UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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

REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT BY SHELL OIL PRODUCTS US, SHELL OIL COMPANY, SHELL PETROLEUM INC., SHELL TRADING (US) COMPANY, AND MOTIVA ENTERPRISES LLC

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INTRODUCTION

Unable to rebut Defendants' core arguments requiring dismissal of Causes of Action 1-7, 9, 10, and 21 (the "Adaptation Claims") of the Amended Complaint ("AC") (ECF No. 11) and dismissal all claims against Defendant Motiva Enterprises, LLC ("Motiva"), Conservation Law Foundation Inc. ("CLF") instead resorts to mischaracterizing the law, repeatedly invoking events like Superstorm Sandy and Hurricane Harvey at distant facilities that have no bearing on the likelihood of severe weather in Providence or how the Providence Terminal is operated, and even attempting to shift the burden to Defendants to show how they are *not* liable. *See* ECF No. 24-1 ("Opp.") at 1.

These attempts at misdirection cannot distract from the following key failures of the Adaptation Claims:

- to allege facts showing CLF's alleged injury is "certainly impending" or is at a "substantial risk" of occurring, rather than speculative;
- to plead allegedly wrongful conduct by each defendant named;
- to plead facts alleging Defendants engaged in the *acts* of "handling, storage, treatment, transportation, or disposal" of "waste" that may present an "imminent and substantial endangerment" to state a claim under the Resource Conservation and Resource Conservation and Recovery Act ("RCRA");
- to identify any long-term planning requirements in the Terminal's Rhode Island Pollutant Discharge Elimination System ("RIPDES") permit that would cover the decades-long horizon of the Adaptation Claims;
- to identify any obligation to manage inundation from sea level rise or storm surge as "stormwater";
- to plead facts upon which the Court can infer Clean Water Act ("CWA") permit violations; and

- to plead a basis for jurisdiction over Motiva after its relinquishment of all ownership and operational responsibility for the Terminal.[1]

ARGUMENT

I. CLF Has Not Shown It Suffers from An Imminent Injury

CLF's opposition evades Defendants' central argument challenging CLF's standing to bring its Adaptation Claims: the AC does not demonstrate an injury-in-fact that is "certainly impending" or is at a "substantial risk" of occurring. *See* Defs.' Mem. at 13-14 (ECF No. 20-1). CLF instead espouses a number of alternate standards that it claims satisfy Article III's imminence requirement that are all based on mischaracterizations of the law—its members' "proximity" to the Terminal, the occurrence of a so-called "past wrong," and the allegation that severe weather "trends are continuing." CLF must demonstrate that the risk of injury to its members is of a magnitude that is "substantial" or "certainly impending." CLF has not met its burden to satisfy this requirement.

A. CLF Has Failed To Allege Facts Demonstrating Its Alleged Injury Is "Certainly Impending" Or At A "Substantial Risk" Of Occurring

CLF misstates the law of this circuit in claiming that "[a] plaintiff can show a substantial probability of harm by demonstrating proximity to the source of risk RCRA seeks to minimize." Opp. at 7 (citing *Me. People's Alliance v. Mallinckrodt*, 471 F.3d 277, 283-84 (1st Cir. 2006)) This proposition is nowhere in the Court of Appeals' *Mallinckrodt* decision. The statements of CLF's members regarding their proximity to the Terminal are irrelevant; probability of a harm coming to fruition does not turn on nearness to an alleged source of pollution.

Mallinckrodt actually states that "neither a bald assertion of [] harm nor a purely subjective fear that an environmental hazard may have been created is enough to ground

[1] For the reasons stated *infra* and in Defendants' Memorandum (ECF No. 20-1), all claims against Motiva should be dismissed.

standing. Rather, an individual's decision to deny herself aesthetic or recreational pleasures based on concern about pollution will constitute a cognizable injury *only when the concern is premised upon a realistic threat*." *Id*. at 284 (emphasis added).[2] The affidavits of CLF's members ultimately establish only a subjective fear of injury. *See* Opp. Ex. A ¶¶ 8, 13 (describing "concern[]" about possibility of releases or discharges from Terminal); Opp. Ex. B ¶¶ 9, 14 (same); Opp. Ex. C ¶¶ 12, 15 (same); Opp. Ex. D ¶¶ 13, 15, 19 (same); Opp. Ex. E ¶¶ 7, 10, 13 (same). The affidavits do not speak to whether the injury they fear is imminent—the central argument raised by Defendants.

Even if the Court credits CLF's members' "concern," the Adaptation Claims are not premised on a "realistic threat," *i.e.*, an "actual or imminent, not speculative" threat. *Katz v. Pershing, LLC*, 672 F.3d 64, 79 (1st Cir. 2012). Defendants' opening brief addressed how the phenomena identified in Section IV.A. of the AC (collectively, "severe precipitation and flooding") (and the sources cited therein) that CLF alleges contribute to its risk of injury[3] (1)

[2] Although not raised in Defendants' opening brief, CLF's opposition and the affidavits of its members call into question whether CLF's Adaptation Claims satisfy the requirement for a "concrete and particularized" injury in fact. *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1547-48 (2016). In light of the Court's "independent obligation to determine whether subject-matter jurisdiction exists," Defendants address the issue here. *Arbaugh v. Y & H Corp*., 546 U.S. 500, 514 (2006). Not one of the five affidavits submitted by CLF states that any CLF member has decided to "deny herself aesthetic or recreational pleasures," *Mallinckrodt*, 471 F.3d at 284, due to concern about a deluge of petroleum or other substances the from the Terminal resulting from the severe precipitation and flooding described in Section IV of the AC. *See generally* Opp. Exs. A-E. The isolated statements in the affidavits Mr. Riley and Mr. Kilguss that they do not eat the fish they catch or swim in the area due to general water quality concerns or the Parks Department decision not to install a fish cleaning station do not provide standing for CLF's Adaptation Claims. Opp. Ex. D ¶¶ 11-12, Opp. Ex. E. ¶¶ 8, 14; *see also Katz v. Pershing, LLC*, 672 F.3d 64, 71 (1st Cir. 2012) ("The standing inquiry is claim-specific: a plaintiff must have standing to bring each and every claim that she asserts."). No CLF member contends they refrain from activities due to fear of the effects of the severe precipitation and flooding described in Section IV.A. of the AC which are the basis of the Adaptation Claims. Rather, *all* affirmatively state that they regularly engage in rowing, boating, fishing, and other recreational activities on or near the Providence River. *See* Opp. Ex. A ¶ 6; Opp. Ex. B ¶ 7; Opp. Ex. C ¶¶ 4, 9, 10, 11; Opp. Ex. D ¶ 6; Opp. Ex. E ¶¶ 6, 8. This is in stark contrast to the affidavits found to support standing in *Mallinckrodt*, where the defendant was alleged to have contaminated a river with mercury and the plaintiffs refrained from certain activities in response to fear of mercury exposure. *See Mallinckrodt*, 471 F.3d at 284 (describing testimony of members of plaintiff's organization "that they have modified their behavior due to fear of mercury contamination. Although eager to do so, none of them will eat fish or shellfish from the river nor recreate on or near it").

