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, MOTIVA ENTERPRISES LLC, TRITON TERMINALING LLC, and EQUILON ENTERPRISES LLC, Defendants.	C.A. No. 1:17-cv-00396-WES-LDA HEARING REQUESTED

PLAINTIFF CONSERVATION LAW FOUNDATION'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO ALL DEFENDANTS

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Plaintiff Conservation Law Foundation, Inc. ("CLF") hereby moves pursuant to Federal Rule of Civil Procedure 37(a) and Local Rule Cv 37 for an order compelling 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") to produce documents responsive to CLF's First Set of Requests for Production to All Defendants ("First RFPs").[1] On May 28, 2021, CLF served the First RFPs, consisting of 62 requests for production, upon Defendants. In response, Defendants have produced only a limited number of responsive documents while maintaining various objections to CLF's requests. *See* Defendants' Responses to Plaintiff's First Set of Requests for Production to All Defendants ("Responses to First RFPs").[2] As detailed below, CLF and Defendants have met on multiple occasions and exchanged letters in an attempt to limit disputes and avoid the necessity of filing a motion to compel production. The Parties have nevertheless reached an impasse on several of these issues. CLF thus moves for an order overruling those of Defendants' objections detailed herein and compelling production of documents responsive to the First RFPs.

I. INTRODUCTION

CLF filed this action to halt Defendants' longstanding and ongoing violations of the Clean Water Act ("CWA") and Resource Conservation and Recovery Act ("RCRA") at their bulk petroleum storage terminal in Providence, Rhode Island (the "Terminal"). As relevant to the present Motion, CLF alleges that Defendants have failed to evaluate and address the reasonably foreseeable risks to the Terminal posed by severe weather, including risks associated with climate change, which threaten to flood the Terminal and release millions of gallons of oil and other toxic

[1] Attached hereto as Exhibit A.

[2] Attached hereto as Exhibit B.

chemicals into surrounding neighborhoods and the environment. Defendants' actions (i) violate the terms of Defendants' CWA permit, including the obligation to satisfy "good engineering practices," (ii) violate the requirement to "maintain and operate their facilit[y] in a manner that minimizes the possibility of a fire, explosion, or any unplanned spill or release of hazardous waste constituents into the air, soil, or surface waters of the State," 250 R.I. Code R. § 140-10-1.7.12(I)(1); *id.* § 140-10-1.7.13(H)(1); *see also id.* § 140-10-1.7.14(H)(1), and (iii) present an imminent and substantial endangerment to human health and the environment under RCRA.

The primary dispute between the Parties centers on the relevance of documents that do not expressly refer to Defendants' Terminal, including Shell corporate policies that set standards for the resilience of its infrastructure to severe weather risks and climate change, as well as analyses of pollution discharges from other Shell facilities during major storms, such as Superstorm Sandy. As described in detail in Section III.A below, Defendants' parent company, Shell plc (formerly Royal Dutch Shell), has represented to the public and to government regulators that it relies on mandatory, detailed, centralized approaches and processes—applicable to the entire Shell family of companies such as Defendants—to evaluate and address risks to the physical infrastructure of Shell companies' facilities. These representations indicate that this control framework includes setting and utilizing engineering standards for infrastructure and employing what it calls a "Metocean Team" to evaluate climate preparedness at Shell facilities.

Furthermore, Shell's control framework is implemented and enforced through both a vertically integrated corporate structure and through management and control policies and frameworks that cross-cut corporate structures. For purposes of environmental compliance activities in the United States, including the risks of severe weather and climate change, each of the Defendants are both bound by these corporate frameworks and obligated to enforce and

implement them. Further, Defendants are subject to periodic audits and performance reporting to parent entities and management employed by and housed in parent entities.

Despite these representations and control frameworks, and despite publicly available documents indicating that Shell has known about and studied climate risks for decades, Defendants object that documents that do not directly address the Terminal itself are not discoverable. Defendants claim that all climate change and severe weather risk analyses are conducted by management at the individual facilities without centralized corporate policies, processes, or standards. In light of these conflicting representations, it appears only one of two possibilities is true: either (i) Shell plc's representations to the public and to its regulators are false, or (ii) Defendants are violating Shell's policies in the operation of the Terminal. Either way, these documents are highly relevant for determining whether Defendants have satisfied their obligations under the CWA and RCRA to adequately prepare the Terminal for severe weather so as to prevent pollutant discharges.

Documents showing corporate policies and pertaining to facilities other than the Terminal are also highly relevant to several issues in this case including, among others, (i) the evaluation of what actions are required under the "good engineering practices" standard and whether Defendants have complied with that standard, (ii) Defendants' knowledge of the risks to the Terminal, and their failure to disclose or address those risks as required under the CWA and RCRA, and (iii) the egregiousness of Defendants' violations. To the extent that there is a disconnect between Shell's public representations about how it evaluates and prepares for climate change risks and Defendants' actions with respect to the Terminal, CLF is entitled to production of documents to probe that discrepancy.

Also, contrary to Defendants' statements at the February 14, 2022 informal conference

with the Court, in this litigation Defendants *have not* admitted that climate change has caused increased risks of severe weather. Instead, Defendants' litigation position has consistently been that the risks posed by severe weather are "highly speculative, remote, or hypothetical." Defs.' Mem. of Law in Support of MTD, ECF 46-1 ("MTD Mem.") at 14. Indeed, Defendants' motion to dismiss refers variously to "speculative weather events," MTD Mem. at 1, "speculative or remote weather events," *id.* at 18, and "alleged risks of severe precipitation and flooding that are . . . speculative and remote in time," *id.* at 2. Defendants' position could not be clearer: "the chance of severe precipitation and flooding occurring as described in the TAC—is highly speculative." *Id.* at 17. This position stands in stark contrast to Shell's publicly stated position, and production of records regarding Defendants' actual knowledge and actions addressing climate change and severe weather risks is the only avenue to assess the veracity of their litigation position, as well as their understanding of appropriate engineering and management of the Terminal.

For the reasons described herein, the Court should: (i) hold that documents concerning other Shell facilities, including generally applicable policies, and Shell's knowledge of climate change is relevant and discoverable, (ii) overrule Defendants' objection to "climate change" and related terms, (iii) overrule Defendants' objections to the miscellaneous requests addressed in Section III.B, (iv) hold that Defendants have waived their burden and proportionality objections for lack of specificity, (v) hold that Defendants waived objections to Requests where they gave conditional responses, (vi) strike Defendants' General Objections as improper, and (vii) order Defendants to search for and produce responsive documents in a timely fashion with bi-weekly rolling productions.

