

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CONSERVATION LAW FOUNDATION, INC.,	:	
	:	Case No.: 3:21-cv-00932-SVN
Plaintiff,	:	
	:	
v.	:	
	:	
GULF OIL LIMITED PARTNERSHIP,	:	
	:	
Defendant.	:	August 24, 2022

**DEFENDANT’S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO COMPEL**

I. Concise Statement of Nature of This Case

This is one of several cases Conservation Law Foundation, Inc. (“CLF”) has filed around New England alleging that various oil storage facilities are susceptible to future weather events due to climate change.

Here, CLF has alleged that Gulf Oil Limited Partnership (“Gulf”), which operates a bulk storage and fuel terminal at 500 Waterfront Street in New Haven, Connecticut (the “Terminal”), fails to comply with its stormwater permit and the Clean Water Act, improperly manages the Terminal’s susceptibility to washout of solid waste, contributes to dangers associated with hazardous wastes that may endanger health or the environment in violation of the Resource Conservation and Recovery Act (“RCRA”), and fails to operate and maintain the Terminal to minimize the possibility of contamination. Compl. at 1-2. Gulf unequivocally denies CLF’s allegations, and a motion to dismiss the case is pending before this Court.

II. Discovery Sought by Gulf Is Relevant to Its Defense¹

¹ A copy of Gulf’s Interrogatories with CLF’s corresponding objections and responses are attached hereto at **Exhibit A**, as copying CLF’s responses into the body of this Motion would make it excessively lengthy.

The interrogatories set forth below are each from Gulf's First Set of Interrogatories, to which CLF objected and responded on May 25, 2022. Following the parties' attempts to narrow and limit outstanding issues, substantive disputes about these interrogatories remain. The interrogatories are set forth below, followed by a discussion for each of why CLF must be compelled to answer them.

Interrogatory Nos. 10 and 11:

INTERROGATORY NO. 10: Paragraphs 367, 368, 369, and 370 reference "relevant facts and/or information" that Gulf allegedly did not identify in its SWPPP or submit to the Connecticut Department of Energy and Environmental Protection. Identify the specific "relevant facts" and/or "information" referenced in these allegations and when you contend they should have been identified in the SWPPP or submitted to the Connecticut Department of Energy and Environmental Protection.

INTERROGATORY NO. 11: In paragraphs 374, 375, and 376 of the Complaint You allege that Gulf failed to amend or update its SWPPP "based on information known to it regarding the factors discussed in Section IV.A, *supra*, and the substantial risks of pollutant discharges and/or releases associated with these factors," as well as to disclose the existence of two outfalls and additional monitoring requirements. Identify how and when Gulf should have updated or amended its SWPPP to address this information.

For both of the above interrogatories, Gulf has asked CLF to identify the "relevant facts and/or information" alluded to in the Complaint that CLF contends Gulf did not identify in its SWPPP or submit to the Connecticut Department of Energy and Environmental Protection ("DEEP"). In its responses, CLF objected on various grounds, including that such information calls for expert testimony. *See Exhibit A* at 35-39. In counsel's meet and confer correspondence, Gulf explained that CLF's objections were unsupported and that, despite its length, the response provided by CLF was unresponsive as it did not ever provide the information requested. *See Exhibit B* (7.19.22 Letter) at 3. During a call on June 14, 2022 and again in a confirmatory letter,

CLF stated that it stood on its objections and response and would not be supplementing with the requested information. *See id.*; *see also* **Exhibit C** (8.23.22 Letter), at 2.

Clearly, the information sought is relevant to Gulf's defense of the claims leveled against it in CLF's Complaint. In fact, the lack of this information is one basis of Gulf's motion to dismiss currently pending before the Court. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). CLF cannot hide behind future expert testimony to avoid providing key information related to its claims against Gulf. "[I]nterrogatories may inquire into the factual basis for particular allegations." *Maziarz v. Hous. Auth. of Town of Vernon*, No. 3:10CV2029 JCH, 2011 WL 4538071, at *2 (D. Conn. Sept. 29, 2011). Here, Gulf simply seeks the factual bases for particular allegations that it kept certain information from DEEP. CLF's answers here are deficient for the same reason its Complaint fails to state a claim—there is no specificity as to *what* Gulf has not included in an SWPPP or submitted to DEEP. There has been no valid reason articulated for CLF to avoid responding to Interrogatory Nos. 10 and 11, and it should be compelled to do so.