[3] CLF acknowledges that these phenomena "make up the factors identified in the [AC] as causing and/or contributing to the substantial risk of pollutant discharge and/or releases from the Terminal." Opp. at 12.

contain no information regarding the likelihood that the phenomena will occur, (2) estimate risk to be at very low levels (*e.g.*, between 0.2% and 4%), (3) rely on irrelevant models of hypothetical impacts that do not speak to risk of injury (*e.g.*, modeling depicting the *aggregate* impact of *100,000* storms at *maximum* levels of wind and rain), or (4) describe remote scenarios occurring at the end of the century. *See* Defs.' Mem. at 13-14. In sum, the AC offered nothing establishing the existence of a "certainly impending" or "substantial risk" of injury as required under the law.

CLF's opposition does not show the existence of a "imminent" threat under either the "certainly impending" or "substantial risk" standard, despite conceding these standards apply. *See* Opp. at 10 (citing *Clapper*, 568 U.S. at 414 n.5). It instead asks the Court to find its claimed injury is imminent because the "trends are continuing and effects are aggregating" and similarly that precipitation and flooding are happening at an "increasing rate." Opp. at 12-13. Even accepting arguendo that trends are "continuing" or occurring at an "increasing rate," this sleight of hand tells the Court nothing at all about the magnitude of risk, much less establishes that the risk is "substantial" or presents a "certainly impending" injury. CLF identifies no case where an "increased rate" of factors allegedly contributing to an injury has been deemed to meet standing's imminence requirement.

Also unavailing is CLF's invocation of a "sheen" referenced in an April 2010 Rhode Island Department of Environmental Management ("RIDEM") report. Opp. at 13. CLF cites the sheen as "'evidence bearing on whether there is a real and immediate threat of repeated injury.'" *Id*. (quoting *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974)). However, the next sentence in *O'Shea* states, "the prospect of future injury *rests on the likelihood* that respondents will *again* be. . . ." injured. *Id*. (emphasis added). The Court concluded standing was lacking because the

claimed injury was premised on contingent events and therefore there was "uncertainty about whether the alleged injury will be likely to occur. . . ." *Id*. at 498.[4] Thus, contrary to CLF's suggestion, *O'Shea* is consistent with *Clapper* and *Mallinckrodt* in requiring a plaintiff to show the likelihood of a future injury is not uncertain, but rather "substantial" or "certainly impending."[5] *Mallinckrodt*, 471 F.3d at 283-84 ("To establish an injury in fact based on a probabilistic harm, a plaintiff must show that there is a substantial probability that harm will occur."); *Clapper*, 568 U.S. at 414 n.5. As described above, and in Defendants' opening brief, CLF has failed to make this showing here.[6]

Finally, CLF cannot evade the imminence requirement by merely stating a risk exists "today." Opp. at 12 n.10. Some level of risk is always present. An injury is always possible. The law of standing requires more—that CLF show the risk is of a magnitude that it poses an imminent injury. *See Clapper*, 568 U.S. at 409 ("'[a]llegations of *possible* future injury' are not sufficient."') (quoting *Whitmore v. Arkansas*, 495 U.S. 149 158 (1990)) (emphasis added). CLF has failed to carry that burden and its Adaptation Claims should be dismissed on this ground alone.

[4] The Supreme Court also stated in *O'Shea* that "past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, *if unaccompanied by any continuing, present adverse effects*." 414 U.S. at 495-96 (emphasis added). As described above, the affidavits submitted by CLF's members do not indicate continuing or present injuries (*i.e.*, refrain from aesthetic or recreational activities) out of concern about discharges from the alleged severe precipitation and flooding underlying the Adaptation Claims. *See supra* at n.1.

[5] CLF's reliance on the 2010 "sheen" as evidence of a threat of repeated injury is belied by the lack of allegations of discharges or releases from storms in the intervening eight years. This period included Hurricane Irene's storm surge of 4.65 feet and 1.98 inches of precipitation in Providence and Superstorm Sandy's storm surge of 6.20 feet and 1.45 inches of precipitation in Providence. *See* Nat'l Hurricane Ctr., *Tropical Cyclone Report – Hurricane Irene* at 22-23 (Dec. 14, 2011), https://www.nhc.noaa.gov/data/tcr/AL092011_Irene.pdf; Nat'l Hurricane Ctr., *Tropical Cyclone Report – Hurricane Sandy* at 61, 81 (Feb. 12, 2013), https://www.nhc.noaa.gov/data/tcr/AL182012_Sandy.pdf. Further, CLF's affidavits do not indicate its members were injured by the alleged 2010 sheen.

[6] CLF's claim that "coastal infrastructure has already been damaged" refers to a generalized statement in the AC. It is not specific to Providence. *See* AC ¶ 141.

B. Standing Cannot Be Premised On A Speculative Chain of Possibilities

CLF dismisses the lengthy chain of events needed for its alleged injury to occur discussed in Defendants' memorandum with no substantive response. *See* Defs.' Mem. at 14-15. As described above, CLF has failed to show that the risk of severe precipitation and flooding that will trigger its alleged injury is even likely. Thus the first step in CLF's chain of causation is speculative. Uncertainty as to whether a necessary link in the causation chain will even occur is fatal to standing's imminence and traceability requirements. *Clapper*, 568 U.S at 410-14; *see also Katz*, 672 F.3d at 80 ("Standing is not an 'ingenious academic exercise in the conceivable."') (citation omitted).