II. Background

CLF filed the instant case in August of 2017 under the citizen suit enforcement provisions of the Clean Water Act and RCRA to remedy Defendants' violations of these statutes, including,

among others, their failure to evaluate and address the reasonably foreseeable risks to the Terminal posed by climate change-induced severe weather. In October of 2019, Defendants moved to dismiss a number of the claims in CLF's Third Amended Complaint ("TAC"). *See* Motion to Dismiss, ECF No. 46. In its September 2020 order, this Court denied Defendants' motion "as to near-term harms from foreseeable weather events," writing that:

> The Complaint makes clear that a major weather event, magnified by the effects of climate change, could happen at virtually any time, resulting in the catastrophic release of pollutants due to Defendants' alleged failure to adapt the Terminal to address those impending effects. While it might not occur for many years, the fact that it is certainly impending is enough to meet the standard.

Mem. and Ord, ECF No. 55 at 3 (Sept. 28, 2020) ("Ord. on MTD").

On May 28, 2021, CLF served the First RFPs and First Set of Interrogatories on Defendants.[3] On June 14, 2021, Defendants requested an additional sixty days to respond to the First RFPs. CLF agreed to the requested extension. On July 29, 2021, Defendants requested a further 30-day extension to respond to CLF's First RFPs and First Interrogatories. On August 3, 2021, the Parties held a meet-and-confer where (i) CLF agreed to extend the deadline for Defendants' interrogatory responses to August 27, 2021, and (ii) the Parties entered into a joint agreement governing discovery of electronically stored information. On August 9, 2021, Defendants sent a letter[4] to CLF detailing several broad objections to the First RFPs. On August 13, 2021, Defendants served their formal Responses to First RFPs upon CLF, asserting various objections to the First RFPs. *See generally*, Exhibit B.

CLF worked diligently with Defendants to resolve or narrow the areas of dispute between the Parties before seeking court intervention. On August 18, 2021, CLF responded to Defendants'

[3] Because resolution of disputes as to the First RFPs is expected to resolve similar disputes regarding the First Set of Interrogatories, only Defendants' Responses to First RFPs are the subject of the instant motion.

[4] Attached hereto as Exhibit C.

August 9 Letter. On August 20, 2021, the Parties met and conferred. On September 10, 2021, CLF sent a letter responding to Defendants' Responses. On September 13, 2021, the Parties met and conferred again. On September 23, 2021, Defendants sent a letter, offering to further confer to narrow some of the areas of dispute. On September 27, 2021, the Parties met and conferred again, where Defendants made no narrowing proposals and, instead, maintained blanket relevance objections. On September 29, Defendants sent another letter restating their objections without any substantive narrowing proposals. On October 1, 2021, CLF wrote again regarding Defendants' intransigence. On October 4, 2021, the Parties held yet another meet-and-confer to address Defendants' time frame objections. The Parties exchanged several additional emails, but as of November 3, 2021, agreed that an impasse had been reached on several issues, including the scope of relevance and the default time period. The Parties continued to exchange emails regarding search terms until Defendants agreed to a set of proposed terms on November 15, 2021.

On January 4, 2022, CLF filed its first Motion to Compel, ECF No. 68. On January 5, 2022, the Court denied CLF's motion without prejudice. On January 12, 2022, the Court held an informal discovery conference with the Parties, during which the Court ordered the Parties to confer and submit a joint letter to the Court summarizing the remaining disputes between the parties. On January 19, 2022, the Parties held a meet-and-confer, but they were unable to narrow the areas of dispute. On January 25, 2022, the Parties filed a joint letter with the Court summarizing the areas of dispute. On February 14, 2022, the Court held a second informal discovery conference with the Parties, where the Court pressed the Parties to see if there was any room for agreement on the issues described in the January 25 Letter and then set a briefing schedule for CLF to file the instant motion to compel and for Defendants to file their response and a cross-motion for protective order. On February 24, 2022, the Parties conferred again. On March 2, 2022, the Parties agreed in writing

to resolve their dispute over the time period applicable to most of CLF's Requests; however, the Parties were unable to resolve their other disputes.[5]

Nine months after CLF served its First RFPs, Defendants have produced only a limited number of documents in response the First RFPs. The documents that have been produced do not identify which Requests they are responsive to, nor do they include a description in cover letters of what the documents are or where they were obtained. In addition, while Defendants inadvertently produced documents marked as attorney work product—of which CLF advised Defendants and then destroyed at Defendants' request—CLF has not received a privilege log of any documents withheld under any claimed privilege.

III. Argument

This Court should order Defendants to produce the documents responsive to the Requests identified herein because the materials are relevant, and Defendants have failed to make proper objections that would overcome CLF's need for this discovery. Federal Rule of Civil Procedure 34(a) authorizes parties to request production of any documents that fall within the scope of Rule 26(b), which states: "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case . . . ." Fed. R. Civ. P. 26(b)(1). If a party fails to produce documents requested under Rule 34, the requesting party may move to compel disclosure. Fed. R. Civ. P. 37(a)(3). In filing a motion to compel, "the moving party bears the burden of making an initial showing that the requested documents are relevant, and if that showing is made, the opposing party bears the burden of showing that the requested production is improper." *Keefe v. LendUS, LLC*, No. 20-CV-195-JD, 2021 WL 3550036, at *1

[5] In this same correspondence, CLF is seeking to clarify which Requests remain in dispute following the resolution of the default time period issue. As of the date of this Motion, CLF is awaiting confirmation of the remaining Requests in dispute. Should the Parties agree that any Requests included in this Motion are no longer in dispute, CLF will advise the Court in its next filing.

(D.N.H. Aug. 11, 2021) (citations omitted).

Relevance in discovery is construed broadly. *See, e.g., Herbert v. Lando*, 441 U.S. 153, 177 (1979); *Heidelberg Americas, Inc. v. Tokyo Kikai Seisakusho, Ltd.*, 333 F.3d 38, 41 (1st Cir. 2003) (courts are to interpret discovery rules liberally "to encourage the free flow of information among litigants."). The scope of what is relevant—and therefore discoverable—"is framed by the pleadings," and discovery rules "must be construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case." *Nat'l Liab. & Fire Ins. Co. v. Carman*, No. 17-CV-038-WES, 2017 WL 11477214, at *1 (D.R.I. Dec. 12, 2017) (quoting *Fudge v. Time Warner Cable, Inc.*, No. 3:16-CV-11396-MGM, 2017 WL 2836992, at *3 (D. Mass. June 30, 2017)).

