UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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| CONSERVATION LAW FOUNDATION, INC.,<br>Plaintiff,<br>v.<br>SHELL OIL COMPANY, EQUILON ENTERPRISES LLC D/B/A SHELL OIL PRODUCTS US, SHELL PETROLEUM, INC., SHELL TRADING (US) COMPANY, TRITON TERMINALING LLC, and MOTIVA ENTERPRISES LLC,<br>Defendants. | Case No: 3:21-cv-00933-SALM |

**JOINT RULE 26(F) REPORT OF PARTIES' PLANNING MEETING**

*Conservation Law Foundation, Inc. v. Shell Oil Company, et al.*

Plaintiff: Conservation Law Foundation, Inc. ("CLF")

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

Date Complaint Filed: July 7, 2021

Date Complaint Served: Waivers of the Service of Summons filed October 8, 2021

Date of Defendant's Appearance: December 1, 2021

Pursuant to Fed. R. Civ. P. 16(b), 26(f) and D. Conn. L. Civ. R. 16, a conference was held on January 18, 2022. The participants were:

Ian Coghill for Plaintiff Conservation Law Foundation, Inc.

James O. Craven and Bina R. Reddy for Defendants.

## I. CERTIFICATION

Undersigned counsel (after consultation with their clients) certify that (a) they have discussed the nature and basis of the parties' claims and defenses and any possibilities for achieving a prompt settlement or other resolution of the case; and (b) they have developed the following proposed case management plan. Counsel further certify that they have forwarded a copy of this report to their clients.

## II. JURISDICTION

### A. Subject Matter Jurisdiction

Plaintiff's Statement

CLF brings this civil suit under the citizen suit enforcement provisions of Section 505 of the Clean Water Act, 33 U.S.C. § 1365, ("CWA") and Section 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972 ("RCRA"). This Court has subject matter jurisdiction over the parties and this action pursuant to those statutes and 28 U.S.C. § 1331 (providing district courts with original jurisdiction over an action arising under the Constitution and laws of the United States).

Defendant's Statement

As set forth in Defendants' Motion to Dismiss the Complaint, to be filed on January 21, 2022, Defendants dispute that CLF has alleged claims sufficient for this Court to exercise subject matter jurisdiction over Defendant Motiva (a former owner of the terminal that is the subject of this litigation) under Section 505 of the CWA and Section 7002(a)(1)(A) of RCRA. Defendants also dispute that CLF's pleading satisfies the requirements for Article III standing for Counts 1-

9, 12-14 and thus this Court does not have subject matter jurisdiction over those claims pursuant to 28 U.S.C. § 1331.

**B. Personal Jurisdiction**

Personal jurisdiction is not contested.

## III. BRIEF DESCRIPTION OF CASE

**A. Claims of Plaintiff:**

Plaintiff's claims revolve around Defendants' bulk petroleum storage terminal (the "Terminal") in the Port of New Haven, Connecticut, and fall into two categories: CWA Claims (Counts 1 through 11) and RCRA Claims (Counts 12 through 14).

CWA Claims: To prevail on its CWA claims, Plaintiff must prove Defendants are in violation of the Terminal's Connecticut Industrial Stormwater Permit No. GSI002800 (the "Permit"). Specifically, Plaintiff has alleged violations related to the Permit's provisions regarding the Terminal's Stormwater Pollution Prevention Plan ("SWPPP") and its failure to account for non-stormwater discharges (Count I), potential pollution sources (Count IV), and run-on from storm surge and increased rainfall (Count VI); its failure to use appropriate control measures to minimize the discharge of pollutants (Count V) and minimize the potential for leaks and spills (Count VII); and its inclusion of unlawful corporate officer and engineer certifications (Count III), all related to failing to consider and plan for the impacts of climate change to the Terminal. Additionally, CLF alleges that Defendants have failed to amend or update their SWPPP (Count IX) as required by the Permit to account for the effects of climate change. Plaintiff also alleges that Defendants have not submitted information related to the effects of climate change on the Terminal to Connecticut Department of Energy and Environmental Management ("CT DEEP") (Count VIII) and that operating its Terminal without appropriately

planning for the effects of climate change on the Terminal, as listed in the various counts, violates the Permit and its inclusion of Connecticut's Coastal Management Act (Count II).

Lastly, Defendants' SWPPP is also deficient because it does not identify discharges to New Haven Harbor, an impaired waterbody, despite outfalls that discharge to the Harbor via the City of New Haven's municipal separate storm sewer system (Count X), and therefore the SWPPP does not indicate that Defendants conduct monitoring for discharges to impaired waters (Count XI), both violations of the Permit.

