>                  12 <b>Q. I'd like to look at page 2</b>                  13 <b>of this document. There's a paragraph --</b>                  14 <b>it's the second full paragraph on the</b>                  15 <b>page, and it's under the heading</b>                  16 <b>"Dredging and Pier Issues, Intertidal</b>                  17 <b>Shallows Impacts."</b>                  18 <b>A. Okay.</b>                  19 <b>Q. The first sentence of that</b>                  20 <b>passage reads, "At the present time, the</b>                  21 <b>State of Delaware has characterized this</b>                  22 <b>project as not being in compliance with</b>                  23 <b>Delaware's Coastal Regulations."</b>                  24 <b>Is that statement consistent</b></p>
<p style="text-align: right;">95</p> <p>1 <b>Crown Landing BP, I believe, was going --</b>                  2 <b>dealing with that office in trying to</b>                  3 <b>coordinate the application process.</b>                  4 <b>Q. If I understand you</b>                  5 <b>correctly, is the Office of Permit</b>                  6 <b>Coordination and Environmental Review an</b>                  7 <b>office that's set up to coordinate sort</b>                  8 <b>of larger projects that require multiple</b>                  9 <b>permits from various divisions within</b>                  10 <b>DEP?</b>                  11 <b>A. Yes, that's part of their</b>                  12 <b>function. I believe they also review</b>                  13 <b>documents. They review environmental</b>                  14 <b>impact statements that come in for large</b>                  15 <b>projects.</b>                  16 <b>Q. Do they have legal staff?</b>                  17 <b>A. I'm not aware if they do or</b>                  18 <b>not.</b>                  19 <b>Q. Who provides legal counsel</b>                  20 <b>to the Department of Environmental</b>                  21 <b>Protection?</b>                  22 <b>A. The Division of Law.</b>                  23 <b>Q. And that's within DEP?</b>                  24 <b>A. No. That's within the</b></p>	<p style="text-align: right;">97</p> <p>1 with the understanding that was set forth                  2 in the February 4th letter regarding                  3 Delaware's regulatory authority over the                  4 project to the extent it extends into                  5 Delaware?                  6 <b>A. Well, I didn't make this</b>                  7 <b>statement. This was made by Ken Koschek.</b>                  8 <b>Q. Okay.</b>                  9 <b>A. And -- could you restate</b>                  10 <b>your question?</b>                  11 <b>Q. Well, whether or not you</b>                  12 <b>wrote this, is that first sentence</b>                  13 <b>consistent with the understanding set</b>                  14 <b>forth in your letter of February 4th that</b>                  15 <b>Delaware would have regulatory authority</b>                  16 <b>over the Crown Landing project to the</b>                  17 <b>extent that it extends into Delaware?</b>                  18 <b>A. No. I think -- I think this</b>                  19 <b>is two different things being stated.</b>                  20 <b>The first sentence states -- I mean the</b>                  21 <b>document -- the sentence speaks for</b>                  22 <b>itself, but it says, the State of</b>                  23 <b>Delaware has characterized this project</b>                  24 <b>as not being in compliance with</b></p>

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1 Delaware's coastal zone regulations.  
 2 And what I -- what's stated  
 3 in the third paragraph of my February 4  
 4 letter is that we believe the project is  
 5 -- at that time was located within  
 6 Delaware and it was subject to their  
 7 coastal zone management regulations.  
 8 This is saying -- the second  
 9 letter is saying Delaware has found it  
 10 not to be in compliance. I don't believe  
 11 that was stated in the letter of February  
 12 4.  
 13 Q. Okay.  
 14 Did you provide any input on  
 15 this letter?  
 16 A. Yes, I did.  
 17 MS. CONKLIN: And we're  
 18 speaking about Risilia-2. Right?  
 19 MR. ATTAWAY: Yes, thank you  
 20 for the clarification.  
 21 BY MR. ATTAWAY:  
 22 Q. Let me just back up a minute  
 23 and ask something I should have asked a  
 24 few questions ago.

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1 Who is Kenneth Koschek?  
 2 A. He's a representative of the  
 3 Office of Pollution Prevention and Right  
 4 To Know. Actually --  
 5 Q. Where is he in the chain of  
 6 command in the Office of Permit  
 7 Coordination and Environmental Review or  
 8 where was he at the time that this letter  
 9 was written?  
 10 A. According to his signature  
 11 on page 9 of the document, he is a  
 12 supervising environmental specialist with  
 13 the Office of Permit Coordination and  
 14 Environmental Review, which I believe is  
 15 a -- is under the purview of the office  
 16 listed in the heading of the letter.  
 17 Q. Who did he report to at that  
 18 time?  
 19 A. I don't know who his  
 20 supervisor was.  
 21 Q. Just so I understand the  
 22 organization of the DEP a little bit  
 23 better, Mr. Koschek was in the Office of  
 24 Permit Coordination and Environmental

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1 Review, and that office is -- is in turn  
 2 within another office which is entitled  
 3 Office of Pollution Prevention and Right  
 4 To Know; is that how the bureau is  
 5 structured?  
 6 A. I believe that -- that it  
 7 was a -- a subgroup within -- I think  
 8 this is a -- an office -- he worked in an  
 9 office that was part of a program or --  
 10 that was the larger program, the Office  
 11 of Pollution Prevention and Right To  
 12 Know.  
 13 Q. I don't want to belabor  
 14 this, but just generally speaking, where  
 15 in the hierarchy of DEP does the Office  
 16 of Pollution Prevention and Right To Know  
 17 exist?  
 18 A. I don't know where they --  
 19 where they are on a -- like, a regulatory  
 20 flow chart or -- I'm not really sure.  
 21 There's a lot of departments in the  
 22 program.  
 23 Q. The Office of Permit  
 24 Coordination, where were they in the

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1 hierarchy?  
 2 A. I'm not sure where they are.  
 3 Q. Is it possible to say that  
 4 it's a department that's above or below  
 5 yours? "Yours," meaning the ODST?  
 6 MS. CONKLIN: I'm sorry. I  
 7 am going to ask for clarification  
 8 on that in terms of above and  
 9 below.  
 10 In the context of reviewing  
 11 the letter, in the context of  
 12 reviewing an application? We need  
 13 some context.  
 14 MR. ATTAWAY: Just in the  
 15 context of the organization of the  
 16 bureau -- of the DEP, rather.  
 17 If there -- if there were a  
 18 flow chart, for example, would the  
 19 Office of Permit Coordination and  
 20 Environmental Review -- would it  
 21 be above or below the ODST in the  
 22 flow chart? Answer if you can.  
 23 THE WITNESS: I don't know.  
 24 BY MR. ATTAWAY:

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1 Q. Have you ever seen a flow  
 2 chart of the DEP?  
 3 A. Yes.  
 4 Q. Do you understand how the  
 5 different offices or bureaus or whatever  
 6 they're called in the DEP are structured?  
 7 A. Generally.  
 8 Q. So, generally speaking,  
 9 would you consider the Office of Permit  
 10 Coordination and Environmental Review a  
 11 superior office to the ODS?  
 12 A. Well, I do not recall the  
 13 flow chart that may have shown their  
 14 position, so I don't know if they are  
 15 considered at a higher level or -- on the  
 16 flow chart than our office would be.  
 17 Q. Why were you providing input  
 18 for this letter written by Ken Koschek of  
 19 a different office from yours?  
 20 A. Because he requested it.  
 21 Q. Do you know why he requested  
 22 it?  
 23 A. I believe because he was  
 24 charged with responding to the FERC draft

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1 environmental impact statement, DEIS.  
 2 Q. Turning back to page 5 of  
 3 the letter --  
 4 A. The April 19 letter?  
 5 Q. Yes.  
 6 A. Okay.  
 7 Q. Thanks. I'll try to be  
 8 clearer.  
 9 A. That's fine.  
 10 Q. -- there's a section that  
 11 begins toward the top of the page called  
 12 "Permitting," and I'm going to ask you a  
 13 few questions about the first two of the  
 14 three paragraphs within that section, so  
 15 take your time to read.  
 16 A. (Witness complies.)  
 17 Okay. I've read the first  
 18 paragraph.  
 19 Q. So the first paragraph  
 20 refers to the February 4th letter that  
 21 you wrote; is that correct?  
 22 A. Yes.  
 23 Q. And claims that that letter  
 24 is attached.

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1 A. Yes.  
 2 Q. Is that correct?  
 3 Is it -- now, the document  
 4 that I have that was produced by New  
 5 Jersey doesn't include the attachment.  
 6 Is it your understanding  
 7 that the February 4th letter that you  
 8 wrote was, in fact, attached in the  
 9 transmission to FERC?  
 10 A. I believe it was.  
 11 Q. That it was?  
 12 A. I believe that it was  
 13 attached.  
 14 Q. Okay.  
 15 The second paragraph states  
 16 that the project that was proposed in the  
 17 draft EIS that was released by FERC might  
 18 be substantially different than the one  
 19 proposed in the near future by the  
 20 applicant, meaning Crown Landing, and  
 21 that's, according to this letter, because  
 22 the State of Delaware Coastal Zone  
 23 Industrial Control Board decision to  
 24 uphold the rejection of the Crown Landing

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1 LNG in Delaware has a major impact on  
 2 this project.  
 3 As I read this, is it  
 4 consistent with your understanding that  
 5 the reason -- well, does this passage, in  
 6 your understanding, acknowledge at the  
 7 time that Delaware had regulatory  
 8 authority over the portion of the pier  
 9 that was proposed to be in Delaware?  
 10 A. I think the paragraph speaks  
 11 for itself. I --  
 12 Q. Well, I'm just asking for  
 13 your understanding. You can answer "yes"  
 14 or "no."  
 15 A. So can you --  
 16 Q. Does this passage  
 17 acknowledge that Delaware has regulatory  
 18 authority over the project?  
 19 MS. CONKLIN: Counsel, I'm  
 20 going to object to the form of the  
 21 question. It's calling for a  
 22 legal conclusion.  
 23 MR. ATTAWAY: I'm not asking  
 24 for his understanding of the law.

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1 I'm asking for his understanding  
 2 as a regulator.  
 3 MS. CONKLIN: But this is  
 4 not his letter. So you're asking  
 5 him to figure out what someone  
 6 else was thinking.  
 7 But if you want to stay with  
 8 that, go right ahead.  
 9 MR. ATTAWAY: Okay. I'm  
 10 going to insist that he answer the  
 11 question based on his  
 12 understanding, whether or not he  
 13 wrote this letter or not.  
 14 BY MR. ATTAWAY:  
 15 Q. Is it consistent -- okay.  
 16 You -- let's back up.  
 17 Your February 4th letter  
 18 stated rather clearly that Delaware had  
 19 regulatory authority over the portion of  
 20 the Crown Landing project extending into  
 21 Delaware.  
 22 Are we on common ground  
 23 there?  
 24 A. Yes.

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1 Q. Okay.  
 2 Is the second paragraph on  
 3 page 5 consistent with that statement in  
 4 the February 4th letter?  
 5 A. Generally.  
 6 Q. And if New Jersey were  
 7 contesting or if this letter were  
 8 contesting Delaware's regulatory  
 9 authority, then why would it make sense  
 10 to state that Delaware has denied  
 11 approval for the project and therefore  
 12 the scope of the project might change in  
 13 the future?  
 14 MS. CONKLIN: Again, I'm  
 15 going to object to the form.  
 16 MR. ATTAWAY: Answer if you  
 17 can.  
 18 THE WITNESS: Well, it's --  
 19 I think you're asking me to -- to  
 20 advise you or to answer on legal  
 21 strategy. It sounds that way as I  
 22 understand it. I don't know -- I  
 23 can't explain the rationale behind  
 24 what happened.

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1 MR. ATTAWAY: Let me try  
 2 asking you a different way.  
 3 BY MR. ATTAWAY:  
 4 Q. Is this passage based on the  
 5 understanding that Delaware would have  
 6 regulatory authority over the project to  
 7 the extent it extends into Delaware?  
 8 MS. CONKLIN: I'm going to  
 9 object on foundation grounds.  
 10 It's not his letter, so he doesn't  
 11 know what the understanding is for  
 12 this text.  
 13 BY MR. ATTAWAY:  
 14 Q. Mr. Risilia, you provided  
 15 input for this letter, did you not?  
 16 A. Parts of it, yes.  
 17 Q. Did you provide input for  
 18 this part?  
 19 A. I don't recall specifically  
 20 providing input under this second  
 21 paragraph.  
 22 Q. Okay.  
 23 MR. ATTAWAY: I would like  
 24 to mark for identification Exhibit

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1 3.  
 2 \* \* \*  
 3 (Whereupon, the  
 4 above-mentioned document was  
 5 marked for identification as  
 6 Risilia-3.)  
 7 \* \* \*  
 8 (PAUSE)  
 9 BY MR. ATTAWAY:  
 10 Q. Mr. Risilia, I've had marked  
 11 for -- as Exhibit 3 a memorandum from  
 12 yourself to Ken Koschek, Office of Permit  
 13 Coordination and Environmental Review,  
 14 dated April 12th, 2005.  
 15 Have I described this  
 16 correctly?  
 17 A. Yes.  
 18 Q. And it's Bates stamped, for  
 19 the record, New Jersey 01068 through  
 20 01073.  
 21 A. Mine is 01069 -- oh, I'm  
 22 sorry. Oh, the -- there's a cover  
 23 letter. Thank you.  
 24 Q. I'm going to start with the

<p style="text-align: right;">110</p> <p>1 memorandum itself.                  2 If you could read -- let's                  3 see. I want to compare this to Exhibit                  4 2, and I'd like you to read the second                  5 and third paragraphs of the letter on                  6 page 1 and compare those paragraphs to                  7 the two paragraphs we were just                  8 discussing on page 5 of Exhibit 2.                  9 And I think you'll see that                  10 they're identical?                  11 MS. CONKLIN: Counsel, could                  12 you identify it by the NJ number                  13 at the bottom as well? Do we have                  14 NJ numbered pages of what we're                  15 supposed to be comparing?                  16 MR. ATTAWAY: Okay. Compare                  17 NJ 01069 with NJ 01085.                  18 THE WITNESS: Thank you.                  19 And you would like me to                  20 look at which paragraphs?                  21 MR. ATTAWAY: The second and                  22 third. The second paragraph                  23 begins, "As you are aware, the                  24 ODST issued a deficiency letter</p>	<p style="text-align: right;">112</p> <p>1 Q. So I'll go back to my                  2 original line of questioning with respect                  3 to the April 19th letter, let me ask it                  4 about your memorandum of April 12th,                  5 which is Exhibit 3.                  6 In the statement on page 1,                  7 which is New Jersey 1069, it references                  8 Delaware's Coastal Zone Industrial                  9 Board's decision to reject the Crown                  10 Landing pier in Delaware.                  11 Is that statement consistent                  12 with the February 4th statement in your                  13 letter that Delaware has regulatory                  14 authority over the Crown Landing project                  15 to the extent it is in Delaware?                  16 A. No.                  17 Q. They're not consistent.                  18 A. I believe that they're                  19 saying two different things.                  20 The February 4 letter says                  21 that it appears that the project is                  22 located in Delaware and Delaware has                  23 jurisdiction.                  24 The -- my memorandum of</p>
<p style="text-align: right;">111</p> <p>1 attached."                  2 (PAUSE)                  3 THE WITNESS: Okay. I read                  4 it.                  5 BY MR. ATTAWAY:                  6 Q. Are the two paragraphs on                  7 New Jersey 1069 in substance the same as                  8 the two paragraphs on New Jersey 1085?                  9 A. They appear to be.                  10 Q. And New Jersey 1069 is the                  11 April 12th memorandum from David Risilia                  12 to Ken Koschek; correct?                  13 A. Yes.                  14 Q. And the two paragraphs on                  15 New Jersey 1085 are in the April 19th                  16 letter that Ken Koschek wrote to FERC; is                  17 that correct?                  18 A. Yes.                  19 Q. So it appears that Mr.                  20 Koschek took this language that you                  21 drafted seven days earlier and included                  22 it in the letter that he sent to FERC; is                  23 that correct?                  24 A. Yes.</p>	<p style="text-align: right;">113</p> <p>1 April 12 states that the State of New                  2 Jersey decided to reject the LNG pier in                  3 Delaware, and I believe that was because                  4 there is a public announcement that State                  5 of Delaware had denied approval to Crown                  6 Landing.                  7 Q. Is there anything in your                  8 memorandum of April 12th, 2005 that says                  9 that Delaware lacks regulatory authority                  10 over that portion of the project that                  11 exists in Delaware?                  12 A. No, I don't -- we didn't                  13 address that. It talks about -- it says                  14 that they made a decision to reject it.                  15 Q. "They" meaning Delaware?                  16 A. The State of Delaware.                  17 Q. Likewise, in the April 19th                  18 letter, which is marked as Exhibit 2, is                  19 there anything in that letter from Mr.                  20 Koschek that denies the authority of                  21 Delaware to regulate the Crown Landing                  22 project to the extent that it extends                  23 into Delaware?                  24 A. No. This is in response to</p>

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1 a draft EIS. It doesn't talk about -- it  
 2 does not speak on state jurisdiction. It  
 3 only -- to deny or approve -- it just  
 4 states what's written in the text.  
 5 Q. It's correct, is it not,  
 6 that your memorandum of April 12th and  
 7 Mr. Koschek's letter of April 19th both  
 8 refer to and attach the deficiency letter  
 9 that you wrote on February 4th; is that  
 10 correct?  
 11 A. Yeah, they both reference  
 12 and -- yes, it is correct.  
 13 Q. Do either of the -- does the  
 14 memorandum or the letter of April 19th  
 15 reject or in any way retract the  
 16 statement made in the February 4th letter  
 17 that Delaware has regulatory jurisdiction  
 18 over the project?  
 19 A. Not --  
 20 MS. KELLY: I'm going to  
 21 object to the characterization as  
 22 to the word "jurisdiction." I  
 23 don't think that's what the letter  
 24 states. I think it misstates the

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1 letter.  
 2 I don't know if you want to  
 3 rephrase that.  
 4 MR. ATTAWAY: Regulatory  
 5 authority.  
 6 (PAUSE)  
 7 THE WITNESS: Can you ask  
 8 that question again, please?  
 9 BY MR. ATTAWAY:  
 10 Q. The April 12th and April  
 11 19th letters both attach your February  
 12 4th letter; is that correct?  
 13 A. Yes.  
 14 Q. And neither the April 12th  
 15 letter nor the April 19th letter refer to  
 16 or disavow the statements made in your  
 17 February 4th letter about Delaware's  
 18 regulatory authority over the Crown  
 19 Landing project; is that correct?  
 20 A. They're silent on it. They  
 21 don't say anything to that effect.  
 22 Q. But the -- the memorandum  
 23 and the letter both refer to Delaware's  
 24 rejection of the permit application by

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1 Delaware.  
 2 A. That's true.  
 3 Q. So why would -- well, we'll  
 4 leave it at that.  
 5 Do you know if the  
 6 statements in your February 4th letter  
 7 were subsequently retracted by someone  
 8 else?  
 9 A. Which statements?  
 10 Q. The -- okay.  
 11 Exhibit 1, page 1, the  
 12 language is, "The project site is located  
 13 in the States of Delaware and New Jersey.  
 14 Accordingly, activities taking place from  
 15 the mean low waterline outshore are  
 16 located in the State of Delaware and  
 17 therefore are subject to Delaware Coastal  
 18 Zone Management Regulations."  
 19 A. Yes, those statements were  
 20 -- that statement was later corrected in  
 21 a subsequent letter that went to -- that  
 22 went to Crown Landing, I believe.  
 23 Q. How did that come about?  
 24 A. When this letter was issued

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1 on February 4, my program -- myself --  
 2 was not aware of the Compact of 1905 and  
 3 the legal implications associated with  
 4 the Compact.  
 5 So after transmitting this  
 6 letter to the Division of Law and then  
 7 the applicant reviewed our letter and  
 8 they responded with a response of  
 9 deficiency letter in which they -- they  
 10 basically asked us to re-evaluate whether  
 11 or not -- what the effect of the Compact  
 12 of 1905 was.  
 13 And at that time -- or  
 14 subsequent to their request, our office  
 15 had been in communication with the  
 16 Division of Law, and they advised us that  
 17 -- that this -- this, in fact, needed to  
 18 be corrected.  
 19 Q. When did that happen?  
 20 A. Exactly, I don't remember,  
 21 but there was a letter that indicated  
 22 when -- you know, when we retracted --  
 23 when we corrected our position on this.  
 24 And I believe it was after -- it might

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1 have been -- it was in 2005. It was  
 2 probably June or July.  
 3 Q. Do you know who sent that  
 4 letter and to whom it was sent?  
 5 A. I believe Suzanne Dietrick  
 6 sent it.  
 7 Q. To?  
 8 A. I believe she sent it to --  
 9 well, actually, no, I'm -- I'm -- we're  
 10 going back a little while.  
 11 I believe it might have been  
 12 sent by Joe Seebode, who is Assistant  
 13 Commissioner, and I think it was sent to  
 14 the -- to the attorney or to someone from  
 15 BP.  
 16 Q. And that's the same  
 17 Assistant Commissioner that received your  
 18 draft letter of February 4th; is that  
 19 correct?  
 20 A. Yeah, that's correct.  
 21 Q. And he didn't comment in any  
 22 way on your statement on page 1 of that  
 23 letter that Delaware had regulatory  
 24 authority over the project.

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1 MS. CONKLIN: At what time  
 2 are we talking about?  
 3 MR. ATTAWAY: Whenever he --  
 4 whenever Mr. Risilia sent the  
 5 draft letter out that became the  
 6 final letter of February 4th.  
 7 THE WITNESS: At the time  
 8 that the February 4 letter was  
 9 sent -- was circulated as a draft,  
 10 he did not make comments on -- on  
 11 the paragraph 3.  
 12 MR. ATTAWAY: Okay.  
 13 BY MR. ATTAWAY:  
 14 Q. But I think you said earlier  
 15 that he did send some comments on other  
 16 topics.  
 17 A. Yeah, I'm sure he did.  
 18 Q. Do you know that he did?  
 19 A. That he -- I just said I'm  
 20 sure he did.  
 21 Q. Okay.  
 22 A. Yes.  
 23 Q. So what you're saying is  
 24 that he did send comments to you on the

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1 draft -- draft letter that became the  
 2 February 4th letter.  
 3 A. He reviewed my draft and he  
 4 made -- he made written comments on it  
 5 that I either addressed or incorporated  
 6 and put into the final letter.  
 7 Q. Okay.  
 8 And he sent those written  
 9 comments to you?  
 10 A. Yes.  
 11 Q. Are you familiar with the  
 12 coastal management plan in New Jersey?  
 13 A. Somewhat.  
 14 Q. Just tell me generally your  
 15 understanding of what the coastal  
 16 management plan is.  
 17 A. Well, it's administered by a  
 18 separate program that I am not a member  
 19 of; and the coastal management plan, I  
 20 believe, is a -- a broad -- a broader  
 21 plan that encompasses various elements of  
 22 Coastal Zone Management Rules.  
 23 Q. You said it was administered  
 24 by a different division, if I -- maybe

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1 you used a different word but, what --  
 2 what division --  
 3 A. There's another program --  
 4 there's a planning program within DEP  
 5 that administers the coastal management  
 6 plan.  
 7 Q. What's the name of that?  
 8 A. They've changed their names  
 9 recently and I -- I am not sure. The --  
 10 its director is Ruth Ehinger. Its  
 11 director, I believe, is Ruth Ehinger.  
 12 Q. Do you work with Miss  
 13 Ehinger in your daily duties?  
 14 A. No.  
 15 Q. Or even on occasion?  
 16 A. Yes, on occasion.  
 17 Q. In what context?  
 18 A. Since her office is  
 19 responsible for amendments to and updates  
 20 to -- on the Coastal Zone Management  
 21 Rules, we -- when I say "we," the Office  
 22 of Dredging, myself included -- interact  
 23 with them sometimes on language for new  
 24 regulations.

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1 Q. Okay.  
 2 Do you -- let me go back to  
 3 the coastal management plan.  
 4 Do you know when the coastal  
 5 management plan was adopted?  
 6 A. No, I don't.  
 7 Q. Have you ever seen it?  
 8 A. I may have, but I don't  
 9 recall it.  
 10 Q. You don't recall ever  
 11 reading New Jersey's coastal management  
 12 plan?  
 13 A. I may have seen -- I think I  
 14 reviewed -- looked at various excerpts of  
 15 it, but not really. I don't recall  
 16 reading it in entirety.  
 17 Q. Is it a big document?  
 18 A. I don't know.  
 19 Q. Do you remember the excerpts  
 20 you reviewed?  
 21 A. Not really. No, I don't.  
 22 Q. Or when you would have  
 23 reviewed them?  
 24 A. No. I don't recall.

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1 Q. So you've been working in  
 2 the coastal zone and administering the  
 3 coastal zone rules for about 15 years?  
 4 A. Yes.  
 5 Q. Is that correct?  
 6 But you've never read the  
 7 coastal management plan?  
 8 A. The coastal management plan,  
 9 as I understand it, is a planning  
 10 document.  
 11 I -- my concentration has  
 12 been in implementing the rules on coastal  
 13 zone management. They're two different  
 14 entities. One is different than the  
 15 other.  
 16 The one that -- the rules  
 17 that we apply, that we evaluate projects  
 18 under are the CZM rules; and coastal  
 19 management plan is a planning document,  
 20 so I'm not really -- really familiar with  
 21 the -- the planning document, no.  
 22 Q. Okay.  
 23 So other than -- you said  
 24 you've reviewed excerpts. Do you

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1 remember in what context?  
 2 A. I believe that I may have  
 3 seen excerpts, because there may be  
 4 references to that in the rationale  
 5 section of the Coastal Zone Management  
 6 Rules.  
 7 And I -- at times when we're  
 8 trying to apply a rule, we'll look at the  
 9 rationale to determine what kind of  
 10 comments were generated in creating that  
 11 rule or how -- or to get a broader  
 12 understanding of the rule.  
 13 And that's where I would  
 14 have looked at excerpts, but I have not  
 15 reviewed the plan in a broad sense, in an  
 16 overall sense.  
 17 Q. I know you said you don't  
 18 remember exactly when the coastal  
 19 management plan was adopted, but do you  
 20 remember the era?  
 21 A. No. I presume -- I really  
 22 don't know.  
 23 Q. If I said the late '70s or  
 24 early '80s, would that ring a bell at

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1 all?  
 2 A. The Coastal Zone Management  
 3 Rules -- I mean, I -- I -- I don't know.  
 4 I don't know when -- if it predated the  
 5 rules -- I don't know if the plan  
 6 predated the rules or the rules predated  
 7 the plan, so I don't have a time context  
 8 to put it in.  
 9 Q. So that's more a function of  
 10 Miss Ehinger's division to administer the  
 11 coastal management plan?  
 12 A. Yes.  
 13 Q. Have you ever reviewed any  
 14 excerpts of the coastal management plan  
 15 pertaining to the boundary between  
 16 Delaware and New Jersey?  
 17 A. No.  
 18 MR. ATTAWAY: I can't tell,  
 19 Miss Conklin, if you're just --  
 20 it's just a spontaneous physical  
 21 reaction or -- but often you shake  
 22 your head "no" just before he  
 23 answers "no," and you shake your  
 24 head "yes" before he answers "yes"

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1 --  
 2 MS. CONKLIN: Well, I will  
 3 certainly try and stop that, but  
 4 --  
 5 MR. ATTAWAY: I gather  
 6 you're just kind of thinking  
 7 through it, but I've noticed some  
 8 eye contact periodically and I'm  
 9 just, you know, wondering, you  
 10 know --  
 11 MS. CONKLIN: Well, what I'm  
 12 wondering about is the foundation  
 13 of your question, because you're  
 14 assuming that there's something in  
 15 the -- you're assuming that the  
 16 plan contains something when he  
 17 says he doesn't know anything  
 18 about the plan other than excerpts  
 19 that he has reviewed, and he  
 20 doesn't recall the excerpts.  
 21 So I think I was probably  
 22 reacting to the form of your  
 23 question.  
 24 And in the future, I will

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1 articulate my objection. Thank  
 2 you for the correction.  
 3 BY MR. ATTAWAY:  
 4 Q. Do you know whether New  
 5 Jersey or Delaware -- New Jersey has ever  
 6 coordinated permit review of any project  
 7 review with Delaware?  
 8 A. If they've ever coordinated  
 9 a permit review with the State of  
 10 Delaware.  
 11 Q. I can be clearer if -- with  
 12 respect to a project similar or as -- as  
 13 with the Crown Landing project, that  
 14 starts on New Jersey shore and then  
 15 extends beyond the boundary line and into  
 16 Delaware.  
 17 Are you aware of any project  
 18 that has that geographical characteristic  
 19 on which -- with regard to which New  
 20 Jersey has coordinated its review, its  
 21 permitting review, with Delaware?  
 22 A. As I mentioned -- as I  
 23 indicated a while back, with the DuPont  
 24 Chambers Works project, because it

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1 occurred in New Jersey and in Delaware.  
 2 Q. Right.  
 3 A. There was coordination  
 4 there. I called the State of Delaware  
 5 and asked them if they were concerned and  
 6 they wanted to issue a permit; and they  
 7 told me, no, it's New Jersey's lead.  
 8 So that's -- that's the  
 9 extent of my knowledge of coordination --  
 10 Q. Okay.  
 11 A. -- on permit.  
 12 MR. ATTAWAY: Should we take  
 13 a little break or --  
 14 MS. CONKLIN: Sure. How  
 15 long do you have in mind? Do you  
 16 want to break for lunch now or you  
 17 want to do five more minutes?  
 18 I mean, when would you like  
 19 to go for lunch? That's all.  
 20 MR. ATTAWAY: Well, I'm  
 21 happy to take a short break and go  
 22 for another 45 minutes or an hour  
 23 and then --  
 24 MS. CONKLIN: Are you

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1 comfortable with that, Dave?  
 2 MR. ATTAWAY: Yeah, it's  
 3 entirely up to you.  
 4 MS. CONKLIN: I mean, if  
 5 you're used to getting lunch at  
 6 12:00 --  
 7 THE WITNESS: I did have a  
 8 very light breakfast.  
 9 MR. ATTAWAY: You should  
 10 have lunch then. I don't want to  
 11 inconvenience you at all.  
 12 MS. CONKLIN: Yeah -- we can  
 13 go off the record, please.  
 14 \* \* \*  
 15 (Whereupon, a discussion was  
 16 held off the record.)  
 17 \* \* \*  
 18 (Whereupon, a luncheon  
 19 recess was taken from 12:05 p.m.  
 20 until 1:00 p.m.)  
 21 \* \* \*  
 22 (Whereupon, various  
 23 documents were marked for  
 24 identification as Risilia-4,

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1 Risilia-5, Risilia-6, Risilia-6A,  
 2 and Risilia-7, respectively.)  
 3 \* \* \*  
 4 (PAUSE)  
 5 BY MR. ATTAWAY:  
 6 Q. Mr. Risilia, I've had  
 7 exhibits marked 4, 5, 6, 6A, and 7.  
 8 Have you had a chance to  
 9 review those?  
 10 A. Yeah. Mine aren't marked,  
 11 but --  
 12 Q. I'll go through them one at  
 13 a time.  
 14 A. Okay. That would be great.  
 15 Q. Okay.  
 16 Exhibit 4 is Bates stamped  
 17 DuPont 1021.  
 18 A. Okay. October 15th, 1982?  
 19 Q. Right. Right.  
 20 And this letter concerns  
 21 Chamber Works; is that correct?  
 22 A. It appears to, yes.  
 23 Q. Would you agree that this  
 24 shows that the State of Delaware issued a

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1 permit to DuPont for its Chamber Works  
 2 facility?  
 3 A. It appears to be that way.  
 4 I'm not familiar with what their permits  
 5 look like.  
 6 Q. Okay.  
 7 And would that be consistent  
 8 with the position taken in your February  
 9 4th, 2005 letter to Mr. Blaha, the  
 10 portion from page 1 stating that Delaware  
 11 has regulatory authority in the 12 Mile  
 12 Circle?  
 13 A. Back to my February 2005 --  
 14 Q. I'm just asking if it's  
 15 consistent -- Delaware issuing a permit  
 16 in 1982, is that consistent with your  
 17 statement in 2005 stating that Delaware  
 18 has regulatory authority over projects in  
 19 the 12 Mile Circle?  
 20 A. I don't know if it's  
 21 consistent. I -- I stated -- the letter  
 22 of 2005 says we believe that the project  
 23 was in Delaware's jurisdiction, and this  
 24 is --

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1 Q. And that Delaware had  
 2 regulatory authority therefor?  
 3 A. Correct. And this appears  
 4 to be some kind of letter that indicates  
 5 that they've authorized maintenance  
 6 dredging. The State of Delaware is  
 7 authorizing maintenance dredging by -- it  
 8 appears in this letter.  
 9 Q. Okay.  
 10 So moving on to what's been  
 11 marked as Risilia-5, and this is -- it's  
 12 Bates stamped Delaware 19645 through 649  
 13 -- and this is a subaqueous lands permit  
 14 granted to DuPont Chamber Works. Date of  
 15 issuance is May the 4th, 2001; is that  
 16 correct?  
 17 A. That's what it appears to  
 18 be.  
 19 Q. You mentioned earlier that  
 20 in 2001, you contacted Delaware officials  
 21 regarding environmental mediation at  
 22 Chamber Works; correct?  
 23 A. Yes, I did.  
 24 Q. Would you agree that this

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1 subaqueous lands permit issued by  
 2 Delaware indicates that Delaware was  
 3 exercising regulatory jurisdiction over  
 4 the Chamber Works project?  
 5 MS. KELLY: Overbroad.  
 6 You can answer.  
 7 THE WITNESS: I don't know  
 8 about regulatory jurisdiction.  
 9 This to me indicates that they are  
 10 regulating or issuing an  
 11 instrument to occupy an area, a  
 12 water area, in the river.  
 13 MR. ATTAWAY: Okay.  
 14 BY MR. ATTAWAY:  
 15 Q. Moving on to what's been  
 16 marked as Exhibit 6, this is Bates  
 17 stamped Delaware 25932 to 933, and this  
 18 is a letter -- it's dated April 7th, 2004  
 19 -- from the Governor of Delaware and the  
 20 Governor of New Jersey, a joint letter,  
 21 to the Acting Secretary of the Army at  
 22 the Department of Defense at the  
 23 Pentagon; is that correct?  
 24 A. Yes.