Once a movant has satisfied its initial burden, the opposing party "bears the burden of establishing lack of relevancy or undue burden." *Autoridad de Carreteras y Transportacion v. Transcore Atl.*, 319 F.R.D. 422, 427 (D.P.R. 2016); *see also* 8 Fed. Prac. & Proc. Civ. § 2008 & nn. 31, 31.5 (3d ed.) (collecting cases).[6] When objecting to any part of a document request, the objection must "*state with specificity* all grounds upon which the objecting party relies. Any ground not stated in an objection *shall be deemed waived*." Local Rule Cv 34(b) (emphasis added). Objections to document requests "must include reasons and, in this District, must be stated with specificity." *Cornell Corr. of R.I., Inc. v. Cent. Falls Det. Facility Corp.*, No. 11-CV-491-WES-PAS, 2012 WL 6738283, at *2 (D.R.I. Dec. 28, 2012). Objections "must articulate *precisely why* a particular discovery request calls for irrelevant information or uses vague terms and/or why responding to it would be unduly burdensome." *HealthEdge Software, Inc. v. Sharp Health Plan,*

[6] Regarding electronically stored information, "the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause . . . ." Fed. R. Civ. P. 26(b)(2)(B).

No. 19-CV-11020-ADB, 2021 WL 1821358, at *4 (D. Mass. May 6, 2021) (citations omitted) (emphasis added).

The materials CLF seeks through the instant Motion lie at the heart of CLF's claims. The Motion broadly seeks to compel production of documents concerning: (i) Defendants' knowledge and analyses of the severity and imminence of risks posed to their infrastructure by severe weather and climate change; (ii) corporate policies and practices governing the climate resilience of Shell's infrastructure; and (iii) actions taken at and severe weather impacts already affecting Shell's other facilities similar to the Terminal. As described in Section III.A, this material is relevant to various issues in this case including, among others: (i) the severity and imminence of risks to the Terminal; (ii) the requirements of "good engineering practices"; and (iii) whether Defendants are satisfying the "good engineering practices" standard.

The instant Motion is divided into four main sections. Section III.A concerns documents regarding Defendants' knowledge of the risks of climate change and actions they have taken in response, along with Defendants' objection to the term "climate change" and related terms. Section III.B concerns additional requests in dispute that do not fit neatly into the preceding section. Section III.C addresses Defendants' waiver of certain categories of objections, including: (i) Defendants' failure to specify grounds for their burden and proportionality objections, (ii) Defendants' waiver of objections to certain Requests by making improper conditional responses, and (iii) Defendants' improper reliance on general objections. Finally, Section III.D discusses Defendants' improper delay in producing responsive documents.

A. Documents Concerning Defendants' Knowledge of Climate Change and Its Effects on Shell's Other Infrastructure are Discoverable

The primary dispute between the Parties concerns the relevance of documents that do not specifically refer to the Terminal, such as (i) documents concerning Shell facilities other than the

Providence Terminal, including the engineering of those facilities, the impacts of severe weather at those facilities, and/or company-wide Shell engineering and climate policies applicable to those facilities, and (ii) documents concerning Defendants' knowledge regarding climate change and the risks it poses to infrastructure.[7] Defendants have maintained that only documents that specifically refer to the Terminal's design and operation are relevant, and any other documents are outside the scope of CLF's claims. *See, e.g.,* Exhibit C at 2. Defendants either (i) refused to produce responsive documents at all, *see* Request Nos. 23, 25-27, (ii) expressly limited their responses to exclude documents that do not directly relate to the Terminal, *see* Request Nos. 12-17, 19-21, and 24, or (iii) improperly conditioned their production "subject to" their objection, *see* Request No. 10.

However, as explained below, many categories of documents from outside the Terminal's fence-line are relevant and discoverable, including information regarding Shell's engineering policies and practices, whether those policies and practices were followed at the Terminal, and Defendants' understanding of the risks associated with climate change. Shell has a long and extensive history of research and analysis of climate impacts, as well as declarations calling for governments and companies to address those impacts, and has made many public statements suggesting that its own consideration of severe weather and climate change risk and resilience is centralized. These documents are relevant and discoverable for the reasons described below.

1. Documents Concerning Shell Facilities Other Than the Providence Terminal Are Discoverable, Including the Information Regarding the Engineering of the Facilities, Impacts of Severe Weather at Those Facilities, and/or Company-Wide Shell Engineering and Climate Policies Applicable to Those Facilities

CLF served Requests for (i) documents specifically concerning other Shell facilities, *see*,

[7] Documents relating to Shell's engineering and climate policies, and related climate change projections, fit into each of these categories. For brevity, CLF has addressed these documents only in the first subsection concerning other Shell facilities.

e.g., Request Nos. 26 and 27 (effects of Hurricanes Sandy and Ike "on Defendants' infrastructure and on Defendants' engineering, design, and management of terminals, refineries, and other infrastructure"), and (ii) documents concerning centralized climate change preparation and decision making, *see, e.g.*, Request Nos. 10 (addressing climate change, including "engineering, design, and management of facilities" and "corporate policy, management, or decision-making"); 17 (Shell's Metocean Team); 23 ("Shell's consideration of climate change in its design and engineering of terminals, refineries, and other infrastructure."). Defendants objected to these Requests, stating that documents concerning other facilities are irrelevant to CLF's claims. *See* Ex. B at 12, 21, 24-25, 27-28. Defendants' objections are meritless. Documents concerning other Shell facilities, including company engineering and climate policies, are highly relevant to several issues in this case.

First, the requested material is relevant to evaluate (i) what is required by the "good engineering practices" standard set by Defendants' RIPDES Permit, and (ii) whether Defendants have violated that standard. Shell's policies and procedures for analyzing and addressing such risks are clearly relevant to the inquiry of what qualifies as "good engineering practices." Shell has made numerous statements describing centralization of climate change risk and resilience consideration. According to Shell: "Each Shell entity and each Shell-operated venture is responsible for implementing climate change policies and strategies." Royal Dutch Shell plc, *Powering Progress: Annual Report and Accounts 2020*, 96 (2021), *available at* https://reports.shell.com/annual-report/2020/servicepages/downloads/files/shell-annual-report-2020.pdf. In fact, a Dutch court recently concluded that Shell plc is ultimately responsible for the emissions of all its subsidiaries because it controls climate policies for the entire Shell group. Rechtbank Den Haag [The District Court of The Hague], 26 May, 2021, Rechtspraak.nl, ECLI:NL:RBDHA:2021:5339 (Neth.),

available at https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339. The court found that individual Shell companies have the responsibility to implement corporate policy, although Shell plc determines the policies of the Shell group. *Id.* at 4.4.4. Following its findings, the court held that Shell plc was obligated to reduce the emissions of the entire Shell group through corporate policies in order to meet the level of emissions set by the court. *Id.* at 4.4.55.