II. CLF's Members' Affidavits Confirm The Adaptation Claims Are Not Ripe

CLF does not dispute that it must satisfy both the fitness and hardship prongs of the ripeness test. Because CLF's Adaptation Claims rest on events that may not occur at all, they are not fit for judicial resolution. *See* Defs.' Mem. at 16. Further, CLF's affidavits only confirm that its members will suffer no "direct or immediate dilemma" if the Court withholds judgment on CLF's speculative claims. *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 90 (1st Cir. 2013). CLF's members regularly row, boat, fish, and otherwise engage in recreational activities in the area. Opp. Ex. A ¶ 6; Opp. Ex. B ¶ 7; Opp Ex. C ¶¶ 4, 9, 10, 11; Opp. Ex. D ¶ 6; Opp. Ex. E ¶¶ 6, 8.

III. CLF Has Failed To Identify Actions Or Wastes Necessary To Sustain The RCRA Claim

The gravamen of CLF's RCRA claim is that Defendants are liable because of a failure to act. CLF now backpedals from its AC and strains to turn its allegations of inaction into acts and saleable products into waste in an effort to salvage its RCRA imminent and substantial endangerment claim. CLF's argues that "failing to act" is a "process" and by allegedly failing to

act Defendants are somehow "generating" waste. CLF also argues the petroleum and other products sold at the Terminal are within the scope of this waste statute. Both arguments lack any legal basis and border on nonsensical.

Significantly, CLF's opposition cites to no allegations in the AC identifying any Defendant's "handling, storage, treatment, transportation, or disposal" of "waste" that it alleges is causing an "imminent and substantial endangerment." There are no such allegations in the AC. These allegations are absent from CLF's complaint because CLF is fundamentally not alleging a RCRA claim. It is alleging a "failure to adapt" that is fundamentally at odds with RCRA's statutory focus on affirmative waste management *activities*. Accordingly, the Court should dismiss CLF's RCRA claim.

A. Mere "Generation" Of Waste Is Not Sufficient To Sustain An Imminent And Substantial Endangerment

CLF makes much ado about Defendants' "generation" of waste, *see* Opp. at 19-24, but being a generator of waste only puts Defendants within the class of potentially liable parties under RCRA § 7002(a)(1)(B). *See* 42 U.S.C. § 6972(a)(1)(B). Nearly every commercial and industrial facility generates some solid waste. Alleging mere generation of waste at a facility does not state a claim under RCRA's imminent and substantial endangerment provision, even if that facility sits near sea level. If it did, under CLF's logic, nearly every building subject to flooding along the Providence River would be liable for creating an imminent and substantial endangerment under the statute.

CLF's argument that Defendants' alleged failure to act should be deemed "generation of waste" lacks any legal basis and should be rejected out of hand. CLF contends that because the definition of "hazardous waste generation" includes "the process of producing hazardous waste," it follows that Defendants' so-called "process of failing to act" equates to the "process of

producing hazardous waste." Opp. at 24. CLF's argument collapses under the plain meaning of its words. Inaction involves no "process." A "process" is, by definition, "a series of *actions* or steps." Oxford Living English Dictionary, https://en.oxforddictionaries.com/definition/process (emphasis added). CLF's post-hoc attempt to transform its allegations of a failure to act into the "process" of waste generation must be rejected.

B. CLF's Baseless Successor Liability Theory Does Not Rescue the RCRA Claim

CLF's opposition continues to problematically fail to distinguish between the various entities that have been named as defendants and makes the sweeping conclusion (without any legal or factual support) that "Shell owns all historical and legacy interests in the Terminal dating back to Texaco Refining and Marketing's original purchase in 1907, and all entities and interests that have contributed to the legacy contamination of the site are now wholly owned by Shell." Opp. at 22. This attempt to impose successor liability on Defendants for the Terminal's entire history runs contrary to both federal and state law.

As an initial matter, CLF does not allege any facts in the AC that even suggest Defendants are liable to as successors to the Terminal's past owners. Moreover, the buyer of a corporation's assets does not assume the selling corporation's liabilities. *See Ed Peters Jewelry Co. v. C & J Jewelry Co.*, 124 F. 3d 252, 266 (1st Cir. 1997); *H.J. Baker & Bro. Inc. v. Orgonics, Inc.*, 554 A.2d 196, 205 (R.I. 1989).[7] Nothing in the AC supports the argument that any Defendant assumed liabilities relating to the operations at the Terminal going back to 1907, an argument rendered all the more perplexing given that the prior owners and operators that CLF

[7] The only relevant exception to this rule is the "mere continuation" test that provides five factors courts traditionally consider to evaluate whether to impose successor liability after an asset sale: (1) the divesting corporation's transfer of assets; (2) payment by the buyer of less than fair market value for the assets; (3) continuation by the buyer of the divesting corporation's business; (4) a common officer of the buyer and divesting corporations who was instrumental in the transfer; and (5) inability of the divesting corporation to pay its debts after the assets transfer. *U.S. v. Davis*, 261 F.3d 1, 53 (1st Cir. 2001). CLF has provided no facts showing that the "mere continuation" exception applies.

referenced continue to exist to this day. *See Davis*, 261 F.3d at 54 (affirming district court's refusal to impose successor liability where selling corporation "continued as a financially viable business following the sale…."); *see* Ex. A (Del. Div. of Corp. records of active status for Equilon Enterprises, Motiva Enterprises, Texaco Inc., and Saudi Refining, Inc.). Lacking any basis in law or fact, or even an allegation in the AC, the Court should reject CLF's argument that Defendants have liability as successors in interest.

CLF also insists that the Court should overlook its failure to allege facts supporting the elements of its RCRA claim as to each Defendant simply because the AC "identified" the Defendants and somehow "connected" them to the alleged endangerment at the Terminal. Opp. at 22 n.20. However, CLF must do more than simply identify an entity and allege a vague "connection." CLF must allege facts supporting "each material element necessary to sustain recovery under some actionable legal theory" in order to survive a motion to dismiss. *Campagna v. Mass Dept. of Envrtl Protection*, 334 F.3d 150, 155 (1st Cir. 2003). Without this showing, the AC falls well short of the plausibility standard of *Iqbal*. *See Redondo Waste Sys., Inc. v. Lopez-Freytes*, 659 F.3d 136, 140 (1st Cir. 2011) (finding complaint "fails the plausibility test spectacularly" where plaintiff attempts to impose liability on several parties but "no defendant [is] specifically linked to actionable conduct. . . ."). CLF's bald allegations, which do not point to any activities conducted by any particular named Defendant fail to save the RCRA claim.