134	<p>1 Q. This letter pertains to a 2 nerve gas known as VX. Are you familiar 3 with VX? 4 A. Somewhat. 5 Q. Now, this letter concerns 6 DuPont's Chamber Works facility and a 7 proposal to treat VX that had been stored 8 in Indiana and then dump it into the 9 Delaware River. 10 Have you -- before today, 11 before seeing this letter, were you aware 12 of this proposal at all? 13 A. Yeah, I did read about it 14 and hear about it on the news. 15 Q. Okay. 16 Did you do any work on it as 17 part of your job at Department of 18 Environmental Protection? 19 A. No. 20 Q. Do you know who worked on 21 it? 22 A. No, I don't. 23 Q. Do you know who within the 24 DEP likely would have been assigned to</p>	136	<p>1 Delaware DNREC office -- that's D-N-R-E-C 2 -- in New Castle, Delaware on March 10th, 3 2004. 4 Do you see an attendance 5 sheet attached to the -- 6 A. Yes. 7 Q. -- agenda notice? 8 Toward the top, there are 9 three names that have NJ DEP next to 10 them, indicating that these three 11 individuals attended this meeting. 12 Sam Wolfe, do you know Mr. 13 Wolfe? 14 A. Yes. 15 Q. What is his area of 16 expertise? 17 A. He no longer works for the 18 department. 19 Q. At this time, in March 2004, 20 what was his position within the 21 department? 22 A. I believe he worked -- I 23 think he was an assistant to the 24 Commissioner in the Commissioner's</p>
135	<p>1 this type of project? 2 A. If it involved a discharge 3 to surface waters under the New Jersey 4 PDS program, NJ PDS, then it would -- 5 Q. I'm sorry. What does PDS 6 stand for? 7 A. It's the pollution discharge 8 elimination program, also known as NJPDES 9 program, then someone who had 10 jurisdiction or a project manager who 11 would have been involved with the 12 discharge or the regulation of the 13 discharge may have been involved in that 14 -- or would have -- you know, that would 15 be the logical person who would review 16 this. 17 Q. Okay. 18 Turning to what's been 19 marked as Exhibit 6A, Delaware 25974 and 20 75, this is an agenda or it's titled an 21 agenda of a technical briefing meeting, 22 treatment and disposal of neutralized VX 23 at DuPont Chamber Works. 24 The meeting location is</p>	137	<p>1 office. I don't know his title. 2 Q. Okay. 3 And Susan Rosenwinkel? 4 A. Yes. 5 Q. What was her -- at this 6 time, what was her job title and 7 responsibilities? 8 A. I don't know her job title, 9 but I believe she worked in the program 10 that I mentioned earlier, the -- the 11 NJPDES program, in the discharge to 12 surface water section. 13 Q. And Pilar Patterson, 14 P-I-L-A-R Patterson? 15 A. I don't know that person. 16 Q. Okay. 17 Do you know whether New 18 Jersey ever asserted that Delaware did 19 not have jurisdiction to regulate the 20 discharge of VX from the DuPont Chamber 21 Works facility? 22 A. I don't know that. I was 23 not involved in this project whatsoever. 24 Q. Okay.</p>

<p style="text-align: right;">138</p> <p>1 But the Governors of the two                  2 states wrote a joint letter to the Army                  3 expressing their joint concerns with the                  4 discharge of VX into the Delaware River;                  5 is that correct?                  6 A. It appears to be, in the                  7 April 7th, '04 document.                  8 Q. Okay. Thank you.                  9 Let's move to the last                  10 exhibit I've recently had marked number                  11 7, and the Bates stamp range is DuPont                  12 1339 through 1343.                  13 Looking at DuPont 1340, this                  14 is a subaqueous lands permit granted to                  15 DuPont for dredging below the mean                  16 waterline within the State of Delaware                  17 adjacent to the Chamber Works facility,                  18 and it was issued March 7th, 2006.                  19 Is -- did I read that                  20 correctly?                  21 A. Yes.                  22 Q. Or paraphrase would be more                  23 accurate, I guess.                  24 A. Yeah.</p>	<p style="text-align: right;">140</p> <p>1 2004 says that activity below the mean                  2 low waterline are subject to Delaware's                  3 coastal zone management regulations.                  4 Q. Correct.                  5 A. And I don't know -- that's                  6 -- the coastal zone management                  7 regulation, that's the CZM rules.                  8 This document talks about                  9 riparian areas, which are -- are                  10 different, so I don't know -- I don't                  11 know how the linkage -- what the linkage                  12 is throughout -- you know, between the                  13 two documents.                  14 Q. Earlier, you mentioned a                  15 project known as Keystone.                  16 Are you familiar with any                  17 New Jersey permits issued for the                  18 Keystone project?                  19 A. All I know is that land use                  20 regulation issued a permit for the                  21 Keystone cogeneration facility, which                  22 includes a pier, but I did not work on                  23 that. I don't even know when it was                  24 issued.</p>
<p style="text-align: right;">139</p> <p>1 Q. I wasn't trying to quote                  2 exactly.                  3 Were you aware of this                  4 permit that was granted by Delaware?                  5 A. No.                  6 Q. Would you agree that the                  7 action by Delaware in issuing a permit                  8 here was consistent with your statement                  9 in your February 4th letter that Delaware                  10 has regulatory jurisdiction within the 12                  11 Mile Circle, regulatory authority?                  12 MS. KELLY: I have a                  13 foundation objection, but you can                  14 answer.                  15 THE WITNESS: I don't know                  16 what you mean by "consistent."                  17 BY MR. ATTAWAY:                  18 Q. Well, your February 2005                  19 letter said that Delaware had regulatory                  20 authority over the Crown Landing project                  21 to the extent that it extended into                  22 Delaware.                  23 Do I have that correct?                  24 A. It said that -- my letter of</p>	<p style="text-align: right;">141</p> <p>1 Q. Okay.                  2 Just briefly describe your                  3 understanding of the nature and scope of                  4 the Keystone project.                  5 A. Again, I -- you know, I                  6 wasn't the project manager. I know                  7 there's a pier out there. It extends out                  8 into the river from -- it's adjacent to                  9 Crown Landing. It's directly upstream of                  10 the Crown Landing BP facility.                  11 And the pier is used to                  12 receive coal -- I believe coal shipments                  13 via barge that are taken to the -- the                  14 landside facility, which is a                  15 cogeneration facility that, I believe,                  16 generates electric and steam and sells                  17 steam to other users in the area.                  18 Q. When in 1991 did you start                  19 in the Land Use Division?                  20 A. I think it may have been in                  21 the spring. I don't remember the month.                  22 MR. ATTAWAY: I'd like to                  23 mark another exhibit. This will                  24 be number 8.</p>

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1           \* \* \*

2           (Whereupon, the

3           above-mentioned document was

4           marked for identification as

5           Risilia-8.)

6           \* \* \*

7           MR. ATTAWAY: Back on the

8           record.

9           BY MR. ATTAWAY:

10          Q. Okay, Mr. Risilia. Marked

11          as Exhibit 8 is a permit from State of

12          New Jersey, Department of Environmental

13          Protection, dated September 24th, 1991,

14          issued to Keystone Cogeneration System,

15          Incorporated; is that correct?

16          A. Yes.

17          Q. And the Bates stamp numbers

18          are New Jersey 4403 to 09.

19          In the top of page 1,

20          there's a number of boxes. It says

21          "Issuing Division: Land Use Regulation

22          Element."

23          Is that your division at

24          that time?

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1          A. Yes.

2          Q. Have you ever seen this

3          permit?

4          A. No.

5          Q. Have you seen other permits

6          that look similar?

7          A. What do you mean by "look

8          similar"?

9          Q. In terms of the formatting.

10          Like, are -- these permits, do they tend

11          to be sort of boilerplate or are they all

12          drafted individually for each project?

13          A. The permit format that's

14          shown on here is a boilerplate format in

15          that the information is entered

16          individually for each project, but the

17          appearance of the permit page at that

18          time -- it's somewhat changed now, but

19          they're pretty much the same or were the

20          same.

21          Q. And throughout the remainder

22          of the permit, does this type of language

23          appear repeatedly in these types of

24          permits?

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1          A. I didn't read every word of

2          it, but they followed a similar format.

3          Q. This says on page 1 that

4          it's a waterfront development and

5          wetlands type A permit. I think you

6          testified earlier that waterfront

7          development was the type of permits that

8          you evaluated; is that correct?

9          A. That's right.

10          Q. Turn to page 5 of the

11          permit, Bates stamp New Jersey 4408,

12          please.

13          A. (Witness complies.)

14          Q. And at the top of the page

15          there is a letter E and then 1, 2, 3, 4

16          under that. I'll give you a chance to

17          review that.

18          (PAUSE)

19          THE WITNESS: Okay.

20          BY MR. ATTAWAY:

21          Q. I'll just read it. It says,

22          "E, Prior to construction, the permit

23          team must submit copies of all the

24          permits or approvals listed below to the

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1          element."

2          And the element is the land

3          use regulation element; is that correct?

4          A. It would be.

5          Q. Okay.

6          Number 1 is New Jersey

7          pollution discharge elimination system;

8          number 2 is amendment to the area-wide

9          water quality management plan; number 3,

10          Delaware River Basin Commission approval;

11          and, number 4, subaqueous land and

12          coastal zone management, open paren,

13          Delaware, close paren; is that correct?

14          A. That's what it says.

15          Q. So based on this, does it

16          appear to you that this -- the validity

17          of this permit was conditioned on the

18          issuance of permits by Delaware?

19          A. It was a condition of the

20          permit.

21          Q. Do you know of any other

22          permits that had a similar condition?

23          A. No.

24          Q. I know you hadn't seen this

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1 permit, but did you know that a condition  
 2 of this type was included in the Keystone  
 3 permit -- in the permit issued by New  
 4 Jersey to Keystone?  
 5 A. No, I didn't.  
 6 Q. Do these permits undergo  
 7 review by legal counsel at any time?  
 8 A. At any time?  
 9 Q. Yes.  
 10 MS. CONKLIN: I'm going to  
 11 ask -- I'm going to object on the  
 12 grounds of a lack of foundation.  
 13 I would -- I would suggest  
 14 you can ask him about the permits  
 15 that he's issued or if there's a  
 16 general procedure for handling  
 17 these permits, but we don't have a  
 18 foundation that he knows about the  
 19 general procedure other than the  
 20 permits he handles.  
 21 So if you want to zero in on  
 22 what he knows first, that would be  
 23 helpful.  
 24 BY MR. ATTAWAY:

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1 Q. Is it your understanding  
 2 that permits issued by the -- the DEP are  
 3 reviewed at any time by legal counsel?  
 4 A. I believe I addressed that  
 5 earlier and -- and I indicated, as I --  
 6 my understanding is that permits that go  
 7 before legal counsel are permits that are  
 8 either being appealed, because there were  
 9 -- let me be more specific -- decisions,  
 10 decisions that are reviewed by legal  
 11 counsel are either permit decisions that  
 12 were denied and they're therefore being  
 13 appealed by the denied party or permits  
 14 that have a dispute over a condition.  
 15 They are the ones that I --  
 16 that -- that I know in general go -- go  
 17 through legal counsel.  
 18 Q. Have you ever asked for  
 19 counsel to review a permit that you've  
 20 been working on?  
 21 A. At what -- at what point?  
 22 Q. At any point in your career  
 23 at DEP.  
 24 A. Yes.

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1 Q. How often does that happen?  
 2 A. It happen -- not very  
 3 frequently.  
 4 Q. Do you recall the projects  
 5 that you sought legal counsel on?  
 6 A. Some of them.  
 7 Q. And tell me whichever you  
 8 can recall.  
 9 A. I've worked on over a  
 10 thousand. I -- I've worked on probably  
 11 several thousand permit decisions over my  
 12 tenure, so, you know, I can't recall  
 13 specific instances, but in cases where  
 14 I've denied -- denied a permit, you know,  
 15 frequently, they have been assigned --  
 16 when a -- when a permit gets denied, it  
 17 gets assigned -- if the denied party  
 18 appeals the decision, it gets assigned to  
 19 the Attorney General.  
 20 And then the Attorney  
 21 General, DAG, typically approaches me and  
 22 says, "This is my case. Can I see the  
 23 permit?" And that's happened over the  
 24 course of my career a number of times.

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1 Q. Okay.  
 2 Sir, you know an attorney at  
 3 the law division named William Anderson;  
 4 correct?  
 5 A. Yes.  
 6 Q. Have you ever spoken with  
 7 him at any time about Delaware's  
 8 regulatory authority over -- let me start  
 9 this -- before February 2005, had you  
 10 ever spoken with Mr. Anderson about  
 11 Delaware's regulatory authority within  
 12 the 12 Mile Circle?  
 13 A. No, not that I can recall.  
 14 Q. Do you know whether Mr.  
 15 Anderson advised any applicants regarding  
 16 Delaware's authority in the 12 Mile  
 17 Circle?  
 18 MS. CONKLIN: I'm going to  
 19 object to -- on foundation  
 20 grounds.  
 21 MR. ATTAWAY: Well, he  
 22 either knows or he doesn't. Your  
 23 objection's noted.  
 24 MS. CONKLIN: I understand

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1 that, but you're asking -- you're  
 2 asking him something and you have  
 3 no idea if he knows anything about  
 4 it.  
 5 MR. ATTAWAY: Well, that's  
 6 the point of asking the questions.  
 7 Your objection's noted for the  
 8 record.  
 9 Please answer if you can.  
 10 THE WITNESS: I don't know  
 11 whom Bill may have advised --  
 12 MR. ATTAWAY: Okay.  
 13 BY MR. ATTAWAY:  
 14 Q. So you don't have any  
 15 knowledge --  
 16 A. -- in his capacity.  
 17 Q. You don't have any knowledge  
 18 that he ever advised any applicant as to  
 19 the scope of Delaware's permitting  
 20 authority.  
 21 A. That's correct, I don't -- I  
 22 don't have any knowledge.  
 23 Q. Did you ever hear of a --  
 24 well, do you know whether New Jersey DEP

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1 or any Delaware agency entered into  
 2 negotiations about coordinating permit  
 3 reviews of the respective states?  
 4 A. No, I don't know if that  
 5 occurred.  
 6 Q. So you never heard anything  
 7 about that, anything about any permit  
 8 review coordination?  
 9 A. The only permit coordination  
 10 that I'm aware of is something called  
 11 joint permit process meetings, which  
 12 occur on a monthly basis in -- at land  
 13 use regulation, in which other regulatory  
 14 agencies besides DEP meet monthly to  
 15 discuss different applications,  
 16 consisting of the Army Corp, U.S. Fish &  
 17 Wildlife Service, sometimes the National  
 18 Marines Fishery Service, and other  
 19 regulatory entities.  
 20 I don't know of any specific  
 21 cases that I -- that I could -- that I'm  
 22 aware of where Delaware attended those  
 23 meetings.  
 24 Q. Okay.

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1 A. Those coordination meetings.  
 2 Q. Well, did Delaware attend  
 3 the meetings that you're talking about,  
 4 the joint --  
 5 A. I was never at one where  
 6 Delaware -- a joint permit process  
 7 meeting where Delaware was there.  
 8 Q. Okay.  
 9 MR. ATTAWAY: I'd like to  
 10 mark for exhibit -- are we up to  
 11 9?  
 12 THE COURT REPORTER: Yes.  
 13 \* \* \*  
 14 (Whereupon, the  
 15 above-mentioned document was  
 16 marked for identification as  
 17 Risilia-9.)  
 18 \* \* \*  
 19 (PAUSE)  
 20 THE WITNESS: Okay. I've  
 21 reviewed it.  
 22 BY MR. ATTAWAY:  
 23 Q. I've had marked as Exhibit 9  
 24 a memorandum from -- it's got State of

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1 New Jersey, Department of Environmental  
 2 Protection & Energy letterhead.  
 3 The memorandum is to  
 4 distribution, from Steven Whitney,  
 5 manager. Date is July 7, 1994, and the  
 6 subject is New Jersey/Delaware memorandum  
 7 of agreement.  
 8 The Bates range is Delaware  
 9 27930 to 935.  
 10 Mr. Risilia, have you seen  
 11 this document before today?  
 12 A. No, I haven't.  
 13 Q. Does it refresh your  
 14 recollection as to any attempts between  
 15 the states to coordinate permitting  
 16 reviews?  
 17 A. No, because I wasn't aware  
 18 of it.  
 19 Q. The distribution on the  
 20 first page shows a number of names with  
 21 NJ DEP after them. Do you recognize any  
 22 of the names on that list?  
 23 A. Yes.  
 24 Q. Let's just start at the top.

154	<p>1 John Weingart?</p> <p>2 A. Yes.</p> <p>3 Q. And what was his job title,</p> <p>4 if you know, at -- and/or</p> <p>5 responsibilities at the -- at the time?</p> <p>6 A. I believe he was the</p> <p>7 Director of Land Use Regulation program</p> <p>8 at -- at some point in time,</p> <p>9 approximately around this time.</p> <p>10 Q. Approximately, yeah, okay.</p> <p>11 So he was the director of</p> <p>12 your department at that time?</p> <p>13 A. Of my program, yes.</p> <p>14 Q. Because you were at land use</p> <p>15 at that time?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 Martin Bierbaum?</p> <p>19 A. I recognize his name.</p> <p>20 Q. Do you recall what his</p> <p>21 responsibilities were at the time?</p> <p>22 A. No. He -- he was also</p> <p>23 working in the land use program.</p> <p>24 Q. Ernest Hahn?</p>	156	<p>1 in the air program?</p> <p>2 Q. Tom Wells?</p> <p>3 A. Don't know.</p> <p>4 Q. The name is just not</p> <p>5 familiar?</p> <p>6 A. Yeah, it's not familiar.</p> <p>7 Q. And JoAnne Cubberly?</p> <p>8 A. JoAnne Cubberly was the -- I</p> <p>9 don't know if her title was director, but</p> <p>10 she was in charge of the Bureau of</p> <p>11 Tidelands.</p> <p>12 Q. So whether her title was</p> <p>13 director or manager or whatever, she was</p> <p>14 at the top of the Bureau of Tidelands; is</p> <p>15 that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 A. You know, actually --</p> <p>19 MS. CONKLIN: There's no</p> <p>20 question pending. Please --</p> <p>21 THE WITNESS: I want to</p> <p>22 clarify what I said.</p> <p>23 MS. CONKLIN: Go right</p> <p>24 ahead.</p>
155	<p>1 A. Yes, he also was in the --</p> <p>2 in that program.</p> <p>3 Q. Land use?</p> <p>4 A. Yes.</p> <p>5 Q. Ruth Ehinger?</p> <p>6 A. Yes, Ruth Ehinger was one of</p> <p>7 the managers of the land -- at the land</p> <p>8 use regulation program at that time.</p> <p>9 Q. Theresa Fowler?</p> <p>10 A. I recognize her name, but I</p> <p>11 don't remember what her title or position</p> <p>12 was.</p> <p>13 Q. Do you remember what</p> <p>14 department she was in?</p> <p>15 A. I believe she was at land</p> <p>16 use.</p> <p>17 Q. Okay.</p> <p>18 Dennis Hart?</p> <p>19 A. He was in another regulatory</p> <p>20 program. It might have been the water</p> <p>21 program. I'm not sure, but he wasn't in</p> <p>22 land use.</p> <p>23 Q. Bill O'Sullivan?</p> <p>24 A. I believe he might have been</p>	157	<p>1 THE WITNESS: JoAnne</p> <p>2 Cubberly, at that date, I don't</p> <p>3 know whether she was Director of</p> <p>4 Tidelands. She did have a tenure</p> <p>5 as Director of the Bureau of</p> <p>6 Tidelands, but prior to that, she</p> <p>7 did have a position within</p> <p>8 tidelands.</p> <p>9 But that was a lot of years</p> <p>10 ago and I don't know what her</p> <p>11 title was at that time.</p> <p>12 BY MR. ATTAWAY:</p> <p>13 Q. When did she -- assuming she</p> <p>14 left, when did she leave the position as</p> <p>15 the top of the Bureau of Tidelands, as</p> <p>16 you put it?</p> <p>17 A. I believe she retired last</p> <p>18 year.</p> <p>19 Q. Okay.</p> <p>20 So she was at the top of the</p> <p>21 -- she was the highest person in the</p> <p>22 Bureau of Tidelands until last year,</p> <p>23 starting sometime previously that may or</p> <p>24 may not have included 1994, when this</p>

158

1 memorandum was written; is that what  
 2 you're saying?  
 3 **A. She was -- yeah, she was**  
 4 **Director of the Bureau of Tidelands for a**  
 5 **number of years, and I believe she**  
 6 **retired last year.**  
 7 **Q. Okay.**  
 8 **Do you know about how long**  
 9 **she was with the Bureau?**  
 10 **A. No, I don't -- I don't**  
 11 **recall when she was appointed or started**  
 12 **being director.**  
 13 **Q. Okay.**  
 14 **So turning to page 2 of the**  
 15 **draft memorandum of agreement, I want to**  
 16 **direct your attention to the sentence at**  
 17 **the bottom of the page -- and this is**  
 18 **Delaware 27932 regarding Bates numbers --**  
 19 **and it says, "Both agencies recognize**  
 20 **that each agency has the independent**  
 21 **authority to approve or deny applications**  
 22 **pursuant to its own regulations. DEP and**  
 23 **DNREC will share applications under the**  
 24 **following authorities."**

159

1 **And then it lists several**  
 2 **divisions of the New Jersey DEP followed**  
 3 **by several permitting functions of the**  
 4 **Delaware equivalent.**  
 5 **A. I think I lost where you are**  
 6 **on that page. I'm sorry. Did you say 2**  
 7 **--**  
 8 **Q. I was reading at the bottom**  
 9 **of page 2, 27932.**  
 10 **A. Okay. I found it.**  
 11 **Q. Okay.**  
 12 **So does that language at the**  
 13 **bottom of page 2 suggest that the persons**  
 14 **contemplating this agreement considered**  
 15 **Delaware to have permitting authority**  
 16 **within the 12 Mile Circle?**  
 17 **MS. KELLY: I'm going to**  
 18 **object. There's no foundation,**  
 19 **because he's already testified**  
 20 **that he's never seen this before.**  
 21 **He would be purely speculating on**  
 22 **that.**  
 23 **And I think it**  
 24 **mischaracterizes -- taking pieces**

160

1 **out of context, it**  
 2 **mischaracterizes, but -- what it**  
 3 **says.**  
 4 **MR. ATTAWAY: Okay. You can**  
 5 **still answer the question.**  
 6 **THE WITNESS: I can't speak**  
 7 **for the persons that authored**  
 8 **this. I don't know what their**  
 9 **intentions were.**  
 10 **BY MR. ATTAWAY:**  
 11 **Q. Just looking at the document**  
 12 **in general, would you agree that this**  
 13 **document generally sets out procedures**  
 14 **for sharing information between the**  
 15 **Delaware and New Jersey agencies for**  
 16 **projects within the 12 Mile Circle?**  
 17 **MS. KELLY: Just continue my**  
 18 **objection.**  
 19 **THE WITNESS: I didn't see**  
 20 **any references to the 12 Mile**  
 21 **Circle in this document.**  
 22 **BY MR. ATTAWAY:**  
 23 **Q. Well, let's just say, along**  
 24 **the Delaware River.**

161

1 **A. So your question now is --**  
 2 **is -- can you rephrase that, please?**  
 3 **Q. Would you agree that in**  
 4 **general, this memorandum of agreement,**  
 5 **draft memorandum of agreement, proposes**  
 6 **procedures for the state agencies in**  
 7 **Delaware and New Jersey to share**  
 8 **information regarding their permitting**  
 9 **processes along the Delaware River?**  
 10 **A. Yeah, it appears that way.**  
 11 **Q. Turning back to the**  
 12 **memorandum, this -- and that's at**  
 13 **Delaware 27930 -- the memorandum to which**  
 14 **the draft memorandum of agreement is**  
 15 **attached is from Steven Whitney, manager.**  
 16 **Do you know Mr. Whitney?**  
 17 **A. Yes, I knew Mr. -- Steve**  
 18 **Whitney.**  
 19 **Q. Who is Mr. Whitney?**  
 20 **A. He's a former manager of --**  
 21 **at land use regulation program who**  
 22 **retired quite a few years ago, as I**  
 23 **recall.**  
 24 **Q. Did you work under him when**

162

1 you were at land use?  
 2 A. I don't recall if he -- I  
 3 worked in two different bureaus at land  
 4 use, and I don't recall if I was working  
 5 under him at that time. I don't think I  
 6 did.  
 7 Q. Okay.  
 8 How many bureaus were  
 9 encompassed within the land use  
 10 regulation element, I think it was  
 11 referred to in the Keystone permit?  
 12 A. There were two bureaus.  
 13 There was a coastal bureau and an inland  
 14 bureau.  
 15 Q. Which one were you assigned  
 16 to?  
 17 A. I worked in both of them.  
 18 Q. Which one was Mr. Whitney  
 19 the manager of?  
 20 A. I believe he was the manager  
 21 of the coastal bureau, but I don't know  
 22 that I worked in the coastal bureau while  
 23 he was manager.  
 24 Q. Are you familiar with a

164

1 (Whereupon, the examination  
 2 concluded at 1:57 p.m.)  
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163

1 project known as Fort Mott?  
 2 A. No.  
 3 Q. No?  
 4 Are you familiar with Fort  
 5 Mott?  
 6 A. I've heard of Fort Mott, but  
 7 I don't -- I know virtually nothing about  
 8 it.  
 9 Q. Okay.  
 10 So I take it that means you  
 11 don't know anything about a permit issued  
 12 by New Jersey to refurbish a pier at Fort  
 13 Mott?  
 14 A. No. I didn't work on that.  
 15 Q. Okay.  
 16 A. I don't recall -- recall  
 17 that.  
 18 Q. All right.  
 19 MR. ATTAWAY: I have no  
 20 further questions.  
 21 MS. CONKLIN: Very good.  
 22 \* \* \*  
 23 (Witness excused.)  
 24 \* \* \*

165

1 CERTIFICATE  
 2 I hereby certify that the  
 3 witness was duly sworn by me and that the  
 4 deposition is a true record of the  
 5 testimony given by the witness.  
 6  
 7  
 8  
 9 \_\_\_\_\_  
 10 Kimberly A. Cahill, RMR, CSR  
 11 Dated: Wednesday, October 4, 2006  
 12 (The foregoing certification of this  
 13 transcript does not apply to any  
 14 reproduction of the same by any means,  
 15 unless under the direct control and/or  
 16 supervision of the certifying shorthand  
 17 reporter.)  
 18  
 19  
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LAWYER'S NOTES		
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IN THE SUPREME COURT  
OF THE UNITED STATES

- - -

STATE OF NEW JERSEY : NO. 134, Original

:

v.

:

:

STATE OF DELAWARE :

- - -

OCTOBER 20, 2006

- - -

Oral deposition of CARL W.  
WENTZELL, taken pursuant to notice, was  
held at the offices of the Department of  
Environmental Protection, 9 Ewing Street,  
Trenton, NJ 08609, commencing at 1:00  
p.m., on the above date, before Kimberly  
S. Gordon, a Registered Professional  
Reporter and Notary Public in the State  
of New Jersey.

- - -

ESQUIRE DEPOSITION SERVICES  
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Philadelphia, Pennsylvania 19103  
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2

1 APPEARANCES:

2

3

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23

24

4

1 ---

2 DEPOSITION SUPPORT INDEX

3 ---

4

5 Direction to Witness Not to Answer

6 Page Line

7 None

8

9

10 Request for Production of Documents

11 Page Line

12 None

13

14

15 Stipulations

16 Page Line

17 None

18

19

20 Question Marked

21 Page Line

22 None

23

24

3

1 ---

2 INDEX

3 ---

4 Testimony of:

5 CARL W. WENTZELL

6 PAGE

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8 By Mr. Walton 5, 64, 70

9 By Ms. Balint 61, 68

10

11

12 ---

13 EXHIBITS

14 ---

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18 Wentzell-3	Affidavit	51

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5

1 ---

2 CARL W. WENTZELL, after

3 having been duly sworn, was

4 examined and testified as follows:

5 ---

6 EXAMINATION

7 ---

8 BY MR. WALTON:

9 Q. Good afternoon, Mr.

10 Wentzell.

11 A. Good afternoon.

12 Q. My name is Max Walton. I'm

13 an attorney for the State of Delaware in

14 the case, in the original jurisdiction

15 action New Jersey versus Delaware. New

16 Jersey has sued Delaware regarding

17 certain jurisdictional issues.

18 And I just wanted to ask you

19 have you ever been deposed before?