The Hague District Court's findings are borne out by many of Shell's statements regarding its corporate structure. Shell has global teams that "support the businesses in monitoring and addressing certain physical risks of climate change," including by providing "direct technical assistance to facilities, based on their analysis of the potential impacts of climate change in different operating environments." *Annual Report and Accounts 2020* at 97. Shell's teams also incorporate "considerations of certain potential physical climate change risks in the internal Design and Engineering Practice (DEP) requirements for new projects" and then periodically reviews these DEPs "to take account of changes in the risk environment, including emerging weather and climate factors." *Id.*

One such team tasked with considering climate preparedness for its infrastructure is the "Metocean Team." This team is responsible for (i) generating climate change projections, (ii) establishing climate preparedness standards for Shell infrastructure, and (iii) evaluating the preparedness of Shell's existing infrastructure. Examples of the Metocean Team's climate change projections for the years from 2030 to 2050 include a "Regional Temperature Increase Review," a "Global Sea Level Rise Review," and a "Regional Increased Precipitations Review." *See, e.g.*, Exhibit D at 8-10. The Metocean Team also develops and updates design standards for new infrastructure that includes climate preparedness requirements and evaluates the climate

preparedness of Shell's existing infrastructure to determine what facilities need to be retrofitted to meet modern standards. *Id.*

Shell's own climate preparedness standards, climate vulnerability analyses, and remedial actions at other facilities are highly relevant to determining what a reasonable engineer would do at the Terminal. Even though the ultimate application of the "good engineering practices" standard is an objective issue to be decided by the Court and the jury, evidence of similar evaluations conducted for other facilities is relevant and discoverable. *See, e.g., City of Wilmington v. United States*, 141 Fed. Cl. 558, 563–64 (2019) (holding that the defendants' assessments of whether a charge was "reasonable" under the Clean Water Act were relevant even though the court makes the ultimate determination *de novo*).

Second, this information is also relevant to the severity and imminence of risks to the Terminal. Part of Shell's centralization of climate policy includes climate change projections. As noted above, Shell's Metocean Team generates regional climate change predictions. Similarly, Shell's investment decisions and discussions with industry trade groups, (*see, e.g.*, Request No. 10), speak to Shell's evaluation of the risk of climate change to its facilities. Also, the damage suffered by other Shell facilities from severe weather is informative as to the likely impact to the Terminal of similar weather events.

Third, this information is also highly relevant to Defendants' defenses in this case. Defendants maintain that they are satisfying all their obligations at the Terminal and that they have done everything required by the "good engineering practices" standard. *See, e.g.*, Answer, ECF No. 57 at 75-77 (Affirmative Defenses 5, 6, 10). Evidence regarding Defendants' process for making these pertinent legal and factual determinations and any discrepancies between actions taken at other Shell facilities and those taken at the Terminal is clearly relevant for the purpose of

evaluating their defenses. *See City of Wilmington*, 141 Fed. Cl. at 563. Moreover, Shell's engineering and climate policies and practices are relevant to credibility. If Defendants' litigation position and/or expert testimony conflicts with Shell's own internal practice, that casts doubt on the credibility of Defendants' assertions. *See id.* at 563-64 (finding that the defendants' evaluations of "reasonableness" may be used to impeach the defendants' experts); Fed. R. Civ. P. 26(b)(1) Advisory Committee's Note (2000) ("[I]nformation that could be used to impeach a likely witness, although not otherwise relevant to the claims or defenses, might be properly discoverable."). Additionally, if a sophisticated entity like the Shell group of companies has not developed broadly applicable policies—despite Shell plc's statements to the public and regulators that it has, in fact, done so—it casts doubt on any *post hoc* assurances of compliance in this litigation.

For these reasons, the Court should overrule Defendants' objections and order Defendants to produce documents responsive to the following Requests without limiting that production to documents expressly concerning the Terminal: Request Nos. 10, 17, 23, 25-27.

2. Documents Concerning Defendants' Knowledge Regarding Climate Change and the Risks It Poses to Infrastructure Are Discoverable

CLF also served several Requests inquiring into Defendants' long history of studying climate change and its impacts on fossil fuel infrastructure. For example, Request No. 24 seeks documents related to "Shell's consideration of climate change in investment and spending decisions" and Request No. 12 seeks documents related to the creation of various Shell publications concerning the risks of climate change. Defendants objected that the documents concerning Shell's study and consideration of climate change are irrelevant because they are "wholly unrelated to the Providence Terminal." *E.g.*, Resp. to Req. No. 24. However, documents concerning Defendants' knowledge of climate change and its risks to infrastructure are relevant and discoverable.

First, like the categories of documents described above, documents concerning Shell's study of climate change and its risks are relevant to the severity and imminence of risks at the Terminal. Shell has long been aware of the present impacts and risks of climate change and has said that it was "one of the first energy companies to recognise the climate change threat and to call for action." TAC ¶ 132, (quoting Royal Dutch Shell plc, *Responsible Energy Sustainability Report* 2 (2008)). Shell's long and detailed study of climate change and its effects has afforded Defendants significant insight into the severity and likelihood of climate-change induced discharges.

Second, the documents are relevant to determining what Defendants were required to disclose to regulators. CLF has alleged that Defendants have failed to disclose to the Terminal regulators information regarding the risks to the Terminal. TAC ¶¶ 329-334. CLF has further alleged that Defendants misled RIDEM and the public by failing to disclose and address these risks in their SWPPP, permit application, and other filings with RIDEM. *See, e.g.*, TAC ¶¶ 274–93; 312–16; 331–32. CLF additionally alleged that Defendants' extensive history of public statements about the risks posed by climate change demonstrates that they are well aware of the corresponding substantial danger to all of their infrastructure, including the Terminal, and that despite this knowledge, Defendants have failed to address those risks at the Terminal in violation of the CWA and RCRA.

