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May 12, 2020

VIA ECF

Maria R. Hamilton
Clerk of Court
U.S. Court of Appeals for the First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: *State of Rhode Island v. Shell Oil Prods. Co., et al.*, No. 19-1818

Dear Ms. Hamilton:

Defendant-Appellant Chevron writes in response to Plaintiff-Appellee's April 24, 2020 letter regarding *Atlantic Richfield Co. v. Christian*, 2020 WL 1906542 (U.S. Apr. 20, 2020) ("*Christian*").

In *Christian*, the Supreme Court considered whether CERCLA stripped Montana state courts of jurisdiction over claims brought under Montana common law for property restoration at a Superfund site in Montana. *Id.* at *6. The defendant did not dispute that the claims had their source in Montana law, but argued that they fell within CERCLA's provision "that 'the United States district courts shall have exclusive original jurisdiction over all controversies arising under this chapter.'" *Id.* at *7. The Court disagreed, holding that the plaintiffs' claims did not "aris[e] under" CERCLA. *Id.* The court interpreted the term "arising under" consistently with the same language in 28 U.S.C. § 1331, and refused to give the statute broader jurisdiction-stripping effect absent a clearer statement from Congress. *Id.*

Christian concerned conduct, pollution, and harm that occurred entirely in a single State, and thus does not alter the line of Supreme Court authority holding that disputes arising from *transboundary* pollution (like the claims asserted here) arise under federal law and belong in federal court. *See Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410 (2011); *Int'l Paper Co. v. Ouellette*, 479 U.S. 481 (1987); *City of Milwaukee v. Illinois*, 451 U.S. 304 (1981); *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972). Nor does *Christian* address a

situation like the one here, in which a plaintiff attempts to plead its claims under law that could not apply.

While *Christian* does not support Plaintiff's arguments, it does suggest that this Court has appellate jurisdiction over the entire remand order. Just as *Christian* held that the term "arising under" in CERCLA should be read consistently with the same language in 28 U.S.C. § 1331, the term "order" in Section 1447(d) should be read consistently with the same language in 28 U.S.C. § 1292(b), such that "appellate jurisdiction applies to the *order* … and is not tied to [a] particular question." *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 205 (1996).

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)