C. Saleable Petroleum And Other Products Are Not "Waste"

Faced with the fact that RCRA liability is limited to waste, CLF abandons common sense by arguing that the products sold at the Terminal should be deemed waste. CLF asks the Court to make the extraordinary "inference" that Defendants' alleged "failure to act to prevent releases of products" demonstrates an "intent to discard" the products, and thus the products are waste. Opp. at 24-26. There is no dispute that the petroleum and other products in the tanks are sold;

this is the Terminal's primary purpose. *See* AC ¶¶ 46, 49-50. These allegations support only one "inference"—the intent is to sell the products in the tanks, not discard them.

Further, CLF's theory that products indisputably for sale should be deemed waste on the basis of the seller's alleged knowledge that severe weather may strike would again expand the reach of RCRA § 7002(a)(1)(B) beyond recognition. Nearly every seller of a product situated on the river in Providence, or any other body of water, would be subject to RCRA citizen suits. The Court should decline to use CLF's flawed logic to drastically expand RCRA's reach.

D. CLF Remains Unable To Identify Any "Handling, Storage, Treatment, Transportation, Or Disposal" Of "Waste" That Is Presenting An Imminent And Substantial Endangerment

CLF's opposition ignores that RCRA's imminent and substantial endangerment provision is conjunctive: CLF must allege that a defendant has engaged in the "handling, storage, treatment, transportation, or disposal of . . . waste" *and* that activity presents an "imminent and substantial endangerment." 42 U.S.C. § 6972(a)(1)(B); *see also Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 263 F. Supp. 2d 796, 847 (D.N.J. 2003), *aff'd*, 399 F.3d 248 (3d Cir. 2005) ("The term 'which' in the statutory phrase 'which may present an imminent and substantial endangerment to health or the environment' in RCRA § 7002(a)(1)(B) requires Plaintiffs' . . . to establish that the drum removal and/or petroleum release presented the 'imminent and substantial endangerment.' No such showing was made.").

CLF's opposition sets forth the definitions of "storage," "handling," and "treatment," and then simply asks the Court to accept, without any reference to the AC, that Defendants "meet[] all of these tests." Opp. at 27. There are no specific facts alleged in the AC regarding any handling, transportation, or treatment of waste, just formulaic paraphrasing of the elements of the RCRA claim that is insufficient as matter of law. *See* Defs.' Mem. at 22. The only specific allegations regarding storage referenced in the AC is the storage of products, not waste.

Moreover, such allegations are not enough to state a claim under § 7002(a)(1)(B). As explained in Defendants' memorandum, CLF has not alleged any facts to support its claim that these alleged "storage" "handling" and "treatment" activities are causing an imminent and substantial endangerment. Defs.' Mem. at 27-29. CLF's reliance on *Goldfarb v. Mayor & City of Baltimore*, 791 F.3d 500, 514-15 (4th Cir. 2015), *see* Opp. at 28, is misplaced. There the court found the allegations of leaks, spills, excavating and mixing of contamination could cause an endangerment.[8] CLF's AC is devoid of any allegations that such activities are causing an endangerment here.

CLF's argument that Defendants have engaged in "disposal" through inaction fares no better. CLF relies on the holding in *United States v. Price*, 523 F.Supp. 1055, 1071 (D.N.J.), *aff'd*, 688 F.2d 204 (3d Cir. 1982), that "disposal" may result from "passive inaction" because the definition of "disposal" includes "leaking." Opp. at 29. However, CLF ignores that the Third Circuit later specifically rejected the basis for this conclusion in *Price*. *See United States v. CDMG Realty Co.*, 96 F.3d 706, 714 (3d Cir.1996) ("We think there is a strong argument, however, that in the context of this definition [of disposal], "leaking" and "spilling" should be read to require *affirmative human action*.") (emphasis added).[9] The other cases cited by CLF are inapposite because they concern whether migration of contaminants constitutes an imminent and substantial endangerment, not the scope of the definition of "disposal." *See Hoxsie Real Estate Trust v. Exxon Educ. Found.*, 81 F. Supp. 2d 359, 367 (D.R.I. 2013); *Marrero Hernandez v. Esso Standard Oil Co.*, 597 F. Supp. 2d 272, 287 (D.P.R. 2009).

[8] The Court should disregard the new allegations injected by CLF in its opposition that are not contained in the AC. *See* Opp. at 23-24 (referencing "grading, construction, and demolition" and "excavation.")

[9] Although *CMDG* addressed CERCLA liability, the Court was interpreting the RCRA definition of "disposal," which is incorporated by reference into CERCLA. See 42 U.S.C. § 9601(29).

Finally, CLF's argument that it has adequately alleged "disposal" of waste falters because it ignores that "disposal" is preceded by the words "*past or present*" in the statute. 42 U.S.C. § 6972(a)(1)(B) (emphasis added). CLF's opposition states that severe precipitation and flooding "*will result*" in "discharging, spilling, and/or leaking," *i.e.*, the disposal has not happened yet. Opp. at 28 (emphasis added). It is clear from the statutory text of § 7002(a)(1)(B) that the possibility of *future* disposal is not actionable under that provision.

E. CLF Has Not Alleged Defendants "Contributed To" An "Imminent And Substantial Endangerment"

CLF's argument that it has alleged an imminent and substantial endangerment is notable for what it does not say. CLF does not identify in its opposition (or the AC) any "handling," "storage," "treatment," "transportation," or "disposal" of "waste" that it contends is causing an imminent and substantial endangerment. Rather, CLF argues it is Defendants' "lack of preparedness" that presents the alleged endangerment. Opp. at 29. As explained above, CLF must allege the Defendants' past or present "handling, storage, treatment, transportation, or disposal" of "waste" is presenting the endangerment. "Lack of preparedness" does not fit within the definition of any of these enumerated activities. *See* Opp. at 27-28 (defining terms).[10]

CLF fails to meaningfully distinguish the weight of case law holding "contributing to" under RCRA requires active conduct. These holdings were based on a plain language reading of statute, and these cases are not, as CLF claims, limited to "passive conduct and migration." Opp. at 31 n.26; *see generally* Defs.' Mem. at 20-21 (discussing cases). For example, in *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, it was not migration of contaminants, but rather the defendant's alleged "studied indifference" to contamination that was found insufficient to

[10] CLF's repeated references to the Terminal's NDPES permit and alleged discharges covered by the permit to suggest the existence of an imminent substantial endangerment under RCRA are legally irrelevant. *See e.g.*, Opp. at 30, 32. Discharges subject to an NDPES permit are excluded from definition of solid waste under RCRA. *See* 42 U.S.C. § 6903(27). CLF has no alleged any releases of solid waste in the AC.

impose RCRA liability. 263 F. Supp. 2d at 845-46. CLF's failure to adapt theory is closely analogous—essentially alleging Defendants are indifferent to the alleged risk of severe precipitation and flooding—and likewise insufficient under RCRA.

