

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Conservation Law Foundation, Inc.,	§	
	§	
	§	C.A. No. 1:17-cv-00396-WES-LDA
Plaintiff,	§	
	§	
v.	§	
	§	
Shell Oil Products US,	§	
Shell Oil Company,	§	
Shell Petroleum, Inc.,	§	
Shell Trading (US) Company,	§	
Motiva Enterprises LLC,	§	
Triton Terminaling LLC, and	§	
Equilon Enterprises LLC,	§	
	§	
Defendants.	§	
	§	
	§	
	§	

MOTION FOR ENTRY OF A JOINT PROPOSED DISCOVERY SCHEDULE

Plaintiff, the Conservation Law Foundation (hereinafter, “Plaintiff” or “CLF”), and Defendants, Shell Oil Products US, Shell Oil Company, Shell Petroleum, Inc., Shell Trading (US) Company, Motiva Enterprises LLC, Triton Terminaling LLC, and Equilon Enterprises LLC (hereinafter, collectively, “Defendants” or “Shell”) in this matter jointly submit the attached proposed Joint Discovery Scheduling Order for the Court’s consideration.

Dated: March 29, 2021

Respectfully submitted,

/s/ James Crowley

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2021, the foregoing Motion for Entry of a Joint Proposed Discovery Schedule was filed through the Court's electronic filing system ("ECF"), by which means the document is available for viewing and downloading from the ECF system and a copy of the filing will be sent electronically to all parties registered with the ECF system.

/s/ Elizabeth B. Petersen
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Dated: March 29, 2021

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Equilon Enterprises LLC,	§	
	§	
Defendants.	§	
	§	
_____	§	

JOINT PROPOSED DISCOVERY SCHEDULE

Plaintiff Conservation Law Foundation (“CLF”) and Defendants Shell Oil Products US, Shell Oil Company, Shell Petroleum, Inc., Shell Trading (US) Company, Motiva Enterprises LLC, Triton Terminaling LLC, and Equilon Enterprises LLC, (collectively “Defendants”) respectfully submit the following Joint Proposed Discovery Schedule for the above-captioned matter.¹ The Parties have reached an agreement as to all issues except for the number of sites visits to be permitted during discovery. The Parties’ respective positions on this issue are set forth below in § III(A)(1).²

¹ CLF and Defendants are jointly referred to herein as “the Parties.”

² The Parties continue to discuss this issue in an attempt to resolve their differences and will update the Court should they reach any further agreements.

I. Proposed Pretrial Schedule.

The Parties have conferred about a proposed schedule in this action. The Parties' proposed discovery and pretrial timelines detailed below contemplate conducting all fact and expert discovery within the span of 18 months, which the Parties agree is necessary for the complexity of this case. To the extent needed, the Parties will coordinate to accommodate COVID-related restrictions and related health and safety considerations during discovery.

II. Initial Disclosures.

Initial Disclosures required by Fed. R. Civ. P 26(a)(1) were exchanged by the parties on November 9, 2020.

III. Proposed Discovery Plan

A. Factual Discovery

1. Plaintiff: All fact discovery is to be completed on or before November 30, 2021 and will include at least one virtual site visit and a second site visit to allow for sampling, as requested by the Plaintiff, to allow for Plaintiff to complete expert analysis. The Parties will work together in good faith to address timing, safety and COVID concerns. Plaintiff also requests a site visit during a wet weather event, as defined in the Permit, to allow for real time observation of the facility during a rain event. Defendants oppose this request. The Parties will continue to discuss this in an effort to come to agreement on this third site visit, including any procedures to be required to provide adequate notice to the Parties as to scheduling, and, if unable to reach consensus, will submit briefing on the issue to the Court for resolution.

Defendants: Defendants agree with the positions stated above by Plaintiff, with the exception of the request for a "wet weather" site visit, which Defendants oppose. A wet

weather site visit is not necessary to address the claims in this case, which concern whether the design of the Terminal meets applicable standards. Further, such a “wet weather” visit presents significant practical and logistical – and potentially safety – issues. However, Defendants agree to continue to discuss this topic with Plaintiff and that the Parties can submit briefing to the Court if unable to reach agreement on this issue.

2. The Parties: No deposition shall exceed eight (8) hours over one (1) calendar day, unless otherwise agreed upon by the Parties.

3. The Parties: Depositions of fact witnesses shall be completed on or before November 30, 2021.

B. Expert Disclosure and Discovery

1. The Parties: Plaintiff shall disclose experts pursuant to Fed. R. Civ. P. 26(a)(2) and produce any expert reports on or before January 15, 2022.

2. The Parties: Defendants shall disclose experts pursuant to Fed. R. Civ. P. 26(a)(2) and produce any expert reports on or before April 15, 2022.

3. The Parties: Plaintiff shall produce rebuttal expert reports, if any, on or before June 15, 2022.

4. The Parties: The Parties shall be entitled to depose any expert identified by the other side. Expert Depositions shall be completed by September 2, 2022.

C. Proposed Schedule for Filing of Motions

1. Motions to Amend Pleadings

a) The Parties: Motions to Amend Pleadings, if any, shall be filed on or before October 1, 2021.

b) The Parties: Responses shall be due within 14 days.

c) The Parties: Replies shall be filed not later than 7 days after service of the response.

2. Motions for Summary Judgement

a) The Parties: Motions for summary judgment shall be filed on or before February 1, 2023.

b) The Parties: Responses shall be filed not later than 30 days after service of the motion.

c) The Parties: Replies shall be filed not later than 15 days after service of the response.

d) The Parties: Memoranda in support of motions for summary judgment and responses thereto shall be limited to 40 pages, and replies to 20 pages, double spaced.

3. Motions *in limine*

a) The Parties: Motions *in limine* shall be filed five weeks before the pretrial conference.

b) The Parties: Responses shall be filed three weeks before the pretrial conference.

c) The Parties: Replies shall be filed a week before the pretrial conference.

4. Initial Pretrial Conference. An initial pretrial conference will be held at the Court's convenience following the close of discovery and the Court's ruling on any dispositive motions.

D. Summary of Proposed Schedules

EVENT	THE PARTIES' PROPOSED DEADLINES
Initial Disclosures	November 9, 2020
Amendment to Pleadings	October 1, 2021
Answer	November 20, 2020
Fact Discovery	Closed by November 30, 2021
Expert Discovery	Closed by September 2, 2022
Dispositive Motions	On or before February 1, 2023
Motions <i>in Limine</i>	Five weeks before pretrial conference
Pretrial Conference	

IV. Changes to Discovery Event Limitations.

The Parties agree that the complexity of this case, including the number of different defendant entities, warrants enlargement of the discovery limits.

In addition, Plaintiff proposes that successive depositions of a corporation under a single 30(b)(6) notice shall not constitute multiple depositions.

To avoid excessive and unnecessary demands to have multiple corporate representatives appear for depositions when one or two knowledgeable witnesses would suffice, Defendants propose to clarify that Plaintiff may not seek to depose multiple corporate representatives on a single noticed topic. Plaintiff remains free to seek depositions from multiple witnesses in their individual capacity consistent with common discovery practice.

The Parties' proposals are summarized as follows:

Discovery	F.R.C.P.	Parties' Proposal
Fact Depositions	10	20 total per side
Interrogatories	25	45 total per side
Requests for Admission	No Limit	No Limit
Requests for Production	No Limit	No Limit

Dated: March 29, 2021

Respectfully submitted,

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