To prove violations the above violations, Plaintiff will present facts to prove that exercising "best industry practice" and implementing "Best Management Practices" ("BMPs") for this Terminal includes consideration of all information known to reasonably prudent engineers, including information about climate change factors and the substantial risks of pollutant discharges associated with these factors. Plaintiff will show that Defendants failed to prepare a SWPPP in accordance with these practices, and by failing to prepare a SWPPP in accordance with BMPs, Defendants are violating the Permit and the Clean Water Act.

RCRA Claims: Plaintiff's RCRA claims allege that, as a Small Quantity Generator that generates, stores, handles, and disposes of petroleum products containing and/or composed of hazardous waste constituents, Defendants' failure to address known imminent risks associated with severe precipitation, extreme weather, storm surge, and sea level rise will result in release of these products, violating RCRA's open dumping provision (Count XII), creating an imminent and substantial endangerment to human health and the environment (Count XIII), and failing to comply with federal and state regulatory obligations requiring Small Quantity Generators to operate and maintain the Terminal in a way that minimizes or prevents any discharge, fire,

explosion, or unplanned release which has a reasonable likelihood of adversely affecting human health or the environment (Count XIV).

Plaintiff will prove these violations by presenting facts that show that the hazardous and solid waste at the Terminal is generated, handled, stored, treated, transported and/or disposed of at or near sea level in close proximity to major human population centers, the New Haven Harbor, and the Quinnipiac and Mill Rivers. Further, Plaintiff will prove that Defendants have discharged and/or released pollutants from the Terminal, and will likely continue to do so, due to, including but not limited to, infrastructure failures and inadequate infrastructure design, because the Terminal has not been properly engineered, managed, operated, fortified, or, if necessary, relocated, to protect against climate change factors. Defendants have not integrated these factors and the substantial risks of pollutant discharges and/or releases associated with these factors, into its systems for handling, storage, or disposal of hazardous waste at the Terminal or its RCRA and other compliance and permitting filings. Defendants have also failed to modify the Terminal to prevent pollutant discharges and/or releases associated with these factors.

Defendants' unsafe operation of and the failure to adapt the Terminal to the foreseeable risks associated with climate change put the facility, the public health, and the surrounding community and environment at substantial and imminent risk of pollutant discharges and/or releases from the Terminal. Defendants' failure to disclose information available to it related to these factors and their associated risks has also contributed to the imminent and substantial endangerment to health and the environment.

To the extent additional facts are discovered which may form the basis of further violations, Plaintiff reserves the right to seek to amend these claims.

**B. Defenses and Claims (Affirmative Defenses, Counterclaims, Third Party Claims, Cross Claims) (either pled or anticipated) of Defendants:**

Defendants are filing a motion to dismiss on January 21, 2022, which tolls the time in which Defendants must file an Answer to CLF's Complaint. While reserving the right to assert additional defenses in the Answer to CLF's Complaint, Defendants at this time anticipate asserting that Plaintiff's claims are barred, in whole or in part:

- For lack of fair notice and violation of due process;
- For violating the pleading standard of Rule 8(a) of the Federal Rules of Civil Procedure;
- For lack of subject matter jurisdiction;
- For failure to meet the standing requirements of Article III of the U.S. Constitution;
- For failure to state a claim upon which relief can be granted;
- For lack of subject-matter jurisdiction over the Terminal's former owner/operator;
- For failure to adequately allege the presence of any ongoing violations, *see Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49 (1987);
- For failure to satisfy all statutory and/or regulatory pre-suit notice requirements;
- For failure to exhaust administrative remedies;
- For failure to challenge the Terminal's Industrial Stormwater Permit;
- By the doctrines of primary jurisdiction and/or abstention;
- By the doctrine of ratification;
- By the applicable statute of limitations;
- By the doctrines of accord and satisfaction, release, waiver, novation and/or estoppel;
- By the doctrine of preclusion;
- By Article II, Section 1, of the U.S. Constitution;

- By the collateral attack and/or permit shield doctrines;
- By the doctrine of force majeure;
- To the extent any Defendant was or is operating the Terminal, Defendant was or is operating in accordance with regulatory permits, permit representations, or other governmental authorizations and/or acting as a reasonably prudent operator would act;
- To the extent that any Terminal equipment is owned or operated in accordance with applicable and accepted industry design standards and to the extent applicable and accepted industry design standards are relied upon;

Defendants expressly deny any and all allegations that they are violating any applicable law, regulation or permit, and reserve the right to assert any additional defenses that become known during the course of additional investigation and discovery.