Finally, this material is also relevant to CLF's request for civil penalties. A substantial component of the civil penalty calculation is the egregiousness of Defendants' conduct, and the duration of the violations is relevant to that analysis. *See, e.g.*, 33 U.S.C. § 1319(d) ("In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such

violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator . . . ."). Failing to prepare the Terminal for climate change is particularly egregious if Defendants have extensive information about the likelihood and severity of risks and have not taken any measures to mitigate those risks. Even if the actual violations are limited by a five-year statute of limitations (which CLF does not concede), Defendants' long history of ignoring known climate risks would be relevant to the appropriate penalty calculation.

For these reasons, the Court should overrule Defendants' objections and order Defendants to produce documents responsive to the following Requests without limitation: Request Nos. 12-16, 19-21, and 24.

3. The Court Should Overrule Defendants' Objections to "Climate Change" and Related Terms

In response to five of CLF's Requests, Defendants object that the terms "climate change," "greenhouse effect," and related terms are "undefined" in the Requests, *see* Responses to Requests 10, 11, 23-25, but these objections are unsupportable. Defendants are intimately familiar with these terms and use them extensively in both public statements and in their own filings in this case. For example, Defendants used the term "climate change" over thirty times in their Memorandum in Support of Defendants' Motion to Dismiss Plaintiff's Third Amended Complaint, ECF 46-1, including Defendants' argument that the Court should have deferred to actions by the State of Rhode Island on climate change. Similarly, an entire section of Shell plc's most recent Annual Report is entitled "Climate Change and Energy Transition," where Shell states that "Shell has long recognized that greenhouse gas (GHG) emissions from the use of hydrocarbon-based energy are contributing to the warming of the climate system." *Annual Report and Accounts 2020*, at 94.

For these reasons, the Court should overrule Defendants' objection to these terms in Request Nos. 10, 11, and 23-25.

B. Miscellaneous Requests Where Defendants Refuse to Produce Relevant Documents

This section addresses Requests where the parties have a dispute concerning the scope of production that does not fit squarely within the other categories in this Motion.

a. Request No. 1

Request No. 1 seeks: "All document or record retention policies applicable to the operations and remediation efforts at the Terminal from 1985 through present." Defendants objected that documents dating back to 1985 are irrelevant and not proportional to the needs of this case. Ex. B at 6. Defendants then purported to produce only those responsive documents "that have been in place during the time a Defendant owned, operated, or controlled the Terminal." *Id*. However, Request No. 1 seeks a very limited set of documents governing the Terminal's records retention policies. These policies inform what documents Defendants can be expected to have retained over that period. The nature and limited scope of information sought by Request No. 1 justify the request for information from 1985 to the present. Meanwhile, Defendants' purported limitation of their production is impermissibly vague. Defendants do not say what period they contend that the Terminal was owned or operated by a Defendant. Moreover, Defendants provide no information on the burden supposedly imposed by searching for this very limited set of documents.

Therefore, the Court should overrule Defendants' objections to Request No. 1 and order Defendants to search for and produce responsive documents without limitation.

b. Request No. 4

Request No. 4 seeks "Documents sufficient to show the management structure of the Terminal, including all individuals who hold supervisor and/or managerial roles." Defendants' Response purports to limit their production to documents that identify "individuals with

supervisory or managerial roles at the Providence Terminal related to the issues implicated by Plaintiff's CWA and RCRA claims." Ex. B at 8. Defendants' proposed limitation is improper for the following two reasons. *First*, Defendants chose not to make a specific objection in their Responses to First Set of RFPs; they have thus waived the right to limit their production. Defendants' only objection to the request was that the term "documents sufficient to show" was vague. *Second*, Defendants' purported limitation is itself unreasonably vague. CLF would be unable to determine if Defendants appropriately identified individuals with roles "related to the issues implicated" in CLF's TAC because it would be unable to determine how Defendants made such classifications.

Therefore, the Court should overrule Defendants' objections to Request No. 4 and order Defendants to search for and produce responsive documents without limitation.

c. Request No. 6

Request No. 6 seeks: "All Documents related to corporate control of any activities at the Terminal, including policies governing Defendants' corporate interactions with each other and any parents or subsidiaries." Defendants object, in pertinent part, that CLF's request seeks documents that are "not relevant to the CWA and RCRA claims in this matter and/or the relief sought by Plaintiff, including policies wholly unrelated to the activities at issue in the case" and purport to limit their product to documents "relating to the activities at the Providence Terminal by the parties to this case that have owned and/or operated the Terminal." Ex. 8 at 8-9. Defendants' objections and limitations are misplaced.

Documents concerning the corporate relationship between Defendants and/or the other entities falling under the Shell plc group of companies is highly relevant to the issue of liability in this case. Defendants are (or were in the case of Motiva) direct or indirect subsidiaries or joint ventures over which Shell plc exercised control and are part of a vertically integrated corporate

structure. More specifically, Defendants Triton and Equilon are subsidiaries of Shell Oil Company, which is a subsidiary of Shell Petroleum. Based on Shell's vertically integrated corporate structure as discussed above, *see* Sections I and III.A.1 above*supra*, it appears each organization is responsible for its own environmental compliance and, to an as yet undetermined degree, that of its subsidiaries; therefore, each Defendant is liable for Defendants' failures at the Terminal. Federal environmental laws are concerned with "control" over the relevant acts or omissions, *see*, *e.g.*, Ord. on MTD at 6 (noting that the touchstone for liability under RCRA is "control over the Terminal and its waste disposal processes"), and not the niceties of state corporate law. These considerations are similar to the conclusions of the Hague court that found Shell plc responsible for emission reductions for all of its subsidiaries because of the "far-reaching control and influence" that Shell plc has over the various subsidiaries. Rechtspraak.nl, ECLI:NL:RBDHA:2021:5339, at ¶ 4.4.23.

Accordingly, Defendants' objections and attempts to limit their production are improper. *First*, Defendants' objection is hopelessly vague. Defendants do not explain how the requested documents are "wholly unrelated to the activities at issue," or give CLF any basis to evaluate what activities Defendants deem at issue or not at issue. Similarly, Defendants provide no basis for limiting their production to only the parties who have "owned and/or operated the Terminal."