20 A. Yes.

21 Q. How many times?

22 A. I couldn't tell you.

23 Q. Numerous?

24 A. I'm a retired police

6  
1 officer.  
2 Q. I understand. Have you ever  
3 given deposition testimony in a civil  
4 action before?  
5 A. No.  
6 Q. Have you ever testified in a  
7 civil trial before?  
8 A. Yes.  
9 Q. And could you just tell me  
10 about that civil trial?  
11 A. **It was an auto accident.**  
12 Q. Just because you haven't  
13 been deposed too many times in a civil  
14 action or given trial testimony in a  
15 civil action, I just want to sort of  
16 introduce the ground rules here.  
17 Certainly, everything you  
18 say is going to be taken down by the  
19 court reporter next to us, so just make  
20 sure you verbalize any of your answers.  
21 Just remember you're under oath just like  
22 at trial. And please give full and  
23 complete answers to any question that I  
24 may ask.

7  
1 And I always ask this  
2 question, it's a lawyerly question, but  
3 have you taken any medication or are you  
4 ill or is there anything that would  
5 affect your testimony or prohibit you  
6 from telling the truth today?  
7 A. No, sir.  
8 Q. Can you please give me your  
9 educational background?  
10 A. **I have a Bachelor's in**  
11 **Business Administration.**  
12 Q. From?  
13 A. **From Kennedy Western**  
14 **University.**  
15 Q. And do you have any  
16 postgraduate degrees?  
17 A. No.  
18 Q. Other certificate courses?  
19 A. **In my career field?**  
20 Q. Yes, sir.  
21 A. **Many, anything with the**  
22 **federal government dealing with emergency**  
23 **management, all the ICS 100, 200, 300,**  
24 **402, 700, 800, just did 900 this morning.**

8  
1 **I'm a certified evaluator for FEMA for**  
2 **nuclear plants where I go out and**  
3 **evaluate other nuclear sites.**  
4 Q. You used the term ICS, I  
5 believe?  
6 A. **Incident Command System.**  
7 Q. And you gave a lot of  
8 numbers there. But for those who are not  
9 as educated in such a field, could you  
10 please explain that?  
11 A. **New Jersey has come down**  
12 **with a ruling for emergency responders**  
13 **that they must comply with, be NIMS**  
14 **compliant which requires depending on**  
15 **your level of involvement which level of**  
16 **ICS you take. And Incident Command 100,**  
17 **200, 300 and 400 are for emergency**  
18 **responders, and I've done everything but**  
19 **the 400.**  
20 Q. Again, you mentioned  
21 something else I wasn't familiar with,  
22 the NIMS requirement.  
23 A. **National Incident Management**  
24 **System.**

9  
1 Q. That's a federal program?  
2 A. Yes.  
3 Q. And I believe you also said  
4 you did some evaluations for FEMA?  
5 A. Yes.  
6 Q. Could you explain that, what  
7 your qualifications are, certifications  
8 are in that?  
9 A. **A nuclear evaluator, I go**  
10 **out to other nuclear facilities and**  
11 **evaluate the way a county, a state, a**  
12 **municipality respond to any nuclear**  
13 **incident. They are evaluated every two**  
14 **years by the federal government, and I**  
15 **serve with the feds to go out and be sure**  
16 **that one of these sites know what they're**  
17 **doing.**  
18 Q. So, when you let's say  
19 evaluate the Salem Nuclear Facility --  
20 A. **No, I cannot evaluate my**  
21 **own.**  
22 Q. That's your own facility?  
23 A. **That's mine.**  
24 Q. So, you would go out and

10

1 evaluate other nuclear facilities?  
2 A. Yes, sir.  
3 Q. And I suppose that I'll ask  
4 the question. I'm pretty sure that  
5 you've never done any of those in  
6 Delaware?  
7 A. No, sir, not in Delaware.  
8 Q. Just because I don't believe  
9 we have a nuclear reactor in Delaware.  
10 A. You don't. But you're an  
11 important part of the jurisdiction of  
12 PSE&G.  
13 Q. Explain that to me.  
14 A. New Castle and Kent County  
15 are within the ten-mile radius of  
16 Salem-Hope Creek Nuclear Power Plant.  
17 Q. So, what does that mean as  
18 far as nuclear response or Delaware's  
19 involvement in that?  
20 A. They have to train the  
21 counties and the municipalities within  
22 that ten-mile ring of being able to  
23 protect the citizens of their  
24 jurisdiction.

11

1 Q. In the event --  
2 A. In the event of any kind of  
3 an incident at the nuclear power plant.  
4 Q. Beyond your nuclear  
5 capacity, where are you currently  
6 employed?  
7 A. I am employed with the  
8 County of Salem in New Jersey.  
9 Q. And what is your title?  
10 A. My title is Director of  
11 Emergency Services.  
12 Q. And where are you sort of in  
13 the chain of command? Are you the Chief  
14 of Emergency Services?  
15 A. Yes, sir.  
16 Q. And do you report to anyone?  
17 A. Freeholder Board.  
18 Q. I'm just trying --  
19 A. Governing body.  
20 Q. So, how many folks do you  
21 have working for you?  
22 A. On a daily basis?  
23 Q. Overall and on a daily  
24 basis.

12

1 A. Daily, there's 12. If we're  
2 involved in an incident, there can be up  
3 to 120.  
4 Q. When you say you're involved  
5 in an incident, up to 120, could you give  
6 me an example of an incident?  
7 A. Any kind of an incident,  
8 man-made, nuclear, hazardous materials,  
9 severe weather, anything where I have to  
10 activate my Emergency Operating Center  
11 and bring staff in.  
12 Q. Let's talk about your  
13 Emergency Operating Center just for a  
14 minute so I can get an understanding.  
15 Your 12 people who are employed on a  
16 daily basis, excluding the time when  
17 there's an incident, what do they do?  
18 A. I have the Director of the  
19 Fire Academy, the Domestic Preparedness  
20 Planner, the Chief of Communications, my  
21 9-1-1 dispatchers, my Operations and  
22 Training Officer and a maintenance man.  
23 Q. And I assume that everyone  
24 pretty much, except for the maintenance

13

1 person, is on staff 24 hours a day or  
2 on-call 24 hours a day?  
3 A. Correct.  
4 Q. Let's say that there's an  
5 incident, be it a fire, a nuclear  
6 accident, fire, whatever it may be. You  
7 say you can call in up to 120 people?  
8 A. Yes, sir.  
9 Q. Are they employees or are  
10 they volunteers?  
11 A. Both.  
12 Q. Can you explain that to me?  
13 A. If I activate my Emergency  
14 Operating Center, I pull in the majority  
15 of the department heads.  
16 Q. Let me stop you there.  
17 Those are the people that you named  
18 earlier?  
19 A. No, I'm talking about county  
20 department heads.  
21 Q. And they may be?  
22 A. Treasurer, Clerk of the  
23 Board, facilities management, roads and  
24 bridges, fire marshal, EMS officer,

14

1 public works, ag, engineer.  
 2 Q. And if you pull those in,  
 3 sort of what happens next in responding  
 4 to an incident?  
 5 A. They come in. And in the  
 6 Emergency Operating Center, depending on  
 7 the situation, whatever I need I go to  
 8 the respective department head and ask  
 9 for those resources.  
 10 Q. And then I'm just trying to  
 11 get the chain of command. So, let's say  
 12 it's the fire marshal or I believe you  
 13 said the ag person. They, I assume,  
 14 would then have people underneath them to  
 15 activate?  
 16 A. Correct.  
 17 Q. And are those paid staff or  
 18 volunteer staff?  
 19 A. Both.  
 20 Q. And how do the volunteer  
 21 staff sort of get involved in the  
 22 process? I mean, when are they activated  
 23 versus when are the paid people used?  
 24 A. It depends on the situation.

15

1 If I've got the department heads in the  
 2 office and we don't need anybody from  
 3 their department, they don't get  
 4 activated. If there's a specific thing  
 5 that we need, they activate their people  
 6 through phone call, tone alert pagers,  
 7 cell phones.  
 8 Q. And then they would respond  
 9 to a particular incident?  
 10 A. Yes, sir.  
 11 Q. Let's say we had a fire, a  
 12 rather large fire. Could you walk me  
 13 through an incident command?  
 14 A. There's two ways of looking  
 15 at that, the incident command there.  
 16 There would be an on-scene commander set  
 17 up with all the resources and assistance  
 18 he needs to work from the scene. And if  
 19 it's that large and there may be other  
 20 requirements, the Emergency Operating  
 21 Center would be activated and we'd work  
 22 out of there also.  
 23 Q. When you say you work out of  
 24 there also, what would you do?

16

1 A. Any resources that the  
 2 incident commander on scene might need,  
 3 line them up, have them respond to his  
 4 location.  
 5 Q. And for those not quite as  
 6 familiar with this field, could you give  
 7 me an example of what those might be?  
 8 What other resources might be pulled in  
 9 from the off site command center?  
 10 A. Additional fire apparatus  
 11 from in county or out of county,  
 12 additional ambulances. Depending on the  
 13 severity, we made need public works there  
 14 for moving debris, law enforcement to  
 15 keep the scene secure.  
 16 Q. I understand. That's very  
 17 helpful. Thank you. When you call in  
 18 other folks or other agencies, for  
 19 example, police or fire, are there mutual  
 20 aid agreements --  
 21 A. Yes, sir.  
 22 Q. -- between those?  
 23 And are they between the --  
 24 let me put a sharper point on my

17

1 question. Is there mutual aid  
 2 agreements, for example, between police  
 3 and fire?  
 4 A. Between police and --  
 5 Q. Police and fire. Or are  
 6 they just between districts?  
 7 A. Their law enforcement has  
 8 mutual aid with law enforcement. Fire  
 9 has them with fire.  
 10 Q. So, I assume by what you  
 11 said, -- and if I'm incorrect, please let  
 12 me know -- I assume that there are fire  
 13 districts?  
 14 A. Each municipality has their  
 15 own fire but there are also fire  
 16 districts, yes.  
 17 Q. And are there similar police  
 18 districts?  
 19 A. No. Police is to their  
 20 jurisdiction.  
 21 Q. And when you say to their  
 22 jurisdiction --  
 23 A. Their municipality.  
 24 Q. I assume smaller

<p style="text-align: right;">18</p> <p>1 municipalities, are they covered by the  2 New Jersey State Police in some  3 instances?  4     <b>A. Yes, sir.</b>  5     <b>Q. And in some instances, the</b>  6 <b>municipalities have their own</b>  7 <b>departments?</b>  8     <b>A. Correct.</b>  9     <b>Q. And those are funded through</b>  10 <b>their own municipality?</b>  11     <b>A. Correct.</b>  12     <b>Q. With respect to the fire</b>  13 <b>departments, is it arranged in sort of</b>  14 <b>the same way?</b>  15     <b>A. Yes.</b>  16     <b>Q. Municipality has fire</b>  17 <b>district and their funding is received</b>  18 <b>from that municipality?</b>  19     <b>A. Correct.</b>  20     <b>Q. Is there funding received</b>  21 <b>from state agencies to the particular</b>  22 <b>fire municipalities, fire districts</b>  23 <b>within the municipalities?</b>  24     <b>A. Through grants.</b></p>	<p style="text-align: right;">20</p> <p>1     <b>Q. And are they logged in a</b>  2 <b>computer system?</b>  3     <b>A. Yes, sir.</b>  4     <b>Q. And I would assume that</b>  5 <b>sometimes you get calls for a police</b>  6 <b>activity or police are needed, sometimes</b>  7 <b>you get calls for fire needed, other</b>  8 <b>emergency, --</b>  9     <b>A. Yes, sir.</b>  10     <b>Q. -- ambulance?</b>  11         <b>And is there anything else</b>  12 <b>besides police, fire and ambulance?</b>  13     <b>A. Emergency management.</b>  14     <b>Q. When you say emergency</b>  15 <b>management, just kind of can you explain</b>  16 <b>what that means?</b>  17     <b>A. Assistance on a motor</b>  18 <b>vehicle accident. If there's a spill of</b>  19 <b>gasoline, diesel fuel, chemicals,</b>  20 <b>emergency management is brought in to</b>  21 <b>handle that side of it.</b>  22     <b>Q. For lack of a better term,</b>  23 <b>hazmat?</b>  24     <b>A. Hazmat, or the new word is</b></p>
<p style="text-align: right;">19</p> <p>1     <b>Q. But I guess the ultimate</b>  2 <b>question I'm trying to get at is: Those</b>  3 <b>are funded by the municipalities?</b>  4     <b>A. Correct.</b>  5     <b>Q. With the exception of grants</b>  6 <b>or special projects or special funding?</b>  7     <b>A. Yes, sir.</b>  8     <b>Q. Can I talk to you about your</b>  9 <b>9-1-1 center for a moment?</b>  10     <b>A. Yes, sir.</b>  11     <b>Q. When a call comes into your</b>  12 <b>9-1-1 center -- first of all, let me ask</b>  13 <b>this question: Are you in charge of the</b>  14 <b>9-1-1 center?</b>  15     <b>A. Yes, sir, I am.</b>  16     <b>Q. When a call comes into your</b>  17 <b>9-1-1 center, how does that call get</b>  18 <b>processed?</b>  19     <b>A. I'm not sure I understand</b>  20 <b>what you're asking.</b>  21     <b>Q. A call gets placed to the</b>  22 <b>9-1-1 center. Does a dispatcher handle</b>  23 <b>the call?</b>  24     <b>A. Yes, sir.</b></p>	<p style="text-align: right;">21</p> <p>1 <b>CBRNE.</b>  2     <b>Q. Can you tell me what that</b>  3 <b>means?</b>  4     <b>A. Chemical, biological,</b>  5 <b>radiological, nuclear explosives.</b>  6     <b>Q. So, the dispatcher takes the</b>  7 <b>call. How do they then determine who to</b>  8 <b>call or to be the responder?</b>  9     <b>A. They know where the call is</b>  10 <b>coming from. The way the CAD system is</b>  11 <b>set up when the call comes in it shows</b>  12 <b>what police agency, what fire agency,</b>  13 <b>what EMS agency is involved, covers that</b>  14 <b>respective area. And after they get all</b>  15 <b>the information, then they will dispatch</b>  16 <b>the respective response unit.</b>  17     <b>Q. When you talk about a CAD</b>  18 <b>system, could you explain that to me?</b>  19     <b>A. Computer-aided dispatch.</b>  20     <b>Q. And let me give you my</b>  21 <b>understanding and please correct me if</b>  22 <b>I'm wrong. That will pinpoint the</b>  23 <b>location of the call?</b>  24     <b>A. Yes, sir.</b></p>

22

1 Q. And then they would be  
2 dispatched, assuming that the caller  
3 wants a response to that location, --  
4 A. **Correct.**  
5 Q. -- dispatched to that  
6 particular location?  
7 And does the CAD system  
8 identify sort of what fire district?  
9 A. **Yes.**  
10 Q. And what police district?  
11 A. **Yes, sir.**  
12 Q. Are you familiar with the  
13 area known as the Twelve-Mile Circle?  
14 A. **No, sir, not in that**  
15 **terminology.**  
16 Q. What is your understanding  
17 of the boundary between New Jersey and  
18 Delaware in the Delaware River?  
19 A. **Part of Salem County would**  
20 **be the middle of the river. And for the**  
21 **most part of Salem County, it's the low**  
22 **watermark.**  
23 Q. And when you say for the  
24 most part, is there a part that it's not

23

1 the low watermark?  
2 A. **Correct.**  
3 Q. What part is that?  
4 A. **The southern part of the**  
5 **county below -- part of Lower Alloway**  
6 **Creek Township, it is out in the center**  
7 **of the river.**  
8 Q. And how far north does Salem  
9 County go? What's the adjoining county?  
10 A. **Gloucester County.**  
11 Q. And could you give me a  
12 landmark sort of where they split between  
13 Gloucester and Salem County?  
14 A. **Logan Township and I believe**  
15 **it's Madhorse Creek. Don't hold me to**  
16 **that one, but I think it's the little**  
17 **body of water that runs right up**  
18 **alongside of Oldman's Township, between**  
19 **Oldman's and Logan Township.**  
20 Q. If I showed you an overhead  
21 photo, do you think you could identify  
22 the boundary?  
23 A. **Yes, sir.**  
24 Q. I'm not going to mark this

24

1 as an exhibit because it's very large.  
2 Mr. Wentzell, I've laid out on this  
3 L-shaped table pictures, overhead photos  
4 of the Delaware River. The first photo  
5 is marked DE28987 through the last photo  
6 that's marked DE28992 on the table here.  
7 Now, could you show me on  
8 the overhead photos where -- and if I  
9 represented to you on Picture 6 it's the  
10 tip of Artificial Island, could you give  
11 me the boundary?  
12 A. **So, that's Artificial Island**  
13 **coming up this way?**  
14 Q. That's correct.  
15 A. **(Witness pointed.)**  
16 Q. If I represented to you  
17 that's Oldman's Creek --  
18 A. **Okay, yes, sir.**  
19 Q. Salem County would go from  
20 the tip of Artificial Island north of the  
21 Delaware Memorial Bridge?  
22 A. **Correct.**  
23 Q. All the way up to --  
24 A. **Oldman's Creek.**

25

1 Q. -- Oldman's Creek?  
2 A. **Yes, sir.**  
3 Q. In what we just described or  
4 what you showed me was the boundaries of  
5 Salem County --  
6 MS. BALINT: Actually, when  
7 you identified the southern tip,  
8 you were talking about the tip of  
9 Artificial Island, and that's not  
10 the border of Salem County. Salem  
11 County proceeds further south.  
12 BY MR. WALTON:  
13 Q. I believe you testified  
14 earlier that the southern part of Salem  
15 County, the low watermark was not the  
16 border of the county?  
17 A. **That's correct.**  
18 Q. And based upon my maps, if I  
19 represented to you that the yellow line  
20 on the overhead photos was the border  
21 between the states, would you agree that  
22 the tip of Artificial Island essentially  
23 is the area where the low watermark  
24 boundary begins?

26

1       A. Yes, sir.

2       Q. So, within that area, you

3 would be responsible for handling

4 emergency calls?

5       A. Yes, sir.

6       Q. Now, when a call is logged

7 into your CAD system -- and I'm sorry,

8 I've already forgotten the acronym.

9       A. **Computer-aided dispatch.**

10      Q. Does it keep a record of

11 where the particular emergency fire,

12 police response, where they were sent?

13      A. Yes, sir.

14      Q. And how far back does that

15 go, the recordkeeping for that?

16      A. **I'm not quite sure exactly**

17 **how far back. It goes back a period of**

18 **time.**

19      Q. Approximately at least

20 through the '90s?

21      A. **No. I do not know.**

22      Q. Is it fair to say that it

23 goes back just at least five years?

24      A. Yes, sir.

27

1       Q. Ten years?

2       A. **I honestly can't answer**

3 **that.**

4       Q. But at least five years?

5       A. Yes.

6       Q. Now, we discussed the

7 boundaries of Salem County up to Oldman's

8 Creek?

9       A. Yes, sir.

10      Q. What is the next county

11 north?

12      A. **Gloucester.**

13      Q. And do you have a

14 counterpart in Gloucester County?

15      A. **Correct.**

16      Q. Do you know who that is?

17      A. **Tom Butts, B-U-T-T-S.**

18      Q. Now, we've gone over sort of

19 what the boundary is between New Jersey

20 and Delaware in the river?

21      A. Yes, sir.

22      Q. I believe you testified

23 earlier that there were maps, excuse me,

24 there were areas within particular fire

28

1 districts. Are there maps that show

2 where the fire districts are located?

3       A. **Municipal boundary lines.**

4       Q. So, it's based upon the

5 municipal boundary lines?

6       A. Yes, sir.

7       Q. So, a fire district wouldn't

8 go beyond a municipal boundary line?

9       A. **A local one would not.**

10 **Salem County is divided into three fire**

11 **districts involving multiple**

12 **municipalities.**

13      Q. Could you explain that to

14 me, where they're located and sort of how

15 that works?

16      A. **Salem County is divided into**

17 **three fire districts, the riverfront**

18 **being one.**

19      Q. When you say the riverfront,

20 what do you mean?

21      A. **Oldman's Township, Carney's**

22 **Point Township, Pennsville Township,**

23 **Penns Grove, Salem City.**

24      Q. Could you give me those

29

1 again real quick?

2       A. **Oldman's Township, Carney's**

3 **Point Township, Pennsville, Penns Grove**

4 **and Salem City.**

5       Q. So, the river is one, the

6 area adjoining the river is those towns

7 and townships; that's one fire district?

8       A. **Not totally, because**

9 **Elsinboro and Lower Alloway Creek is also**

10 **part of, along the riverfront but they're**

11 **a part of District 2.**

12      Q. And where on my map or on my

13 overhead photo, where are Elsinboro and

14 Lower Alloway Township?

15      A. **Artificial Island.**

16      Q. They're down at the very

17 southern part?

18      A. **Correct.**

19      Q. I'm going to show you the

20 map marked DE28992. Would Elsinboro

21 Township be north or south of the tip

22 of --

23      A. **North.**

24      Q. It would be in this area

30

1 just north of Artificial Island?  
2 A. Correct.  
3 Q. And Lower Alloway Township  
4 would be to the south?  
5 A. **And adjoining to the nuclear**  
6 **power plant of Artificial Island.**  
7 Q. So, it goes on down --  
8 A. Yes.  
9 Q. -- through Artificial  
10 Island?  
11 Where is the other fire  
12 district? You said there were three fire  
13 districts in Salem County. Where are  
14 they located?  
15 A. **District 2 would sweep on**  
16 **around to Quinton Township, Alloway**  
17 **Township and then the District 3 is more**  
18 **inland.**  
19 Q. So, that's the upper, more  
20 inland areas?  
21 A. Correct.  
22 Q. Is there a map that sort of  
23 depicts all of this?  
24 A. No, sir, not into the

31

1 **districts other than just looking at a**  
2 **county map and knowing each municipality**  
3 **has its own.**  
4 Q. So, the municipality sort of  
5 boundaries would be that municipality's  
6 fire district?  
7 A. Correct.  
8 Q. And the overall fire  
9 district would be, would you agree, it's  
10 a territorial boundary sort of out to the  
11 river?  
12 A. Yes, sir.  
13 Q. Now, are you familiar with  
14 the, I'm pretty sure it's in Salem  
15 County, Fort Mott State Park?  
16 A. Yes, sir.  
17 Q. And are you familiar with  
18 the Conectiv Power Plant, I think it's  
19 changed names recently, just south of the  
20 Delaware Memorial Bridge?  
21 A. Yes, sir.  
22 Q. And are you familiar with  
23 the DuPont facility just north of the  
24 Delaware Memorial Bridge, --

32

1 A. Yes, sir.  
2 Q. -- Chambers Works?  
3 And are you familiar with  
4 the Keystone facility or the Logan  
5 Generating Station just north of Oldman's  
6 Creek?  
7 A. Yes, sir.  
8 Q. Please correct me if I'm  
9 wrong, but I believe it was your  
10 testimony that the boundary between Salem  
11 County and Delaware was the low  
12 watermark?  
13 A. Correct.  
14 Q. Has that always been your  
15 understanding?  
16 A. **Except for the southern part**  
17 **of the county, yes.**  
18 Q. And just so I don't get hung  
19 up on that every time, just know that I  
20 mean from the tip of Artificial Island  
21 north going forward.  
22 We were talking about sort  
23 of recordkeeping a moment ago about how  
24 your CAD system sort of logs when calls

33

1 were made and how they go. Do you  
2 remember that?  
3 A. Correct.  
4 Q. And my question to you is:  
5 Are you aware in your computerized  
6 recordkeeping system of any fire that  
7 occurred on the Fort Mott pier?  
8 A. No, sir.  
9 Q. Are you aware of any fire  
10 that occurred on the Conectiv pier?  
11 A. No, sir.  
12 Q. And are you aware of any  
13 fire that occurred on the DuPont pier?  
14 A. No, sir.  
15 Q. And are you aware of any  
16 fire that occurred on the Keystone pier,  
17 Logan Generating Station?  
18 A. No, sir.  
19 Q. And when I refer to  
20 Keystone, I mean the Logan Generating  
21 Station. It was formerly called Keystone  
22 Cogeneration and I tend to confuse the  
23 names, so I apologize.  
24 How long have you been in

34

1 your current position?  
 2 **A. Four years in my current**  
 3 **position. I've been with the county and**  
 4 **emergency management for over 20.**  
 5 Q. And what year did you start?  
 6 **A. 1986.**  
 7 Q. So, in that time, you are  
 8 aware of no fires on the Fort Mott --  
 9 **A. That's correct.**  
 10 Q. And DuPont?  
 11 **A. That's correct.**  
 12 Q. And Keystone?  
 13 **A. That's correct.**  
 14 Q. And Conectiv?  
 15 **A. Correct.**  
 16 Q. Now, I believe you said part  
 17 of your responsibilities are sort of  
 18 emergency management, hazardous  
 19 materials, that sort of thing?  
 20 **A. Yes, sir.**  
 21 Q. Do you participate in any  
 22 sort of safety programs or training  
 23 programs or do you do any of those  
 24 programs for businesses within the

35

1 municipality?  
 2 **A. Yes, sir, we do.**  
 3 Q. And what sort of businesses  
 4 do you do that sort of training program  
 5 for?  
 6 **A. We train annually with the**  
 7 **nuclear power plant. We also interact**  
 8 **with E.I. DuPont, Pedricktown Industrial**  
 9 **Complex. And if someone asked for any**  
 10 **training that we could provide, we'll**  
 11 **deal with anybody.**  
 12 Q. What sort of training had  
 13 you done for E.I. DuPont?  
 14 **A. Done for?**  
 15 Q. Done for or done with.  
 16 **A. Participated with them in**  
 17 **emergency response exercises.**  
 18 Q. Could you explain to those  
 19 less educated what those are?  
 20 **A. If they simulated a fire or**  
 21 **a medical emergency or a release of any**  
 22 **hazardous material, we work with them and**  
 23 **assist them from the outside.**  
 24 Q. Have you actually been on

36

1 site?  
 2 **A. Yes.**  
 3 Q. And is that a pretty secure  
 4 facility, the Chambersburg facility?  
 5 **A. Yes, sir.**  
 6 Q. From your personal  
 7 knowledge, what sort of protections or  
 8 security measures are taken at that  
 9 facility?  
 10 **A. The entire facility is**  
 11 **fenced in. They have a camera system on**  
 12 **the whole fence line, plus they have**  
 13 **24-hour guards at the facility.**  
 14 Q. Now, have you ever been to  
 15 the Conectiv facility?  
 16 **A. Yes, sir.**  
 17 Q. Do they have security  
 18 measures?  
 19 **A. Again, it's all fenced in.**  
 20 **I can't go any further than that on that**  
 21 **when it's all fenced in. I believe they**  
 22 **have security at the gate.**  
 23 Q. Fair enough. But you can't  
 24 just drive in the Conectiv facility?

37

1 **A. No, you cannot.**  
 2 Q. How about on the Keystone  
 3 facility or the Logan Generating Station?  
 4 **A. I've only been on that site**  
 5 **one time since that is in Gloucester**  
 6 **County, and I honestly cannot answer.**  
 7 Q. Fair enough. When you say  
 8 you've been with the county for almost  
 9 20 years, approximately 20 years, have  
 10 you been in the same sort of positions  
 11 and sort of moved up the ladder?  
 12 **A. I started in emergency**  
 13 **management and recently took over as the**  
 14 **director of the program.**  
 15 Q. So, you've always been in  
 16 this capacity?  
 17 **A. Yes, sir.**  
 18 Q. I'm going to take you back  
 19 to those four piers that we discussed  
 20 earlier. Are you aware of any arrests or  
 21 police responses on the Fort Mott State  
 22 Park?  
 23 **A. Yes.**  
 24 Q. Can you tell me about that?

38

1       **A. There was a murder incident**  
 2 **a few years back on Fort Mott.**  
 3       **Q. Was it on the location or**  
 4 **was it on the dock?**  
 5       **A. No, it was on the location.**  
 6       **Q. It was on the location?**  
 7       **A. Yes, sir.**  
 8       **Q. I'm sorry, I should have put**  
 9 **a sharper point on my question. Are you**  
 10 **aware of any response or police activity**  
 11 **or police responses on the pier?**  
 12       **A. No, sir.**  
 13       **Q. I'm going to move northward.**  
 14 **Are you aware of any police responses on**  
 15 **the Conectiv dock?**  
 16       **A. No, sir.**  
 17       **Q. Are you aware of any police**  
 18 **responses on the DuPont dock?**  
 19       **A. No, sir.**  
 20       **Q. Are you aware of any police**  
 21 **responses on the Keystone or Logan**  
 22 **Generating --**  
 23       **A. No, sir.**  
 24       **Q. I'm going to go back and**

39

1 sort of walk through my townships and  
 2 make sure I got them all along the river.  
 3 I believe you testified there was  
 4 Oldman's Township?  
 5       **A. Correct.**  
 6       **Q. Carney's Point?**  
 7       **A. Correct.**  
 8       **Q. Pennsville?**  
 9       **A. Correct.**  
 10       **Q. Penns Grove?**  
 11       **A. Correct.**  
 12       **Q. Salem City?**  
 13       **A. Correct.**  
 14       **Q. Elsinboro?**  
 15       **A. Correct.**  
 16       **Q. And Lower Alloway, just a**  
 17 **little bit?**  
 18       **A. Part of it, yes.**  
 19       **Q. Now, are you aware of sort**  
 20 **of the equipment or resources of those**  
 21 **particular fire companies?**  
 22       **A. Yes, sir.**  
 23       **Q. And before I go there, is**  
 24 **that sort of the full range along the**

40

1 river?  
 2       **A. Yes, sir, it is.**  
 3       **Q. Now, I'm going to walk you**  
 4 **through. Oldman's Township, do they have**  
 5 **an emergency response boat?**  
 6       **A. No, sir.**  
 7       **Q. Do they have a fire boat?**  
 8       **A. No, sir.**  
 9       **Q. Carney's Point Township?**  
 10       **A. No, sir.**  
 11       **Q. Neither a fire boat nor an**  
 12 **emergency response boat?**  
 13       **A. Correct.**  
 14       **Q. Pennsville Township, I'll**  
 15 **ask the question together, do they have**  
 16 **an emergency response boat or a fire**  
 17 **boat?**  
 18       **A. No, sir.**  
 19       **Q. Penns Grove, do they have an**  
 20 **emergency response boat or a fire boat?**  
 21       **A. No, sir.**  
 22       **Q. Salem City, do they have an**  
 23 **emergency response boat or a fire boat?**  
 24       **A. No response boat. They have**

41

1 **a, they are manning a fire boat recently**  
 2 **purchased by the county.**  
 3       **Q. Purchased through --**  
 4       **A. Homeland Security.**  
 5       **Q. Just so I understand, when**  
 6 **you say through Homeland Security, is**  
 7 **that different from your office?**  
 8       **A. It's another part of my**  
 9 **office along with the Prosecutor's**  
 10 **Office.**  
 11       **Q. And is that a municipal**  
 12 **piece or is that from a state grant?**  
 13       **A. From a federal grant.**  
 14       **Q. And when did they get that**  
 15 **federal grant?**  
 16       **A. For that fire boat, it was**  
 17 **2004.**  
 18       **Q. And prior to 2004, did Salem**  
 19 **City have any emergency response boat or**  
 20 **a fire boat?**  
 21       **A. They had an emergency**  
 22 **response boat.**  
 23       **Q. And what kind of boat was**  
 24 **that?**

42

1       **A. Just a small boat that could**  
2 **go out in the river and assist with a**  
3 **disabled vessel.**  
4       Q. I'm going to move south of  
5 Salem City. Elsinboro Township, do they  
6 have an emergency response boat?  
7       **A. No, sir.**  
8       Q. Do they have a fire boat?  
9       **A. No, sir.**  
10       Q. And Lower Alloway Township,  
11 they have a boat, correct?  
12       **A. They have a small response**  
13 **boat, yes.**  
14       Q. Did I give a complete list  
15 of all the towns all the way down that  
16 adjoin the Twelve-Mile Circle?  
17       **A. Yes, sir, you did.**  
18       Q. And so the only response  
19 boats up until 2004 were Lower Alloway  
20 Township, a small response boat?  
21       **A. Lower Alloway Creek.**  
22       Q. My apologies. Lower Alloway  
23 Creek, small response boat?  
24       **A. Yes, sir.**

43

1       Q. Salem City had a small  
2 response boat also?  
3       **A. Yes, sir. Pennsville**  
4 **Township had one at one point and then**  
5 **they don't have it anymore.**  
6       Q. How come?  
7       **A. Nobody wanted to man it, I**  
8 **guess. I don't know.**  
9       Q. Do any of the police  
10 agencies for any of those towns have a  
11 response boat?  
12       **A. Oldman's Township.**  
13       Q. Why don't I walk --  
14       **A. Oldman's Township is covered**  
15 **by New Jersey State Police, and of**  
16 **course, there is the New Jersey State**  
17 **Marine Bureau. But none of the other**  
18 **town law enforcement have a boat.**  
19       Q. So, Oldman's Township is New  
20 Jersey State Police. Do you have any  
21 familiarity with the New Jersey State  
22 Police boat, --  
23       **A. No.**  
24       Q. -- what they have?