## IV. STATEMENT OF UNDISPUTED FACTS

Counsel and self-represented parties certify that they have made a good faith attempt to determine whether there are any material facts that are not in dispute. The following material facts are undisputed:

1. The New Haven Terminal ("Terminal") is a bulk storage and fuel distribution facility located at 481 East Shore Parkway, New Haven, Connecticut.

2. The Terminal is subject to Connecticut Industrial Stormwater Permit No. GSI002800.

3. Equilon holds Connecticut Industrial Stormwater Permit No. GS1002800.

4. Triton became the owner of the Terminal in 2017.

5. Motiva was the owner and/or operator of the Terminal prior to Triton's ownership in 2017.

## V. CASE MANAGEMENT PLAN

### A. Initial Disclosures

Initial disclosures will be served by February 11, 2022.

### B. Scheduling Conference

1. The parties do not request to be excused from holding a pretrial conference with the Court before entry of a scheduling order pursuant to Fed. R. Civ. P. 16(b).

2. The parties prefer that a scheduling conference, if held, be conducted by telephone or videoconference.

### C. Early Settlement Conference

1. The parties certify that they have considered the potential benefits of attempting to settle the case before undertaking significant discovery or motion practice. Settlement is unlikely at this time.

2. The parties do not request an early settlement conference.

3. The parties prefer a settlement conference, when such a conference is held, with the presiding judge or a magistrate judge.

4. The parties do not request a referral for alternative dispute resolution pursuant to D. Conn. L. Civ. R. 16.

### D. Joinder of Parties, Amendment of Pleadings, and Motions Addressed to the Pleadings

The parties have discussed any perceived defects in the pleadings and have reached the following agreements for resolution of any issues related to the sufficiency of the pleadings.

1. Defendants intend to file a motion to dismiss on January 21, 2022, and therefore, Plaintiff should be allowed until July 22, 2022 to file motions to join additional parties and to file motions to amend the pleadings. Motions filed after the foregoing dates will require, in addition to any other requirements under the applicable rules; a showing of good cause for the delay.

2. Defendants should be allowed until August 22, 2022 to file motions to join additional parties and until 30 days after the filing of an amended complaint to file a response to any amended complaint. Motions filed after the foregoing dates will require, in addition to any other requirements under the applicable rules, a showing of good cause' for the delay.

**E. Discovery**

1. Recognizing that the precise contours of the case, including the amounts of damages at issue, if any, may not be clear at this point in the case, in making the proposals below concerning discovery, the parties have considered the scope of discovery permitted under Fed. R. Civ. P. 26(b)(1). At this time, the parties wish to apprise the Court of the following information regarding the "needs of the case" :

Parties' Position: Given the number of parties and claims in this case, as well as the complexity and technical aspects of the claims, the Parties anticipate this case will require an extended fact discovery schedule, as well as expert discovery. The parties have agreed to approximately 17 months for completion of discovery.

Plaintiff's Position (if different): While Plaintiff agrees with Defendants' statement below that it has brought a citizen enforcement action under the CWA and RCRA and that its claims allege current and ongoing non-compliance with specific CWA permit terms and RCRA statutory or regulatory provisions at the New Haven Terminal, it otherwise disagrees with Defendants' characterization of its claims. Regardless, while Plaintiff is amenable to discussing discovery needs at the Fed. R. Civ. P. 16(b) Scheduling Conference, Plaintiff does not agree that the Rule 16(b) conference is the appropriate avenue to define the scope of relevant discovery in this case. The motion to dismiss has not yet been filed—let alone ruled upon—and no discovery has been served. Moreover, the Federal Rules of Civil Procedure already adequately provide for the determination of discovery issues as they come up in the context of a given case. *See, e.g.,* Fed. R. Civ. P. 26(c); *id.* R. 37.

Defendant's Position: (if different): The parties are in agreement regarding the anticipated time periods needed for fact and expert discovery. However, Defendants additionally address here important scope considerations relating to the "needs of the case."