CLF's argument that Defendants are contributing to an endangerment because they "ha[ve] control over" hazardous waste at the Terminal, Opp. at 27 (citing *Cmty. Ass'n for Restoration of the Env't, Inc. v. Cow Palace, LLC*, 80 F. Supp. 3d 1180, 1229 (E.D. Wash. 2015)), ignores that control only creates RCRA liability where the defendant directed the specific *activities* of "handling," "storage," "treatment," "transportation," or "disposal" of waste. *See Cow Palace*, 80 F. Supp. at 1230 (defendant's direction of third party's *disposal activities* constituted sufficient control for RCRA liability); *see also Hinds Invs., L.P. v. Angioli*, 654 F.3d 846, 850-51 (9th Cir. 2011) (defendant lacked sufficient control to be liable under RCRA where it did not direct *disposal* of waste). CLF's AC fails to allege any facts showing any Defendant's specific direction of the aforementioned activities.

CLF also cannot rely on the broad injunctive relief available under RCRA to imply that a failure to act creates liability. In fact, *Mallinckrodt* cautions against this "conflat[ion of] the [] court's finding of liability with its choice of remedy." 471 F.3d at 283. The breadth of the Court's injunctive powers in no way excuses CLF from its obligation to plead actionable conduct under RCRA.

Finally, CLF has not alleged an endangerment under RCRA that is "imminent." CLF acknowledges that the First Circuit requires the threat of harm to be "near-term." Opp. at 30 (quoting *Mallinckrodt*, 471 F.3d at 288). As discussed above, there are no allegations in the AC that the alleged threat of harm is "near-term." *See supra* § I.A.

IV. CLF's CWA Adaptation Claims Seek To Impose Novel Legal Obligations On Defendants And Are Insufficiently Pled

A. CLF'S CWA Adaptation Claims Attempt To Hold Defendants To Requirements Not Found In The Terminal's Permit

CLF engages in misdirection and relies on questionable authority to resist the conclusion that the CWA Adaptation Claims are an attempt to read nonexistent requirements into the Terminal's permit. These claims seek to hold Defendants liable for conditions that may only exist well past the life of the RIPDES permit and outside any obligation Defendants might have under that permit to manage stormwater. To the extent that CLF's claims seek to hold Defendants' liable on these bases, the CWA Adaptation Claims must be dismissed.

1. The Terminal's Permit Does Not Impose Obligations Beyond Its 5-Year Term

CLF has provided the Court with no legal basis to conclude that Defendants have an obligation to address or consider risks of severe precipitation and flooding long beyond the conceivable life of the Terminal's Permit. Instead, CLF engaged with arguments that Defendants have not made: "that te [sic] NPDES program's five-year permit term forecloses any obligation [they have] to consider climate-related impacts on the Terminal," Opp. at 33, and that the Terminal's permit should be read to include a *force majeure* or act of God exemption.[11] *Id.* at 35 n.29. CLF chose to address these straw men rather than explain to the Court why Defendants should be held liable for failures to consider conditions that may only come to pass by the end of the century.[12]

While CLF is correct that the Terminal was not "constructed . . . with an intention to only operate it for five years," it does not follow that an NPDES permit imposes requirements that are

[11] In this portion of its memorandum, CLF also refers to injuries being "certainly impending," a term germane to Article III standing, but not interpretation of the CWA or the Terminal's permit. Opp. at 34.

[12] Each of the CWA Adaptation Claims seek to hold Defendants liable for failing to address the "factors discussed in Section IV.A," which include, among other things, sea level rise scenarios for 2070 and 2100. *E.g.*, AC ¶¶ 219, 229.

intended to reach decades into the future. Opp. at 34. Congress instead chose to address changes to conditions over time by requiring periodic, 5-year renewals of a facility's permit. *See* Defs.' Mem. at 32. These renewals afford the permitting authority the opportunity to "reevaluat[e] . . . the relevant factors," and, as needed, "tighten[] . . . discharge conditions." *Upper Blackstone Water Pollution Abatement Dist. v. EPA*, 690 F.3d 9, 22 (1st Cir. 2012). Under this process, the permit terms cited by CLF in the CWA Adaptation Claims—including the requirement oft-referenced by CLF to use "good engineering practices" in preparing the SWPPP—will be reevaluated and potentially revised by RIDEM and subject to public comment. CLF cannot hold Defendants liable for conditions that will occur decades from now because the Terminal's permit does not address them; the CWA contemplates that a future permit will if needed.

CLF's cherry-picked example of a permit being administratively extended for thirteen years provides no basis for the Court to disregard how Congress structured the NPDES program. Opp. at 34 (citing *United States v. Zenon-Encarnacion*, 387 F.3d 60, 63-64 (1st Cir. 2004). CLF cites no legal authority to support this argument, nor does it suggest that the Terminal has such a history of delays in renewing its permit that there could conceivably be any justification to read the RIPDES Permit to impose obligations to address conditions that may only occur more than fifty years from now. To the contrary, the record indicates that RIDEM has promptly renewed the Terminal's permit in the past. The current permit became effective on April 1, 2011, just over a year after the Terminal's previous permit had expired. *See* ECF No. 11-1 at 1.

2. The Definition Of "Stormwater" Limits The Scope Of CLF's Claims

CLF has also failed to address in its brief how the definition of "stormwater"—and the duty to manage it under the RIPDES permit—does not extend to inundation caused by sea level rise and storm surge. CLF instead devotes a substantial discussion to what portions of the

Terminal are "point sources" that are subject to regulation under the CWA. Opp. at 36-37. CLF identifies these components and their potential to convey pollutants to warn the Court not to adopt Defendants' position that "discharges related to inundation are not subject to regulation" under the CWA. *Id.* at 38. CLF has again tried to rebut an argument that Defendants have not made.