Second, Defendants have waived any potential right to limit their production because Defendants did not make any specific objection to this Request. Defendants made no specific objection to information about activities by (i) non-parties, or (ii) parties who have not owned or operated the Terminal. Without a stated relevant, specific objection, this purported limitation is improper. Documents governing these parties' corporate interactions, especially those with the other Defendants, are highly relevant.

Therefore, the Court should overrule Defendants' objections to Request No. 6 and order Defendants to search for and produce responsive documents without limitation.

d. Request No. 7

Request No. 7 seeks: "All contracts and related Documents, including relevant scope(s) of work, related to environmental monitoring, sampling, analysis, and/or assessment at the Terminal from 1985 to present." Defendants object, in pertinent part, that (i) "[d]ocuments dating back to 1985 are irrelevant to Plaintiff's claims," and (ii) "documents involving environmental monitoring are irrelevant if they "do not involve compliance with the Terminal's RIPDES permit or its management of waste." Ex. B at 9. Defendants then purport to limit their production to "environmental monitoring, sampling, analysis, and/or assessment at the Terminal involving compliance with the Terminal's RIPDES permit or waste management during the period that a Defendant owned or operated the Terminal." *Id.*

This Request seeks a limited set of documents concerning environmental monitoring and analysis by contractors at the Terminal. These documents are highly relevant to CLF's claims that (i) Defendants failed to disclose relevant information to RIDEM, and (ii) Defendants' failure to prepare the Terminal for climate change will result in discharge of toxic pollutants into the environment. Any environmental analysis or sampling could inform both the likelihood of prohibited releases and the nature of material that could be released. Defendants fail to explain how any environmental assessment or sampling at the Terminal would not be relevant to these issues, and Defendants' purported limitation of its production to assessments "involving compliance with the Terminal's RIPDES permit or waste management" does not give CLF any information from which to assess the objection. For the same reason, this limited request for documents going back to 1985 is not unduly burdensome or disproportional.

Therefore, the Court should overrule Defendants' objections to Request No. 7 and order

Defendants to search for and produce responsive documents without limitation.

e. Request No. 22

Request No. 22 seeks: "All Documents related to changes in physical infrastructure at the Terminal." Defendants object, in pertinent part, that Request No. 22 seeks information "regarding physical infrastructure changes that bear no relation to Plaintiff's claims regarding alleged violations of the Terminal's RIPDES permit and of its obligations under RCRA" and purport to limit their production to documents "regarding physical infrastructure changes at the Providence Terminal related to compliance with the Terminal's RIPDES permit or its obligations under RCRA." Ex. B at 24.

Defendants admit, as they must, that the nature of the physical infrastructure at the Providence Terminal is central to CLF's claims of liability. However, Defendants now claim that not all changes to physical infrastructure are relevant. Defendants provide no explanation of this assertion. To the extent a category of infrastructure changes might in fact be irrelevant, Defendants have made no effort to explain or provide proposed limitations on its searches/production efforts to address such a concern. The changes that Defendants have made to the physical infrastructure of the Providence Terminal over time, and what consideration—if any—Defendants have given to climate change risks are highly relevant to determine, for example, whether in light of climate change-induced risks, Defendants prepared their SWPPP in accordance with good engineering practices, TAC ¶¶ 288–93, addressed leaks and spills, *id.* ¶¶ 307–11, and updated their SWPPP. Id. ¶¶ 313–16.

Therefore, the Court should overrule Defendants' objections to Request No. 22 and order Defendants to search for and produce responsive documents without limitation.

f. Request No. 31

Request No. 31 seeks: "All Communications with the State of Rhode Island or the City of

Providence regarding the Terminal." Defendants object, in pertinent part, that the Request "seeks information that is not relevant to the CWA and RCRA claims in this matter and/or the relief sought by Plaintiff" and purport to limit their production to documents "related to the CWA and RCRA claims in this case." Ex. B at 30.

Request No. 31 is relevant to CLF's claims because Defendants' communications with the State of Rhode Island and the City of Providence regarding the Terminal can shed light on Defendants' knowledge of climate change-induced risks, *see* Section III.A.2 *supra*, and what measures Defendants have needed to take to comply with the CWA and RCRA, such as information on what the good engineering practices standard entails. Defendants provide no explanation for why these communications might be irrelevant or any sense of the burden of producing these communications.

Therefore, the Court should overrule Defendants' insufficient objections to Request No. 31 and order Defendants to search for and produce responsive documents without limitation.

C. Defendants Waived Certain Categories of Objections

As explained below, the Court should hold that Defendants have waived (i) burden and proportionality objections, (ii) objections to Requests where Defendants gave conditional responses, and (iii) improper general objections.

1. Defendants Waived Their Burden and Proportionality Objections By Failing to Specify the Burden Imposed

Defendants have waived their generalized, non-specific burden and proportionality objections for failing to provide any factual basis to support their objections. An objection to a discovery request must "state with specificity the grounds for objecting to the request, including the reasons." Fed. R. Civ. P. 34(b)(2)(B). "[B]oilerplate generalized objections are inadequate and tantamount to not making any objection at all." *HealthEdge Software, Inc.*, 2021 WL 1821358 at

*4 (citations omitted). "Boilerplate objections that a request for discovery is overbroad and unduly burdensome are improper unless based on particularized facts." *Autoridad de Carreteras*, 319 F.R.D. at 427 (citations and quotation marks omitted).

Defendants made a variety of general, non-specific burden and proportionality objections purportedly tied to their assertion that CLF's requests seek information that is "not relevant," yet provided no details as to how the information is not relevant, nor any factual bases for the supposed burden such production would impose on Defendants. For example, CLF's Request No. 37 sought: "All analyses of the Terminal's infrastructure, including but not limited to buildings, berms, and pipelines." Defendants objected: "Defendants object to this Request as overbroad, unduly burdensome, and not proportional in relation to the reasonable needs of the case because it seeks information that is not relevant to the CWA and RCRA claims in this matter and/or the relief sought by Plaintiff." Ex. B at 32. Defendants' objection provides no information regarding how analyses of infrastructure alleged to be deficient is irrelevant to this case, nor do they explain the burden of producing these analyses, such as what analyses are supposedly irrelevant or how many analyses are done in a given period on the berms, pipelines, etc.

For these reasons, the court should hold that Defendants' burden and proportionality objections to the following Requests are waived: 1, 2, 6-17, 19-28, 30-33, 35, 37-42, 48-53, and 59.