Plaintiff's suit is a citizen enforcement action under the CWA and RCRA. All of the claims allege only current or ongoing non-compliance with specific CWA permit terms or RCRA statutory or regulatory provisions at the New Haven Terminal. These are narrow questions for the Court, and discovery should be appropriately tailored to the needs of case, consistent with Fed. R. Civ. P. 26. Because Plaintiff has filed a nearly identical citizen suit against these same Defendants in the United States District Court for District of Rhode Island, *see* No. 1:17-cv-396-WES-LDA, the parties have a preview of the scope and subjects Plaintiff intends to seek discovery on in this case. These include: information going back nearly 40 years in time; documents regarding the engineering of coastal assets located anywhere in the world;

and the Defendants' "knowledge of" "climate change" and "GHG emissions" (with "Defendants" defined to include a range of non-parties including parents and affiliates.) Defendants have objected to the relevance and proportionality of these requests to claims about current CWA permit and RCRA compliance at a specific facility. There is anticipated to be substantial discovery motions practice in the Rhode Island case regarding the scope of relevance.

In the interest of efficiency for the Court and the parties, and potentially avoiding similar disputes in this action, Defendants respectfully request that the appropriate scope of discovery be defined at the outset and that requests be limited to subjects relevant and proportional to the actual causes of action and Terminal in question. Defendants respectfully request the opportunity, pursuant to the Court's inherent discretion to manage its docket under Fed. R. Civ. P. 16, to raise this issue at the requested Fed. R. Civ. P. 16(b) Scheduling Conference, or through written submissions, should this Court prefer.

2. The parties anticipate that discovery will be needed on the following subjects:

Plaintiff's Proposed Subjects:

- Defendants' knowledge of climate change risks to infrastructure, including risks to the Terminal specifically and risks to its infrastructure more generally;
- Defendants' policies concerning the preparedness of its infrastructure for climate change;
- Communications between Defendants, EPA, and state regulators regarding the Terminal;

- Information regarding the level of control exercised by corporate parents over the Terminal;
- Information on any environmental monitoring or assessment done at the Terminal;
- Information regarding the Terminal's Connecticut Industrial Stormwater Permit No. GS1002800;
- Information regarding contamination at the Terminal;
- Information regarding the handling of solid waste and hazardous materials at the Terminal;
- Information regarding the daily operation and maintenance of the Terminal;
- Information regarding Defendants' pollutant discharges at the Terminal;

Defendants' Proposed Subjects:

- Plaintiff's standing to bring the claims alleged in the Complaint;
- Information related to alleged precipitation and flooding risks in or around the New Haven Terminal and potential impacts regarding same at the Terminal;
- Information related to the Best Management Practices and/or control measures CLF contends are necessary to comply with the Clean Water Act;
- The information CLF contends Defendants possessed but did not disclose to EPA and the State regulators;

- Information related to the source of pollutants that CLF contends were omitted from the Terminal's SWPPP;
- Information related to the inadequacies in the design, engineering, management, operation, and/or fortification of the Terminal that CLF alleges results in violation of RCRA;
- Information related to CLF's failure to exhaust its administrative remedies and/or administratively challenge issuance of the Permit;
- Information related to CLF's discussions and communications with U.S. EPA, the Connecticut Department of Energy and Environmental Protection, and other federal, state, and local regulatory authorities;
- Information related to CLF's non-settlement discussions and communications with other industrial stormwater permit holders, including other petroleum terminal operators;

3. All discovery will be commenced by March 4, 2022 and completed (not propounded) by July 28, 2023.

4. Discovery will be conducted in phases. Fact discovery will proceed first and be completed by November 4, 2022, to be followed by expert discovery, which will begin on November 7, 2022 and be completed by July 28, 2023.

5. The parties anticipate that the plaintiff and the defendants will require depositions of fact witnesses. The depositions will commence by April 4, 2022 and be completed by November 4, 2022.

Plaintiff's Position: Given the number of parties and claims in this case, as well as the complexity and technical aspects of the claims, Plaintiff believes increasing the number of fact witness depositions to 20 is appropriate in this matter. Indeed, Defendants previously agreed in Plaintiff's similar citizen suit in the United States District Court for District of Rhode Island that "the complexity of th[e] case, including the number of different defendant entities, warrant[ed] enlargement of the discovery limits" to 20 fact witness depositions per side. *Conservation Law Foundation v. Shell Oil Products US, et al.,* Case No. 1:17-cv-00396-WES-LDA (D. R.I.), Joint Proposed Discovery Schedule, 5–6, ECF No. 61-1.

