

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

CONSERVATION LAW FOUNDATION,
INC.,

Plaintiff,

v.

SHELL OIL COMPANY, EQUILON
ENTERPRISES LLC D/B/A SHELL OIL
PRODUCTS US, SHELL PETROLEUM,
INC., SHELL TRADING (US) COMPANY,
TRITON TERMINALING LLC, and
MOTIVA ENTERPRISES LLC,

Defendants.

Case No: 3:21-cv-00933-SALM

(Related to Case No: 3:21-cv-00932-SVN)

JANUARY 25, 2022

**MOTION TO TRANSFER IN ACCORDANCE WITH
LOCAL RULE 40(b)(2) DUE TO A RELATED CASE**

Defendants Shell Oil Company, Equilon Enterprises LLC d/b/a Shell Oil Products US, Shell Petroleum Inc., Shell Trading (US) Co., Triton Terminaling LLC, and Motiva Enterprises LLC respectfully move to transfer this case within the District of Connecticut to The Honorable Sarala V. Nagala who is handling the related and earlier filed case that is currently pending in this District entitled: *Conservation Law Foundation Inc. v. Gulf Oil Limited Partnership*, Case No: 3:21-cv-00932-SVN (“Gulf action”). Defendants have conferred with Plaintiff and it does not consent to transfer.

Defendants previously filed a Local Rule 40(b)(2) Notice of Related Case to provide notice to the Court of the related Gulf action. (Doc. # [25]). In response, the Court promptly issued an Order (Doc. # [28]) indicating that if Defendants sought to transfer the related case that

a motion affirmatively seeking such relief should be filed. The Court also raised the propriety of transferring the matter given the parties were at the time engaged in preliminary settlement discussions. Settlement discussions among the parties are no longer active, *see* Doc. #40 (parties' joint Rule 26(f) report stating settlement is unlikely), and Defendants now move to transfer the case to maximize judicial efficiencies, minimize potential conflicting rulings on legal issues pertaining to the Port of New Haven, and allow for more efficient discovery coordination.

Rule 40(b)(1)(a) of the Local Rules provides in relevant part:

In the event that it is subsequently determined that there is pending in this District a related case assigned to a different Judge, the later-filed case should normally be transferred to the Judge having the earliest filed case that remains pending. The presiding Judge in a later-filed, related case will consider whether transfer is appropriate under the rule promptly after learning of an earlier-filed, related case pending before another Judge of this Court.

“The sensible purpose of this rule is to permit a judge already familiar with the facts of one case to preside over both cases with a minimum duplication of judicial effort.” *McCann v. Communications Design Corp.*, Civ. Nos. 2:92–34 (JAC), B–89–164 (JAC), 1992 WL 336760, *2 (D. Conn. Oct. 1, 1992) (Cabranes, C.J.) (discussing former LR 10(b)(1), now at LR 40(b)(1)); *see also* *Lundstedt v. People’s United Bank*, No. 3:14–cv–01479 (JAM), 2015 WL 540988, *3 (D. Conn. Feb. 10, 2015) (Meyer, J.) (advising parties that if “a similar lawsuit . . . concerning the same subject matter” is filed, “either party may consider whether to file a motion for transfer . . . on the ground that the filing is a related case and on the ground of my familiarity acquired to date with the legal issues presented in this case.”).¹

¹ *Cf. Wyndham Assocs. v. Bintliff*, 398 F.2d 614, 619 (2d Cir. 1968) (considering inter-district transfers under 28 U.S.C. § 1404(a), and noting “There is a strong policy favoring the litigation of related claims in the same tribunal in order that pretrial discovery can be conducted more efficiently, duplicitous litigation can be avoided, thereby saving time and expense for both parties and witnesses, and inconsistent results can be avoided.”).

This action and the earlier filed Gulf action are related. The Gulf action involves the same Plaintiff, Conservation Law Foundation, Inc. (“CLF”). The legal claims in that case allege identical theories based upon provisions of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, *et seq.* (“Clean Water Act”), and the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, *et seq.* (“Resource Conservation and Recovery Act” or “RCRA”). The facilities at issue in the cases are both located in the Port of New Haven in New Haven, CT. The Clean Water Act and RCRA violations claimed by Plaintiff in both cases are premised on common alleged precipitation and flooding risks at the Port of New Haven. *Compare* Doc. #1 ¶¶ 192-275 with Exhibit 1 ¶¶ 175-255. The majority of Plaintiff’s causes of action arise under the CWA and allege stormwater permit violations — the facilities at issue in this action and the Gulf action are both registered and operate under the same General Permit issued by the Connecticut Department of Energy and Environmental Protection, which is not specific to either facility. *See* Doc. #1 ¶¶ 136-138; Exhibit 1 ¶¶ 124-126. Indeed, many of the allegations (and causes of action) in the two complaints are near verbatim copies. It is likely that some of the same witnesses and evidence will be used in both cases.

Transfer of this matter to allow a single judge to manage both of these cases will promote judicial economy. Many factual and legal issues are overlapping, *e.g.*, alleged precipitation and flooding risks to the Port of New Haven, and the regulatory scheme governing the General Permit. Transfer will minimize duplication of judicial effort on these and other common issues, and eliminate unnecessary repetition and confusion in the cases, which both raise novel legal issues. Finally, the related Gulf action is still at the Motion to Dismiss stage and thus coordination between the two cases at this early stage of the litigation would be most efficient.

Wherefore, Defendants Shell Oil Company, Equilon Enterprises LLC d/b/a Shell Oil Products US, Shell Petroleum Inc., Shell Trading (US) Co., Triton Terminaling LLC, and Motiva

Enterprises LLC respectfully submit that transfer of this action is therefore appropriate under Local Rule 40(b)(1)(a).

Respectfully submitted,

/s/ James O. Craven

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