44

1                   Do you know if the New  
2 Jersey State Police station a boat in  
3 Oldman's Township?  
4       **A. No, sir.**  
5       Q. You may have answered this  
6 and I apologize. Are those exclusively  
7 all the boats that would be used for  
8 policing within that area north of the  
9 tip of Artificial Island and the Delaware  
10 River?  
11       **A. For policing?**  
12       Q. Yes, sir.  
13       **A. For law enforcement**  
14 **purposes?**  
15       Q. Yes, sir.  
16       **A. Would strictly be the New**  
17 **Jersey State Police Marine Bureau.**  
18       Q. And they're out of Oldman's?  
19 They may or -- we don't know if --  
20       **A. They do not have a boat**  
21 **stationed at Oldman's Township, no.**  
22       Q. So, to your knowledge, in  
23 none of these municipalities there's a  
24 boat stationed in any of these for law

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1 enforcement purposes?  
2       **A. That's correct.**  
3       Q. With that, I was reading  
4 your Declaration in this case and it  
5 talks about cell phone use. If somebody  
6 was on the water within the Twelve-Mile  
7 Circle and they called on their cell  
8 phone to 9-1-1, how would that work?  
9       **A. If it hit our tower or a**  
10 **tower within Salem County, it would go to**  
11 **our 9-1-1 center. They would take the**  
12 **call and, depending on the situation,**  
13 **either dispatch a unit of ours. They**  
14 **would also transfer that call over to New**  
15 **Castle County and let them also be aware**  
16 **of what's going on.**  
17       Q. How often does that happen  
18 that you transfer calls to New Castle  
19 County?  
20       **A. Any type of call?**  
21       Q. Speaking strictly water  
22 calls within the Twelve-Mile Circle.  
23       **A. Not very often.**  
24       Q. If you had a water call

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1 though, would it be your policy to  
 2 transfer it to New Castle County?  
 3 **A. Correct.**  
 4 **Q. And because they have the**  
 5 **boats to respond?**  
 6 **A. No, because it's their**  
 7 **jurisdiction.**  
 8 - - -  
 9 **(Wentzell-1 marked for**  
 10 **identification.)**  
 11 - - -  
 12 **BY MR. WALTON:**  
 13 **Q. I'm going to hand you**  
 14 **something that you may or may not have**  
 15 **seen. I've had the document marked**  
 16 **Wentzell-1, and it's Delaware Bates stamp**  
 17 **26776, 26763 and 26809. I'll represent**  
 18 **to you that these were produced by the**  
 19 **9-1-1 center in New Castle County.**  
 20 **And there's a phone message**  
 21 **there that says Salem over on the**  
 22 **right-hand side of the page. Do you see**  
 23 **that?**  
 24 **A. Yes, sir.**

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1 **Q. And a gentleman from the New**  
 2 **Castle County 9-1-1 center testified that**  
 3 **that means it was a call from your office**  
 4 **or a referred call from your office?**  
 5 **A. Okay, sir.**  
 6 **Q. Do you have any reason to**  
 7 **dispute that?**  
 8 **A. No, sir.**  
 9 **Q. If it was in New Castle**  
 10 **County's jurisdiction, you would have**  
 11 **referred the call to them?**  
 12 **A. Yes, sir.**  
 13 **Q. Are you aware of the**  
 14 **response procedure for water calls or**  
 15 **boat calls in the Delaware River within**  
 16 **the Twelve-Mile Circle?**  
 17 **A. No, sir, I'm not.**  
 18 **Q. Do you know if there's a**  
 19 **protocol set up by New Castle County or**  
 20 **the Coast Guard regarding how boat**  
 21 **responses or water responses are supposed**  
 22 **to take place?**  
 23 **A. No, sir.**  
 24 - - -

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1 **(Wentzell-2 marked for**  
 2 **identification.)**  
 3 - - -  
 4 **BY MR. WALTON:**  
 5 **Q. Mr. Wentzell, I'm going to**  
 6 **show you a document that's been marked**  
 7 **Wentzell-2, Bates stamped DE26824. I**  
 8 **will represent to you that this is the**  
 9 **fire districts as provided by New Castle**  
 10 **County. Actually, if you go into their**  
 11 **9-1-1 center, this is the map that's**  
 12 **hanging up.**  
 13 **If you look to the right, it**  
 14 **shows the water or the Delaware River on**  
 15 **the right-hand side. Do you see that?**  
 16 **A. Yes, sir.**  
 17 **Q. Do you have any reason to**  
 18 **dispute that New Castle County's fire**  
 19 **districts go all the way to the low**  
 20 **watermark?**  
 21 **A. I do not dispute that.**  
 22 **Q. And do you know which New**  
 23 **Castle County fire districts have boats?**  
 24 **A. No, sir.**

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1 **Q. Now, is it your policy that**  
 2 **if it's in New Castle County that you**  
 3 **refer the call to them?**  
 4 **A. Yes, sir.**  
 5 **Q. But if there was a response**  
 6 **certainly that you could help out with or**  
 7 **your agency could help out with even if**  
 8 **it was in Delaware territory, I assume**  
 9 **you would help out?**  
 10 **A. Yes.**  
 11 **Q. And I assume New Castle**  
 12 **County would do the same for you?**  
 13 **A. That's correct.**  
 14 **Q. Is there a mutual aid**  
 15 **agreement between your county and any New**  
 16 **Castle County or state?**  
 17 **A. Verbal.**  
 18 **Q. I'll represent to you that**  
 19 **they told me the same thing. So, if it's**  
 20 **in Delaware's territory and there's an**  
 21 **event and a New Castle County fire**  
 22 **company or police responds and they need**  
 23 **assistance, would they give you a call?**  
 24 **A. Yes.**

50

1 Q. And then you would, I  
 2 assume, dispatch whatever personnel that  
 3 were needed to assist?  
 4 A. **That's correct.**  
 5 Q. Now, I know when we're  
 6 fighting a fire or having a police  
 7 response we don't worry about these  
 8 things too much. But who would command,  
 9 if there needed to be command decisions  
 10 made, who would command that response  
 11 assuming it was in Delaware territory?  
 12 A. **The lead agency in Delaware.**  
 13 Q. So, that would be Delaware  
 14 and then they would get assistance from  
 15 your agency?  
 16 A. **Correct.**  
 17 Q. So, your emergency  
 18 responders would basically fall under  
 19 their own hierarchy but would ultimately  
 20 fall under the command of Delaware  
 21 emergency responders?  
 22 A. **That is correct.**  
 23 Q. And would it be your  
 24 understanding that Delaware's police,

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1 emergency, fire responses for events in  
 2 the Delaware River, sort of water were in  
 3 the lower watermark, would Delaware have  
 4 jurisdiction for boating accidents?  
 5 A. **Yes, sir.**  
 6 Q. Fires?  
 7 A. **Yes, sir.**  
 8 Q. Police?  
 9 A. **Yes, sir.**  
 10 Q. Any other event that  
 11 occurred out there?  
 12 A. **Short of the U.S. Coast  
 13 Guard taking over, yes.**  
 14 Q. Assuming the U.S. Coast  
 15 Guard didn't take over?  
 16 A. **Yes, sir.**  
 17 Q. I guess that would go to  
 18 police investigations too, drownings,  
 19 something like that?  
 20 A. **Yes, sir.**  
 21 - - -  
 22 **(Wentzell-3 marked for  
 23 identification.)**  
 24 - - -

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1 **BY MR. WALTON:**  
 2 Q. Let's talk about your  
 3 affidavit just for a minute. I'm going  
 4 to try to summarize this just a little  
 5 bit and please tell me if I'm making a  
 6 mistake. I'm not trying to  
 7 mischaracterize.  
 8 It's my understanding that  
 9 if there's a call made from a land-based  
 10 line in New Jersey that call would go to  
 11 you?  
 12 A. **That's correct, unless it  
 13 was our lines were tied up and then it  
 14 would go to a different PSAP and it would  
 15 be sent back to us.**  
 16 Q. Please explain the PSAP  
 17 piece to me real quickly.  
 18 A. **Our 9-1-1 center is a PSAP,  
 19 Public Assistance -- I'm sorry, I can't  
 20 finish it. Any 9-1-1 call made would go  
 21 to our 9-1-1 center, unless all the lines  
 22 were jammed up and then it would go to  
 23 whichever tower it could grab, whether it  
 24 be within New Jersey or whether it be**

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1 **within Delaware. And they would take the  
 2 call and then send it to us.**  
 3 Q. And I believe it's  
 4 absolutely consistent with the way the  
 5 gentleman from New Castle County  
 6 testified. In other words, you would get  
 7 a call and it would be routed to a  
 8 particular tower; and whoever is  
 9 available, if all the lines on one are  
 10 busy, they would go to the other one to  
 11 get an emergency response?  
 12 A. **That's correct.**  
 13 Q. Likely, the first tower, if  
 14 the call was from a land-based line,  
 15 would likely go to your office?  
 16 A. **That's correct.**  
 17 Q. And I assume you would  
 18 dispatch emergency personnel to whatever  
 19 was needed?  
 20 A. **That's correct.**  
 21 Q. Can I go back to my photo  
 22 for a minute?  
 23 A. **Sure.**  
 24 Q. I'm going to use this just

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1 because it's the most visual. I'm  
 2 pointing to DE28987. We discussed that  
 3 was the Keystone or Logan Generating  
 4 Station.  
 5 **A. Yes, sir.**  
 6 **Q. And that's the dock. So, if**  
 7 **a call came in from the Keystone facility**  
 8 **and there was a complaint relating to**  
 9 **something happening on the end of the**  
 10 **dock, for example, there was a problem on**  
 11 **a ship that was more to the dock, you**  
 12 **would send response vehicles?**  
 13 **A. That's Gloucester County,**  
 14 **sir.**  
 15 **Q. Assuming it was in Salem**  
 16 **County?**  
 17 **A. Yes, I would.**  
 18 **Q. And I'm just using this for**  
 19 **illustrative purposes.**  
 20 **A. Yes, I would.**  
 21 **Q. It's on the end of the dock**  
 22 **and you would send emergency services.**  
 23 **And I assume that you would also call New**  
 24 **Castle County?**

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1 **A. That's correct.**  
 2 **Q. Because it's in their**  
 3 **jurisdiction?**  
 4 **A. Yes, sir.**  
 5 **Q. And they have the fire**  
 6 **boats?**  
 7 **A. Yes, sir.**  
 8 **Q. And so if your emergency**  
 9 **responders responded to that fire,**  
 10 **ultimately if it was out on the dock or**  
 11 **the pier, they would be under the command**  
 12 **of New Castle County emergency responders**  
 13 **or personnel because it's in New Castle**  
 14 **County?**  
 15 **A. Upon their arrival, yes,**  
 16 **until which time the chief of the**  
 17 **responding agency would be in command**  
 18 **until the others got there and then they**  
 19 **would transfer command.**  
 20 **Q. They would transfer command**  
 21 **to the jurisdiction that it's in?**  
 22 **A. That's correct.**  
 23 **Q. And that would hold true for**  
 24 **any response on a pier --**

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1 **A. That's correct.**  
 2 **Q. -- that went into Delaware**  
 3 **territory?**  
 4 **A. That's correct.**  
 5 **Q. Same thing with a cell**  
 6 **phone. I used a land-based telephone**  
 7 **call.**  
 8 **A. Same thing.**  
 9 **Q. It would be the same idea if**  
 10 **it went to a response on a pier. New**  
 11 **Castle County or the jurisdiction of New**  
 12 **Castle County who would respond to that**  
 13 **police incident, that fire incident, that**  
 14 **emergency response incident, is it your**  
 15 **testimony that they would be in command**  
 16 **of that response?**  
 17 **A. Once it was transferred from**  
 18 **the local, yes.**  
 19 **Q. And that would be the same**  
 20 **for emergency medical services?**  
 21 **A. Yes, sir.**  
 22 **Q. And any other response that**  
 23 **I might have forgotten?**  
 24 **A. Yes, sir.**

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1 **Q. Are you familiar with**  
 2 **something called a September Fest?**  
 3 **A. Yes, sir.**  
 4 **Q. What is that?**  
 5 **A. It is something that**  
 6 **Pennsville Township puts on that brings**  
 7 **in vendors and rides for the kids and has**  
 8 **a parade. It's just a party day.**  
 9 **Q. Do you know if Pennsville**  
 10 **has ever requested Delaware police forces**  
 11 **to sort of monitor the river?**  
 12 **A. Yes, sir, they have.**  
 13 **Q. I'm sorry, they have**  
 14 **requested?**  
 15 **A. They have, yes, sir.**  
 16 **Q. Because it's in Delaware's**  
 17 **jurisdiction?**  
 18 **A. They request them and the**  
 19 **U.S. Coast Guard because of fireworks at**  
 20 **night. And they notify both the Coast**  
 21 **Guard and Delaware and have them have a**  
 22 **boat in the water to protect the**  
 23 **waterways.**  
 24 **Q. Let's talk about calls to**

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1 the Coast Guard real quick. Let's say a  
 2 call comes into your office regarding, it  
 3 goes off the PSAP towers and it ends up  
 4 in your call center. Is there a  
 5 notification requirement to let the Coast  
 6 Guard know of something that happens in  
 7 the water?  
 8 **A. Again, we pass it to New**  
 9 **Castle.**  
 10 **Q. And then they contact --**  
 11 **A. They would do that. We pass**  
 12 **it to New Castle County and they would**  
 13 **contact the Coast Guard.**  
 14 **Q. Have you ever been down the**  
 15 **Delaware River within the Twelve-Mile**  
 16 **Circle on a boat?**  
 17 **A. Yes, sir.**  
 18 **Q. Could you testify to what**  
 19 **structures existed out there?**  
 20 **MS. BALINT: From his own**  
 21 **personal memory?**  
 22 **MR. WALTON: From his own**  
 23 **personal memory.**  
 24 **THE WITNESS: It's been too**

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1 long.  
 2 **BY MR. WALTON:**  
 3 **Q. So, as far as you know,**  
 4 **there's really only the four facilities,**  
 5 **the Fort Mott, the Conectiv --**  
 6 **A. You're talking about piers**  
 7 **from our shoreline?**  
 8 **Q. Yes, sir.**  
 9 **A. No, there's one in Penns**  
 10 **Grove. Right off Main Street in Penns**  
 11 **Grove there's a pier that's fenced off.**  
 12 **Q. It's not used?**  
 13 **A. It's not used. There's also**  
 14 **one at PSE&G, nuclear power plant.**  
 15 **Q. It's a little further south?**  
 16 **A. Other than that, what you**  
 17 **spoke about is, other than the one in**  
 18 **Penns Grove, is correct. That's all of**  
 19 **them.**  
 20 **Q. With respect to the one in**  
 21 **Penns Grove, are you aware of any fire on**  
 22 **that pier?**  
 23 **A. No, sir.**  
 24 **Q. Are you aware of any police**

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1 responses that occurred on that pier?  
 2 **A. No, sir.**  
 3 **Q. Are you aware of any**  
 4 **emergency services being rendered on that**  
 5 **pier?**  
 6 **A. No, sir.**  
 7 **Q. These are just sort of**  
 8 **general questions. Have you ever**  
 9 **reviewed riparian grants relating to the**  
 10 **Delaware River?**  
 11 **A. No, sir.**  
 12 **Q. Do you know anything about**  
 13 **riparian grants?**  
 14 **A. No, sir.**  
 15 **Q. Have you ever been involved**  
 16 **in any coastal zone consistency**  
 17 **determinations?**  
 18 **A. No, sir.**  
 19 - - -  
 20 **(A recess occurred.)**  
 21 - - -  
 22 **BY MR. WALTON:**  
 23 **Q. I'm sorry, I have forgotten**  
 24 **the name of this county up here.**

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1 **A. The county is Gloucester.**  
 2 **The municipality is Logan Township.**  
 3 **Q. Do you know if they follow**  
 4 **the same procedure as far as notifying**  
 5 **New Castle County?**  
 6 **A. No, I do not. I would**  
 7 **assume but I do not know for sure.**  
 8 **Q. And as far as any hazardous**  
 9 **materials, contaminants, that sort of**  
 10 **thing that would occur in the water**  
 11 **within that Twelve-Mile Circle area,**  
 12 **would it also be your testimony that**  
 13 **would be Delaware's jurisdiction for**  
 14 **those?**  
 15 **A. Yes, sir, it would.**  
 16 **MR. WALTON: That's all I**  
 17 **have for right now.**  
 18 **MS. BALINT: I have probably**  
 19 **just a couple.**  
 20 - - -  
 21 **EXAMINATION**  
 22 - - -  
 23 **BY MS. BALINT:**  
 24 **Q. Mr. Wentzell, if the Salem**

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1 9-1-1 center received a 9-1-1 call from a  
 2 dock or pier extending from the New  
 3 Jersey shore out into the Delaware River  
 4 that involved a health, fire, police  
 5 emergency, would the Salem 9-1-1 center  
 6 dispatch New Jersey emergency responders  
 7 to that incident?  
 8 **A. Yes, ma'am.**  
 9 **Q. And you would also transfer**  
 10 **the call to Delaware after you dispatched**  
 11 **the New Jersey responders?**  
 12 **A. We would transfer the call**  
 13 **prior, and as soon as they got the**  
 14 **information, they would transfer the call**  
 15 **and dispatch at the same time.**  
 16 **Q. Would you expect the**  
 17 **Delaware emergency responders to be first**  
 18 **responders on a call such as that?**  
 19 **A. No, ma'am.**  
 20 **Q. Why not?**  
 21 **A. Because by the time they**  
 22 **could get there, Lord knows what might**  
 23 **happen. We could be there a lot quicker**  
 24 **than they can come across the bridge and**

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1 **get there.**  
 2 **Q. Do you have any idea how**  
 3 **long it might take a Delaware ambulance**  
 4 **or police car to respond to the dock or**  
 5 **pier at the DuPont plant? That's an easy**  
 6 **one because it's right by the bridge.**  
 7 **A. It would take approximately**  
 8 **20 minutes to a half an hour.**  
 9 **Q. And would you expect New**  
 10 **Jersey emergency responders to respond**  
 11 **quicker?**  
 12 **A. Yes, because DuPont has**  
 13 **emergency responders on site. And it's a**  
 14 **private pier at DuPont. They would**  
 15 **respond in with their units and then ask**  
 16 **for assistance if need be.**  
 17 **Q. How about the Fort Mott**  
 18 **pier?**  
 19 **A. It would take them a good**  
 20 **hour driving across the bridge to get to**  
 21 **Fort Mott pier where we could have a unit**  
 22 **there within 15 minutes.**  
 23 **MS. BALINT: That's all I**  
 24 **have.**

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1 **MR. WALTON: Just a few**  
 2 **follow-ups.**  
 3 **---**  
 4 **EXAMINATION**  
 5 **---**  
 6 **BY MR. WALTON:**  
 7 **Q. I believe you testified that**  
 8 **you didn't know what the protocol was for**  
 9 **responses, for boat responses in the**  
 10 **Delaware River. Is that correct?**  
 11 **A. That's correct.**  
 12 **MS. BALINT: Objection.**  
 13 **That's outside of the scope of any**  
 14 **question that I asked.**  
 15 **MR. WALTON: It goes to the**  
 16 **response time. I'll follow it up**  
 17 **---**  
 18 **MS. BALINT: We were talking**  
 19 **about land-based response.**  
 20 **MR. WALTON: But the**  
 21 **testimony was how long would it**  
 22 **take them to get there. And the**  
 23 **Wilmington fire boats, I would**  
 24 **like to ask him questions about**

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1 **how fast would it take for the**  
 2 **Wilmington fire boat to respond to**  
 3 **the same pier because that would**  
 4 **be a fire response to Fort Mott or**  
 5 **a police response to Fort Mott.**  
 6 **Because you limited it only to**  
 7 **roads, it does not preclude me**  
 8 **from asking the question about who**  
 9 **could get there.**  
 10 **BY MR. WALTON:**  
 11 **Q. Now, so you don't know how**  
 12 **quickly it would take for the Wilmington**  
 13 **fire boat to respond?**  
 14 **A. No, sir, I do not.**  
 15 **Q. Or any of the other**  
 16 **emergency, boating emergency response**  
 17 **vehicles?**  
 18 **A. No, sir, I do not.**  
 19 **Q. And so it could be**  
 20 **considerably less than the time frames**  
 21 **that you stated?**  
 22 **A. That's correct.**  
 23 **Q. How far can fire hoses**  
 24 **reach?**

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1       **A. That depends on the fire**  
 2 **company. They have many hundreds of feet**  
 3 **of hose.**  
 4       **Q. Hundreds of feet of hose?**  
 5       **A. Yes, sir.**  
 6       **Q. How far can the spray go,**  
 7 **sort of maximum out of the ones that you**  
 8 **know of? The longest one, how far out**  
 9 **could it go out of any of the townships?**  
 10       **A. There are too many**  
 11 **variables, depending on the hose size,**  
 12 **the nozzle size. And it would be hard to**  
 13 **say not knowing what they were using at**  
 14 **that time.**  
 15       **Q. Would it be difficult to**  
 16 **reach over 1,000 feet?**  
 17       **A. Oh, yes.**  
 18       **Q. Would it be difficult to**  
 19 **reach over 2,000 feet?**  
 20       **A. Yes, sir.**  
 21       **Q. If I represented to you that**  
 22 **the dock at the Keystone or Logan**  
 23 **facility was over 1,000 feet long, would**  
 24 **it be difficult to put out a fire on the**

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1       **end of that pier?**  
 2       **MS. BALINT: Objection to**  
 3 **the form of the question.**  
 4 **BY MR. WALTON:**  
 5       **Q. You can answer, if you can**  
 6 **understand it.**  
 7       **A. If you're asking me do they**  
 8 **have enough fire hose to get out there,**  
 9 **I'd say yes, they do. They could not**  
 10 **stand on land and throw it 1,000 feet.**  
 11       **Q. Would it be difficult to**  
 12 **fight the fire without water support for**  
 13 **a fire at the end of that pier?**  
 14       **A. Difficult to fight any fire**  
 15 **without water support.**  
 16       **Q. I mean water-based support**  
 17 **on a boat, with a fire boat?**  
 18       **A. I'm not sure what you're**  
 19 **asking me there.**  
 20       **Q. I'm sorry, I need to put a**  
 21 **sharper point on my question. Assume**  
 22 **that the Keystone pier is about**  
 23 **1,300 feet.**  
 24       **A. Okay.**

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1       **Q. The pier is on fire and a**  
 2 **boat is on fire at the end of the pier.**  
 3 **Would it be difficult to fight that fire**  
 4 **from land only?**  
 5       **A. Very much.**  
 6       **Q. And would you need support**  
 7 **from the water side?**  
 8       **A. Yes.**  
 9       **MR. WALTON: That's all I**  
 10 **have.**  
 11       **MS. BALINT: I have just one**  
 12 **follow-up issue.**  
 13       **---**  
 14       **EXAMINATION**  
 15       **---**  
 16 **BY MS. BALINT:**  
 17       **Q. Are you aware of whether**  
 18 **fire hoses are capable of being**  
 19 **interlocked with one other, like they can**  
 20 **connect hoses to one other and lay a line**  
 21 **of --**  
 22       **A. Yes, ma'am.**  
 23       **Q. -- multiple hoses?**  
 24       **A. Yes, ma'am.**

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1       **Q. Are you aware of a limit on**  
 2 **the length that those hoses can be**  
 3 **connected?**  
 4       **A. No, ma'am.**  
 5       **Q. Is it your understanding**  
 6 **that a fire truck, multiple fire trucks**  
 7 **with sufficient quantities of hose could**  
 8 **lay a line -- and by lay a line, I mean**  
 9 **connect lines and lay them down -- that**  
 10 **would extend to the end of any pier that**  
 11 **you're aware of on the Delaware River?**  
 12       **A. I don't know what Logan Fire**  
 13 **Company has. But I would venture to say**  
 14 **that they could reach the end of any pier**  
 15 **into the Delaware, in Salem County and**  
 16 **Keystone.**  
 17       **Q. And certainly, if a single**  
 18 **fire company didn't have sufficient hose,**  
 19 **there would be mutual aid and more hose**  
 20 **would be brought on another truck?**  
 21       **A. That is correct.**  
 22       **MS. BALINT: That's all I**  
 23 **have.**  
 24       **---**

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1           **EXAMINATION**  
 2           - - - -  
 3   **BY MR. WALTON:**  
 4       Q.   And just to follow-up: And  
 5   Delaware would respond to that fire?  
 6       A.   **Most likely.**  
 7       **MR. WALTON:** That's all I  
 8   have.  
 9  
 10       - - - -  
 11       (Witness excused.)  
 12       (Deposition concluded at  
 13   approximately 2:17 p.m.)  
 14       - - - -  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

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1           **LAWYER'S NOTES**  
 2   **PAGE LINE**  
 3  
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 2           **CERTIFICATE**  
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 5           **I HEREBY CERTIFY** that the  
 6   witness was duly sworn by me and that the  
 7   deposition is a true record of the  
 8   testimony given by the witness.  
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 12  
 13       **Kimberly S. Gordon, a**  
 14       **Registered Professional Reporter**  
 15       **and Notary Public**  
 16       **Dated: OCTOBER 25, 2006**  
 17  
 18  
 19  
 20       (The foregoing certification of  
 21   this transcript does not apply to any  
 22   reproduction of the same by any means,  
 23   unless under the direct control and/or  
 24   supervision of the certifying reporter.)



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IN THE  
SUPREME COURT OF THE UNITED STATES

- - -  
STATE OF NEW JERSEY :  
v. :  
STATE OF DELAWARE :

- - -  
October 10, 2006  
- - -

Oral deposition of Steven  
Whitney was held at the Offices of NJDEP,  
Bureau of Tidelands, 9 Ewing Street,  
Trenton, New Jersey, commencing at 9:30  
a.m., on the above date, before Samantha  
A. Oakley, Certified Shorthand Reporter  
and Notary.

- - -  
ESQUIRE DEPOSITION SERVICES  
Four Penn Center  
1600 JFK Boulevard, 12th Floor  
Suite 1210  
Philadelphia, Pennsylvania 19103  
(215) 988-9191

2

1 **APPEARANCES:**  
 2  
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 4 DIVISION OF LAW  
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 25 Market Street  
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 8  
 9  
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 14  
 15  
 16 Also Present:  
 William E. Andersen, Esquire  
 17 State of New Jersey, Division of Law  
 18  
 19  
 20  
 21  
 22  
 23  
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 5 Page Line Page Line Page Line  
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 9 Request for Production of Documents  
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5

1 Steven Whitney, after having  
 2 been duly sworn, was examined and  
 3 testified as follows:  
 4  
 ---  
 5 ORAL EXAMINATION  
 6  
 ---  
 7 BY MR. ATTAWAY:  
 8 Q. Good morning, Mr. Whitney.  
 9 A. Good morning.  
 10 Q. My name is Scott Attaway and  
 11 I represent the State of Delaware in this  
 12 case, which is New Jersey versus  
 13 Delaware, number 134 original, and it's  
 14 been filed in the Supreme Court of the  
 15 United States by New Jersey. Before we  
 16 begin, I just want to establish a few  
 17 ground rules so that the deposition goes  
 18 smoothly.  
 19 First, if you don't hear a  
 20 question, please let me know and I'll  
 21 repeat it. Second, if you don't  
 22 understand a question, let me know and  
 23 I'll try to clarify it. Also because  
 24 this is being taken down by a court

6

1 reporter, I'll need you to provide a  
2 verbal response to any questions I ask.  
3 She can't really take down nods of the  
4 head or anything.  
5 **A. I understand.**  
6 **Q. Finally, let me finish my**  
7 **question before you start to answer,**  
8 **again so the court reporter can take down**  
9 **what both of us says. Do you understand**  
10 **these instructions?**  
11 **A. Yes, I do.**  
12 **Q. Is there any reason which**  
13 **you are aware that might prevent you from**  
14 **testifying truthfully today, such as**  
15 **medications or anything else like that?**  
16 **A. No.**  
17 **Q. You're currently retired**  
18 **from the New Jersey Department of**  
19 **Environmental Protection?**  
20 **A. Yes.**  
21 **Q. Are you represented by**  
22 **counsel today?**  
23 **A. Yes.**  
24 **Q. Who is your counsel?**

7

1 **A. Barbara Conklin and Bill**  
2 **Andersen.**  
3 **Q. Other than conversations**  
4 **with counsel, what did you do to prepare**  
5 **for your deposition today?**  
6 **A. Not much. Since I'm retired**  
7 **and live in Maine, I don't have access to**  
8 **any documents. So, basically, I did**  
9 **nothing except get a good night's sleep.**  
10 **Q. It sounds like a good**  
11 **preparation. So you didn't review any**  
12 **documents before coming here today?**  
13 **A. There's a couple of**  
14 **documents I reviewed yesterday regarding**  
15 **the 1978 Bay and Ocean Shore Segment**  
16 **document and the 1980 document, but just**  
17 **reviewed a couple small paragraphs, did**  
18 **not look at the document in any detail.**  
19 **Q. Have you read any of the**  
20 **pleadings in this case?**  
21 **A. No, I have not.**  
22 **Q. Did you talk to anyone else**  
23 **to prepare, other than counsel?**  
24 **A. No.**

8

1 **Q. Did you meet or speak with**  
2 **counsel to prepare for the deposition?**  
3 **To be clear, I don't want to know the**  
4 **substance of anything you talked about**  
5 **with your counsel.**  
6 **A. Yes, I did.**  
7 **Q. When was that?**  
8 **A. That was yesterday.**  
9 **Q. For about how long?**  
10 **A. It was about an hour and a**  
11 **half.**  
12 **Q. Who did you meet with?**  
13 **A. I met with Barbara Conklin**  
14 **and Bill Andersen.**  
15 **Q. Have you given a deposition**  
16 **before?**  
17 **A. Yes, I have.**  
18 **Q. How many times?**  
19 **A. To the best of my**  
20 **recollection, I guess it was two or three**  
21 **times.**  
22 **Q. What were those cases about?**  
23 **A. They were about some court**  
24 **proceedings -- probably had to do --**

9

1 **again, this is recalling from memory,**  
2 **having to do with permit cases that I**  
3 **administered when I was in DEP.**  
4 **Q. Let's take them one at a**  
5 **time. What was the earliest case?**  
6 **A. Probably sometime in the**  
7 **early -- no, probably sometime in the**  
8 **late 1970s.**  
9 **Q. Do you remember what that**  
10 **case was about?**  
11 **A. No. I can only recall the**  
12 **setting but I can't recall the details.**  
13 **Q. Something about a permit?**  
14 **A. Yes.**  
15 **Q. A permit that you**  
16 **administered?**  
17 **A. Yes.**  
18 **Q. We'll get to that in a**  
19 **minute. What about the other two?**  
20 **A. Again, the same. I can**  
21 **recall settings, but I can't recall**  
22 **detail exactly what cases they were.**  
23 **They were probably having to do with**  
24 **permit cases.**

10	<p>1 Q. Anything having to do with 2 the boundary between New Jersey and 3 Delaware? 4 A. No. 5 Q. Anything having to do with 6 Delaware's authority in the Delaware 7 River? 8 A. No. 9 Q. I'd like to mark as 10 Exhibit-1 -- let me ask one question 11 before I do. You provided an affidavit 12 in this case, correct? 13 A. Yes. 14 Q. I'd like to mark that as 15 Exhibit-1. 16 (Whereupon document was 17 marked Whitney-1 for identification.) 18 BY MR. ATTAWAY: 19 Q. Mr. Whitney, is this the 20 affidavit that you supplied in this case? 21 A. Yes, it is. 22 Q. In the affidavit you talk a 23 fair bit about your background, so I just 24 wanted to go through that briefly. In</p>	12	<p>1 Q. Do you have an agreement to 2 provide work on this case? 3 A. No. 4 Q. In Paragraph 2 it says from 5 January 1975 to July 1979 you served as 6 supervisor in the Office of Coastal Zone 7 Management in the Division of Coastal 8 Resources. Just briefly describe your 9 duties there and the scope of the Office 10 of Coastal Zone Management in the 11 Division of Coastal Resources. 12 A. The Office of Coastal Zone 13 Management in the Division of Coastal 14 Resources was an office at the time that 15 was set up to administer the Coastal Area 16 Facilities Review Act and some other 17 regulatory laws. It was all done under 18 the auspices of those laws as well as the 19 Federal Coastal Zone Management Act. 20 Q. You said the Coastal Area 21 Facilities Review Act; is that CAFRA? 22 A. Yes. 23 Q. What were your duties in 24 that office?</p>
11	<p>1 paragraph 2 -- in paragraph 1 it says you 2 retired from a 27-year career -- nice 3 career -- at the Department of 4 Environmental Protection between 1970 and 5 1997. Since 1997, have you done any 6 work? 7 A. Yes, I have. 8 Q. What sort of work? 9 A. I am an unpaid volunteer on 10 the Deer Isle Memorial Ambulance Corps as 11 an EMT, and for two summers since 12 retirement I worked at an airport, Bar 13 Harbor Airport, doing line service for 14 both private and commercial aircraft. 15 Q. Have you done any work for 16 the State of New Jersey since 1997? 17 A. No. 18 Q. When I say State of New 19 Jersey, I mean the Department of 20 Environmental Protection. 21 A. None. 22 Q. Are you being paid for your 23 work on this case? 24 A. No.</p>	13	<p>1 A. During this period of time 2 between 1975 and 1979? 3 Q. Yes. 4 A. I was basically in charge of 5 the regulatory program that administered 6 the permits under the Coastal Area 7 Facilities Review Act, which calls for 8 regulating major development in New 9 Jersey's coastal zone. It does not 10 include all development but major 11 development such as residential units of 12 25 or more dwelling units, major 13 commercial and industrial facilities. 14 Q. Then in paragraph 4 it 15 states that from 1979 to 1988 you served 16 as Chief of the Bureau of Planning and 17 Project Review also in the Division of 18 Coastal Resources. What were your duties 19 there? 20 A. From that period of time it 21 included an expanded regulatory program. 22 The department underwent a 23 reorganization, which for my 24 responsibility it included not only CAFRA</p>

14

1 permits but there was a new office  
2 created that I supervised that dealt with  
3 CAFRA, coastal wetland permits and  
4 waterfront development permits all under  
5 one office.