Defendants' Position: As this case presents only narrow compliance questions for the Court, and Plaintiff has not provided any reason to depart from the default of Fed. R. Civ. P. 30(a)(2)(A)(i), Defendants request the default limit of 10 fact witness depositions per side. Although Defendants agreed to 20 fact witness depositions per side in the Rhode Island case, Defendants have since concluded that number was excessive for these claims. Indeed, after nearly 10 months of discovery, Plaintiff has yet to notice a single deposition. Defendants note that Plaintiff agreed in a similar citizen suit before this Court to 10 fact witness depositions per side. *Conservation Law Foundation v. Gulf Oil Limited Partnership*, No. 3:21-cv-00932-SVN, Joint Rule 26(f) Report of Parties' Planning Meeting, ECF No. 35.

6. The parties anticipate serving interrogatories.

Plaintiff's Position: Given the number of parties and claims in this case, as well as the complexity and technical aspects of the claims, Plaintiff believes increasing the number of interrogatories to 45 is appropriate in this matter. Indeed, Defendants previously

agreed in Plaintiff's similar citizen suit in the United States District Court for District of Rhode Island that "the complexity of th[e] case, including the number of different defendant entities, warrant[ed] enlargement of the discovery limits" to 45 interrogatories per side. *Conservation Law Foundation v. Shell Oil Products US, et al.,* Case No. 1:17-cv-00396-WES-LDA (D. R.I.), Joint Proposed Discovery Schedule, 5–6, ECF No. 61-1.

Defendants' Position: As this case presents only narrow compliance questions for the Court, and Plaintiff has not provided any reason to depart from the default of Fed. R. Civ. P. 33(a), Defendants request the default limit of 25 interrogatories per side. Although Defendants agreed to 45 interrogatories per side in the Rhode Island case, Defendants have since concluded that number was excessive for these claims. Indeed, after nearly 10 months of discovery, Plaintiff has only served one set of 19 interrogatories. Further, Plaintiff agreed in its similar citizen suit before this Court to 25 interrogatories per side. *Conservation Law Foundation v. Gulf Oil Limited Partnership*, No. 3:21-cv-00932-SVN, Joint Rule 26(f) Report of Parties' Planning Meeting, ECF No. 35.

7. Plaintiff intends to call expert witnesses at trial. Defendants intend to call expert witnesses at trial.

8. The parties have agreed to the following schedule for expert discovery:

(a) Plaintiff shall disclose experts pursuant to Fed. R. Civ. P. 26(a)(2) and produce any expert reports on or before December 12, 2022.

(b) Defendants shall disclose experts pursuant to Fed. R. Civ. P. 26(a)(2) and produce any expert reports on or before March 10, 2023.

(c) Plaintiff shall produce rebuttal expert reports, if any, on or before May 19, 2023.

(d) The Parties shall be entitled to depose any expert identified by the other side. Expert depositions shall be completed by July 28, 2023.

9. Undersigned counsel (after consultation with their respective clients concerning computer-based and other electronic information management systems, including historical, archival, back-up and legacy files, in order to understand how information is stored and how it may be retrieved) and self-represented parties have discussed the disclosure and preservation of electronically stored information, including, but not limited to, the form in which such data shall be produced, search terms and/or other techniques to be used in connection with the retrieval and production of such information, the location and format of electronically stored information, appropriate steps to preserve electronically stored information, and the allocation of costs of assembling and producing such information. The parties are in the process of finalizing an agreement governing electronically stored information and expect to have that agreement finalized by February 11, 2022.

10. Undersigned counsel (after consultation with their clients) and self-represented parties have also discussed the location(s), volume, organization, and costs of retrieval of information stored in paper or other non-electronic forms. The parties agree to the following procedures for the preservation, disclosure and management of such information. The parties are in the process of finalizing an agreement governing non-electronic information and documents and expect to have that agreement finalized by February 11, 2022.

11. Undersigned counsel and self-represented parties have discussed discovery procedures that minimize the risk of waiver of privilege or work-product protection, including procedures for asserting privilege claims after production. The parties agree to the following procedures for asserting claims of privilege after production, which will supersede Paragraph 18 of the Standing Protective Order (ECF No. 7):

(a) Clawback Procedure

(i) If a Receiving Party reasonably suspects that it has received Privileged Material, the Receiving Party must refrain from further use or examination of the documents that may be privileged, and shall immediately notify the Producing Party, in writing, that the Receiving Party possesses material that appears to be privileged.

(ii) In the event a Producing Party discovers it has disclosed Privileged Material, the Producing Party may provide clawback notice to the other Parties advising of the disclosure and requesting return or destruction of the Privileged Material.