CLF's First through Sixth Counts seek to enforce portions of the RIPDES Permit that address stormwater. These permit provisions, such as the requirement to use "good engineering practices" and develop Best Management Practices ("BMPs"), concern Defendants' obligation to manage "storm water discharges associated with industrial activity," as opposed to all possible types of discharges that might be regulated by the CWA. *E.g.*, ECF No. 11-1 at Permit Condition I.C.1. Thus, the definition of "stormwater" dictates the scope of the permit provisions under which CLF seeks to hold Defendants liable. Whether certain portions of the Terminal fall within the definition of a "point source" is irrelevant.

CLF's First through Sixth Counts fail thus fail to state claims to the extent that they seek to hold Defendants liable for failing to address conditions that fall outside the definition of stormwater: sea level rise and storm surge. CLF does not contest those portions of Defendants' Memorandum demonstrating that the definition of stormwater—and Defendant's obligations under its permit to manage it—does not encompass sea level rise and storm surge. Defs. Mem. at 33-35. Yet the AC alleges that Defendants violated the RIPDES by failing to account for "the factors discussed in Section IV.A," which include these two phenomena. *See, e.g.*, AC ¶ 281. How the U.S. Environmental Protection Agency ("EPA") and RIDEM have defined stormwater precludes holding Defendants liable for any alleged failure to consider storm surge and sea level rise under the permit conditions on which CLF based its first six counts.

3. CLF's Relies On An Inapplicable, Outdated EPA Document To Expand Defendant's Obligations Beyond What The Terminal's Permit Requires

CLF attempts to argue that Defendants' obligations under the NPDES permit are unbounded by time or the definition of stormwater by extensively citing to an EPA document that is no longer valid and does not apply to the permit obligations CLF seeks to enforce. Although CLF characterizes the document, *Framework for Protecting Public and Private Investment in Clean Water Enforcement Remedies* ("*Framework*"), as "guidance," it is undated and appears nowhere in EPA's repository of CWA enforcement guidance.[13] *See* EPA, *Water Enforcement Policy, Guidance and Publications,* https://www.epa.gov/enforcement/water-enforcement-policyguidance-and-publications (last updated Feb. 16, 2017). The document also does not appear to reflect current government policy; two of the executive orders underpinning the *Framework* have been revoked in the past year. *See Framework* at 8 (discussing executive orders); Exec. Order No. 13783 § 3(i) (Mar. 28, 2017) (revoking Exec. Order No. 13653); Exec. Order No. 13807 § 6 (Aug. 15, 2017) (revoking Exec. Order No. 13690).

CLF further overlooks how the *Framework* in no way purports to define obligations under the RIPDES Permit that CLF claims to be enforcing. The *Framework* concerns only how EPA will exercise its discretion to seek "appropriate relief" using its authority under Section 309(b) of the CWA in cases where a violation has already been found. *Framework* at 5 (citing 33 U.S.C. § 1319(b)). Courts have recognized that this discretion sweeps more broadly than strictly requiring compliance. *See, e.g., United States v. Outboard Marine Corp.*, 549 F. Supp. 1036, 1043-44 (N.D. Ill. 1982) (breadth of Section 309(b) permits injunctive relief to remedy environmental conditions). The *Framework* also contains no discussion of how to assess

[13] Based on the URL for the pdf of the *Framework*, EPA appears to have posted it online in December 2016. *See Framework, https:*//www.epa.gov/sites/production/files/2016-12/documents/frameworkforprotectingpublicandprivateinvestment.pdf.

whether Defendants or other entities are complying with their permits. The *Framework* simply presumes a violation already occurred, something that CLF has the burden to establish in this action.

B. The Amended Complaint Does Not Contain Allegations Sufficient To Infer Plausible Violations Of The Terminal's Permit

CLF's opposition doubles down on the defects in its pleading of the CWA Adaptation Claims rather than direct the Court to non-conclusory allegations that might support these claims. CLF calls out two aspects of the AC, neither of which shows that CLF has stated "a plausible, not a merely conceivable, case for relief."[14] *Sepúlveda-Villarini v. Dep't of Educ. of P.R.*, 628 F.3d 25, 29 (1st Cir. 2010) (Souter, J.). The AC's failure to state plausible violations of the Terminal's permit requires dismissal of the CWA Adaptation claims.

First, CLF asserts that "[e]ach claim describes the basis for the alleged violation," Opp. at 42, but that basis consists solely of conclusory statements. CLF simply cites its conclusory assertions that Defendants have failed—in a way that is not specified—to "consider" or otherwise address "the factors discussed in Section IV.A" of the AC. *E.g.*, AC ¶ 287 ("Shell has failed to identify sources of pollution resulting from the factors discussed in Section IV.A. . . ."). Conclusory statements like these cannot be credited in assessing the sufficiency of CLF's pleadings. *See A.G. ex rel Maddox v. Elsevier, Inc.*, 732 F.3d 77, 80 (1st Cir. 2013) (declining to credit "conclusory statement [] presented as an ipse dixit, unadorned by any factual assertions that might lend it plausibility."); *Sanchez v. Pereira-Castillo*, 590 F.3d 31, 49 (1st Cir. 2009) (conclusory allegations are '"not entitled to the presumption of truth'") (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009); *see also* Defs.' Mem. at 17-18, 37, 43-44.

[14] Defendants have not tried "to hold CLF to a higher pleading standard than is required." Opp. at 42. Defendants ask the Court to evaluate CLF's allegations consistent with the decisions of the U.S. Supreme Court and the First Circuit. CLF cites no authority to support its contention that it is being held to a higher standard than mandated by law.

Second, CLF relies on allegations that have no bearing on whether Defendants' activities complied with RIPDES Permit. CLF's memorandum highlights how Section IV.A of the AC lays out a variety of flooding and precipitation risks relating to climate change, and Shell's alleged general awareness that some of these risks may exist. Opp. at 43 (citing AC ¶¶ 117-237). These allegations, however, do not permit the Court to infer anything about whether Defendants prepared the SWPPP or operated the Terminal consistent with the terms of the RIPDES permit.[15] CLF's decision to highlight these portions of the AC, which are unrelated to Terminal operations, demonstrates how this suit is about advancing CLF's political agenda, not enforcing the CWA.