Interrogatory Nos. 13 and 14:

INTERROGATORY NO. 13: Describe with specificity the factual basis for your allegations that Gulf is violating the Resource Conservation and Recovery Act's "open dumping" regulations, including, but not limited to, the allegation in paragraph 436 of the Complaint that "Gulf has taken no steps to guard against the further washout of pollutants and solid waste from the Terminal." In your response, identify the alleged "waste" from the Terminal, when you allege that material becomes "waste," and the specific "steps" that are necessary and required to "guard against the further washout of pollutants and solid waste from the Terminal."

INTERROGATORY NO. 14: Describe with specificity the factual basis for your allegations that Gulf is violating the Resource Conservation and Recovery Act's "imminent and substantial endangerment" regulations, including, but not limited to, the allegation in paragraph 449 of the Complaint that "Gulf's failure to adapt the Terminal to the factors discussed in Section IV.A, *supra*, puts the facility, the public health, and the environment at substantial and imminent risk of pollutant discharges and/or releases from the Terminal into New Haven Harbor, the Quinnipiac River, and the Mill River." In your response, identify the alleged "waste" from the Terminal, when you allege that material becomes "waste," and

the specific design and operational failures you contend are present at the facility that violate the Resource Conservation and Recovery Act.

In these two interrogatories, Gulf has asked CLF to identify the alleged “waste” from the Terminal that CLF contends supports its “open dumping” and “imminent and substantial endangerment” claims under RCRA, when CLF alleged that material becomes “waste,” and the specific steps that CLF contends are necessary to guard against the risk of washout of waste from the Terminal. CLF objected to providing this information, primarily saying that it is subject to expert testimony. *See Exhibit A* at 40-62. In its meet and confer letter and during the call, Gulf explained that such information is not subject to expert testimony and CLF must provide the factual bases for the allegations in its Complaint. During the call and in a confirmatory letter, CLF stated that it stood on its objections and response, and it added that materials at the Terminal are hazardous waste constituents and so their presence alone constitutes “waste” under RCRA. *See Exhibit C* at 2.

Again, the information sought is clearly relevant to Gulf’s defense of the claims leveled against it in CLF’s Complaint. CLF cannot hide behind future expert testimony to avoid providing key information related to its claims against Gulf. “[I]nterrogatories may inquire into the factual basis for particular allegations.” *Maziarz v. Hous. Auth. of Town of Vernon*, No. 3:10CV2029 JCH, 2011 WL 4538071, at *2 (D. Conn. Sept. 29, 2011). Here, Gulf simply seeks the factual bases for particular allegations that it is in violation of RCRA and the “waste” that constitutes said violation. That is the most basic factual information necessary to understand the RCRA counts CLF has alleged here. There has been no valid reason articulated for CLF to avoid responding to Interrogatory Nos. 13 and 14, and it should be compelled to do so.

Interrogatory No. 15:

Identify every person or entity, excluding members of Your organization, with whom You have communicated regarding the alleged climate risks at the Facility.

In this interrogatory, Gulf has asked CLF to identify every person or entity, excluding members of CLF, with whom CLF communicated regarding the alleged climate risks at the Terminal. In its responses, CLF objected to providing this information on the basis of the associational privilege and work product protection. *See Exhibit A* at 62-64. During meet and confer among counsel, Gulf explained that neither the associational privilege nor the work product doctrine protects the requested information from disclosure, and CLF has not made the required showing for the associational privilege. On the June 14, 2022 meet and confer call and then in its confirmatory letter, CLF stated that it stood on its objections and response and would not be supplementing with the requested information. *See Exhibit C* at 2. Gulf had explained to CLF that Gulf was simply requesting that CLF identify anyone other than CLF's members or CLF's experts that commented on or advised CLF with respect to factual matters supporting the alleged climate risks at the Terminal as indicated in the Complaint, including but not limited to regulators, policymakers, and legislators. *See Exhibit B* at 3-4.

CLF's objections based on associational privilege and the work product doctrine do not apply here, and it should be compelled to answer Interrogatory No. 15. The associational privilege is grounded in the First Amendment and supports protection against disclosing membership lists. *See P. & B. Marina, Ltd. P'ship v. Logrande*, 136 F.R.D. 50, 59 (E.D.N.Y. 1991), *aff'd sub nom. P&B Marina Ltd. v. LoGrande*, 983 F.2d 1047 (2d Cir. 1992) (citing *NAACP v. Alabama*, 357 U.S. 449 (1958)). However, "the association privilege usually is upheld when the group's causes are unpopular and disclosure would result in harassment or violence constituting an obvious chilling of the members exercise of their rights." *Id.* at *59-60 ("The nature and activities of Seaview can hardly be categorized as analogous to the NAACP, the Black Panther Party, or the

Communist Party. Furthermore, the court is not satisfied that disclosure of the members of Seaview would have any chilling effect whatsoever given the history of litigation by Seaview.”). CLF has made no showing that the associational privilege applies here. First, the interrogatory explicitly requests *non-member* information, not membership list information the privilege normally protects. And second, there has been no showing that listing whom CLF has discussed the Terminal with would have some chilling effect on the membership of CLF or prevent their ability to exercise their rights—especially in light of their ongoing litigation across several New England states. CLF’s reliance on the associational privilege should be rejected with regard to Interrogatory No. 15.