2. Defendants Waived Their Objections to Requests Where Production is Conditionally Based on Search Terms

After their objections to several of CLF's Requests, Defendants made the following response (or a response in substantially equivalent form): "Subject to the foregoing general and specific objections, Defendants will produce responsive, non-privileged documents in their possession, custody, and control using the document search terms that remain to be negotiated and

agreed upon by the parties." *E.g.*, Ex. B at 10 (Response to Req. No. 8). This conditional response is improper. Defendants' objections are vague and do not state what parameters Defendants are placing on their production, leaving CLF unable to properly respond to Defendants' objections as well as unable to tell when a production is complete or partial. CLF "is left guessing as to whether Defendant[s] ha[ve] produced all documents, or only produced some documents and withheld others on the basis of" their objections. *Pro Fit Mgmt., Inc. v. Lady of Am. Franchise Corp.*, No. 08-CV-2662-JAR-DJW, 2011 WL 939226, at *9 (D. Kan. Feb. 25, 2011), *objections overruled*, No. 08-CV-2662-JAR-DJW, 2011 WL 1434626 (D. Kan. Apr. 14, 2011); *see also Haeger v. Goodyear Tire & Rubber Co.*, 906 F. Supp. 2d 938, 976-77 (D. Ariz. 2012), *aff'd*, 793 F.3d 1122 (9th Cir. 2015), *aff'd*, 813 F.3d 1233 (9th Cir. 2016), *vacated and remanded on other grounds*, 869 F.3d 707 (9th Cir. 2017) (holding the defendant could not "combine its objections with a partial response, without any indication that the response was, in fact, partial."). Meanwhile, saying that Defendants will produce documents using the search terms agreed to by the Parties does not clarify the matter, because despite saying they will use agreed upon search terms, such production is still "subject to" Defendants' vague objections.

For these reasons, the Court should overrule and strike Defendants' objections for the following Requests and order Defendants to produce documents based on the Parties' search terms irrespective of Defendants' specific objections for Request Nos.: 8, 9, 10, 11, 30, 32, 36, 37, 39, 41, 53, and 57.

3. General Objections

CLF asks this Court to overrule Defendants' General Objections 1–7, 11–13, 15, and 16, as the objections are improperly generic. As noted above, Defendants are required to state "with specificity *under each individual request* all grounds upon which the objecting party relies" or Defendants waive that ground for objection. LR Cv 34(b) (emphasis added). Local Rule 34 makes

clear that this requirement "precludes the consideration of any generic general objections." *Id.*

Defendants' Responses include a section entitled "General Objections and Limitations," Exhibit B at 2–6, consisting of improper objections falling roughly into two categories: (i) generic objections purporting to apply to CLF's Requests "to the extent that" they seek certain types of information, *see id.* at ¶¶ 1–7, 16; and (ii) objections to certain definitions in CLF's Requests, *see id.* at ¶¶ 11–13, 15. Defendants' Responses then include the following statement improperly purporting to apply their General Objections to each of CLF's Requests, whether or not Defendants made a specific objection to a certain Request:

> These General Objections are incorporated by reference into each of the individual Responses below. The following Responses are made subject to the foregoing preliminary statement and these General Objections. Defendants do not waive any General Objections in response to any specific Discovery Request propounded, and any specific objection made by Defendants in no respect limits or modifies the General Objections stated herein.

Id. at 5–6.

Defendants' objections are exactly the type of "generic general objection" that Local Rule Cv 34(b) prohibits. In the first category of objections, Defendants purport to object to any Request "to the extent that" it seeks certain categories of information. For example, in Paragraph 3 Defendants "object to the Requests as unduly burdensome to the extent they seek information or documents that cannot be located after a reasonable search of its records reasonably believed most likely to contain the responsive information." This objection gives CLF no information about what Requests it applies to or which records were searched or not searched. Paragraphs 1, 2, 4–7, and 16 are similarly vague and imprecise.

Defendants' objections to definitions in CLF's Requests are similarly non-specific. For example, Defendants object to CLF's definitions of "Defendants," "Shell," and "Shell's RIPDES Permit," but Defendants do not state (i) how they are limiting their search and production, or

(ii) how the objection might impact any particular Request. *Id.* at ¶¶ 11–13.[8]

In some of their correspondence, Defendants have argued that the General Objections are permissible because they are reiterated in specific objections to certain Requests. *See* Ex. E at 2. But, if Defendants have made similar specific objections where relevant, the General Objections serve no purpose. Where Defendants have not made specific objections to a Request, they have waived that objection and cannot rely on the General Objections to support a failure to search for or produce documents responsive to a Request. The General Objections serve no legitimate purpose and only inject uncertainty into CLF's review of Defendants' Responses.

For these reasons, the Court should overrule Defendants' General Objections numbers 1-7, 11-13, 15, and 16.

D. Delayed Productions[9]

Although CLF served its Requests for Production on May 28, 2021 and the Parties agreed to rolling productions, Defendants have thus far produced less than 2,000 documents—many of which are public record and/or were part of CLF's production of documents in connection with its Initial Disclosures. Defendants have provided no plausible justification for this extended delay. Indeed, Defendants have failed to produce responsive documents that even they agree are relevant.

The Parties first exchanged proposed search terms in July 2021. While Defendants objected outright to certain of CLF's proposed search terms and strings, many of their Responses stated Defendants would "produce responsive, non-privileged documents in their possession, custody

[8] Defendants do include the following objection in their Responses to Requests 13 and 14: "Defendants also object to this Request as vague, ambiguous and misleading because it seeks information about 'Shell' but defines that term to include all Defendants." However, Defendants do not develop or explain this objection.

[9] CLF is unable to determine exactly which Requests fall into this category, as Defendants have provided no information identifying the Requests to which the documents they have produced are responsive, nor have they included a description of what the documents are or where they were obtained. Further, Defendants have conditionally objected to many of CLF's Requests, *see* Section III.C.2, making it even more difficult for CLF to know if Defendants have, in fact, responded to a given Request, either in full or in part.

and control using the document search terms that remain to be negotiated and agreed upon by the parties." *E.g.*, Ex. B at 10 (Response to Req. No. 8). CLF proposed new terms in August 2021, to which Defendants indicated they needed to follow up on, but at all times Defendants assured CLF that they would undertake to search for relevant documents regardless of the negotiations as to search terms.[10] In light of this understanding, even though Defendants had objections to certain search terms CLF proposed in August 2021, CLF had no reason to believe that diligent searches for responsive documents were not underway. However, on November 1, 2021, during a meet-and-confer, Defendants for the first time indicated that they were unable to run many of the searches proposed by CLF because of certain requirements of their vendor. In fact, it was only then that Defendants advised CLF that they could not even run the alternate search terms they provided to CLF because Defendants' own search strings also ran afoul of their vendor's requirements. As of November 3, 2021, Defendants confirmed they had run searches on only four Requests, but did not provide any feedback on the results of those searches nor advise whether they were producing documents associated therewith. After additional back and forth via email, on November 15, 2021, Defendants affirmatively stated they had re-structured the remaining searches in a form acceptable to their vendor and would run the searches. Ex. F, 1 ("We will proceed with the searches as provided in the spreadsheet and follow up as described in your message.").