C. Motiva's Transfer Of The Terminal And Its Permit Precludes Jurisdiction Under The CWA's Citizen Suit Provision

CLF seeks to preserve the Court's jurisdiction over its claims against Motiva by attempting to characterize the transfer of the Terminal to Triton Terminaling, LLC as a mere "name change." Opp. at 45. CLF ignores how Motiva "transfer[ed] … ownership and operational responsibilities to Triton," a distinct corporate entity (with no common ownership), and based on this transaction, obtained a permit transfer from RIDEM. ECF No. 20-3. CLF has even acknowledged that Motiva no longer operates the Terminal. *See* AC ¶ 26.

CLF's observation that certain Terminal personnel appeared not to have changed since the transfer does not alter the conclusion that Motiva is no longer owns or controls the Terminal. Facilities are not required to fire and replace all of their employees after being conveyed from one corporate entity to another. Moreover, CLF itself acknowledges that these people ceased to be employees of Motiva after the transfer. *See* Opp. at 44 (observing that the contact

[15] The only portions of Section IV.A highlighted in CLF's memorandum that even arguably address the Terminal are stated as bald conclusions consistent with Defendants' liability, not factual allegations. *See* AC ¶¶ 118, 230, 237.

individual's "affiliation has been changed from Motiva to Shell."). CLF's assertion that the "actor" responsible for complying with the Terminal's permit "remains the same" has no basis. *Id.* at 45.

Motiva's relinquishment of operational control and ownership makes clear that the Court lacks jurisdiction over it. Even when alleged violations of the CWA begin under a prior owner and continue into the present, the prior owner cannot "be in violation" of the CWA.[16] *See Friends of Sakonnet v. Dutra*, 738 F. Supp. 623, 632-33 (D.R.I. 1990); *Brossman Sales, Inc. v. Broderick*, 808 F. Supp. 1209, 1214 (E.D. Pa. 1992). A person cannot "be in violation" if it has "relinquished [control] of the source of the alleged violation and no longer ha[s] the control to abate it." *Brossman*, 808 F. Supp. at 1214. Having ceded its "ownership and operational responsibilities," ECF No. 20-3, Motiva no longer has control over the Terminal and cannot be the subject of this citizen suit.[17]

V. The Doctrines Of Abstention And Primary Jurisdiction Should Be Applied In This Case

A. CLF Seeks Rulings That Will Impact Ongoing State Regulatory Proceedings, Warranting Abstention

CLF attempts to avoid dismissal of the CWA Adaptation Claims on abstention grounds by miscasting these claims as a run-of-the-mill enforcement action and selectively reading First Circuit precedent. CLF seeks rulings from the Court on a subject—how to manage, in state regulations and permits, changes to stormwater discharges resulting from climate change—before Rhode Island agencies have completed processes intended to address this same topic.

[16] The lack of subject matter jurisdiction over a citizen suit brought against Motiva does not mean that the company has been "absolved from liability" under the CWA. Opp. at 46. Motiva remains potentially subject to actions for civil penalties brought by EPA alleging past noncompliance with the CWA. *See Gwaltney of Smithfield, Ltd. v. Chespeake Bay Found.*, 484 U.S. 49, 58 (1987) (discussing actions under CWA § 309(d), 33 U.S.C. § 1319(d)).

[17] Permitting citizen suits against Motiva and similarly situated prior owners would undermine the purpose of the CWA's requirement to provide notice prior to instituting a citizen suit. Motiva relinquished its interests in the Terminal prior to CLF transmitting its notice letter. Opp. at 44. As a consequence, the notice letter could not have prompted Motiva to address the alleged violations identified in the notice letter and avoid the need for a citizen suit.

Abstaining from these claims will ensure that an expert state agency—rather than a federal court—has the first word on how to address this important policy and technical issue directly affecting Rhode Island.

CLF misreads *Chico Serv. Station, Inc. v. Sol Puerto Rico Ltd.*, 633 F.3d 20 (1st Cir. 2011), to create a general bar to abstaining in citizen suits. *Chico* cautions against deferring to state enforcement proceedings that do not qualify for RCRA's "diligent prosecution" bar because Congress "[had] carefully delineat[ed] … the situations in which … enforcement efforts will foreclose review of a citizen suit in federal court." *Id.* at 31. The court did not hold that citizen suit provisions cabin district courts' ability to abstain in deference to state *policymaking* processes. To the contrary, *Chico* recognizes that abstention is appropriate when a plaintiff asks the "district court [to] become the regulatory decision-making center." *Id.* at 30 (internal quotations omitted) (quoting *Vaqueria Tres Manjitas, Inc. v. Irizarry*, 587 F.3d 464, 473 (1st Cir. 2009)); *see also Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728 (1996) (*Burford* counsels in favor of abstention in order to "retain[] local control over 'difficult questions of state law bearing on policy problems of substantial public import' …." (citation omitted)).

The CWA Adaptation claims require the Court to define *for the first time* how Rhode Island's stormwater permitting program addresses potential effects of climate change, not simply "enforce the Permit as written." Opp. at 50. The Court will have to interpret and delineate the scope of a state permit and permitting program that are currently under evaluation by RIDEM to determine how best to manage changes to stormwater discharges that may result from climate change.[18] *See* Defs.' Mem. at 47-48. The CWA counsels that addressing these important water quality questions is committed to state policymakers, not federal courts. *See* 33 U.S.C.

[18] As explained in Section IV.A *supra*, these claims also seek to impose novel obligations that are not required by the Terminal's permit.

§ 1251(b) ("It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution …."). CLF does not simply ask the court to apply state regulations that are "substantially identical to" federal rules, *Chico*, 633 F.3d at 33; it asks the Court to wade into an active state policymaking process with respect to state stormwater permits that the CWA demands Rhode Island to resolve.[19]

Unlike in *Chico* "careful management of the case" will not prevent conflict with Rhode Island's regulatory efforts. *Id.* at 32. A decision concerning the extent to which climate change must be considered under the Terminal's permit will affect not only Defendants, but also numerous other facilities holding permits containing language similar to that in the RIPDES Permit. *See, e.g.*, RIDEM, *Multi-Sector General Permit – Storm Water Discharge Associated with Industrial Activity, No. RIR500000*, at Condition V.A. (Aug. 15, 2013) (requiring development of Storm Water Management Plans "in accordance with good engineering practices. . . ."). These facilities will alter their operations to conform to the Court's decision in order to reduce their risk of exposure to enforcement actions. Without the benefit of RIDEM evaluating available data and revising design standards required by state water quality plans, *see* Defs.' Mem. at 47, these operational changes may frustrate the regulatory framework RIDEM ultimately puts in place.