6 Q. What is a waterfront  
7 development permit?

8 A. A waterfront development  
9 permit is a permit issued for any  
10 development below the mean high water  
11 line in tidal flow areas in the State of  
12 New Jersey.

13 Q. So the Waterfront  
14 Development Act applies only below mean  
15 low water -- mean high water?

16 A. Mean high water at that  
17 time.

18 Q. Then from June 1988 to  
19 July 1991 it says you served as Assistant  
20 Director of the Division of Coastal  
21 Resources. I take it that was something  
22 of a promotion? You went from chief of a  
23 bureau to assistant director?

24 A. I guess you would classify

15

1 it as a promotion. After working in the  
2 permit section for close to eight years,  
3 I really wanted a change because we were  
4 issuing 1500 permits a year. It got to  
5 the point it was no longer a challenge  
6 for me. So I was given a chance to  
7 become the assistant director in the  
8 Division of Coastal Resources dealing  
9 with more the planning side of coastal  
10 management instead of the regulatory side  
11 of coastal management.

12 Q. So more policy than  
13 implementation, perhaps?

14 A. Yes.

15 Q. Then finally it says that  
16 your last position at DEP before you  
17 retired between 1991 and 1997 was as  
18 Manager, Environmental Planning  
19 Coastal/Land Planning Group. Please tell  
20 me a little bit about that position and  
21 whether you would consider it a  
22 promotion.

23 A. I probably would not  
24 consider that a promotion. What happened

16

1 was within that period of time between  
2 1988 or between 1991, around that time  
3 the department went through another  
4 reorganization where it went from an  
5 organization where each section of the  
6 department was organized under resource  
7 lines.

8 There was a division dealing  
9 with coastal issues. There was a  
10 division dealing with water issues,  
11 another division dealing with air quality  
12 issues. The new administration decided  
13 that they did not like that organization  
14 for the department, so they decided to  
15 reorganize the department under  
16 functional lines so that all the permits  
17 were combined under one agency, all  
18 planning was combined under one agency.  
19 So basically my duties shifted because of  
20 the reorganization but they basically  
21 stayed the same, which was overall  
22 responsibility for New Jersey's Coastal  
23 Planning Group.

24 Q. How was the DEP organized

17

1 before that?

2 A. Up until 1991 from 1971 when  
3 the department was first formed, the  
4 department was organized under resource  
5 lines. They may have had different names  
6 over time. There may have been some  
7 administrative changes with each one of  
8 the divisions. For example, the Division  
9 of Coastal Resources was known as  
10 Division of Marine Services.

11 Q. Division of?

12 A. Marine Services. And at the  
13 time Division of Marine Services had an  
14 enforcement arm that is today part of the  
15 State Police. At the time the Division  
16 of Marine Services -- it was a bureau or  
17 the Office of Marine Police that carried  
18 out enforcement actions on marine coastal  
19 waters.

20 I think it was in the late  
21 '70s the department decided to shift  
22 Marine Police into the State Police  
23 function, and during that time there was  
24 also some other changes which evolved in

18

1 the Division of Coastal Resources, but it  
 2 stayed within functional lines. It was  
 3 recognized that there was a marine  
 4 coastal element, a resource to protect,  
 5 and it stayed that way up until 1991  
 6 where the department went through a major  
 7 reorganization from resource-based to  
 8 function-based.  
 9 Q. So if I understand it  
 10 correctly, before 1991 the department was  
 11 organized more or less along the lines  
 12 of, say, coastal resources, inland  
 13 resources and various other subcategories  
 14 and there might be individuals in those  
 15 different divisions performing the same  
 16 function such as planning or permitting  
 17 but then after '91 it was organized I  
 18 think you called it along functional  
 19 lines?  
 20 A. Yes.  
 21 Q. So was it that planning got  
 22 put in one division and permitting got  
 23 put in one division, regardless of the  
 24 geography or the nature of the lands or

19

1 waters within the state?  
 2 A. Yes.  
 3 Q. You said that you worked  
 4 with CAFRA and the Waterfront Development  
 5 Act and the Wetlands Act?  
 6 A. Yes.  
 7 Q. That was from the beginning  
 8 of your tenure at DEP?  
 9 A. No. From the beginning when  
 10 I first came into the Department of  
 11 Environmental Protection I was in the  
 12 Bureau of Geology.  
 13 Q. That was in 1970?  
 14 A. In 1970. I worked in that  
 15 bureau from 1970 to 1973 revising state  
 16 topographic maps and working directly  
 17 under the State topographic engineer.  
 18 Q. After 1973?  
 19 A. After 1973 I transferred to  
 20 the commissioner's office and we were  
 21 working at that time on developing  
 22 tidelands maps that basically drew a line  
 23 between privately-owned lands in the  
 24 state and publically-owned lands.

20

1 And then in January 1975 I  
 2 transferred from the commissioner's  
 3 office to the Division of Coastal  
 4 Resources and created the Division of  
 5 Coastal Resources to administer the  
 6 Coastal Area Facilities Review Act.  
 7 Q. So starting in January 1975  
 8 you were administering and issuing  
 9 permits under CAFRA?  
 10 A. Yes.  
 11 Q. And the Waterfront  
 12 Development Act as well?  
 13 A. No, not at that time. That  
 14 didn't come into effect until later on.  
 15 Q. Do you remember  
 16 approximately when?  
 17 A. I believe it was 1979.  
 18 Q. You said in 1973 you were in  
 19 the commissioner's office developing  
 20 tideland maps to distinguish between  
 21 privately-owned and publically-owned  
 22 lands. In that position, did you have  
 23 occasion to consider the boundary between  
 24 New Jersey and Delaware?

21

1 A. No.  
 2 Q. Are you familiar with  
 3 Delaware's coastal zone laws?  
 4 A. Vaguely familiar with them  
 5 in the sense that we have had meetings  
 6 with staff from the State of Delaware's  
 7 Coastal Management Program and we have  
 8 discussed the fact that Delaware does  
 9 have a coastal law that was passed prior  
 10 to New Jersey passing its law and that  
 11 its law tends to be different as far as  
 12 regulating different facilities than the  
 13 way New Jersey regulates its facilities.  
 14 Q. When did you have those  
 15 meetings with Delaware?  
 16 A. Probably most of the  
 17 meetings we had with staff was probably  
 18 in the early 1990s.  
 19 Q. That was in conjunction, I  
 20 take it, because you mention it in your  
 21 affidavit with the Draft Memorandum of  
 22 Understanding, regarding coordination of  
 23 permit review between the states?  
 24 A. Yes.

22

1 Q. What about before 1991?  
2 A. Before 1991, I had several  
3 meetings with Delaware's coastal  
4 management staff related to shore  
5 protection issues, coastal erosion  
6 issues, at various meetings one on one  
7 with Delaware as well as in conferences.  
8 Q. Did you discuss the boundary  
9 between New Jersey and Delaware in those  
10 meetings?  
11 A. In these previous  
12 meetings -- prior to the meetings in  
13 1990?  
14 Q. We can take them one at a  
15 time, yes. In the pre-1991 meetings.  
16 A. Not that I recall.  
17 Q. Did you discuss in those  
18 pre-1991 meetings Delaware's regulatory  
19 authority within the Delaware River?  
20 A. No, I don't believe so.  
21 Q. You're familiar with what's  
22 known as the Twelve Mile Circle, correct?  
23 A. Yes.  
24 Q. What is your understanding

23

1 of the Twelve Mile Circle?  
2 A. My understanding is it's a  
3 boundary that was set by Supreme Court  
4 decision sometime in the 1930s that  
5 instead of having the boundary run down  
6 the channel or the center line of the  
7 Delaware River and Delaware Bay, the  
8 Twelve Mile Circle runs down basically  
9 the shoreline of the New Jersey side of  
10 the river for a length of 30 or 40 miles  
11 and then reaching a point jets back out  
12 into the center line of the channel or  
13 the river and continues down that center  
14 line to the Atlantic Ocean.  
15 Q. Thank you. When did you  
16 become aware of the location of the  
17 boundary within the Twelve Mile Circle?  
18 A. I first became aware in the  
19 period between 1970 and 1973 when I was  
20 working on revising the New Jersey State  
21 topographic maps. One of the maps covers  
22 that area, and I happened to notice the  
23 boundary and the oddity of the boundary  
24 and talked to the state topographic

24

1 engineer and he referenced the Supreme  
2 Court decision and some other documents  
3 related to the boundary.  
4 Q. What was your understanding  
5 in the 1970 to 1973 time -- when you were  
6 preparing the topographic maps, what was  
7 your understanding of Delaware and New  
8 Jersey's regulatory authority within the  
9 Twelve Mile Circle?  
10 A. I didn't have an  
11 understanding of it then because then I  
12 was only really concerned with revising  
13 topographic features, looking at  
14 topographic maps and just knew that the  
15 boundary was there and that it was not a  
16 mistake of some previous revision to the  
17 map, that that was the actual boundary.  
18 Q. Did you at some point come  
19 to an understanding of the regulatory  
20 authority of the respective states within  
21 the Twelve Mile Circle?  
22 A. Yes.  
23 Q. When did you come to that  
24 understanding?

25

1 A. I guess it was in the late  
2 1970s when I was reviewing one of the  
3 drafts of the Bay and Ocean Shore Segment  
4 of New Jersey's preparation for a  
5 document for federal coastal zone  
6 approval.  
7 Q. Did you say when you were  
8 reviewing a 1978 draft?  
9 A. Yes.  
10 Q. What was the understanding  
11 that you came to?  
12 A. Well, there was an  
13 understanding that there was this oddity  
14 for the boundary, that the boundary was  
15 the shoreline and because of that it may  
16 present some planning or regulatory  
17 problems in the future and that both New  
18 Jersey and Delaware should work to  
19 resolve those issues before finalizing  
20 the 1980 document for the Bay and Ocean  
21 Shore Segment.  
22 Q. You said that was your  
23 understanding in the late 1970s. Did  
24 that remain your understanding

26

1 subsequently?  
2 **A. Yes.**  
3 **Q. Do you know whether New**  
4 **Jersey has ever contended that Delaware**  
5 **lacks the authority to regulate projects**  
6 **that extend from New Jersey into Delaware**  
7 **waters within the Twelve Mile Circle?**  
8 **A. No.**  
9 **Q. In your discussions with**  
10 **Delaware officials, has Delaware taken**  
11 **the position that it could regulate**  
12 **projects extending into Delaware from New**  
13 **Jersey within the Twelve Mile Circle?**  
14 **A. Yes.**  
15 **Q. When around -- when did that**  
16 **happen?**  
17 **A. Probably in the early 1990s**  
18 **when I was in contact with Sarah Cooksey**  
19 **to come up with a memorandum of agreement**  
20 **between the two states and to try to**  
21 **resolve any future problems that that**  
22 **boundary may have.**  
23 **Q. What did Ms. Cooksey say**  
24 **about Delaware's regulatory authority**

27

1 within the Twelve Mile Circle?  
2 **A. I can't recall specifically,**  
3 **but I think it was the general**  
4 **understanding, at least from my part,**  
5 **that New Jersey had regulatory authority**  
6 **on the New Jersey side of the boundary**  
7 **and Delaware had regulatory authority on**  
8 **the Delaware side of the boundary and any**  
9 **project that would cross over that**  
10 **boundary would need to get approvals from**  
11 **both states in order for the project to**  
12 **go forward.**  
13 **Q. Are you familiar with the**  
14 **structures extending from the New Jersey**  
15 **shore into Delaware within the Twelve**  
16 **Mile Circle?**  
17 **A. Well -- am I familiar with**  
18 **them?**  
19 **Q. Are you familiar with any**  
20 **structures?**  
21 **A. I think there probably are**  
22 **some structures that cross that boundary,**  
23 **but I'm not familiar with each and every**  
24 **structure that there may be.**

28

1 **Q. Do you recall ever working**  
2 **on a permit for a project that crossed**  
3 **into Delaware?**  
4 **A. I have a recollection, and I**  
5 **may be wrong, but I think there was at**  
6 **the time that I was head of the**  
7 **regulatory program there may have been**  
8 **one project in, I think, Penns Grove that**  
9 **may have extended from the upland -- some**  
10 **type of pier structure that extended from**  
11 **the upland and went into the Delaware**  
12 **area.**  
13 **Q. You said that's when you**  
14 **were the head of the regulatory**  
15 **department. Was that Chief of the Bureau**  
16 **of Planning and Project Review?**  
17 **A. Yes.**  
18 **Q. In the Division of Coastal**  
19 **Resources?**  
20 **A. Yes.**  
21 **Q. Did you work on a permit for**  
22 **Penns Grove?**  
23 **A. That's the only one --**  
24 **again, it's a vague recollection. If we**

29

1 **checked the dates, it may -- that's the**  
2 **only one I remember. There was not much**  
3 **activity going on within that area.**  
4 **Q. How many permits did you**  
5 **work on in your tenure at DEP,**  
6 **approximately?**  
7 **A. It averaged out about 1500 a**  
8 **year. So over an eight-year period that**  
9 **would have been 12,000 permits.**  
10 **Q. If I understood you**  
11 **correctly, you have a vague recollection**  
12 **that there may have been one permit that**  
13 **affected the Delaware territory in the**  
14 **Twelve Mile Circle?**  
15 **A. Yes.**  
16 **Q. Have you heard of the word**  
17 **riparian?**  
18 **A. Yes.**  
19 **Q. What is your understanding**  
20 **of the meaning of riparian?**  
21 **A. You have to excuse me. I**  
22 **have been retired over 10 years.**  
23 **Riparian, I think, is an old**  
24 **English term that has to do with the**

30

1 definition of the bank of a river or bank  
2 of a shore. The way it is used today  
3 riparian generally refers to any area  
4 below -- at least in New Jersey -- below  
5 the mean high water line. So riparian  
6 lands would be those lands that would be  
7 in public ownership below the mean high  
8 water line.

9 Q. Okay.

10 A. In other states that  
11 boundary between publically-owned land  
12 and privately-owned lands can vary  
13 depending on whether its mean high water  
14 line, mean low water line, mean low, low  
15 water line. So the boundary I know in  
16 some states varies depending whether it's  
17 mean high or low water.

18 Q. So when you were making the  
19 topographic maps in the '70s, I take it  
20 you were concerned with these riparian  
21 lands?

22 A. No. When making the state  
23 topographic maps, we were just drawing a  
24 general line delineating shorelines,

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1 cultural features, but the scale was such  
2 it was not to the scale showing the  
3 boundary between publically-owned lands  
4 and privately-owned lands. Now, in 1973  
5 and 1975 when we were producing the  
6 tidelands maps, those maps specifically  
7 showed the demarcation between  
8 publically-owned lands or private lands  
9 or showing the riparian boundary.

10 Q. Did you work with the Bureau  
11 of Tidelands in any way?

12 A. Yes.

13 Q. How did you work with them?

14 A. The way we worked, between  
15 1973 and 1975 when we were producing the  
16 tidelands maps we were producing the maps  
17 for the Bureau of Tidelands that would  
18 allow the Bureau of Tidelands to  
19 determine where the line was between  
20 private and public lands.

21 Q. Did any of those maps depict  
22 the boundary between New Jersey and  
23 Delaware within the Twelve Mile Circle?

24 A. I do know that there were

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1 maps produced for that area and they  
2 probably delineate the area between  
3 public and privately-owned lands, you  
4 know, showing the mean high water line,  
5 but I don't recall working on any of  
6 those maps in that area.

7 Q. So other people worked on  
8 other maps, you didn't do them all?

9 A. No, no, no. The program ran  
10 for many years. The period that I was  
11 involved, between 1973 and 1975, we were  
12 involved in coming up with the method for  
13 making those delineations and working on  
14 a special area in New Jersey known as the  
15 Hackensack Meadowlands, which has a  
16 unique set of circumstances for drawing  
17 tidelands or riparian boundaries. I left  
18 the program in 1975 and the tidelands  
19 mapping program continued for many years  
20 after that to map the rest of the state.

21 Q. Are you familiar with the  
22 phrase, riparian rights?

23 A. Yes.

24 Q. When did you become familiar

33

1 with that phrase?

2 A. I probably became familiar  
3 with that phrase in the period 1970 to  
4 1973 when I was working in the Bureau of  
5 Geology when I was looking at the  
6 revision of the state topographic maps.  
7 The state topographic engineer required  
8 that we read quite a bit about riparian  
9 rights, lands and boundaries, everything  
10 related to generally of mapping issues.

11 Q. What is your understanding  
12 of the meaning of riparian rights?

13 A. Well, my general  
14 understanding is that those areas that  
15 are above the mean high water line fall  
16 in private ownership and those areas  
17 below the mean high water line fall into  
18 public ownership. So anyone wanting to  
19 build or occupy publically-owned lands  
20 would have to get some type of legal  
21 instrument from the State of New Jersey  
22 either as a lease, a grant or some other  
23 instrument in order to occupy those  
24 lands.

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1 Q. Based on your understanding  
 2 as a regulator, do riparian rights  
 3 include anything in addition to those  
 4 grants of land?  
 5 A. Well, the way we viewed it  
 6 before when I was head of the regulatory  
 7 program before we would issue a  
 8 waterfront development permit that  
 9 required some type of riparian conveyance  
 10 we would not issue the permit until there  
 11 was some type of conveyance. So we  
 12 worked closely with the Bureau of  
 13 Tidelands to ensure that whatever  
 14 conveyance that may be granted would be  
 15 granted first before the issuance of one  
 16 of our waterfront development permits.  
 17 Q. So the grantee of a riparian  
 18 grant would be required to get all  
 19 applicable permits under CAFRA and  
 20 Waterfront Development Act before it  
 21 could actually develop the lands subject  
 22 to a riparian grant; is that correct?  
 23 A. Yes.  
 24 Q. Are you familiar with the

35

1 phrase riparian jurisdiction?  
 2 A. My understanding of riparian  
 3 jurisdiction has to do, again, getting  
 4 back to the fact that at least in the  
 5 State of New Jersey riparian jurisdiction  
 6 falls under the State of New Jersey. New  
 7 Jersey has jurisdiction over all those  
 8 areas below the mean high water line  
 9 unless they had been previously conveyed  
 10 in some way. That's my understanding of  
 11 riparian jurisdiction.  
 12 Q. Are you familiar with a  
 13 compact, an interstate compact, between  
 14 New Jersey and Delaware that was entered  
 15 in 1905?  
 16 A. I wasn't really familiar  
 17 with that until just recently within the  
 18 last year.  
 19 Q. How did you become aware of  
 20 the compact?  
 21 A. Through discussions having  
 22 to do with the affidavit the question  
 23 came up was I familiar with the compact,  
 24 and at the time I was not. Then I have

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1 had some general discussions that there  
 2 was a compact that had some other  
 3 ramifications dealing with the boundary  
 4 issues.  
 5 Q. Do you know whether Delaware  
 6 has exercised regulatory authority over  
 7 projects extending from New Jersey into  
 8 Delaware?  
 9 A. Yes.  
 10 Q. Can you explain your  
 11 understanding? Take it one project at a  
 12 time if that's helpful for you.  
 13 A. The only one I'm aware of  
 14 is, I guess, the case that led up to the  
 15 filing of this proceeding with the  
 16 Supreme Court that there was some liquid  
 17 natural gas, LNG, facility that was being  
 18 proposed mainly within New Jersey but  
 19 having some structures extending into  
 20 Delaware.  
 21 Q. I'd like to turn back to  
 22 your affidavit for a moment to paragraph  
 23 2, which is on page 74a. This paragraph  
 24 discusses your involvement in preparation

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1 of the New Jersey Coastal Management  
 2 Program and Final Environmental Impact  
 3 Statement; is that correct?  
 4 A. Yes.  
 5 Q. As I read it, there was an  
 6 approval in 1978 for the Bay and Ocean  
 7 Shore Segment and then in 1980 which  
 8 covered the same areas but also some  
 9 additional areas. Do I have that right?  
 10 A. Yes.  
 11 Q. Starting with the 1978  
 12 Coastal Management Plan and maybe we can  
 13 abbreviate it to CMP, if that's okay with  
 14 you?  
 15 A. Yes.  
 16 Q. It's a mouthful for me.  
 17 Tell me the events that led up to the  
 18 1978 CMP such as when was it conceived  
 19 and how long did it take? I'll probably  
 20 have some follow-up questions. Just give  
 21 me your general understanding.  
 22 A. The CMP has its genesis in  
 23 the Federal Coastal Management Act. New  
 24 Jersey really didn't start getting active

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1 in filing for a CMP approval with the  
 2 federal government until after passage of  
 3 CAFRA in 1973. In 1973 when that act was  
 4 passed, CAFRA required the New Jersey  
 5 Department of Environmental Protection to  
 6 regulate major development according to  
 7 the statute. It required the department  
 8 to do an inventory of its coast, and it  
 9 also required the department to come up  
 10 with a plan for managing its coast.  
 11 New Jersey was aware of the  
 12 Federal Coastal Management Act. If New  
 13 Jersey could get federal approval then it  
 14 could receive federal funds in order to  
 15 help manage its coast.  
 16 Q. Were those federal funds  
 17 substantial?  
 18 A. They averaged out when I was  
 19 there to about \$2 million a year, and  
 20 most of those funds went to pay for staff  
 21 in the planning and regulatory  
 22 departments related to coastal matters.  
 23 Q. Do you know the budgets for  
 24 those departments -- the total budgets

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1 for those departments during that time?  
 2 A. No.  
 3 Q. Do you think it was more  
 4 than 2 million?  
 5 A. Yes.  
 6 Q. So is New Jersey required to  
 7 develop a CMP and submit it to the  
 8 federal government or was it an option?  
 9 A. It's an option. It's a  
 10 voluntary basis, but I believe every  
 11 coastal state that was eligible, maybe  
 12 excluding one state, was actively working  
 13 on seeking federal approval.  
 14 Q. The incentive was to get  
 15 federal funding?  
 16 A. Yes.  
 17 Q. Any other incentives?  
 18 A. Other incentives of national  
 19 approval, national attention. There were  
 20 other incentives of getting together on a  
 21 regular basis to discuss and share  
 22 problems that each state may have in  
 23 coordinating those functions. It was  
 24 very interesting in the process of

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1 meeting with other states finding out  
 2 what other state problems they may have  
 3 or what solutions they may have to  
 4 different issues related to managing the  
 5 coast.  
 6 Q. So by getting an approved  
 7 coastal management plan New Jersey was  
 8 able to meet with other states and  
 9 discuss their coastal policies?  
 10 A. Yes.  
 11 Q. Was that a forum set up by  
 12 the federal government or an agency of  
 13 the federal government?  
 14 A. Yes. Then it was the Office  
 15 of Coastal Zone Management within the  
 16 NOAA, National Oceanic and Atmospheric  
 17 Administration, under the Department of  
 18 Commerce.  
 19 Q. So I take it the Coastal  
 20 Management Plan, or the CMP, was a very  
 21 important document for New Jersey?  
 22 A. Yes.  
 23 Q. It would be very important  
 24 to be accurate in all the representations

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1 New Jersey made to the federal  
 2 government, correct?  
 3 A. Yes.  
 4 Q. Did New Jersey consult its  
 5 legal counsel before submitting its CMP  
 6 to the federal government?  
 7 A. I'm pretty sure New Jersey  
 8 did because the document was widely  
 9 distributed throughout the state  
 10 government for review both as a final  
 11 draft document as well as sections that  
 12 were circulated, but I'm not intimately  
 13 aware. I don't remember seeing any  
 14 documents submitting it to the department  
 15 of -- but I don't remember submitting it  
 16 to any DAGs, although I do remember  
 17 meeting with DAGs relating to coastal  
 18 matters.  
 19 Q. In the process of developing  
 20 the CMP?  
 21 A. I'm not sure. I'm not sure.  
 22 Q. When you say DAGs, you mean  
 23 Deputy Attorneys General?  
 24 A. Yes.

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1 Q. Just for the reporter and  
2 for the transcript.  
3 So if the Department of  
4 Environmental Protection were to consult  
5 legal counsel, would the DAGs have been  
6 the legal counsel to consult or was there  
7 in-house counsel within the department or  
8 other counsel?  
9 A. Early on in the early 1970s  
10 there was in-house counsel. We did have  
11 a few lawyers in-house that looked at  
12 some of the original regulations that led  
13 up to CAFRA. And I do know that there  
14 was some in-house counsel related to the  
15 format and the proceedings that public  
16 hearings would take under CAFRA, but  
17 there was also -- we also relied heavily  
18 on Deputy Attorney Generals relating to  
19 permit matters and appeals relating to  
20 permit matters.  
21 Q. Did the department consult  
22 DAGs in the course of issuing permits?  
23 A. Yes.  
24 Q. Going back to your

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1 affidavit, paragraph 5, I'll read it for  
2 the record. It says, "In these  
3 capacities..." and I believe that's  
4 referring back to Paragraph 4, your  
5 resume there that we went over earlier; I  
6 won't repeat it now. It says, "In these  
7 capacities I participated in the  
8 discussions with the Coastal Management  
9 Program regulatory and planning staffs  
10 about the New Jersey/Delaware boundary  
11 line and what effects it had on permit  
12 decision-making."  
13 There's another sentence but  
14 I just want to look at this one first.  
15 As I read this, you participated in  
16 discussions with New Jersey and  
17 regulatory and planning staffs about the  
18 boundary lines between the states; is  
19 that correct?  
20 A. Yes.  
21 Q. What was the nature of those  
22 discussions?  
23 A. The nature of the  
24 discussions was that there is this

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1 boundary that is not your usual boundary  
2 that we may have issues related to  
3 projects that would be -- that are  
4 proposed that would be on the upland and  
5 then extend on the New Jersey side and  
6 then extend into Delaware waters and that  
7 how best to coordinate those permit  
8 activities between the two states as well  
9 as whether the programs within those  
10 states are compatible, and if there were  
11 some parts of the programs that were not  
12 compatible how to work closely with our  
13 agency -- counter agency in Delaware to  
14 try to make those programs compatible, so  
15 you would not then unduly penalize a  
16 developer that is proposing a project  
17 that would be acceptable to both states  
18 but not be built because of some type of  
19 problems between the two state programs.  
20 Q. I see. In these discussions  
21 with CMP regulatory and planning staffs,  
22 was it the understanding that Delaware  
23 would have regulatory authority over the  
24 portion of the project that extended into

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1 Delaware?  
2 A. Yes.  
3 Q. In these discussions of  
4 regulatory and planning staffs, who was  
5 involved in the discussions?  
6 A. Many people were involved.  
7 It had to do with not only program staff  
8 that worked for me but also program staff  
9 that worked in the regulatory section as  
10 well as other agencies throughout DEP.  
11 The reason being, New Jersey's Coastal  
12 Management Program does not just affect  
13 permit decisions or planning decisions  
14 related to CAFRA, waterfront development,  
15 coastal wetlands but it's a large  
16 umbrella.  
17 Once the CMP was approved by  
18 the federal government, any activity that  
19 would take place within New Jersey be it  
20 a water issue, air quality issue, any  
21 resource issue, Parks and Forestry issue  
22 in New Jersey would have to be compatible  
23 with New Jersey's fairly approved coastal  
24 management program and be consistent with

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1 the coastal regulations.  
2 So it was a broad umbrella  
3 of reaching out throughout the Department  
4 of Environmental Protection of discussing  
5 this issue with them and then exploring  
6 the matter of whether we can come up with  
7 an agreement.  
8 Q. Do you remember the names of  
9 anyone who was involved -- you can start  
10 with those at the so-called top of the  
11 department.  
12 A. Some of the people I can  
13 immediately recall would have been Louis  
14 Nagy, who was then Assistant Commissioner  
15 for Natural Resources, Martin Bierbaum  
16 was my immediate supervisor.  
17 Q. Do you remember Mr.  
18 Bierbaum's title or can you paraphrase  
19 what his responsibilities would have  
20 been?  
21 A. Not offhand.  
22 Q. This time you were chief of  
23 the Bureau of Planning and Project Review  
24 for the Division of Coastal Resources.