Further, the work product doctrine does not apply to the purely factual request (indeed, this simply requests a *list*). “The attorney work product doctrine provides qualified protection for materials prepared by or at the behest of counsel in anticipation of litigation or for trial. The party invoking the privilege bears the heavy burden of establishing its applicability.” *Deutsche Bank Nat. Tr. Co. v. WMC Mortg., LLC*, No. 3:12-CV-1699 CSH, 2015 WL 1650835, at *5 (D. Conn. Apr. 14, 2015) (quoting *In re Grand Jury Subpoena Dated July 6, 2005*, 510 F.3d 180, 183 (2d Cir. 2007)). Courts distinguish between purely factual information, which is sought here, and opinion work product, which is subject to greater protection. *See In re Symbol Techs., Inc. Sec. Litig.*, No. CV053923DRHAKT, 2017 WL 1233842, at *19 (E.D.N.Y. Mar. 31, 2017) (finding fully factual summaries discoverable where “[s]ignificantly, none of the memoranda divulge the mental impressions, conclusions, legal theories or opinions of Plaintiff’s counsel, which would otherwise transform these memoranda from fact work product into opinion work product”). Mere factual descriptions of something that occurred does not implicate the work product doctrine. *Stanton v. Stevens Transp., Inc.*, No. 3:19-CV-1093 (JAM), 2021 WL 1686247, at *3 (D. Conn.

Apr. 29, 2021) (“In the Court’s view, Napolitano’s mere description of the factual circumstances of the accident is not likely to reveal the legal theories, opinions, strategies, or mental processes of defense counsel.”); *Maziarz v. Hous. Auth. of Town of Vernon*, No. 3:10CV2029 JCH, 2011 WL 4538071, at *2 (D. Conn. Sept. 29, 2011) (“Similarly, the work product protection only protects against the disclosure of ‘mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation’ and not the underlying facts, which is what plaintiff seeks to discover.”). CLF should be compelled to respond to Interrogatory No. 15 and can certainly do so without revealing its legal theories, opinions, strategies, or mental processes.

Interrogatory No. 16:

Describe in detail any factual investigation conducted before the filing of Your Complaint Related to the violations of the CWA and RCRA alleged in the Complaint. In Your response, Identify all Persons that had any involvement in such an investigation, and/or Documents created during or resulting from such an investigation.

This request asked CLF to describe the factual investigation it conducted prior to filing the Complaint, including identifying the persons involved in that investigation. CLF objected to providing this information and did not respond, claiming that Interrogatory No. 16 called for information protected by the work product doctrine. *See Exhibit A* at 64-65. On the June 14, 2022 phone call among counsel, Gulf explained that such factual information is not protected from disclosure. On that call, CLF stated that it stood on its objections and responses and would not be supplementing with the requested information. CLF confirmed on August 23, 2022 that it would be standing on its objections as to this request. *See Exhibit C* at 2.

Again, the work product doctrine does not protect CLF from answering Interrogatory No. 16. “The attorney work product doctrine provides qualified protection for materials prepared by

