

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:
(202) 326-7999

(202) 326-7951
dfrederick@khhte.com

June 20, 2006

By E-Mail and First-Class Mail

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

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

Dear Mr. Lancaster:

Pursuant to Case Management Order #7 (“CMO #7”), the State of Delaware respectfully requests the following modifications to three of the four issues on the list set forth in paragraph one of that order. Delaware has no proposed changes to the first issue listed in the first paragraph of CMO #7.

The second issue listed in the first paragraph of CMO #7 reads as follows:

- (b) Which state was or which states were given regulatory authority by the Compact of 1905 over projects, such as the Crown Landing project, constructed on the New Jersey shore but extending beyond the low water line within the 12-mile circle?

Delaware understands this issue to be intended to go to the heart of this case — namely, “the scope and meaning of the language of the Compact framed against the backdrop of a particular project, the Crown Landing LNG facility, over which Delaware has asserted jurisdiction and for which Delaware has declined to issue permits under Delaware law.” Order on New Jersey’s Motion To Strike at 2 (June 13, 2006). New Jersey’s February 10, 2006 list of issues contained one issue of law related to this question. Delaware’s February 17, 2006 list of issues contained seven issues of law (Nos. 4-10) related to this question, which reflect the many components of the interpretive question, in light of the specific language used in Article VII, the different language used in other articles in the 1905 Compact, and the historical circumstances in which the compact was negotiated and approved.

Delaware believes that this issue, as currently stated, diverges in a significant way from the issues related to the interpretation of the 1905 Compact as presented by both New Jersey and Delaware. In addition, this issue introduces a concept — “regulatory authority” — that is not used in Article VII, or any other article, of the 1905 Compact. That new concept appears inadvertently to combine two separate issues: First, what is the scope of any “riparian jurisdiction” reserved to New Jersey within the twelve-mile circle under Article VII of the Compact in light of the fact that, as acknowledged in Article VIII, the Court had not yet adjudicated the boundary line between the States; and, second, whether the reservation of any such riparian jurisdiction to New Jersey prevents Delaware from exercising either its riparian jurisdiction or its non-riparian regulatory authority over activities that occur on its sovereign territory, merely because they happen to occur on a wharf or pier attached to the New Jersey shore.

For these reasons, Delaware requests that the second issue be revised to read as follows:

- (b) What is the extent of the “riparian jurisdiction,” if any, that each State may continue to exercise under Article VII of the Compact of 1905 in light of Article VIII thereof and this Court’s 1934 boundary determination? Does Article VII prevent Delaware from asserting regulatory authority, such as under its Coastal Zone Management Act, over projects, such as the Crown Landing project, constructed on the New Jersey shore but extending beyond the low water line within the 12-mile circle?

This phrasing of the issue attempts to track the language of Article VII of the 1905 Compact and to encompass both parties’ previous statements of the issues of law in a neutral way.

Delaware also requests the following minor additions, indicated in bold, to the third and fourth issues listed in the first paragraph of CMO #7:

- (c) Did New Jersey lose any relevant rights conferred by **Article VII** of the Compact of 1905 through the doctrine of prescription and acquiescence?

As drafted in CMO #7, this issue closely mirrors the third issue of law in New Jersey’s February 10, 2006 list of issues. New Jersey’s third issue, however, was limited to the question whether New Jersey had lost any rights “conferred by *Article VII* of the Compact.” Article VII is the sole source of New Jersey’s claimed right to authorize the building of the Crown Landing facility over Delaware’s objections pursuant to its Coastal Zone Management Act. *See* New Jersey’s Petition for Supplemental Decree at 16 (Prayer for Relief ¶ 1). Therefore, Delaware submits that it is appropriate to limit this issue to Article VII, just as New Jersey had limited its statement of the issue.

- (d) Is either state estopped from claiming exclusive **riparian** jurisdiction over projects physically constructed on the New Jersey shore but including improvements or modifications beyond the low water line within the 12-mile circle?

Mr. Ralph I. Lancaster, Jr., Esq.

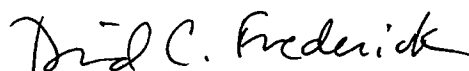
Page 3

June 20, 2006

As drafted in CMO #7, this issue closely mirrors both the second issue of law in New Jersey's February 10, 2006 list of issues and the eleventh issue of law in Delaware's February 17, 2006 list of issues. Both New Jersey and Delaware, however, framed their statements about estoppel in terms of *riparian* jurisdiction, following the language of Article VII of the 1905 Compact. Thus, New Jersey's issue referred to "exclusive jurisdiction over the exercise of riparian rights," and Delaware's issue referred to claims of "'exclusive' riparian jurisdiction." Because both States had limited their statement of the issue in this manner, Delaware submits that it is appropriate to include a similar limitation on the scope of this issue. Such a limitation would clarify differences the parties may assert between "riparian jurisdiction" and other sources of a State's regulatory authority that would not be affected by Article VII.

We would welcome the opportunity to discuss these requests if that would be of assistance to you.

Respectfully submitted,

A handwritten signature in black ink that reads "David C. Frederick". The signature is written in a cursive, slightly slanted style.

David C. Frederick

cc: Rachel J. Horowitz, Esq. (3 copies)
Barbara Conklin, Esq. (2 copies)
Collins J. Seitz, Jr., Esq. (2 copies)