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1 I'm looking at Paragraph 4 of your  
2 affidavit. Actually we're talking about  
3 development of the 1978, so I may be  
4 wrong there. Would it be Paragraph 2,  
5 supervisor in the Office of Coastal Zone  
6 Management?  
7 A. Yes. Well, paragraph 5, in  
8 my mind, really refers to the last  
9 paragraph from July of 1991 to January  
10 of 1997. At that time -- that was after  
11 one of the reorganizations within DEP and  
12 this was under now functioning -- the  
13 department was under functional lines  
14 instead of resource lines.  
15 Q. So paragraph 5 when it says  
16 in these capacities you intend to refer  
17 just to the last sentence of Paragraph 4  
18 and not to the entire Paragraph 4?  
19 A. I would say mostly related  
20 to 1991 to 1997, yes.  
21 Q. Fair enough. I know it was  
22 a while ago.  
23 So besides Mr. Nagy and Mr.  
24 Bierbaum, who else was involved in the

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1 discussions about the effect of the  
2 boundary on New Jersey and Delaware's  
3 regulatory authority?  
4 A. I can't recall. I dealt  
5 with many people, and I just can't  
6 recall. I can recall names but whether I  
7 met with a specific person or like, for  
8 instance, then chief of the regulatory  
9 section or one of the staff, I'm not  
10 quite sure whether we met with staff or  
11 met with chiefs to discuss specific  
12 issues.  
13 Q. There were you said many  
14 people before?  
15 A. Yes.  
16 Q. Can you quantify it? More  
17 than 10? More than 20? More than 50?  
18 A. Well, there was probably  
19 more than 10 agencies that we dealt with  
20 so...  
21 Q. When you say agency -- I'm  
22 sorry.  
23 A. Discrete functions within  
24 the Department of Environmental

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1 Protection.  
2 Q. Agency, the way you're using  
3 it, is within the DEP not other  
4 departments in New Jersey?  
5 A. That's right.  
6 Q. I just wanted to get clear.  
7 A. So it's probably somewhere  
8 between 10 and 20 people that were in  
9 discussions related to the boundary  
10 issue.  
11 Q. Do you know if any of those  
12 people had a law degree?  
13 A. Within the Department of  
14 Environmental Protection at that time I  
15 don't believe anyone had a law degree.  
16 Q. These 10 to 20 people  
17 involved in the discussions were spread  
18 among 10 agencies you called them within  
19 DEP?  
20 A. Yes.  
21 Q. Do you know what the names  
22 of those agencies -- you don't have to  
23 name all 10 if you don't remember them  
24 but just to get an idea.

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1       **A. I don't specifically**  
2 **remember the names of the agencies. It**  
3 **had to do with water programs, air**  
4 **programs, land trust programs, coastal**  
5 **permitting programs, water and coastal**  
6 **planning programs and probably having to**  
7 **do with agencies related to Parks and**  
8 **Forestry as well.**  
9       **Q. This boundary issue was one**  
10 **that was widely considered within DEP**  
11 **during that time during the late 1970s?**  
12       **A. It was widely considered in**  
13 **the 1990s. During the '70s, I don't**  
14 **think there was really any activity --**  
15 **there was no major discussions going on**  
16 **in the '70s between say 1979 and 1988**  
17 **when I headed up the regulatory program.**  
18       **MR. ATTAWAY: Shall we take**  
19 **a break, five or ten minutes?**  
20 **(Whereupon a break was taken.)**  
21 **(Whereupon documents were marked**  
22 **Whitney-2 and Whitney-3 for**  
23 **identification.)**  
24 **BY MR. ATTAWAY:**

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1       **Q. I'd like to introduce what**  
2 **we had marked Exhibit-2, a May 1978 Draft**  
3 **Environmental Impact Statement and**  
4 **Coastal Management Program for the Bay**  
5 **and Ocean Segment; is that correct, Mr.**  
6 **Whitney?**  
7       **A. Yes.**  
8       **Q. Then as Exhibit-3 is the**  
9 **final version of the same document, which**  
10 **is dated August 1978. It's on the third**  
11 **page of the exhibit.**  
12       **Just briefly turning back to**  
13 **your declaration, paragraph 5, I wanted**  
14 **to clarify something about the discussion**  
15 **that we were having before the break.**  
16 **When the paragraph says, in these**  
17 **capacities you participated in**  
18 **discussions regarding the boundaries,**  
19 **this refers, as I understood your answer,**  
20 **primarily to the period 1991 to 1994?**  
21       **A. Related to the agreement**  
22 **that was -- that we worked with with**  
23 **Delaware, yes but -- yes, between 1978**  
24 **and 1990 I did help -- well, between 1978**

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1 **and when this document was finalized, I**  
2 **did have input into this particular**  
3 **document from a regulatory point of view.**  
4       **Q. Did you have any discussions**  
5 **in that late 1970s time period about the**  
6 **boundary between New Jersey and Delaware?**  
7       **A. Yes.**  
8       **Q. With whom did you have those**  
9 **discussions?**  
10       **A. Well, we had discussions --**  
11 **at the time I headed up the regulatory**  
12 **section which was a part of the office.**  
13 **There was another part of the office that**  
14 **had the planning section, and the**  
15 **planning section was mainly responsible**  
16 **for putting this document together. But**  
17 **as they were putting the document**  
18 **together they would consult with us over**  
19 **issues related to permitting issues as**  
20 **well as boundary issues because they knew**  
21 **there was this boundary issue and what**  
22 **experience we had with it from a**  
23 **regulatory point of view.**  
24       **Q. When you say they, you say**

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1 **the planning folks within DEP and they I**  
2 **take at that time they were spread out**  
3 **between a number of different agencies**  
4 **you talked with within DEP?**  
5       **A. There's two questions. Yes,**  
6 **there was -- in your first part of the**  
7 **question is yes having to do with the**  
8 **planning staff. The second part of the**  
9 **question is, no, the planning staff that**  
10 **was responsible for putting this document**  
11 **together was within one of those resource**  
12 **lines within the Office of Coastal Zone**  
13 **Management. The office was split into a**  
14 **regulatory side as well as a planning**  
15 **side, and the planning element was**  
16 **responsible for writing most of the**  
17 **document but they relied upon input from**  
18 **other agencies as well as the other part**  
19 **of the office for input regarding the**  
20 **detail that's found in this document.**  
21       **Q. So the planning department,**  
22 **was it within a particular division or**  
23 **agency in DEP?**  
24       **A. It was within the then I**

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1 guess it was Division of Marine Services  
2 which then became the Division of Coastal  
3 Resources within the Office of Coastal  
4 Zone Management. That was the umbrella  
5 for both -- I believe then both the  
6 planning and regulatory side under the  
7 Division of Coastal Resources all having  
8 to do with CAFRA, coastal wetlands.  
9 Q. You had discussions with  
10 them about the boundary between New  
11 Jersey and Delaware?  
12 A. Yes.  
13 Q. Do you remember who you  
14 spoke with?  
15 A. It was probably with staff  
16 under David Kinsey. So it was probably  
17 John Weingart, Ed Linky. There was some  
18 other staff at the time. I don't really  
19 recall who wrote this particular section,  
20 but it may have been Darryl Caputo,  
21 Stewart McKenzie. I think it was Michael  
22 Hochman. I think that's his name,  
23 H-O-C-H-M-A-N.  
24 Q. Darryl, I didn't get his

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1 last name?  
2 A. Caputo, C-A-P-U-T-O.  
3 Q. Stewart McKenzie and Michael  
4 Hochman. When you said this section I  
5 think you're referring to a discussion we  
6 had off the record talking about the  
7 boundary section of the draft CMP?  
8 A. Yes.  
9 Q. What was Darryl Caputo's  
10 title and responsibilities at that time?  
11 A. Darryl had the same title as  
12 Michael Hochman, as George McKenzie.  
13 They were staff under David Kinsey. They  
14 were charged with writing different  
15 sections of the document.  
16 Q. What were their job  
17 responsibilities in general?  
18 A. Well, they are planners --  
19 environmental planners. I believe they  
20 all had master's degrees in environmental  
21 planning from the University of  
22 Pennsylvania.  
23 Q. David Kinsey was their boss?  
24 A. Yes.

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1 Q. What was his title and  
2 responsibility?  
3 A. I think he was chief then at  
4 that time Office of Coastal Zone  
5 Management. His overall responsibility  
6 was the development of this document as  
7 well as coastal regulations dealing with  
8 CAFRA, wetlands and waterfront  
9 development permits.  
10 Q. Mr. Kinsey was primarily  
11 responsible for putting the draft CMP  
12 together?  
13 A. Yes.  
14 Q. And the final as well?  
15 A. I believe so. The reason I  
16 hesitate -- yeah, David was still in the  
17 department at that time.  
18 Q. Just to clarify, we're  
19 talking about the 1978 CMP right now?  
20 A. Yes.  
21 Q. If you turn to Exhibit-2,  
22 which is the draft 1978 CMP, I'll use the  
23 Bates numbers. This has been produced in  
24 discovery so on the lower right-hand

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1 corner you will see some numbers that  
2 start with DE. I'm looking at DE23820.  
3 This is a letter from Rocco Ricci,  
4 Commissioner of the DEP at that time and  
5 it's to the US Department of Commerce to  
6 the Coastal Zone Management Department  
7 within NOAA; is that correct?  
8 A. Yes.  
9 Q. What involvement -- and this  
10 letter basically submits the draft CMP in  
11 1978, correct?  
12 A. Yes.  
13 Q. What was Mr. Ricci's  
14 involvement in this report?  
15 A. Rocco Ricci was then the  
16 commissioner of the Department of  
17 Environmental Protection so he had  
18 overall responsibility for all department  
19 functions.  
20 Q. So was he involved in this  
21 in a hands-on way?  
22 A. No.  
23 Q. That would be David -- was  
24 it David Kinsey?

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1       **A. Yes.**  
 2       **Q. Anyone else besides Mr.**  
 3 **Kinsey? I know you said a number of**  
 4 **people had input but in terms of crafting**  
 5 **the overall strategy and the overall**  
 6 **document, was Mr. Kinsey in charge of**  
 7 **that in full or were there other people?**  
 8       **A. Well, he headed up an office**  
 9 **of planners as well as a department in**  
 10 **the sense that everyone within the**  
 11 **department had input into the document on**  
 12 **coming up with a plan, as well as**  
 13 **policies as well as functions under this**  
 14 **plan.**  
 15       **Q. What was your understanding**  
 16 **at this time about the effect of the**  
 17 **boundary on New Jersey and Delaware's**  
 18 **regulatory authority within the Twelve**  
 19 **Mile Circle?**  
 20       **A. My understanding at this**  
 21 **time was that there was this oddity in**  
 22 **the boundary and that there was a federal**  
 23 **law, Federal Coastal Management Act and**  
 24 **that there was a Delaware coastal law and**

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1 **there was many New Jersey coastal laws**  
 2 **and that it's quite possible that without**  
 3 **looking at these laws in more detail**  
 4 **there may be some conflict between the**  
 5 **laws as far as what can or cannot occur**  
 6 **across the boundary and that staff within**  
 7 **both departments in both states, it would**  
 8 **be nice for them to work together in**  
 9 **order to try to make the boundary**  
 10 **seamless under the dictates of the**  
 11 **federal Coastal Zone Management Act.**  
 12       **Q. So it was your understanding**  
 13 **that New Jersey would have regulatory**  
 14 **authority over the portion of a project**  
 15 **that extended from the shore to the**  
 16 **boundary and that Delaware would have**  
 17 **regulatory authority over the portions of**  
 18 **the project that extended beyond the**  
 19 **boundary?**  
 20       **A. Yes, that was my**  
 21 **understanding then.**  
 22       **Q. Was it the understanding of**  
 23 **your colleagues in DEP?**  
 24       **A. Yes.**

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1       **Q. Looking back at your**  
 2 **affidavit, paragraph 2, it's the second**  
 3 **half of that paragraph. It's kind of a**  
 4 **long paragraph. I'll read part of it**  
 5 **into the record. It says, "New Jersey's**  
 6 **CMP was adopted in two segments. In**  
 7 **1978, New Jersey adopted a CMP for the**  
 8 **Bay and Ocean Shore (1978 CMP). With**  
 9 **respect to the area known as the Twelve**  
 10 **Mile Circle, the 1978 CMP stated**  
 11 **continued coordination and work toward**  
 12 **appropriate agreements between the**  
 13 **coastal management programs of the two**  
 14 **states would be required to resolve**  
 15 **potential conflicts between the coastal**  
 16 **policies of New Jersey and Delaware (1978**  
 17 **CMP at 19)."**  
 18       **I'd like to turn to it's**  
 19 **actually -- well, I think this is a cite**  
 20 **to the final CMP, which we'll get to, but**  
 21 **page 18 of the draft CMP states that,**  
 22 **"Resolution of potential conflicts**  
 23 **between the coastal policies of Delaware**  
 24 **and New Jersey will require continued**

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1 **coordination and work in the first year**  
 2 **of program approval, toward appropriate**  
 3 **agreements between the coastal management**  
 4 **of both states, Salem County and affected**  
 5 **municipalities." Did I read that**  
 6 **correctly?**  
 7       **A. Yes.**  
 8       **Q. Does this refresh your**  
 9 **understanding and that of your colleagues**  
 10 **that Delaware would have regulatory**  
 11 **authority over projects to the extent**  
 12 **that they extended past the boundary?**  
 13       **A. This paragraph I don't think**  
 14 **really talked about -- I don't think at**  
 15 **the time we were as much concerned with**  
 16 **jurisdiction as the -- we were more**  
 17 **concerned with the potential policy**  
 18 **issues on both sides of the boundary. As**  
 19 **it refers, it says within one year of**  
 20 **program approval.**  
 21       **We submitted our Coastal**  
 22 **Management Program in two steps, one in**  
 23 **1978 which dealt with the coastal area**  
 24 **defined by CAFRA, and we knew that we**

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1 would then have to do more work and we  
2 didn't have the time to do that work  
3 within the time frame we had to extend  
4 the boundary, which we did in 1980, to up  
5 the Delaware River to the added five in  
6 Trenton and then also include the New  
7 York Harbor area and the Hackensack  
8 Meadowlands.

9 We recognized there may be a  
10 potential policy conflict in this area  
11 and we pledged in this document that we  
12 would work to resolve those issues so  
13 when the 1980 document rolled around  
14 hopefully there would be some resolution  
15 of this conflict.

16 Q. Okay.

17 A. But at the time, I don't  
18 think we were as concerned -- I don't  
19 think we were really talking about  
20 regulatory issues and where the boundary  
21 issue is and who regulates on what side.  
22 I don't think that was the issue. The  
23 issue was the policies that Delaware and  
24 the policies that were evolving in New

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1 Jersey whether those policies were  
2 compatible or incompatible and if they  
3 weren't compatible how could we set up a  
4 mechanism to try and resolve any  
5 incompatibilities there maybe.

6 Q. Let's turn to Exhibit-3,  
7 page 19. I'm just going to have one  
8 question about that and that is, is the  
9 language -- there are three paragraphs on  
10 that page and I'm looking at the middle  
11 one. Comparing that paragraph to the  
12 draft it's true, is it not, that the  
13 final has the same language that I just  
14 read from the draft 1978 CMP?

15 A. Yes.

16 Q. Thank you. At that time, as  
17 I understand it, your department wasn't  
18 focused so much on the effect of each  
19 state's regulatory authority?

20 A. That's correct.

21 Q. In developing the 1980 CMP  
22 did that issue receive more attention and  
23 focus?

24 A. I do know that -- again, I

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1 didn't specifically work on that section,  
2 but I do know that there were some  
3 ongoing discussions within the planning  
4 group on trying to resolve that but how  
5 much time they spent on that, as well as  
6 other issues, I really don't know.

7 Q. Who in the planning group  
8 was discussing the effect of the boundary  
9 on the respective states' regulatory  
10 authority?

11 A. I don't know specifically  
12 who it was. Again, it was the planning  
13 group. I don't know who specifically  
14 worked on it within the planning group.

15 Q. The planning group as a  
16 whole you think?

17 A. They may have had meetings  
18 -- group meetings to discuss various  
19 issues and this may have been one of the  
20 issues. Again, that's speculation on my  
21 part. I'm not really sure. I do know  
22 that they did hold group meetings to  
23 discuss within the group and some testing  
24 issues that one person would bring up and

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1 say here we have a problem or we have a  
2 particular issue related to this, how  
3 best collectively does the group see how  
4 it should be written and resolved?

5 Q. Were the CMP documents  
6 reviewed by any legal counsel?

7 A. I don't have any specific  
8 knowledge, but I'm pretty sure it was  
9 reviewed probably by the Attorney  
10 General's Office.

11 Q. I'd like to introduce  
12 Exhibit-4.  
13 (Whereupon document was marked  
14 Whitney-4 for identification.)  
15 BY MR. ATTAWAY:

16 Q. Again, this is an excerpt of  
17 a document. Take your time to review it  
18 and then I'll talk about what it is and  
19 then ask you a few questions.

20 A. (Witness reading.)

21 Q. You have had a chance to  
22 review it?

23 A. Yes.

24 Q. This is a document titled,

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1 Options for New Jersey's Developed Coast.  
2 It's dated March 1979 from Department of  
3 Environmental Protection, Daniel O'Hern,  
4 Commissioner; is that correct?  
5 A. Yes.  
6 Q. Turning three pages in this  
7 document, for the record it doesn't have  
8 any Bates stamps. We received it from  
9 New Jersey yesterday without Bates  
10 stamps. There's a letter about four  
11 pages in from Daniel J. O'Hern,  
12 Commissioner. I gather that this letter  
13 is presenting the report. I'm basically  
14 introducing it's a one-page letter; is  
15 that correct?  
16 A. Yes.  
17 Q. The third paragraph down  
18 starts, Options for New Jersey's  
19 Developed Coast, which is the title of  
20 the document, is a preview of the second  
21 part of the state's Coastal Management  
22 Program being prepared under the federal  
23 Coastal Management Act. The first part  
24 for the Bay and Ocean Shore Segment

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1 received federal approval in 1978. We  
2 have deliberately kept this report as  
3 short as possible. A significant amount  
4 of background material is included in a  
5 separate volume of Appendices which is  
6 also available from this department.  
7 So I have excerpted this  
8 document. Again, it's a voluminous  
9 document when you count the report and  
10 the Appendices. If we turn in a few more  
11 pages, there's Appendix F which is  
12 entitled, Delaware-New Jersey and  
13 Interstate Coastal Management Along the  
14 Salem County Shoreline. This part of the  
15 report is paginated and it's page numbers  
16 141 through 144. You have had a chance  
17 to read these four pages, Mr. Whitney?  
18 A. I have had a chance to skim  
19 read it, yes.  
20 Q. Fair enough. Maybe I should  
21 back up and say, have you seen this  
22 report before, Options for New Jersey's  
23 Developed Coast?  
24 A. Yes.

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1 Q. When did you see it?  
2 A. The first time I probably  
3 saw it was during the time of its  
4 preparation. I probably didn't see any  
5 drafts of this. I probably saw the final  
6 draft as it was presented.  
7 Q. Who prepared this?  
8 A. This was -- this, again, was  
9 prepared by the Office of Coastal Zone  
10 Management within the Department of  
11 Environmental Protection.  
12 Q. Who were the individuals you  
13 talked with preparing the Options report?  
14 A. I believe at this time it  
15 was David Kinsey still headed the office.  
16 Q. Were the three assistants  
17 that you named earlier still working  
18 under him involved in this report?  
19 A. I believe they were, in  
20 addition to other staff.  
21 Q. What is Mr. Kinsey doing  
22 now, if you know?  
23 A. I believe he's a consultant  
24 living in New Jersey.

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1 Q. Do you know when he left the  
2 employment of the state?  
3 A. It was sometime I believe in  
4 the early 1980s, sometime in the 1980s.  
5 Q. Rather than read large  
6 portions of this document into the record  
7 I would just like to paraphrase certain  
8 parts of it and ask if you agree or  
9 disagree and get any clarifications. As  
10 I read the first page of Appendix F, page  
11 141 of the Appendix, the first paragraph  
12 talks about the boundary within the  
13 Twelve Mile Circle and references the  
14 Supreme Court's decision in New Jersey  
15 versus Delaware in 1933, correct?  
16 A. Yes.  
17 Q. It says 1933 but for the  
18 record, I think it was 1934, but it's  
19 probably not material for our discussion  
20 today. The gist of this is to say that  
21 Delaware's coastal zone laws would apply  
22 to any project crossing from New Jersey  
23 into Delaware within the Twelve Mile  
24 Circle; is that correct?

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1       **A. Yes.**  
 2       **Q. And about halfway down**  
 3 **there's a paragraph that goes into some**  
 4 **detail about the content of what it calls**  
 5 **the State of Delaware's stringent Coastal**  
 6 **Zone Act; is that correct?**  
 7       **A. Yes.**  
 8       **Q. While you were at DEP, did**  
 9 **you have occasion to consider the details**  
 10 **of Delaware's Coastal Zone Act?**  
 11       **A. Yes. I was aware that**  
 12 **Delaware's Coastal Zone Act is different**  
 13 **than New Jersey's Coastal Zone Act, at**  
 14 **least from our perspective. The major**  
 15 **difference being that New Jersey's**  
 16 **Coastal Zone Act, or CAFRA, basically**  
 17 **allows any project in the state to be**  
 18 **considered for review and that the**  
 19 **department would review the project for**  
 20 **its effects upon the environment and then**  
 21 **decide whether the project should or**  
 22 **should not be approved, whereas**  
 23 **Delaware's Coastal Zone Act basically**  
 24 **prohibits some activities within its**

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1 **coastal zone without any consideration**  
 2 **for review by a department on whether the**  
 3 **project should or should not be sited in**  
 4 **Delaware's coastal zone.**  
 5       **Q. Without review by you said**  
 6 **the department, which department?**  
 7       **A. The department in Delaware.**  
 8       **Q. The Delaware equivalent of**  
 9 **the New Jersey DEP?**  
 10       **A. Yes, DNREC.**  
 11       **Q. Delaware Natural**  
 12 **Resources -- I can't remember the rest**  
 13 **off the top of my head.**  
 14       **The last paragraph on page**  
 15 **141, which is one sentence long states,**  
 16 **"Consequently, under Delaware law, some**  
 17 **types of activities would be prohibited**  
 18 **from locating along the Delaware River in**  
 19 **Salem County, while other facilities**  
 20 **desiring to locate along the river would**  
 21 **need to obtain permit approval from the**  
 22 **State of Delaware." Is that consistent**  
 23 **with your understanding at the time?**  
 24       **A. Yes.**

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1       **Q. Do you know why the report**  
 2 **singles out Salem County?**  
 3       **A. No, I don't.**  
 4       **Q. Were you involved with any**  
 5 **discussions during this time period about**  
 6 **the liquified natural gas unloading**  
 7 **facility --**  
 8       **A. No.**  
 9       **Q. -- to be located within the**  
 10 **Twelve Mile Circle?**  
 11       **A. No.**  
 12       **Q. At any time period at DEP?**  
 13       **A. Within this area?**  
 14       **Q. Yes.**  
 15       **A. No.**  
 16       **Q. What about other areas?**  
 17       **A. There were some discussions**  
 18 **related to several types of**  
 19 **petroleum-type of facilities for the**  
 20 **Raritan Bay/New York Harbor area.**  
 21       **Q. Are you aware of any**  
 22 **discussions about liquified natural gas**  
 23 **facilities within the Twelve Mile Circle**  
 24 **-- discussions by others in which you**

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1 **were not involved?**  
 2       **A. No.**  
 3       **Q. Turning to page 141, this is**  
 4 **figure 11 and it shows the New Jersey**  
 5 **Delaware boundary as it goes up the**  
 6 **Delaware Bay and then at the bottom of**  
 7 **what's termed Elsinboro on the map it**  
 8 **shifts over from roughly the middle of**  
 9 **the river to the New Jersey shore; is**  
 10 **that correct?**  
 11       **A. Yes.**  
 12       **Q. The bottom of the Twelve**  
 13 **Mile Circle?**  
 14       **A. Yes.**  
 15       **Q. Turning to page 143 this**  
 16 **first paragraph discusses in some detail**  
 17 **Delaware's Underwater Lands Act; is that**  
 18 **correct?**  
 19       **A. Yes.**  
 20       **Q. It sets out five different**  
 21 **situations -- five different examples of**  
 22 **a project that would require approval**  
 23 **under Delaware's Underwater Lands Act,**  
 24 **correct?**

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1       **A. Yes.**  
2       **Q.** The first sentence, the  
3 second half of that sentence states,  
4 Projects involving the use of public  
5 submerged lands -- I'm sorry. Let me  
6 read the whole sentence.  
7       "Because the State of  
8 Delaware exercises jurisdiction along the  
9 Salem County shoreline from the mean low  
10 water line waterward, projects involving  
11 the use of public submerged lands would  
12 require approval under Delaware's  
13 Underwater Lands Act." Did I read that  
14 correctly?  
15       **A. Yes.**  
16       **Q.** And this is consistent with  
17 your understanding at the time; is that  
18 correct?  
19       **A. Yes.**  
20       **Q.** The second paragraph, rather  
21 than reading it, I'll paraphrase. It  
22 appears to me to state that New Jersey's  
23 jurisdiction is limited to what is called  
24 "a narrow strip of tideland between the

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1 mean high water line and mean low water  
2 line in Salem County"; is that correct?  
3       **A. Yes.**  
4       **Q.** Is that your understanding  
5 at the time of the extent of New Jersey's  
6 regulatory authority in this geographic  
7 area?  
8       **A. For those areas within**  
9 **the -- below the mean high water line but**  
10 **New Jersey had jurisdiction upland in**  
11 **some areas under the Coastal Facilities**  
12 **Review Act and Coastal Wetlands Act.**  
13       **Q.** But no jurisdiction beyond  
14 the boundary between Delaware and New  
15 Jersey?  
16       **A. That's correct.**  
17       **Q.** Do you know how -- we looked  
18 at this map on page 142 at the spot where  
19 the boundary changes from roughly the  
20 middle of the river to the New Jersey  
21 shore, is that in Salem County?  
22       **A. Yes, it is.**  
23       **Q.** Do you know how far up Salem  
24 County goes? It's not exactly clear on

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1 this map.  
2       **A. I believe the boundary line,**  
3 **it's a darker line, and I believe it's**  
4 **this line that runs between Oldmans**  
5 **Township and Logan Township. I believe**  
6 **that's the boundary line between**  
7 **Gloucester and Salem counties.**  
8       **Q.** At the point where the  
9 Delaware-Pennsylvania boundary crosses  
10 the Delaware River, is that still in  
11 Salem County or is that in Gloucester  
12 County?  
13       **A. I believe that's Gloucester**  
14 **County.**  
15       **Q.** Would you say it's the case  
16 that Salem County borders most of the  
17 land territory within the Twelve Mile  
18 Circle?  
19       **A. Yes.**  
20       **Q.** So that's probably why the  
21 report focuses on Salem County I would  
22 presume.  
23       **A. I would assume so, yes.**  
24       **Q.** Halfway down on 143 there's

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1 a title that says, "Delaware Jurisdiction  
2 in Salem County". Then there are two  
3 headings. The first one is Delaware  
4 Coastal Zone Act. The first sentence  
5 there says, "Since the Delaware Coastal  
6 Zone Act took effect in 1971, no activity  
7 has taken place along the Salem County  
8 shoreline which would come under the  
9 jurisdiction of the Act." Did I read  
10 that correctly?  
11       **A. Yes.**  
12       **Q.** Is that consistent with your  
13 understanding at the time?  
14       **A. Yes.**  
15       **Q.** So while New Jersey was  
16 aware that Delaware had the Coastal Zone  
17 Act, it was of the opinion that there was  
18 no activity proposed to extend from New  
19 Jersey into Delaware that would implicate  
20 the Delaware Coastal Zone Act, correct?  
21       **A. At this time, correct.**  
22       **Q.** The carryover paragraph at  
23 the bottom of 143 is entitled Delaware  
24 Underwater Lands Act. Toward the bottom

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1 of the page there is a sentence that  
 2 states, "The only experience with the  
 3 Delaware Underwater Lands Act and  
 4 development in New Jersey was in 1971  
 5 when Delaware granted a lease to the  
 6 Dupont Chambers Works in Deepwater to use  
 7 subaqueous lands in the Delaware River."  
 8 I'll just read the next  
 9 sentence for context. "DuPont received  
 10 of the lease to dredge, fill and bulkhead  
 11 the area to locate an oil tank."  
 12 Were you aware of Delaware's  
 13 issuance of this lease in 1971?  
 14 **A. No.**  
 15 Q. The question may have been  
 16 unclear. Were you aware at any time  
 17 during your tenure at DEP that Delaware  
 18 in 1971 had issued this lease?  
 19 **A. Yes.**  
 20 Q. When did you become aware of  
 21 that?  
 22 **A. I think I first became aware**  
 23 **of that when I read this document.**  
 24 Q. So today?

