

**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

**PLAINTIFF CONSERVATION LAW FOUNDATION'S SUPPLEMENTAL
FILING IN SUPPORT OF ITS MOTION TO COMPEL AND ITS REPLY AND
OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR PROTECTIVE ORDER**

Pursuant to the Court's proposal at the June 3, 2022 scheduling conference, Plaintiff Conservation Law Foundation, Inc. ("CLF") submits this supplemental filing in support of its Motion to Compel ("Motion") (ECF No. 72) and its Reply and Opposition to Defendants' Cross-Motion for Protective Order ("Reply") (ECF No. 83).

I. CLF Has Requested Relevant Documents

The documents CLF has requested are relevant to its claims. As discussed throughout CLF's Motion and Reply, the Shell plc group of companies has made numerous statements about its focus on preparing its companies for climate change through studying climate change and evaluating its assets for climate resilience. *See* ECF No. 72, 11-12. Nevertheless, the Parties have been unable to agree on the scope of relevant documents, such as documents concerning i) Shell facilities other than the Providence Terminal, including how those facilities are engineered, whether and how those facilities have been impacted by severe weather and sea level rise, and/or company-wide Shell engineering and climate policies applicable to those facilities, as well as ii) Defendants' knowledge regarding climate change and the risks it poses to infrastructure. As explained in CLF's prior briefing and as discussed below, these documents are relevant to CLF's claims that Defendants have violated the Clean Water Act and Resource Conservation and Recovery Act by failing to consider and prepare for the impacts of climate change at the Terminal.

In their Cross-Motion for Protective Order (ECF Nos. 78, 79) and Reply (ECF No. 85), Defendants claim repeatedly that CLF has misunderstood the Shell corporate structure and application of corporate policies, despite supposedly having been provided this information by Defendants many times. *See, e.g.*, ECF No. 85, 6. The reality is that CLF has continuously asked for information that will allow it to better understand the Shell corporate structure throughout the Parties' discovery negotiations, and Defendants failed to provide CLF with any concrete information until they filed their Cross-Motion. *See* ECF No. 83, 4-5 (describing the Parties' back

and forth and CLF's repeated requests for more information dating back to August 2021). In ignoring the Parties' history, Defendants heavily rely on the declaration of James Kent Yeates (ECF No. 79-9) as proof that engineering decisions are made at the Terminal level. While the declaration chastises CLF for its alleged misunderstanding of Shell's corporate structure and policies, the declaration creates more questions than it answers.

As an initial matter, Yeates was never disclosed to CLF in Defendants' initial disclosures. *See* Exhibit A (Defendants' Initial Disclosures). In addition, the declaration never states whether Yeates is a licensed professional engineer, nor which Shell entity employs Yeates. Moreover, out of the roughly 1800 documents CLF has received so far, only 35 documents include the name "Yeates," and many of those documents are substantially duplicative. For instance, Yeates is included on emails dating back to 2012, when Motiva had ownership of the Terminal,¹ which discuss the preparation and subsequent recovery response of Motiva's New England Terminals to Hurricane Sandy. Exhibit B (Oct. 30, 2012 Email from Anthony Mills). This email chain, among others, highlights the integrated reporting and decision-making structure of environmental compliance at the Terminal. The emails are sent by an Anthony Mills, whose email signature indicates he is the Business Operations Manager for the Northern Region for Motiva Enterprises and is based out of Houston, Texas, *id. at* 4, indicating some level of group reporting and accountability. The content of the emails also indicates that there is a general "Motiva Technical group" that will be flown in to assist with getting some of the Terminals back online post-Sandy, *id. at* 1, again indicating that there is oversight and authority over Terminal operations at a level

¹ ECF No. 79-9, ¶ 3 ("From 1998 to 2017, the Providence Terminal was owned and operated by Motiva Enterprises LLC."); ECF No. 45, ¶ 26 ("Motiva Enterprises LLC formerly operated the Providence Terminal. Motiva Enterprises LLC was a joint venture between Royal Dutch Shell plc and Saudi Aramco . . . Shell formally announced the completion of the dissolution of Motiva Enterprises LLC on May 1, 2017. Per the dissolution agreement, Shell *maintained control* over the Northeastern region of the U.S., including ownership of the Providence Terminal." (emphasis added) (internal citations omitted)).

above that of an individual terminal.²

The declaration itself also attempts to draw a line around engineering practices at the Terminal. ECF No. 79-9, 3-5. The declaration claims that engineering standards for offshore oil platforms bear no relevance to those of liquid fuel storage terminals. *Id.* at ¶¶ 10-11. Even if CLF were to concede that certain engineering standards for an offshore oil platform are different from those applied to a fuel storage terminal, there are still overarching engineering considerations related to future risk that would be consistent across structures—such as the risk of sea level rise and increasingly frequent and severe storms on coastal and ocean-based infrastructure. How those considerations are taken into account will differ based on asset type and the specific characteristics of each individual asset, but the overarching concerns are the same.