These adverse consequences can be avoided by abstaining and permitting CLF to pursue its concerns in the permit proceeding pending before RIDEM. CLF cites no authority to suggest that abstention is appropriate only when the state forum permits a party to "pursue or obtain the

[19] Courts abstaining from hearing citizen suits have not done so, as CLF suggests, solely because a party sought collateral review of a state permit. *See* Opp. at 49. Rather, they have abstained to prevent interference with states' "efforts to establish a coherent policy with respect to" environmental issues on which they have been delegated authority under federal law. *Sierra Club v. Chesapeake Operating, LLC*, 248 F. Supp. 3d 1194, 1203 (W.D. Okla. 2017) (finding Oklahoma's regulation of underground injection wells warranted abstention in RCRA citizen suit); *Ellis v. Gallatin Steel Co.*, 390 F.3d 461, 480 (6th Cir. 2004) ('"federal review … would be disruptive to Kentucky's efforts to establish a coherent policy' with respect to"' its implementation of the CAA).

relief" sought in federal court. Opp. at 48. Abstention requires only that the "*dispute* would best be adjudicated in a state forum." *Quackenbush*, 517 U.S. at 728 (emphasis added). The regulatory process for renewing the RIPDES Permit affords CLF the opportunity to have RIDEM—and ultimately, the Rhode Island Superior Court—consider the Terminal's compliance history and how best to manage the potential for climate change related increases in stormwater in revising the Terminal's permit. *See* Defs.' Mem. at 48.

B. Primary Jurisdiction Applies To CLF's RCRA Claim

CLF continues to downplay the complexity of the technical issues implicated by its RCRA claim and disputes the applicability of primary jurisdiction by arguing that the doctrine is not appropriate in the context of a RCRA citizen suit. CLF's position relies on its ignoring the passage of the Resilient Rhode Island Act of 2014 and that statute's charge to RIDEM to account for the potential impacts of climate change. Looking to the factors for evaluating primary jurisdiction set forth by the First Circuit most recently in *Pejepspcot*, each factor weighs in favor of its applicability here for the following reasons which CLF failed to rebut. *See Pejepscot Indus. Park, Inc. v. Maine Cent. R. Co.*, 215 F.3d 195, 205 (1st Cir. 2000).[20]

First, RIDEM has been delegated authority under RCRA to take action to protect human health and the environment and is tasked with evaluating potential risks associated with climate-related severe precipitation and flooding. Second, as repeatedly illustrated through the various sources discussed in CLF's Amended Complaint (*see* AC ¶¶ 135-236), the climate-related issues identified by CLF require the analysis of complex, evolving, and highly technical data regarding climate-related storm risks with which RIDEM is already engaging. Lastly, deference to RIDEM on this issue will avoid the possibility of the Court entering an order that conflicts with

[20] These factors are: "(1) whether the agency determination l[ies] at the heart of the task assigned the agency by Congress; (2) whether agency expertise [i]s required to unravel intricate, technical facts; and (3) whether, though perhaps not determinative, the agency determination would materially aid the court." (citation omitted).

RIDEM's own determination regarding how remediation standards should be applied to address the coastal areas of the state that CLF has alleged may be at greater risk of severe precipitation and flooding.

Additionally, CLF's opposition fails to address RIDEM's current involvement with the historic contamination alleged by CLF to be the source of an imminent and substantial endangerment (*i.e.,* the AOCs). As noted in Defendants' memorandum, RIDEM is already overseeing the remediation of the AOCs and has approved the applicable RAP. Defs.' Mem. at 50. CLF's allegations regarding dangers posed by soil and groundwater contamination directly relate to RIDEM's core function of protecting health and the environment and the steps it is taking to do so. Courts have found this type of agency involvement constitutes a basis for applying primary jurisdiction in the context of a RCRA citizen suit. *See, e.g., Davies v. Nat'l Co-op. Refinery Assoc.*, 963 F. Supp. 990, 997-98 (D. Kan. 1997) (applying primary jurisdiction where state agency has been actively involved in investigation and remediation site). CLF does not deny the above facts regarding RIDEM's authority nor does it challenge or take issue with the nature or level of RIDEM's ongoing oversight of actions directed to contamination at the facility. At bottom, the injunctive relief sought by CLF rests within the scope of RIDEM's authority and deference to RIDEM on the issues implicated by CLF's RCRA claim is appropriate here.

CONCLUSION

For the foregoing reasons, and those stated in Defendants' motion to dismiss and accompanying memorandum, the Court should dismiss (i) all causes of action against Defendant Motiva, and (ii) Causes of Action 1-7, 9, 10, and 21 against Defendants Shell Oil Products US, Shell Oil Company, Shell Petroleum Inc., and Shell Trading (US) Company.

Dated: February 22, 2018

Respectfully submitted,

/s/ Bina Reddy

Robert D. Fine (RI Bar # 2447)
Chace, Ruttenberg & Freedman, LLP
One Park Roy, Suite 300
Providence, RI 02903
(401) 453-6400
Fax (401) 453-6411
rfine@crfllp.com

John S. Guttmann (admitted *pro hac vice*)
Beveridge & Diamond, P.C.
1350 I Street, NW, Suite 700
Washington, DC 20005
(202) 789-6020
Fax (202) 789-6190
jguttmann@bdlaw.com

Bina Reddy (admitted *pro hac vice*)
Beveridge & Diamond, P.C.
98 San Jacinto Blvd., Suite 1420
Austin, TX 78701
(512) 391-8045
Fax (512) 391-8099
breddy@bdlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2018, the foregoing Reply Memorandum in Support of Motion to Dismiss Plaintiffs' Amended Complaint by Shell Oil Products US, Shell Oil Company, Shell Petroleum Inc., Shell Trading (US) Company, and Motiva Enterprises LLC 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/ Bina Reddy
Bina Reddy