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1 **A. No. I read this document --**  
 2 **I was aware of this document when it was**  
 3 **first published in 1979.**  
 4 Q. I'm sorry. I misremembered  
 5 your answer.  
 6 Delaware's issuance of the  
 7 lease under the Subaqueous Lands Act was  
 8 consistent with your understanding of the  
 9 scope of its regulatory authority within  
 10 the Twelve Mile Circle at that time,  
 11 correct?  
 12 **A. Yes.**  
 13 Q. Moving to page 144 states --  
 14 there's a reference to a Delaware Coastal  
 15 Management Program discussion draft  
 16 September 1978. Are you familiar with  
 17 that document?  
 18 **A. No.**  
 19 Q. So you don't recall ever  
 20 having heard of it during your time?  
 21 **A. I recall hearing of it**  
 22 **because almost every state submitted a**  
 23 **draft Coastal Management Program to the**  
 24 **federal government for approval but I**

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1 **never read the document.**  
 2 Q. I'd like to introduce two  
 3 more exhibits and these are going to be  
 4 the draft and final 1980 CMP.  
 5 (Whereupon documents were marked  
 6 White-5 and Whitney-6 for  
 7 identification.)  
 8 **BY MR. ATTAWAY:**  
 9 Q. What we have had marked as  
 10 Exhibit-5 is the May 1980 draft CMP. It  
 11 says on the first page it was prepared by  
 12 State of New Jersey, Department of  
 13 Environmental Protection, Division of  
 14 Coastal Resources, also by the US  
 15 Department of Commerce. I'm turning to  
 16 the following page which is Bates stamped  
 17 DE24185. This is a one-page letter like  
 18 the previous CMP from the commissioner  
 19 submitting what's called proposed New  
 20 Jersey Coastal Management Program and  
 21 Draft Environmental Impact Statement; is  
 22 that correct?  
 23 **A. Yes.**  
 24 Q. The penultimate paragraph

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1 refers to public meetings we have held  
 2 during the past five years. Is that  
 3 consistent with your recollection?  
 4 **A. Yes.**  
 5 Q. So the preparing of this  
 6 document was a long and arduous process,  
 7 correct?  
 8 **A. Yes.**  
 9 Q. It involved a lot of people,  
 10 a lot of resources?  
 11 **A. Yes.**  
 12 Q. And took, based on this  
 13 letter, at least five years?  
 14 **A. That's correct.**  
 15 Q. Or maybe longer. You said  
 16 when CAFRA was passed in 1973 that  
 17 initiated the development of the Coastal  
 18 Management Plan?  
 19 **A. That's correct.**  
 20 Q. I'd like you to turn to page  
 21 4 of the actual document after the  
 22 tables, and it's Bates stamped DE24199  
 23 for clarity. About halfway down the  
 24 lower half of the page it states, "The

<p style="text-align: right;">82</p> <p>1 first step toward continuing the Coastal  2 Management Program into the more  3 developed portions of the state was  4 publication of Options for New Jersey's  5 Developed Coast in March 1979."  6 Is that consistent with your  7 understanding? Just to be clear, Options  8 for New Jersey's Developed Coast in 1979  9 is Exhibit-4 that we were just discussing  10 before, the 1980 draft; is that correct?  11 <b>A. Yes.</b>  12 <b>Q. The Options report is the</b>  13 <b>report that had all of the language about</b>  14 <b>the Delaware and New Jersey boundary and</b>  15 <b>the regulatory authority of each state,</b>  16 <b>correct?</b>  17 <b>A. Yes.</b>  18 <b>Q. Turning to page 18 of the</b>  19 <b>report or I should say the draft 1980</b>  20 <b>CMP, this is the section on the</b>  21 <b>boundaries which begins on page 17,</b>  22 <b>correct?</b>  23 <b>A. Yes.</b>  24 <b>Q. The last two paragraphs of</b></p>	<p style="text-align: right;">84</p> <p>1 stronger in asserting the scope of each  2 states' regulatory authority within the  3 Twelve Mile Circle?  4 <b>A. I would say that this</b>  5 <b>document makes it clearer regarding the</b>  6 <b>two programs on which programs would</b>  7 <b>regulate what functions.</b>  8 <b>Q. So it's clearer in stating</b>  9 <b>that Delaware laws would apply to any</b>  10 <b>projects extending from New Jersey past</b>  11 <b>the boundary line into Delaware, correct?</b>  12 <b>A. Well, it's clear -- it</b>  13 <b>basically says it's clear that we would</b>  14 <b>coordinate the reviews, but it doesn't</b>  15 <b>specifically mention where the</b>  16 <b>jurisdictions end or begin in each state.</b>  17 <b>Q. But it does say that, "Any</b>  18 <b>New Jersey project extending beyond mean</b>  19 <b>low water must obtain coastal permits</b>  20 <b>from both states?"</b>  21 <b>A. Yes.</b>  22 <b>Q. That can only be premised on</b>  23 <b>the judgment that Delaware has regulatory</b>  24 <b>authority over the project to the extent</b></p>
<p style="text-align: right;">83</p> <p>1 page 18 of this section, they're entitled  2 Seaward and Interstate Boundaries and the  3 final paragraph it states, "In most of  4 Salem County, the Delaware-New Jersey  5 State boundary is the mean low water line  6 on the eastern (New Jersey) shore of the  7 Delaware River. The New Jersey and  8 Delaware Coastal Management agencies have  9 discussed this issue and have concluded  10 that any New Jersey project extending  11 beyond mean low water must obtain coast  12 permits from both states." That is  13 consistent with your understanding of the  14 states' respective regulatory authority  15 at that time, correct?  16 <b>A. Yes.</b>  17 <b>Q. We read language in the</b>  18 <b>draft and final 1978 reports that talked</b>  19 <b>about coordination of permit reviews. Do</b>  20 <b>you remember that language that we talked</b>  21 <b>about?</b>  22 <b>A. Yes.</b>  23 <b>Q. Would you say that this</b>  24 <b>language in the 1980 report is much</b></p>	<p style="text-align: right;">85</p> <p>1 that it extends into Delaware; is that  2 correct?  3 <b>A. I assume that assumption is</b>  4 <b>there, yes.</b>  5 <b>Q. Thank you. Turning to page</b>  6 <b>426, which I excerpted this exhibit -- I</b>  7 <b>don't think I said that earlier. It's</b>  8 <b>Bates Delaware 24620. This is Appendix I</b>  9 <b>and it's a -- I'm sorry. It goes a</b>  10 <b>little bit onto the second page.</b>  11 <b>Appendix entitled, Preparers of the</b>  12 <b>Proposed New Jersey Coastal Management</b>  13 <b>Program and Draft Environmental</b>  14 <b>Statement. It lists the people who were</b>  15 <b>involved in preparing the draft 1980 CMP;</b>  16 <b>is that correct, Mr. Whitney?</b>  17 <b>A. Yes.</b>  18 <b>Q. The first name is one that</b>  19 <b>you mentioned before, David Kinsey,</b>  20 <b>acting director at the time?</b>  21 <b>A. Yes.</b>  22 <b>Q. And then below there are a</b>  23 <b>number of names from the Bureau of</b>  24 <b>Coastal Planning and Development some of</b></p>

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1 whom you mentioned earlier. Do you  
2 recognize all these names?  
3 **A. Yes.**  
4 **Q. Do you know which of these**  
5 **people would have had the primary**  
6 **authority for drafting the language on**  
7 **the boundaries in the CMP?**  
8 **A. No, I do not. At this time**  
9 **it was probably written by someone within**  
10 **the Bureau of Coastal Planning and**  
11 **Development, probably someone on the**  
12 **planning staff. I don't recall who may**  
13 **have been assigned the task of writing**  
14 **that particular section.**  
15 **Q. Toward the end of the list**  
16 **there is Neil Yoskin?**  
17 **A. That's correct.**  
18 **Q. It looks like he was an**  
19 **attorney. Do you know what his**  
20 **responsibilities were in the Bureau of**  
21 **Coastal Planning?**  
22 **A. He was basically a staff**  
23 **attorney within the planning section.**  
24 **Q. Was he employed as an**

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1 attorney or was he in another function  
2 and simply had a law degree?  
3 **A. I'm not sure what his title**  
4 **was.**  
5 **Q. Then the last paragraph**  
6 **says, Planning assistance was also**  
7 **provided by and then it lists, you, Chief**  
8 **Steven Whitney and a number of other**  
9 **names, including Ruth Ehinger?**  
10 **A. Ehinger.**  
11 **Q. What was her involvement in**  
12 **the CMP process?**  
13 **A. The names referred here**  
14 **under the -- they're all employed by the**  
15 **Bureau of Coastal Project Review having**  
16 **to do with issuing permits, and the staff**  
17 **was consulted on the draft of the main**  
18 **document. The main document was prepared**  
19 **by the Bureau of Coastal Planning and**  
20 **Development and the Bureau of Coastal**  
21 **Project Review had input into that**  
22 **document.**  
23 **Q. Did you ever talk to Ms.**  
24 **Ehinger about the boundary issues between**

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1 Delaware and New Jersey within the Twelve  
2 Mile Circle?  
3 **A. I don't believe so because**  
4 **at the time when this document was being**  
5 **prepared Ruth Ehinger had worked in a**  
6 **different section of the coast. Our**  
7 **bureau was divided into two or I think I**  
8 **recall three sections. There may have**  
9 **been more. No, I believe there was three**  
10 **at the time. There was one section that**  
11 **was known as the northern coastal area,**  
12 **which included Monmouth and Ocean**  
13 **counties. Another one included southern**  
14 **which included Atlantic, Salem, Cape May**  
15 **and Salem counties. Then there was**  
16 **another section that included Gloucester,**  
17 **Camden, Mercer as well as the Hackensack**  
18 **Meadowlands areas. I believe at the time**  
19 **Ruth worked in the Monmouth/Ocean area.**  
20 **So I don't think I ever discussed with**  
21 **her any boundary issues because this area**  
22 **was outside of her jurisdiction at the**  
23 **time.**  
24 **Q. Do you know if she ever**

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1 discussed these boundary issues with  
2 anyone else?  
3 **A. She may have. I'm not sure.**  
4 **Q. The very last page of the**  
5 **excerpt, which I believe is the last page**  
6 **of the CMP as well, DE6422 lists a number**  
7 **of public hearings and states public**  
8 **comments will be accepted until July 7,**  
9 **1980. Is it fair to say that -- there**  
10 **are four public hearings listed here. Do**  
11 **you know if those were held?**  
12 **A. I believe they were held,**  
13 **yes.**  
14 **Q. Were other hearings held?**  
15 **A. I'm not sure.**  
16 **Q. Do you know what the turnout**  
17 **was to these public hearings?**  
18 **A. In some areas -- I believe**  
19 **in Toms River and in Trenton there was a**  
20 **pretty good turnout. I think there was a**  
21 **lesser turnout in Jersey City and Camden.**  
22 **Q. The public comments, there's**  
23 **a July 7, 1980 deadline for written**  
24 **public comments. Did the DEP receive**

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1 comments?

2 A. Yes.

3 Q. How many comments?

4 A. I don't recall.

5 Q. More than 100?

6 A. I don't recall.

7 Q. Let's turn to what's been

8 marked as Exhibit-6, which is the

9 August 1980 final Environmental Impact

10 Statement and New Jersey's Coastal

11 Management Program. You have had a

12 chance at least skim through this

13 excerpt; is that correct?

14 A. Yes.

15 Q. If it's okay with you I will

16 start asking a few questions about this

17 and if you need to stop and read

18 something, you can obviously do that.

19 Let's turn to page 20, which is Bates

20 stamped DE20382. This concerns, again,

21 the boundary section of the report. I'll

22 ask you to refer back to the draft.

23 There's a paragraph that begins, "In most

24 of Salem County the Delaware-New Jersey

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1 state boundary is mean low water line on

2 the eastern (New Jersey) shore of the

3 Delaware River." Then it talks about the

4 New Jersey and Delaware agencies having

5 discussed the issue and concluded that

6 any New Jersey project extending beyond

7 mean low water would have to obtain

8 permits from both states.

9 I just want you to compare

10 that paragraph with the similar paragraph

11 on page 18 of the draft 1980 report and

12 tell me if they're the same or if they're

13 not tell me what the difference is.

14 A. As far as I can see, they're

15 identical.

16 Q. So the final report

17 contained exactly the same language with

18 respect to the Delaware-New Jersey

19 boundary as did the draft even after the

20 agency received public comments, correct?

21 A. Yes.

22 Q. I'd like to turn now to

23 Exhibit-6. Still it's the 1980 final

24 CMP. There's Appendix H, which I have

92

1 provided in the excerpt. It starts at

2 DE18925. The first few pages are the

3 table of contents and the list of

4 commentors.

5 MS. CONKLIN: I'm officially

6 lost. We're on exhibit --

7 MR. ATTAWAY: Keep going.

8 MS. CONKLIN: Thank you.

9 MR. ATTAWAY: You're

10 welcome.

11 BY MR. ATTAWAY:

12 Q. Starting at page 419 of the

13 report there's a list of commentors and

14 it goes from 419 through 423, correct?

15 It's an eight-page list of commentors on

16 the draft report or the draft CMP?

17 A. Yes.

18 Q. Continuing on, there's page

19 499 -- I apologize. It's a little hard

20 to read but this is the way it is in the

21 original. This is a summary of comments

22 by interested parties and the response by

23 the New Jersey DEP. There are two

24 columns on this page. If you look on the

93

1 right side there's a number 392, which I

2 believe this is comment number 392 or

3 issue number 392. It's from Salem

4 County.

5 It says, "Salem

6 County..." -- the comment is from the

7 Salem County Planning Board. It says

8 that, "Salem County is strongly opposed

9 to the statement in this revision that

10 any project in the area must be

11 consistent with both Delaware's and New

12 Jersey's coastal programs and obtain

13 permits from two states."

14 The New Jersey DEP response

15 is, "This disagreement is noted, but DEP

16 has found no other solution available by

17 administrative action to address the

18 peculiar N.J.-Delaware boundary in Salem

19 County where the Delaware State line

20 reaches to low tide on the New Jersey

21 shore." Were you familiar with this

22 comment at the time the CMP was being

23 developed?

24 A. No.

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1 Q. This comment shows that  
2 Salem County objected to the statement in  
3 the draft CMP, the draft 1980 CMP, that  
4 any project crossing in the Delaware  
5 would have to get permits from both  
6 states, correct?  
7 A. Yes.  
8 Q. And New Jersey DEP's  
9 response that there is no other solution  
10 to this issue is consistent with your  
11 understanding of the respective states'  
12 regulatory authority in the Twelve Mile  
13 Circle at that time, correct?  
14 A. **It basically states that**  
15 **there is no administrative action to**  
16 **address the particular issue. That**  
17 **doesn't mean there could be something --**  
18 **some other action that might be**  
19 **available.**  
20 Q. In a cooperative sense do  
21 you mean?  
22 A. **In a cooperative --**  
23 **something beyond the capability of the**  
24 **Bureau of Coastal Planning and**

95

1 **Development within the Department of**  
2 **Environmental Protection of coming up**  
3 **with some type of administrative remedy**  
4 **at the state level.**  
5 Q. But this statement is  
6 consistent with your understanding at the  
7 time that Delaware could apply its  
8 coastal zone laws to a project that  
9 extended the boundary into Delaware,  
10 correct?  
11 A. Yes.  
12 Q. Turn back in the excerpts to  
13 page 254. There's a section starting on  
14 254 entitled, Liquefied Natural Gas that  
15 carries over to 255. Just take a moment  
16 and read that. It's about two paragraphs  
17 long.  
18 A. (Witness reading.)  
19 Q. The first paragraph quotes  
20 some language from the National Energy  
21 Plan and then the second paragraph and  
22 final paragraph in this section states  
23 that, "The New Jersey Coastal Program  
24 states that LNG terminals are discouraged

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1 unless they are constructed as to neither  
2 unduly endanger human life nor property  
3 nor otherwise impair the public health,  
4 safety and welfare and comply with the  
5 coastal resource and development policy.  
6 Because the tankering of LNG could pose  
7 potential risk to life and property  
8 adjacent to New Jersey's waterways, which  
9 also serve as boundaries along the states  
10 of Pennsylvania and Delaware along the  
11 Delaware River and the state of New York  
12 and the Port of New York and New Jersey,  
13 the state considers decisions concerning  
14 the siting of LNG terminals to be an  
15 interstate matter."  
16 Is that consistent with your  
17 understanding of the respective states'  
18 regulatory authority in the Twelve Mile  
19 Circle?  
20 A. Yes.  
21 Q. I know I asked you earlier  
22 but does this refresh your recollection  
23 at all as to whether you had any  
24 discussions about LNG terminals? For the

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1 record, LNG is liquefied natural gas.  
2 A. Yeah, I did not have any --  
3 I don't believe I have ever had  
4 discussions with LNG facilities.  
5 Q. Do you know how this passage  
6 would have gotten into the CMP?  
7 A. It was developed probably  
8 jointly by the planning staff. I think  
9 the department then had an office or the  
10 State of New Jersey had an Office of  
11 Energy Policy as well as the federal  
12 Coastal Zone Management staff. But I  
13 don't believe I was ever involved in any  
14 of the discussions.  
15 Q. Do you know whether there  
16 was an amendment process for the New  
17 Jersey CMP?  
18 A. Yes, there is.  
19 Q. What is that process?  
20 A. Under the federal Coastal  
21 Zone Management Act anytime New Jersey  
22 wants to amend its particular program it  
23 must petition the federal government with  
24 the amendments and with arguments for the

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1 amendment, why the program should be  
2 amended. Then it subsequently has to be  
3 approved by the federal government.  
4 Q. Has New Jersey ever used  
5 that procedure to amend its CMP?  
6 MS. CONKLIN: Obviously,  
7 we're talking about during the  
8 time he was present and employed  
9 at DEP, right?  
10 BY MR. ATTAWAY:  
11 Q. At any time during your  
12 knowledge.  
13 MS. CONKLIN: I'm going to  
14 object on the basis of foundation.  
15 If he left the agency in 1997?  
16 THE WITNESS: Yes.  
17 MS. CONKLIN: How about we  
18 break it into two parts?  
19 MR. ATTAWAY: This is a  
20 foundational question. I'm asking  
21 him if he knows whether New Jersey  
22 has ever used the CMP process --  
23 the CMP amendment process.  
24 THE WITNESS: When I was in

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1 the department we did use it I  
2 believe on several occasions to  
3 make minor amendments to New  
4 Jersey's Coastal Management  
5 Program, yes.  
6 BY MR. ATTAWAY:  
7 Q. On approximately how many  
8 occasions?  
9 A. That, I don't recall.  
10 Technically any amendment that's made  
11 such as revisions in coastal regulations  
12 must be presented to the federal  
13 government for review and approval.  
14 Q. So anytime New Jersey  
15 revised its regulations it would have to  
16 seek and receive approval for amendment  
17 of its coastal management plan?  
18 A. Yes, and I'm not sure  
19 whether it was any amendment or any major  
20 amendments because I know anytime we made  
21 an amendment to a regulation we would  
22 submit those revisions to the federal  
23 government. Now, which ones required  
24 approval by the federal government and

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1 which ones did not I'm not sure. But  
2 they were informed of all of the  
3 amendments, or most of the amendments  
4 they knew of.  
5 Q. Did New Jersey ever seek to  
6 amend its coastal management plan to  
7 remove the statements about Delaware's  
8 regulatory authority within the Twelve  
9 Mile Circle?  
10 A. I don't recall.  
11 Q. Do you recall whether anyone  
12 at DEP ever suggested that that occur?  
13 A. No.  
14 Q. Are you familiar with the  
15 Delaware River and Bay Authority?  
16 A. Yes.  
17 Q. What's your understanding  
18 generally?  
19 A. It's an agency that has  
20 jurisdiction over certain activities  
21 within all of the Delaware River and Bay.  
22 It has independent authority.  
23 Q. Is there a compact between  
24 Delaware and New Jersey concerning the

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1 Delaware River and Bay Authority?  
2 A. I'm not sure. I don't know.  
3 Q. Are you familiar with a 1962  
4 compact between Delaware and New  
5 Jersey --  
6 A. No, I'm not.  
7 Q. -- establishing the Delaware  
8 River and Bay Authority?  
9 A. No. I know the agency  
10 exists and that we have had dealings with  
11 them over permit matters and other  
12 planning matters, but I'm not familiar  
13 with the genesis of that agency.  
14 Q. Anything concerning the  
15 boundary between New Jersey and Delaware?  
16 A. No.  
17 Q. The application of  
18 Delaware's regulatory laws to projects  
19 extending from New Jersey?  
20 A. Under the Delaware River and  
21 Bay Authority?  
22 Q. Right.  
23 A. No.  
24 Q. Now would probably be a good

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1 time to break for lunch.  
2 (Whereupon a break was taken.)  
3 BY MR. ATTAWAY:  
4 Q. I have another question  
5 about your affidavit, paragraph 3. I'm  
6 going to ask you a question about the  
7 last sentence but feel free to read the  
8 whole thing if you want to for context.  
9 A. (Witness reading.)  
10 Q. That sentence, "Further,  
11 during my term of service with the DEP,  
12 to my knowledge, New Jersey never adopted  
13 any regulation requiring any person  
14 seeking to construct an improvement  
15 appurtenant to the New Jersey side of the  
16 River to obtain any permit of approval  
17 from the State of Delaware." Is that  
18 still your understanding?  
19 A. That is my understanding,  
20 yes.  
21 Q. Did New Jersey ever issue a  
22 permit requiring anyone to first get a  
23 permit from Delaware?  
24 A. Not that I recall because

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1 when I was in charge of the permitting  
2 staff I don't remember -- I don't  
3 remember any particular requirement of  
4 any permits that were issued requiring  
5 that the applicant get a permit from  
6 Delaware. There's some vague  
7 recollection of a pier that was approved  
8 that's within that area. I don't know if  
9 it was Salem or even Gloucester County;  
10 it's very fuzzy.  
11 (Whereupon document was marked  
12 Whitney-7 for identification.)  
13 BY MR. ATTAWAY:  
14 Q. Let me know when you have  
15 had enough time to review Exhibit-7.  
16 A. I have.  
17 Q. This is a permit issued by  
18 State of New Jersey, Department of  
19 Environmental Protection, dated  
20 September 24, 1991 to Keystone  
21 Cogeneration System, Incorporated. Mr.  
22 Whitney, have you seen this permit  
23 before?  
24 A. I saw it for the first time

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1 yesterday.  
2 Q. Yesterday?  
3 A. Yes.  
4 Q. It says this was issued by  
5 the Land Use Regulation Element?  
6 A. Yes.  
7 Q. How is that division, or  
8 element, how is that related to your  
9 position at DEP?  
10 A. This was after the  
11 department's reorganization where we went  
12 from resource lines to functional lines.  
13 At this time I was serving under a  
14 different assistant commissioner than the  
15 permitting section. So it was a  
16 different part of the department.  
17 Q. If you could turn to page 5  
18 of the permit and the Bates stamp on that  
19 page for the record is New Jersey 4408.  
20 At the top of the page it says, Terms and  
21 Conditions continued, and the letter e.  
22 is what I want to focus on, particularly  
23 e.4. Would you agree that this language  
24 makes the Keystone permit conditioned on

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1 the issuance of a permit by Delaware?  
2 A. Yes.  
3 Q. Does this refresh your  
4 recollection in any way about this permit  
5 and New Jersey's permit conditioned on  
6 approval by Delaware?  
7 A. No. Like I said, I was not  
8 involved in the issuance of this permit  
9 and I only saw it the first time as of  
10 yesterday.  
11 Q. Fair enough. Just another  
12 question or two about this. This was  
13 signed by Ruth Ehinger, looking at page  
14 6. Her name is printed underneath the  
15 signature line. It gives her title as  
16 manager Bureau of Coastal Regulation. I  
17 gather from this that she was in charge  
18 of issuing this permit and other similar  
19 types of permits; is that correct?  
20 A. That's correct but that is  
21 not her signature.  
22 Q. Do you know whose signature  
23 that is?  
24 A. It looks like Bob Tudor --

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1 **Robert Tudor.**  
 2 Q. T-U-D-O-R?  
 3 A. Yes.  
 4 Q. What was his position?  
 5 A. At this time in '91 I  
 6 believe Bob may have been Ruth Ehinger's  
 7 immediate supervisor. If not immediate  
 8 but a supervisor. I know Bob was then  
 9 director of the division or assistant  
 10 commissioner at that time.  
 11 Q. In the hierarchy of the  
 12 division, can you start at the top and  
 13 list the titles? I assume assistant  
 14 commissioner would be the top of the  
 15 division; is that correct?  
 16 A. Not of the division. I  
 17 believe at the time there was the  
 18 commissioner.  
 19 Q. When you say division, you  
 20 mean the Department of Environmental  
 21 Protection?  
 22 A. No.  
 23 Q. Which division?  
 24 A. Starting at the top there's

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1 the commissioner. Then under the  
 2 commissioner there are several assistant  
 3 commissioners. Then under each  
 4 commissioner there are several divisions,  
 5 so there would be division directors.  
 6 Then under division directors there would  
 7 be bureaus or offices, and over time they  
 8 were either considered -- the heads of  
 9 those offices were considered to be  
 10 managers, bureau chiefs, something along  
 11 the lines like that.  
 12 Q. So Tudor was perhaps the  
 13 director or above that the assistant  
 14 commissioner?  
 15 A. Yes.  
 16 Q. For the Bureau of Coastal  
 17 Regulation?  
 18 A. Yes.  
 19 Q. And the assistant  
 20 commissioner reports to whom?  
 21 A. The commissioner.  
 22 Q. There's one commissioner of  
 23 DEP, right?  
 24 A. Yes.

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1 Q. So it would go, the  
 2 commissioner of DEP and then assistant  
 3 commissioner of a particular function and  
 4 then below that would be the director?  
 5 A. Yes. Below that would be  
 6 manager or bureau chief.  
 7 Q. Are manager and bureau chief  
 8 synonyms?  
 9 A. Over the history of the  
 10 department that I'm aware they were very  
 11 similar, yes.  
 12 Q. Your title in the 1980 CMP  
 13 it lists you as chief of -- I forget what  
 14 bureau.  
 15 A. Coastal Project Review.  
 16 Q. That was equivalent to being  
 17 a manager?  
 18 A. Yes.  
 19 Q. Equivalent to Ms. Ehinger's  
 20 position here?  
 21 A. Yes.  
 22 Q. Do you know who would have  
 23 done the work on drafting the Keystone  
 24 permit?

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1 A. According to this document,  
 2 it looks like it was prepared by William  
 3 Berns and David Fanz.  
 4 Q. Where do you see that?  
 5 A. It would be the second page.  
 6 Q. What were their titles and  
 7 responsibilities at this time?  
 8 A. They would be staff within  
 9 the bureau that would review and prepare  
 10 the document for signature by the  
 11 manager. I don't know how detailed you  
 12 want to get as far as civil service  
 13 functions.  
 14 Q. We can go a little ways into  
 15 that.  
 16 A. When I was there, underneath  
 17 the bureau position you would have had  
 18 such positions along the lines of  
 19 environmental specialist. That would be  
 20 in a series of an assistant environmental  
 21 specialist, senior environmental  
 22 specialist, principal and supervising  
 23 environmental specialist. Then you may  
 24 have had some other titles -- geology

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1 titles or engineer, assistant engineer,  
 2 senior engineer, principal.  
 3 A lot of the time the  
 4 bureaus were arranged that under each  
 5 bureau there may have been sections that  
 6 were then supervised by a supervising  
 7 environmental specialist or supervising  
 8 engineer, depending on what function they  
 9 may have had. Under those people would  
 10 have been a hierarchy of principal,  
 11 senior and assistant positions.  
 12 Q. Okay. Do you know how long  
 13 Mr. Berns and Mr. Fanz stayed with the  
 14 DEP?  
 15 A. No, I do not.  
 16 Q. Can you remember a  
 17 subsequent point in time when they were  
 18 still with DEP?  
 19 A. No. I'm unfamiliar with Mr.  
 20 Berns. I'm unfamiliar with David Fanz.  
 21 I don't believe I ever supervised them in  
 22 any capacity.  
 23 Q. How would they have gone  
 24 about determining whether to condition

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1 within the Twelve Mile Circle?  
 2 A. No.  
 3 Q. No knowledge one way or the  
 4 other?  
 5 A. No knowledge.  
 6 Q. Do you know that Mr.  
 7 Andersen submitted an affidavit in this  
 8 case?  
 9 A. No.  
 10 Q. You haven't seen or read  
 11 that affidavit?  
 12 A. That's correct.  
 13 Q. Are you aware of anyone else  
 14 at the department that advised permit  
 15 applicants as to the scope of Delaware's  
 16 permitting authority?  
 17 A. Regarding this particular  
 18 permit or --  
 19 Q. Regarding any permit for  
 20 let's say that a proposed project like  
 21 the Keystone project initiated in New  
 22 Jersey but then extended out into the  
 23 water beyond the boundary, do you know of  
 24 anyone at DEP having advised a permit

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1 this permit on the issuance of permits by  
 2 Delaware?  
 3 A. I have no idea.  
 4 Q. Who would they have gone to  
 5 for advice on resolving an issue that  
 6 came up in a permit drafting process?  
 7 A. I assume they would have  
 8 taken it up to their immediate  
 9 supervisor.  
 10 Q. Ms. Ehinger?  
 11 A. It could be a supervisor  
 12 below.  
 13 Q. Intermediate?  
 14 A. Or it could be directly to  
 15 Ms. Ehinger.  
 16 Q. You know Mr. William  
 17 Andersen, correct?  
 18 A. Yes.  
 19 Q. He was in the room all  
 20 morning?  
 21 A. Yes.  
 22 Q. Are you aware whether he  
 23 ever advised permit applicants as to the  
 24 scope of Delaware's regulatory authority

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1 applicant as to the scope of Delaware's  
 2 regulatory authority over that project?  
 3 A. In what time frame?  
 4 Q. In any time frame while you  
 5 were at the department.  
 6 A. I don't recall any  
 7 connections -- any connection like that.  
 8 The main reason, a lot of times we relied  
 9 upon the Attorney General's Office in  
 10 most cases when a particular permit  
 11 application was appealed. And then the  
 12 Attorney General's Office would represent  
 13 the Department of Environmental  
 14 Protection in the proceedings. I do know  
 15 that in the past if there was some legal  
 16 matter related to a permit application  
 17 that we were unsure of we would contact a  
 18 DAG for advice, but I don't recall any  
 19 case where we dealt with a DAG or any  
 20 other legal staff regarding the boundary  
 21 issue.  
 22 Q. Thank you.  
 23 MR. ATTAWAY: Why don't we  
 24 go off the record and mark some

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1 documents?  
2 (Whereupon documents were marked  
3 Whitney-8 through Whitney-16 for  
4 identification.)  
5 BY MR. ATTAWAY:  
6 Q. Mr. Whitney, I have just had  
7 marked exhibits 8 through 16, a number of  
8 documents from the State of Delaware all  
9 pertaining to permits issued to Keystone  
10 by the State of Delaware. Is that  
11 basically a correct description of these  
12 documents?  
13 A. Yes.  
14 Q. Have you seen any of these  
15 permits before?  
16 A. No.  
17 Q. Were you aware of any  
18 permits that Delaware issued to Keystone?  
19 A. No.  
20 Q. Would you agree that these  
21 nine documents are consistent with your  
22 understanding that you stated earlier  
23 that Delaware had regulatory authority  
24 over projects extending from New Jersey

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1 into Delaware?  
2 A. Yes.  
3 Q. Thanks. I'd like to move  
4 on. Let's move on to the memorandum of  
5 understanding that you mentioned earlier.  
6 We may as well go ahead and introduce  
7 that as Exhibit-17.  
8 (Whereupon document was marked  
9 Whitney-17 for identification.)  
10 BY MR. ATTAWAY:  
11 Q. Before I ask you a question  
12 about this, and I'll give you time to  
13 review it, I want to look at paragraphs 5  
14 and 6 of your declaration. Take time to  
15 review the MOA and let me know when  
16 you're ready to continue.  
17 A. Okay.  
18 Q. Looking at paragraph 5 of  
19 your affidavit this references  
20 discussions with the Coastal Management  
21 Program regulatory and planning staffs  
22 about the New Jersey-Delaware boundary  
23 line and what it effects it had on permit  
24 decision-making. It also mentions other

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1 discussions and conferences with Delaware  
2 staff addressing this same topic. I  
3 understand from our previous discussion  
4 that this is primarily focused on the  
5 time period from 1991 to 1994; is that  
6 correct?  
7 A. Yes.  
8 Q. Tell me generally about how  
9 the memorandum of understanding came  
10 about. First, you can explain what it  
11 is. I'm not asking any questions about  
12 the document itself yet but just the  
13 process leading up to it.  
14 A. The process leading up to it  
15 took -- well, the impetus comes from the  
16 Federal Coastal Zone Management Act which  
17 basically says any state that has an  
18 approved coastal management program  
19 should strive to improve its program. By  
20 the 1980s, one of the things that we  
21 identified and may have been a forgotten  
22 improvement item was the boundary issue  
23 between Delaware and New Jersey and that  
24 it would be beneficial to both Delaware

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1 and New Jersey's coastal management  
2 programs that we would try to come up  
3 with some type of agreement that would  
4 involve issues over the boundary and  
5 projects that would straddle the boundary  
6 itself as well as any activity that would  
7 affect the resources of the Delaware  
8 River and the Delaware Bay.  
9 So we had applied for  
10 permission to get funding from the  
11 federal government to work on a  
12 memorandum of agreement with the State of  
13 Delaware to come up with an agreement  
14 that would basically look at the Delaware  
15 as a whole resource and try to coordinate  
16 our efforts so we would better protect  
17 the national interest and our interstate  
18 interest -- intrastate interest where the  
19 Delaware River and Delaware Bay of...  
20 Q. Who initiated the process of  
21 discussing these matters?  
22 A. I don't recall. This may  
23 have come out of an ongoing program known  
24 as the Delaware Estuary Program whereby I

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1 believe at the same time staff and  
2 agencies from both New Jersey and  
3 Delaware and Pennsylvania were looking at  
4 how best to manage the resources of the  
5 Delaware Estuary. I think one of the  
6 things we were talking about was  
7 coordinating planning regulatory efforts  
8 among all the agencies, not only at the  
9 state level but county and municipal  
10 levels in order to carry out the plan  
11 that would protect the resources of this  
12 area. And I think that jogged the memory  
13 somewhat, I don't know if it was either  
14 Delaware or New Jersey, that this might  
15 be something to work on to improve.