or at the behest of counsel in anticipation of litigation or for trial. The party invoking the privilege bears the heavy burden of establishing its applicability.” *Deutsche Bank Nat. Tr. Co. v. WMC Mortg., LLC*, No. 3:12-CV-1699 CSH, 2015 WL 1650835, at *5 (D. Conn. Apr. 14, 2015) (quoting *In re Grand Jury Subpoena Dated July 6, 2005*, 510 F.3d 180, 183 (2d Cir. 2007)). Courts distinguish between purely factual information, which is sought here, and opinion work product, which is subject to greater protection. See *In re Symbol Techs., Inc. Sec. Litig.*, No. CV053923DRHAKT, 2017 WL 1233842, at *19 (E.D.N.Y. Mar. 31, 2017) (finding fully factual summaries discoverable where “[s]ignificantly, none of the memoranda divulge the mental impressions, conclusions, legal theories or opinions of Plaintiff’s counsel, which would otherwise transform these memoranda from fact work product into opinion work product”). Mere factual descriptions of something that occurred does not implicate the work product doctrine. *Stanton v. Stevens Transp., Inc.*, No. 3:19-CV-1093 (JAM), 2021 WL 1686247, at *3 (D. Conn. Apr. 29, 2021) (“In the Court’s view, Napolitano’s mere description of the factual circumstances of the accident is not likely to reveal the legal theories, opinions, strategies, or mental processes of defense counsel.”); *Maziarz v. Hous. Auth. of Town of Vernon*, No. 3:10CV2029 JCH, 2011 WL 4538071, at *2 (D. Conn. Sept. 29, 2011) (“Similarly, the work product protection only protects against the disclosure of ‘mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation’ and not the underlying facts, which is what plaintiff seeks to discover.”). Here, CLF has filed an eighty-page complaint against Gulf, seeks reams of discovery, and demands relief that could potentially cost Gulf millions of dollars to implement. If it is going to assert claims of such consequence, it should be required to detail what factual investigation was undertaken and by whom. Having to identify what facts were known at the time of filing the lawsuit and who gathered those facts is of core relevance. Indeed,

such an investigation necessarily occurred so that CLF can satisfy its Rule 11 obligations. CLF should be compelled to respond to Interrogatory No. 16 and can certainly do so without revealing its legal theories, opinions, strategies, or mental processes.

Interrogatory No. 21:

Describe with specificity the exact nature of the injunctive relief you seek in the prayer for relief in the Complaint, including, but not limited to, the actions you believe Gulf should take to correct or cease any alleged violations of its Permit, the Clean Water Act, the Resource Conservative and Recovery Act, and alleged violations of any other federal, state, or local law or regulation.

Here, Gulf has asked CLF to “[d]escribe with specificity the exact nature of the injunctive relief” that it sought in its Complaint. In its written responses, CLF objected and refused to respond. See **Exhibit A** at 84-85. During the June 14, 2022 call among counsel, CLF stated that Gulf’s request called for speculation and required expert testimony. See **Exhibit B** at 5. Gulf explained that it was entitled to know the specifics of the injunctive relief that CLF is seeking and alleged in the Complaint. See *id.* CLF confirmed for Gulf on August 23, 2022, that it stood on its objections and would not be supplementing its response. See **Exhibit C** at 2.

Again, Gulf has simply requested factual information underpinning CLF’s Complaint, and “interrogatories may inquire into the factual basis for particular allegations.” *Maziarz v. Hous. Auth. of Town of Vernon*, No. 3:10CV2029 JCH, 2011 WL 4538071, at *2 (D. Conn. Sept. 29, 2011). That CLF has filed this suit without being able to respond to simple factual questions is telling; however, CLF should not be able to hide behind baseless objections to prevent Gulf from learning basic facts about CLF’s allegations and requested relief. See, e.g., *Thermospas, Inc. v. AOC, LLC & Composites One LLC*, No. CIV. 3:04CV751WWE, 2007 WL 4105285, at *1 (D. Conn. Nov. 16, 2007) (compelling interrogatory answer detailing relief sought where party had “not provided any information regarding its damages claim” and rejecting argument that such an

answer could be provided only at the conclusion of discovery). The fact that CLF cannot even articulate what relief it wants is troubling. While CLF may learn of facts later in the case that would warrant amending this answer, CLF should at least be able to identify some specific changes that they are seeking. If they cannot do so, then it certainly leads one to question about whether this lawsuit was brought in good faith. CLF should be compelled to answer Interrogatory No. 21.

Order to Set Date by When to Update Interrogatory Nos. 1, 3, 6, 18, 19, and 21.

During the parties' meet and confer sessions, CLF agreed to provide certain information and promised to provide information that, if made part of an interrogatory answer, would resolve disputes over certain interrogatories, namely Interrogatory Nos. 1, 3, 6, 18, 19, and 21. *See Exhibit B* at 2, 4-5. CLF, however, has failed to make clear when it will provide these updated interrogatory answers, instead vaguely promising that it will update its interrogatories "consistent with rules of discovery, the timeframe for expert disclosures, and any applicable court orders." *Exhibit C* at 2. This statement is so vague about the timing of supplementing interrogatories as to be meaningless. To avoid disputes about CLF's obligations, CLF should be ordered to supplement its interrogatory answers to Interrogatory Nos. 1, 3, 6, 18, 19, and 21, as already agreed, within 14 days of any order entered by the Court.

Dated: August 24, 2022

Respectfully submitted,

GULF OIL LIMITED PARTNERSHIP

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