While Defendants indicated in the Joint Status Report and at the February 14, 2022

[10] In the context of a meet and confer, this agreement was confirmed:

> Defendants confirmed that they are conducting a reasonable search for responsive documents, in addition to any agreed-upon search terms. In particular, Defendants agreed that they will investigate the locations of any responsive documents and will not withhold any known responsive documents, even if those documents do not hit on search terms agreed to by the Parties or ordered by the Court.

Ex. H, 2. A day later, Defendants confirmed that this was their understanding: "It reflects our understanding of the discussion that occurred during our August 20th conference call." *Id.* at 1. As such, Defendants did not identify any issues that would have precluded ongoing searches.

conference that they had issues with the search strings they agreed to run on November 15, 2021, CLF did not receive any additional information regarding any searches run or corresponding issues until March 3, 2022—over three months after they agreed to run searches *and the day before the instant Motion was due*—when CLF received a letter from Defendants' counsel. The letter informed CLF for the first time that "[u]pon running the revised search strings, Defendants avoided the previously identified technical issues but encountered new problems." Ex. G, 2. While the letter stated that "many" of the searches were excessively broad and "returned a disproportionate and excessive number of documents," *id.* at 2, Defendants only provided information detailing these issues for one Request, and related search string, out of the 29 agreed-upon search strings. *Id.* Defendants then proposed new search strings to resolve the identified issues and "urge[d] CLF to consider moving forward as proposed and" revisit any concerns about the new search terms after they have been run. *Id.* at 3. As of the filing of this Motion, CLF has not had a full opportunity to review Defendants' new proposal.

Moreover, although Defendants represented at the conference on February 14, 2022, that another production was forthcoming, no such production has occurred. As of the date of this Motion, Defendants have made only two rolling productions of 975 documents and 815 documents respectively and provided virtually no specific feedback about the searches that have been run. Defendants' last production was on November 14, 2021. As such, Defendants have not timely complied with their obligations in discovery. The continued and unjustified delays in production of documents should not be allowed to continue. Accordingly, CLF requests that Defendants be ordered to (i) produce the remainder of those materials responsive to CLF's Requests that are not in dispute on a continuing basis every two weeks, (ii) provide information as to which Requests the documents are responsive and to what degree the Requests have been answered (if not in full),

and (iii) provide CLF with detailed information (including hit reports, and the custodians and repositories that have been searched) on the results of searches Defendants have run so far.

IV. Conclusion

For the foregoing reasons, CLF asks the Court to:

1. Overrule Defendants' objections to producing documents unrelated to the Terminal and order Defendants to Documents responsive to the following Requests, without limitation: (a) Request Nos. 10, 17, 23, 25-27, and (b) Request Nos. 12-16, 19-21, and 24;
2. Overrule Defendants' objections that CLF's Requests are vague because they do not define "climate change," "greenhouse effect," and related terms, and order Defendants to produce Documents responsive to the following Requests without reference to the definitional objections: Request Nos. 10, 11, 23-25;
3. Overrule Defendants' objection to the time period for Request No. 1 and order Defendants to produce documents response to Request No. 1 from 1985 to present;
4. Strike from Defendants' Response to Request No. 4 the phrase "related to the issues implicated by Plaintiff's CWA and RCRA claims" and order Defendants to produce Documents responsive to Request No. 4 without such limitation;
5. Strike from Defendants' Response to Request No. 6 the phrase "by the parties to this case that have owned and/or operated the Terminal" and order Defendants to produce Documents responsive to Request No. 6 without such limitation;
6. Strike from Defendants' Response to Request No. 7 the phrase "involving compliance with the Terminal's RIPDES permit or waste management during the period that a Defendant owned or operated the Terminal," overrule Defendants' time period objection, and order Defendants to produce Documents responsive to Request No. 7 without such limitations;
7. Strike from Defendants' Response to Request No. 22 the phrase "related to compliance with

the Terminal's RIPDES permit or its obligations under RCRA" and order Defendants to produce Documents responsive to Request No. 22 without such limitation;

8. Strike from Defendants' Response to Request No. 31 the phrase "related to the CWA and RCRA claims in this case" and order Defendants to produce Documents responsive to Request No. 31 without such limitation;
9. Overrule any objection that a Request is overbroad, burdensome, or not proportional where Defendants have not supported the objection with specific facts, including Request Nos. 1, 2, 6-17, 19-28, 30-33, 35, 37-42, 48-53, and 59;
10. Hold that Defendants' conditional responses waived their objections to Request Nos. 8, 9, 10, 11, 30, 32, 36, 37, 39, 41, 53, and 57;
11. Overrule Defendants' General Objections 1–7, 11–13, 15, and 16 as improper under Local Rule Cv 34(b); and
12. Order Defendants to (a) produce the remainder of those materials responsive to CLF's Requests that are not in dispute on a continuing basis every two weeks, (b) provide information as to which Requests the documents are responsive and to what degree the Requests have been answered (if not in full), and (c) provide CLF with detailed information (including hit reports, and the custodians and repositories that have been searched) on the results of searches Defendants have run so far.

HEARING REQUESTED

CLF requests oral argument on this motion and estimates that it will take approximately 90 mins.

DATED: March 4, 2022

Respectfully submitted,

CONSERVATION LAW FOUNDATION, INC., by its attorneys

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**Admitted Pro Hac Vice*

FED. R. CIV. P. 37(A)(1) CERTIFICATION

As described above in Section II, CLF has in good faith conferred with Defendants regarding the discovery sought in this motion in an effort to obtain it without court action.

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2022, the foregoing Motion to Compel Production of Documents Responsive to Plaintiff's First Set of Requests for Production to All Defendants was filed through the Court's electronic filing system ("ECF"), through which 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/ Alexandra St. Pierre
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