16 Q. What part did the boundary  
17 issue play in initiating this process?

18 A. The boundary was an element  
19 probably weighted more than other  
20 elements when you look at such things as  
21 wetlands issues or water quality issues  
22 or air issues, but the boundary itself  
23 was a major issue because we knew that  
24 there would be -- probably would be in

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1 the future some projects that would  
2 straddle this boundary and that it would  
3 require closer coordination of one  
4 project than say a project that might  
5 generally affect a particular resource.

6 Q. You mentioned applying for  
7 federal funding for this process. Is  
8 that the DEP applied for federal funding?

9 A. Yes.

10 Q. When was that?

11 A. Probably somewhere in 1990  
12 or '91 that we started the process. It  
13 was all part of the annual federal  
14 Coastal Zone Management grant that the  
15 state receives. Every year we have to  
16 apply for and designate how that money  
17 will be used both in a regulatory fashion  
18 as well as a planning fashion.

19 Q. In the application documents  
20 to the federal government was the  
21 boundary issue mentioned in New Jersey's  
22 application?

23 A. I don't recall.

24 Q. Did you participate in

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1 preparing that application?

2 A. Yes.

3 Q. Would the application be in  
4 your files?

5 A. That, I don't know. I don't  
6 know how presently DEP purges files and  
7 what documents it keeps, which ones it  
8 doesn't keep.

9 Q. When you left the department  
10 in 1997, was this application in your  
11 possession, in your files?

12 A. It was -- it was probably in  
13 the files within the section that I was  
14 head of, yes, but again, how long those  
15 documents are saved -- I'm not really  
16 sure exactly if applications are saved on  
17 a five-year, ten-year basis or whatever.

18 Q. Did DEP receive federal  
19 funding to pursue the memorandum of  
20 agreement with Delaware?

21 A. Yes.

22 Q. Was the funding sought  
23 specifically for this memorandum of  
24 agreement?

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1 A. No. The funding was -- the  
2 memorandum of agreement was a part of  
3 planning task that the planning section  
4 would hopefully pursue within a certain  
5 time frame.

6 Q. Let's turn to the memorandum  
7 of agreement. There's a draft what's  
8 been introduced as Exhibit-17. There's a  
9 cover memorandum to distribution from  
10 Steven Whitney, manager, and attached is  
11 a draft of the memorandum of agreement  
12 between New Jersey Department of  
13 Environmental Protection and Delaware  
14 Department of Natural Resources and  
15 Environmental Control. The cover  
16 memorandum is dated July 7, 1994. Your  
17 affidavit in paragraph 6 says that this  
18 draft was in the works between 1991 and  
19 1994. When did you produce a first draft  
20 of the memorandum?

21 A. I honestly don't recall.

22 Q. Was it before 1994?

23 A. I have no -- we had several  
24 drafts prior to July 1994.

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1 Q. You got comments and  
 2 suggestions back from various people  
 3 within the DEP and also from Delaware?  
 4 A. Yes.  
 5 Q. I'm looking at the cover  
 6 memorandum. The second paragraph says,  
 7 "A few representatives of NJDEP and DNREC  
 8 have reviewed previous drafts. I would  
 9 appreciate it if you would now provide us  
 10 with your comments and suggestions." Do  
 11 you remember who the representatives of  
 12 DEP and DNREC were that you mention here?  
 13 A. I believe -- I know we  
 14 talked to Sarah Cooksey from DNREC. I  
 15 believe at the time she headed the  
 16 coastal program. I know we talked to  
 17 Ernie Hahn -- Ernest Hahn, Ruth Ehinger,  
 18 Tom Wells. And I know I discussed it  
 19 with both Martin Bierbaum and John  
 20 Weingart.  
 21 Q. In those discussions, was it  
 22 always understood that Delaware would  
 23 have regulatory authority over projects  
 24 that straddled the boundary with

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1 Delaware?  
 2 A. Yes.  
 3 Q. Did anyone comment that that  
 4 was incorrect, that Delaware lacked  
 5 regulatory authority over projects that  
 6 extended into Delaware?  
 7 A. No.  
 8 Q. The bottom of the cover  
 9 memorandum -- well, the "To" line on the  
 10 memorandum at the top says distribution  
 11 colon, so I assume the above reference is  
 12 a shorthand for the list of approximately  
 13 10 names, although I haven't counted  
 14 them, at the bottom? It's 10?  
 15 A. 11. Close.  
 16 Q. You mention Sarah Cooksey.  
 17 She's at the top. Bob Tudor, it says  
 18 USEPA. When we were looking at the  
 19 Keystone permit, is that the same Bob  
 20 Tudor that you said signed for Ruth  
 21 Ehinger?  
 22 A. Yes.  
 23 Q. He moved from DEP to EPA?  
 24 A. Yes. Bob was heading up the

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1 Delaware National Estuary program.  
 2 Q. When did he move from DEP to  
 3 USEPA?  
 4 A. I don't recall.  
 5 Q. Do you remember ever  
 6 discussing the boundary issue with Mr.  
 7 Tudor?  
 8 A. No, I don't recall  
 9 specifically discussing the boundary  
 10 issue with him. Coordination issues, yes  
 11 but...  
 12 Q. John Weingart you mentioned  
 13 earlier. What was his title and  
 14 responsibilities?  
 15 A. I believe at this time John  
 16 Weingart was the assistant commissioner,  
 17 or I should say an assistant  
 18 commissioner.  
 19 Q. Do you remember what bureau  
 20 or division or whatever the proper term  
 21 is?  
 22 A. No, I do not.  
 23 Q. Martin Bierbaum, what was  
 24 his title?

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1 A. He was my immediate  
 2 supervisor.  
 3 Q. Ernest Hahn?  
 4 A. Ernest Hahn at the time  
 5 headed one of the regulatory programs  
 6 within DEP.  
 7 Q. Are you able to remember  
 8 which one?  
 9 A. No.  
 10 Q. Ruth Ehinger, do you know  
 11 what her title and responsibilities were  
 12 in 1994?  
 13 A. No, but she did head one of  
 14 the regulatory sections as well.  
 15 Q. Was it Land Use?  
 16 A. It may have been; I don't  
 17 recall.  
 18 Q. Theresa Fowler?  
 19 A. She headed one of the  
 20 regulatory programs within Water.  
 21 Q. Dennis Hart?  
 22 A. He headed a regulatory  
 23 program within water as well.  
 24 Q. Bill O'Sullivan?

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1       **A. He headed one of the**  
2 **regulatory programs in air quality.**  
3       **Q. Tom wells?**  
4       **A. He was in charge of the**  
5 **Green Acres program.**  
6       **Q. Very briefly, what is the**  
7 **Green Acres program?**  
8       **A. The Green Acres program is a**  
9 **program set up by legislation that allows**  
10 **the State of New Jersey on a voluntary**  
11 **basis to purchase lands for conservation**  
12 **or recreational purposes.**  
13       **Q. And JoAnne Cubberly?**  
14       **A. JoAnne headed the Bureau of**  
15 **Tidelands. I believe that was the name**  
16 **of the bureau at that time.**  
17       **Q. That's the bureau that would**  
18 **issue riparian grants?**  
19       **A. Yes.**  
20       **Q. Do you know when she became**  
21 **the head of the Bureau of Tidelands?**  
22       **A. No, I do not.**  
23       **Q. Do you know about how long**  
24 **she kept that position?**

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1       **A. No, I don't.**  
2       **Q. Turning to the memorandum of**  
3 **agreement as opposed to the cover**  
4 **memorandum that we were just talking**  
5 **about. The bottom of page 2 says, "Both**  
6 **agencies recognize that each agency has**  
7 **the independent authority to approve or**  
8 **deny applications pursuant to its own**  
9 **regulations." I think you said earlier**  
10 **that the working understanding of**  
11 **everyone involved in this was that**  
12 **Delaware did have regulatory authority**  
13 **over projects that straddled the**  
14 **boundary?**  
15       **A. Yes.**  
16       **Q. Let's go back to your**  
17 **affidavit, paragraph 8, please. The**  
18 **first sentence of paragraph 8 says,**  
19 **"However, during the review process of**  
20 **the draft MOA within DEP, objections were**  
21 **raised." What were those objections and**  
22 **who raised them?**  
23       **A. They were raised by the**  
24 **different regulatory agencies that we**

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1 **shared this memorandum of agreement with.**  
2 **Their main concern was either delaying**  
3 **the review process or creating a process**  
4 **whereby Delaware would have veto power**  
5 **over a permit process. At the time when**  
6 **this memorandum of agreement was being**  
7 **prepared there was an emphasis by the**  
8 **then administration to speed up the**  
9 **permit decision-making process. The**  
10 **administration had promised that DEP**  
11 **would be more responsive and make**  
12 **decisions more quickly than in the past.**  
13       **A lot of the heads of the**  
14 **different programs were feeling pressure**  
15 **to issue decisions in a timely manner and**  
16 **they felt that this agreement would**  
17 **somehow jeopardize that time frame as**  
18 **well as somehow allow the agency to lose**  
19 **its independent permit decision making to**  
20 **other agencies outside of DEP.**  
21       **Q. So if I understand you**  
22 **correctly, the thinking was that by**  
23 **entering into this cooperative agreement**  
24 **there could be a process whereby say if**

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1 **Delaware didn't meet its deadline or come**  
2 **through with some interim decision that**  
3 **it would stop New Jersey from acting**  
4 **further based on the agreement between**  
5 **them; is that fair to say?**  
6       **A. Yes.**  
7       **Q. When you say there were**  
8 **concerns about giving a veto to Delaware**  
9 **as to projects which otherwise would have**  
10 **met New Jersey's standards, that's not**  
11 **talking about Delaware's independent**  
12 **regulatory authority over a project that**  
13 **straddled the boundary, is it?**  
14       **A. No. I think they were more**  
15 **concerned that somehow an agency would be**  
16 **interjecting itself into their permit**  
17 **decision making and would have a veto or**  
18 **overruling process within their decision**  
19 **making.**  
20       **Q. Over New Jersey's own**  
21 **permitting process?**  
22       **A. Yes.**  
23       **Q. But it's also true that even**  
24 **if the agencies were completely**

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1 separate -- in other words, if the  
 2 memorandum of agreement was never  
 3 consummated -- that Delaware would still  
 4 have the independent right to regulate  
 5 the project, correct?  
 6 MS. CONKLIN: I'm going to  
 7 object to that because I think  
 8 it's calling for a legal  
 9 conclusion.  
 10 BY MR. ATTAWAY:  
 11 Q. I'm just asking for your  
 12 understanding as a regulator.  
 13 MS. CONKLIN: You can answer  
 14 the question based on your  
 15 understanding as a regulator.  
 16 THE WITNESS: It was my  
 17 understanding that a project that  
 18 would require -- that started in  
 19 New Jersey and then maybe extended  
 20 out into the State of Delaware  
 21 would need to get permits from  
 22 both states and that a project  
 23 could not go forward until an  
 24 applicant has secured approvals

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1 both from Delaware and New Jersey.  
 2 We saw it that way  
 3 simplistically because that's the  
 4 way we looked at permits not only  
 5 between states but also within  
 6 different agencies and governments  
 7 within New Jersey. For instance,  
 8 in New Jersey's coastal zone a  
 9 major development would have to  
 10 get a CAFRA permit, but that's not  
 11 the only permit major development  
 12 would usually have to get. They  
 13 usually have to get some type --  
 14 sometimes county approvals or some  
 15 municipal approvals, and there was  
 16 some legal discussions for a while  
 17 that municipal approvals may be  
 18 excerpt by state approvals in the  
 19 sense if an applicant could go to  
 20 the state and get state approval,  
 21 then regardless of what the  
 22 municipality, whether approved to  
 23 or denied, the state approval  
 24 would stand and the project would

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1 go forward.  
 2 It was always our  
 3 understanding within DEP that an  
 4 applicant had to get green lights  
 5 all the way down, had to get state  
 6 approvals, county approvals and  
 7 municipal approvals before it  
 8 could proceed.  
 9 BY MR. ATTAWAY:  
 10 Q. So in that sense the state  
 11 and local authorities in New Jersey in a  
 12 way had a veto power over the project  
 13 just as Delaware had a veto power over  
 14 the project if it didn't issue a permit,  
 15 correct?  
 16 A. Yes.  
 17 Q. But that's not the kind of  
 18 veto that you were talking about in  
 19 paragraph 8, is that right?  
 20 A. **The concern was the veto**  
 21 **power had to do with somehow an agency**  
 22 **outside the Department of Environmental**  
 23 **Protection and in another state could**  
 24 **have some type of mechanism -- legal**

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1 **mechanism whereby they could come inside**  
 2 **the decision-making process within the**  
 3 **Department of Environmental Protection**  
 4 **for those permits that are mentioned here**  
 5 **and have some legal precedent to halt or**  
 6 **deny a permit by the New Jersey**  
 7 **Department of Environmental Protection in**  
 8 **issuing its permit.**  
 9 Q. Just to clarify, the veto  
 10 power that you mention here was a veto  
 11 power over how New Jersey conducted its  
 12 own permitting processes but it didn't  
 13 have anything to do with functional veto  
 14 that Delaware would have if it decided  
 15 not to approve the Delaware portion of  
 16 the project?  
 17 A. **That's correct.**  
 18 Q. Was this draft memorandum or  
 19 a prior version of it ever reviewed by  
 20 legal counsel?  
 21 A. **I don't recall.**  
 22 Q. The last sentence of  
 23 paragraph 8 of your affidavit says, "As a  
 24 result, in 1994, New Jersey abandoned

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1 efforts to reach an agreement on these  
2 maters." Could you talk a little bit  
3 about the abandonment process?  
4 **A. The different agencies that**  
5 **were reviewing this felt strongly. They**  
6 **had strong opinions about this memorandum**  
7 **of agreement and they refused to sign off**  
8 **on it. So as a result we met with them**  
9 **and tried to assure them that we could**  
10 **put in language or whatever, revise the**  
11 **memo in such a way that they would be**  
12 **satisfied. And we couldn't reach any**  
13 **agreement on any language and raised it**  
14 **enough in the department so that it was**  
15 **discussed at a higher level than just the**  
16 **manager or the assistant director level.**  
17 **There was no agreement reached at that**  
18 **level either, so basically the agreement**  
19 **just died.**  
20 **Q. Did anyone at that higher**  
21 **level of review raise any objections over**  
22 **as to Delaware's regulatory authority?**  
23 **A. I don't recall.**  
24 **Q. Do you know after the MOA**

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1 was abandoned, did New Jersey ever  
2 continue to condition permits -- New  
3 Jersey permits on the issuance of  
4 Delaware permits?  
5 **A. I don't know.**  
6 **MR. ATTAWAY: I'd like to**  
7 **mark Exhibit-18.**  
8 **(Whereupon document was marked**  
9 **Whitney-18 for identification.)**  
10 **BY MR. ATTAWAY:**  
11 **Q. Unfortunately, I'm going to**  
12 **ask you to read the smudge part. This is**  
13 **the best copy that we were able to come**  
14 **up with.**  
15 **A. (Witness reading.) Okay.**  
16 **Q. Marked as Exhibit-18 is a**  
17 **letter dated January 8, 1995 from Dan**  
18 **Saunders to Gregory A. Marshall,**  
19 **Director. It's on letterhead of State of**  
20 **New Jersey, DEP, Division of Parks and**  
21 **Forestry, Historic Preservation Office.**  
22 **This letter concerns a pier --**  
23 **rehabilitation of a pier at Fort Mott.**  
24 **Mr. Whitney, are you familiar with Fort**

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1 Mott generally and the pier specifically?  
2 **A. I am familiar with Fort Mott**  
3 **generally and I am not that familiar with**  
4 **the pier at all.**  
5 **Q. Are you aware that the pier**  
6 **at Fort Mott was rehabilitated in the**  
7 **1990s?**  
8 **A. No.**  
9 **Q. In 1995 when this letter was**  
10 **written, your position was please remind**  
11 **me?**  
12 **A. I was within another part of**  
13 **the department. Gregory Marshall as**  
14 **director was director of the Division of**  
15 **Parks and Forestry under one assistant**  
16 **commissioner and I was in another part**  
17 **under another assistant commissioner.**  
18 **Q. Who is Dan Saunders?**  
19 **A. I don't know. I believe he**  
20 **worked in the Historic Preservation**  
21 **Office.**  
22 **Q. It says Dorothy Guzzo,**  
23 **administrator. Do you know who she was?**  
24 **A. No.**

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1 **Q. Then a couple more names on**  
2 **the second page. It's copied to Carl**  
3 **Nordstrom and Indrek Ojamaa. Do you know**  
4 **either of those people?**  
5 **A. I know Carl. I believe at**  
6 **the time Carl was the assistant director**  
7 **of the Division of Parks and Forestry.**  
8 **Q. On the first page of this**  
9 **two-page letter is a middle paragraph**  
10 **that's unfortunately smudged. I'll try**  
11 **to read it starting at the second**  
12 **sentence. "The pier, which is**  
13 **essentially a timber grillage filled with**  
14 **rock and sand was constructed before the**  
15 **Supreme Court decision establishing the**  
16 **Delaware State line at the mean low water**  
17 **line of the New Jersey coast. Our**  
18 **working assumption has been that the pier**  
19 **itself, which is above the low water line**  
20 **is in New Jersey. However, the**  
21 **rehabilitation of the pier will be**  
22 **accomplished by building new structure**  
23 **around the existing pier. The new**  
24 **structure will, therefore, be in the**

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1 State of Delaware."  
2 Would you say that this  
3 passage was written based on the  
4 understanding that Delaware would have  
5 regulatory authority over the portion of  
6 rehabilitation that occurred in Delaware?  
7 **A. No. I'm not sure. This is**  
8 **written by someone within the Historic**  
9 **Preservation Office. That is in a**  
10 **different section of the department than**  
11 **the waterfront development permits or**  
12 **riparian sections. So I don't know if**  
13 **this person had an understanding of where**  
14 **the boundary is -- well, it appears that**  
15 **the person has an understanding where the**  
16 **boundary is, but I don't know if they**  
17 **really had a clear understanding of the**  
18 **jurisdiction issues as contained -- as**  
19 **spelled out in the coastal management**  
20 **program.**  
21 **Q. Okay.**  
22 **MR. ATTAWAY:** I'd like to  
23 mark for identification two more  
24 exhibits. Maybe we should take a

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1 five or ten-minute break. Is that  
2 all right with you?  
3 **MS. CONKLIN:** Sure.  
4 (Whereupon a break was taken.)  
5 (Whereupon documents were marked  
6 Whitney-19 and Whitney-20 for  
7 identification.)  
8 **BY MR. ATTAWAY:**  
9 **Q. I have introduced exhibits**  
10 **19 and 20. Exhibit-19 is an application**  
11 **by the New Jersey Department of**  
12 **Environmental Protection, Division of**  
13 **Parks and Forestry to the State of New**  
14 **Jersey, Department of Environmental**  
15 **Protection, Land Use Regulation Program.**  
16 **So essentially this is an application by**  
17 **a division of DEP to DEP to rehabilitate**  
18 **the Fort Mott pier; is that correct, Mr.**  
19 **Whitney?**  
20 **A. Yes.**  
21 **Q. And this is Bates stamped,**  
22 **for the record, New Jersey 5423 through**  
23 **5439. On page 5424 there's a line that**  
24 **says, other and then typewritten is State**

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1 - Delaware Department of Natural  
2 Resources and Environmental Control,  
3 Federal US Army Corps of Engineers. Does  
4 this indicate, Mr. Whitney, that the DEP  
5 was stating that it was also applying to  
6 Delaware for a permit for the  
7 rehabilitation?  
8 **A. I don't know. I have never**  
9 **seen this permit before and I have never**  
10 **seen this form before. This is**  
11 **interesting. On the face of it, I would**  
12 **say that that's what it looks like.**  
13 **Q. Then on 5425 it's signed by**  
14 **Carl Nordstrom, Deputy Director. I think**  
15 **you said earlier he was Deputy Director**  
16 **of Parks and Forestry?**  
17 **A. Parks and Forestry, yes. I**  
18 **was unaware that he at sometime moved**  
19 **from Parks and Forestry to Land Use**  
20 **Regulation.**  
21 **Q. Is he -- I think he is**  
22 **signing as the applicant. As I read this**  
23 **on page 5423 the applicant is Division of**  
24 **Parks and Forestry and the division**

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1 applied to is Land Use. Does that seem  
2 right? It confused me for a long time.  
3 **A. Yes, signature of applicant,**  
4 **okay.**  
5 **Q. Then on page 5428 there's a**  
6 **line that says, permits required at the**  
7 **top and one of the permits required says**  
8 **Delaware Subaqueous Lands Permit. Again,**  
9 **does this appear that Mr. Nordstrom was**  
10 **indicating that the Division of Parks and**  
11 **Forestry was also applying to Delaware**  
12 **for a permit for this project?**  
13 **A. It indicates that Mr.**  
14 **Nordstrom acknowledged two other permits**  
15 **are required, but I don't know if this**  
16 **signifies that he had applied or was**  
17 **applying.**  
18 **Q. Fair enough. Thank you. On**  
19 **page 5431 toward the bottom of the page**  
20 **there's a number 25. It says, list of**  
21 **other certifications or approvals/denials**  
22 **received from other federal, state or**  
23 **local agencies for work described in this**  
24 **application. One of the listings is**

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1 Delaware Department of Natural Resources  
 2 and Environmental Control Subaqueous  
 3 Lands Project and it says the status is  
 4 pending.  
 5 So based on the face of  
 6 this, does this indicate that Mr.  
 7 Nordstrom had on behalf of the Division  
 8 of Parks and Forestry applied to Delaware  
 9 for a permit?  
 10 A. Yes.  
 11 Q. One more along these lines,  
 12 New Jersey 5434. There's a number 7. It  
 13 says, have you discussed this project  
 14 with any representative of local, state  
 15 or federal regulatory agency and the yes  
 16 box is checked. In the name of agency  
 17 line, DNREC is listed here. So based on  
 18 the face of this, is this consistent with  
 19 the other three mentions of Delaware's  
 20 regulatory authority over this project?  
 21 A. Yes.  
 22 Q. Just to summarize, this  
 23 permit from New Jersey DEP, Division of  
 24 Parks and Forestry, to New Jersey DEP,

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1 Land Use Regulations has four mentions in  
 2 the permit application of Delaware's  
 3 regulatory authority over the project,  
 4 correct?  
 5 A. That's correct.  
 6 Q. Let's move on to Exhibit-20.  
 7 This is the application that the State of  
 8 New Jersey DEP, Division of Parks and  
 9 Forestry, made to State of Delaware  
 10 specifically to the Delaware Department  
 11 of Natural Resources and Environmental  
 12 Control, or DNREC. This is Bates stamped  
 13 DE1914 through 1970. If I'm doing my  
 14 math correctly, 70 minus 14,  
 15 approximately a 56-page application made  
 16 to Delaware?  
 17 A. Yes.  
 18 Q. Were you aware of this  
 19 permit before today?  
 20 A. No.  
 21 Q. Or permit application  
 22 rather?  
 23 A. No.  
 24 Q. I'd like to introduce one

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1 more exhibit.  
 2 (Whereupon document was marked  
 3 Whitney-21 for identification.)  
 4 BY MR. ATTAWAY:  
 5 Q. Let me know when you have  
 6 had a chance to review it and we'll  
 7 continue.  
 8 A. (Witness reading.) Okay.  
 9 Q. Exhibit-21 is the permit  
 10 issued by State of New Jersey DEP Land  
 11 Use Regulation Division issued on January  
 12 24, 1996 for the Fort Mott  
 13 rehabilitation. The first page says  
 14 toward the bottom prepared by Bruce  
 15 Stoneback. Mr. Whitney, did you know Mr.  
 16 Stoneback?  
 17 A. No.  
 18 Q. Have you seen this permit  
 19 before?  
 20 A. No.  
 21 Q. Were you aware that New  
 22 Jersey had issued a permit for the Fort  
 23 Mott project?  
 24 A. No.

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1 Q. Turning to page 2 of the  
 2 permit there are some administrative  
 3 conditions. Number 2 says, "The  
 4 following project aspects are subject to  
 5 approval of the State of Delaware: a)  
 6 installation of floating ferry mooring  
 7 associated pilings, and b) removal of  
 8 rip-rap against the crib structure below  
 9 mean low water." Did I read that  
 10 correctly?  
 11 A. Yes.  
 12 Q. Would you say that this is  
 13 consistent with the understanding that  
 14 you had throughout your tenure at DEP  
 15 that Delaware would have regulatory  
 16 authority over projects that straddled  
 17 the boundary and extended to Delaware?  
 18 A. Yes.  
 19 Q. On the last page, which is  
 20 page 3, there's a signature. The printed  
 21 name under the line says Ruth Ehinger.  
 22 The signature appears to be a different  
 23 name. Do you recognize that signature?  
 24 A. I believe that is the

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1 signature of Kevin Broderick.  
 2 Q. Who is Mr. Broderick?  
 3 A. I think Kevin is one of the  
 4 supervisors within the Bureau of Coastal  
 5 Regulation.  
 6 Q. What was his relation to Ms.  
 7 Ehinger employment wise?  
 8 A. Kevin reported to Ruth  
 9 Ehinger or reports to.  
 10 Q. I'm going to circle back a  
 11 little bit to the memorandum of  
 12 understanding. We talked about JoAnne  
 13 Cubberly, who is listed on the end of the  
 14 distribution list on the memorandum of  
 15 agreement. You said she was director of  
 16 Bureau of Tidelands at that time,  
 17 correct?  
 18 A. JoAnne Cubberly was the  
 19 bureau chief or manager.  
 20 Q. I said director. Sorry.  
 21 But she had the top position in that  
 22 bureau at that time; is that correct?  
 23 A. I believe she did, yes.  
 24 Q. In the discussions internal

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1 to New Jersey about the Delaware-New  
 2 Jersey boundary line and the regulatory  
 3 authority of various states, did you talk  
 4 to other people in the Bureau of  
 5 Tidelands?  
 6 A. I don't recall who we talked  
 7 to within the Bureau of Tidelands,  
 8 whether it was JoAnne Cubberly or someone  
 9 that worked within the bureau.  
 10 Q. But you talked to someone in  
 11 the bureau about these issues raised in  
 12 the memorandum of understanding?  
 13 A. Yes.  
 14 Q. Obviously, Ms. Cubberly was  
 15 copied on distribution?  
 16 A. Yes.  
 17 Q. When you worked at DEP, did  
 18 you know Martin McHugh?  
 19 A. The name is familiar but no  
 20 recollection of what Mr. McHugh did  
 21 within the department.  
 22 Q. David Resilla (ph)?  
 23 A. No.  
 24 Q. Susanne Deitrich?

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1 A. No.  
 2 Q. You mentioned Mr. Broderick.  
 3 Did you deal with him on any regular  
 4 basis when you were at DEP?  
 5 A. Yes. Kevin did work in the  
 6 Bureau of Coastal Project Review, and I  
 7 headed that office. He was one of the  
 8 project reviewers between 1979 and 1988.  
 9 Q. How about after 1988 when I  
 10 think you had a shift in your duties, you  
 11 were assistant director of the Division  
 12 of Coastal Resources?  
 13 A. Yes.  
 14 Q. Did you have dealings with  
 15 Mr. Broderick after that?  
 16 A. Not directly. Again, we  
 17 were within the department but under  
 18 different lines of function. So I  
 19 believe he was still working in the  
 20 regulatory program -- one of the  
 21 regulatory programs.  
 22 Q. Richard Castagna?  
 23 A. Yes.  
 24 Q. When did you first meet Mr.

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1 Castagna?  
 2 A. I believe I first met him  
 3 when he was working in the Bureau of  
 4 Tidelands for JoAnne Cubberly.  
 5 Q. So he worked under Ms.  
 6 Cubberly?  
 7 A. Yes.  
 8 Q. What time period was that?  
 9 A. I'm unsure of the dates. It  
 10 was probably the late '80s, early '90s.  
 11 Q. After the late '80s or early  
 12 '90s, what were Mr. Castagna's duties at  
 13 that time?  
 14 A. I believe when I left JoAnne  
 15 Cubberly was still the chief of the  
 16 Bureau of Tidelands.  
 17 Q. So she was chief until 1997?  
 18 A. Yes.  
 19 Q. Starting at least as early  
 20 as 1991, is that fair to say?  
 21 A. I don't recall.  
 22 Q. But at least in '94 when you  
 23 copied her on your distribution memo?  
 24 A. Yes.

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1 Q. Did Mr. Castagna work under  
2 her at that time?  
3 A. I'm not sure.  
4 Q. Are you familiar with the  
5 Crown Landing project proposed by BP?  
6 A. No.  
7 Q. What's your understanding of  
8 what this case is about?  
9 A. My understanding, what  
10 little that I read of it, which was a  
11 press release by the Department of  
12 Environmental Protection, has to do  
13 generally with the issue of jurisdiction  
14 between the State of New Jersey and the  
15 State of Delaware over -- for projects on  
16 or near the Delaware boundary in that --  
17 in the arc.  
18 Q. In the Twelve Mile Circle?  
19 A. Yes, Twelve Mile Circle.  
20 Q. You said earlier that you  
21 haven't done any work for New Jersey on  
22 this case. Have you advised them in any  
23 way regarding this litigation?  
24 A. I have not been paid for any

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1 work. I was first contacted by Bill  
2 Andersen I guess it was over a year ago,  
3 it may have been early summer, asking me  
4 if I remember any memorandums or any work  
5 I had done with my name on it. I told  
6 him I have vague recollections of some  
7 work.  
8 Q. I know I asked you earlier  
9 and you said you're not being paid by New  
10 Jersey. I assume that means you're not  
11 being paid by anyone else for your work  
12 here today or otherwise in this case,  
13 correct?  
14 A. That's correct.  
15 Q. Have you spoken with any or  
16 met with anyone from BP, in other words,  
17 British Petroleum?  
18 A. No.  
19 Q. Give me a minute. I might  
20 be done.  
21 One or two questions about  
22 the draft MOA, 1994, Exhibit-17. Who  
23 drafted this?  
24 A. Who drafted this particular

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1 memorandum of agreement?  
2 Q. Yes.  
3 A. I don't recall.  
4 Q. Who did the first draft?  
5 A. I believe it was probably me  
6 that did the first draft. I was thinking  
7 about that over the last year. I  
8 couldn't recall if the first draft was  
9 done by Delaware or done by New Jersey  
10 and if it was done by New Jersey, who.  
11 But it's quite possible I may have done  
12 the first draft.  
13 Q. I do have one more exhibit  
14 then and probably not very many  
15 questions.  
16 (Whereupon document was marked  
17 Whitney-22 for identification.)  
18 BY MR. ATTAWAY:  
19 Q. I think I'm only going to  
20 ask you about the first page, the cover  
21 memorandum.  
22 A. Okay.  
23 Q. This is a memorandum from --  
24 this meaning what's been marked as

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1 Exhibit-22 is a memorandum from Sarah  
2 Cooksey to several people within DNREC  
3 dated July 27, 1994, which is shortly  
4 after the memo that you transmitted to  
5 DNREC, correct, to Ms. Cooksey and  
6 others? The first paragraph says, "Some  
7 time ago New Jersey and Delaware Coastal  
8 Programs decided that we could work  
9 together better on interstate issues and  
10 decide to try to take a step in that  
11 direction by developing an MOA. New  
12 Jersey has had the lead on this and has  
13 sent me a copy of a draft MOA." Does  
14 this refresh your recollection in any way  
15 about who took the lead or created the  
16 first draft of the document?  
17 A. Yes, it does. Thank you. I  
18 guess we were the ones that took the  
19 lead.  
20 MR. ATTAWAY: Thank you. No  
21 further questions.  
22 (Witness excused.)  
23 (Deposition concluded at  
24 approximately 2:50 p.m.)