The declaration’s statement that “engineering practices are highly site specific, even within the same type of asset” due to considerations such as age of the infrastructure, geological features, and site-related weather risks, *id.* at ¶ 12, does not go as far as Defendants claim. *See* ECF No. 85, 6 (“Mr. Yeates’ explanation [is] that there is no specific standard applied to all infrastructure other than the non-prescriptive, broad goals in the HSSE Control Framework . . .”). CLF is not saying that all facilities should be engineered in the same way, but that the good engineering practices *standard* applies across facilities, and that certain factors must be considered across similar assets as well as different types of assets. The declaration actually concedes that some standards apply across different facilities within the same asset type, such as the API tanks standards. ECF No. 79-9, ¶ 17.

² While these emails are from 2012 when Motiva owned and operated the Terminal, several of the 2012 Motiva employees remain involved with the Terminal today, including Yeates, Mike Sullivan, and Jennifer Bothwell. *Compare* Ex. B & C (Oct. 30 2012 email from Glenn Hardcastle to Jennifer Bothwell) with Ex. A. Moreover, because Motiva was a Shell joint venture, *see* ECF No. 45, ¶ 26, it is reasonable to believe that much of the corporate reporting structure remains similar today, especially given the retention of Motiva employees.

Moreover, even if there are no corporate policies dictating specific engineering standards for Shell infrastructure, either broad-based or asset-specific, the Motiva emails—and Yeates’ own position within the Shell corporate structure—indicate that there is at least some corporate grouping of similar asset types for environmental risk management, compliance, and oversight. Accordingly, how risks are managed at one facility would necessarily inform preparedness and response practices at other facilities, as well as shed light on what industry practice is and how it relates to the good engineering practices standard. [REDACTED]

[REDACTED] (Exhibit D)

The Yeates declaration also states that the Metocean Team functions essentially as a third-party consultant and that it has not done any analysis of the Terminal because the Terminal has supposedly managed storms well since 1907. ECF No. 79-9, ¶ 14-16. Defendants therefore conclude that there is no relationship between the Terminal and the Metocean Team. ECF No. 85, 6. Not only does this ignore the relevance of the Metocean Team’s regional climate projections to CLF’s claims, it also ignores Shell’s own statements about the impact of the Metocean Team’s engineering work. In its disclosures to the CDP, Shell stated as follows:

[W]e employ a Metocean team who focuses on the physical climate impacts and adaptation aspects. This team conducts assessments of future climate conditions; one of their studies is the Global Sea Level Rise Review (2030-2050). *As this team influences ongoing engineering design standards*, our new projects’ resilience is always based on the latest climate science outlook. The ongoing challenge is retrofitting existing assets, while design standards are revised on an ongoing basis to take account of climate change influences. The most vulnerable existing assets, designed under previous standards, are identified and any adaptation plans will be integrated into Shell existing procedures and processes such as the asset reference plans that guide their ongoing maintenance schedules.

ECF No. 72-6, 9 (emphasis added). Defendants have access to “the latest climate science outlook,”

as well as an engineering team that “influences ongoing design standards.” *Id.* Even if Defendants have chosen not to utilize these resources in evaluating the Terminal’s vulnerabilities to climate change, the climate data and design standards are still relevant and informative as to the climate risks faced by the Terminal, as well as whether the Terminal is prepared to meet those risks under the good engineering practices standard.

Lastly, while the Yeates declaration notes that the frameworks CLF has pointed to, such as the Health, Security, Safety, Environment and Social Performance Control Framework (“HSSE Control Framework”), are general frameworks “as to the identification of risks and the level to which such risks should be managed (e.g., to meet applicable regulations),” ECF No. 79-9, ¶ 24, these policies still apply to the Terminal and are therefore relevant. While Defendants have said they will produce such documents, ECF No. 85, 6, as CLF noted before, it has only received unconsolidated pieces of the HSSE Control Framework. Moreover, as to the more specific policies that are supposedly carried out at the Terminal level, such as the operational Hazards and Effects Management Process (“operational HEMP”), ECF No. 79-9, ¶ 33, CLF has not received documents regarding how these policies and processes are implemented at the Terminal.

II. Conclusion

These examples underscore the relevance of the information requested in discovery. Simply because the Requests would result in production of numerous documents does not diminish their relevance or render them disproportionate to the needs of this case. The risks to Providence and Narragansett Bay are just as significant and important as any locale or resource and should be addressed consistent with good engineering practices. The complexity of Shell’s corporate management and structure underscores the need for discovery responses that will allow the Court to determine the appropriate reach of liability. In sum, the Court should grant CLF’s Motion and deny Defendants’ Cross-Motion.

DATED: July 1, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2022, the foregoing Supplemental Filing in Support of CLF's Motion to Compel and CLF's Reply and Opposition to Defendants' Cross-Motion for Protective Order 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.

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