(iii) If a Receiving Party receives a clawback notice, it shall make no further use or examination of the Privileged Material and shall immediately take reasonable efforts to segregate it in a manner that will prevent further disclosure or dissemination of its contents, and, within fourteen (14) days of receiving such notice of production of Privileged Material, the Receiving Party shall take reasonable efforts to: (1) sequester, destroy, or return all reasonably accessible documents identified by the Producing Party in such notice; (2), destroy or delete all reasonably accessible copies of such documents; and (3) expunge from any

other reasonably accessible document, information or material derived from the produced Privileged Material, including testimony concerning the Privileged Material.

(iv) To the extent the Receiving Party provided any clawed-back Privileged Material to a secondary recipient as authorized under this Protective Order, the Receiving Party shall promptly make reasonable efforts to retrieve and return or destroy such clawed-back Privileged Material and notify the Producing Party that it has done so.

(v) If the Receiving Party has any notes or other work product reflecting the contents of the Privileged Material, the Receiving Party will sequester and not review or use those materials (except for challenges to the clawback notice as provided in paragraph 6(c)) unless a court later designates the Privileged Material as not privileged or protected, and after the completion and exhaustion of all appeals, rehearings, or reviews of the court ruling, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

(vi) Privileged Material that is not reasonably accessible because of undue burden or cost is considered to be sequestered.

(b) Clawback Log: Any Producing Party that claws back Privileged Material will provide Receiving Parties with a privilege log that reasonably identifies the basis for the assertion of privilege or protection over the clawed-back documents.

(c) If the Receiving Party objects to the designation of inadvertently produced documents as privileged, it must make a good faith effort to resolve any such objection with the Producing Party.

(i) The Parties shall complete a meet-and-confer to resolve objections within fourteen (14) days of the Receiving Party's receipt of the clawback notice from the Producing Party. The meet-and-confer period may be extended by agreement of the Parties.

(ii) If the Parties fail to reach agreement, the Receiving Party may move for an order from this Court vacating the designation within fourteen (14) days of the conclusion of the meet-and-confer conference. The Receiving Party may not assert as a ground for compelling production the fact or circumstance that the Privileged Material has already been produced. The Requesting Party may, however, argue that, where applicable, the privilege has been waived by production of the same information in other versions not subject to the clawback.

(iii) Any response to the motion shall be filed within seven (7) days. Any such motion or response shall be no longer than 10 pages.

(iv) The Party asserting a privilege or protection bears the burden to provide information regarding the content and context of the Privileged Material sufficient to establish the applicability of any asserted privilege or prohibition from discovery.

(v) If a timely motion vacating the designation is filed, the deadlines for the Receiving Party to destroy or return the disputed documents and to confirm such destruction or return are suspended pending resolution by the Court. The

Receiving Party may not use or disclose any disputed materials until the claim is resolved, except that such materials may be submitted under seal with the Court in connection with a motion to vacate the designation.

(d) Definitions

(i) "Court": The United States District Court for the District of Connecticut

(ii) "Counsel": Outside Counsel or House Counsel (as well as their support staff).

(iii) "Discovery Material": all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things) that are provided, produced, or generated in disclosures or in response to document requests in this action.

(iv) "House Counsel": attorneys (and their staff), including legal secondees, who are employees or contractors of a Party and whose responsibilities include overseeing this action.

(v) "Non-Party": any natural person, partnership, corporation, association, or other legal entity not named as a Party in this action.

(vi) "Outside Counsel": attorneys (and their support staff) who are not employees of a Party but are representing or advising a Party.

(vii) "Party": any party to this action, including all of its officers, directors, and employees whose current or past responsibilities pertain to the claims or defenses in this action.

(viii) "Privileged Material": information (regardless of how it is generated, stored, or maintained), testimony, or tangible things that are not public and which are

subject to a claim of privilege as the term "privilege" is used in the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

(ix) "Producing Party": a Party or Non-Party that produces or provides Discovery Material in this action.

(x) "Receiving Party": a Party or its Counsel that receives Discovery Material from a Producing Party or a secondary recipient that receives Discovery Material from a Receiving Party.

**F. Other Scheduling Issues**

Defendants intend to file a motion to transfer the case in light of an earlier filed case, *Conservation Law Foundation v. Gulf Oil Limited Partnership*, No. 3:21-cv-00932-SVN, involving the same core allegations and claims regarding another bulk terminal also located at the Port of New Haven.

**G. Summary Judgment Motions:**

Summary judgment motions, which must comply with Local Rule 56, will be filed on or before November 17, 2023.

**H. Joint Trial Memorandum**

The joint trial memorandum required by the Standing Order on Trial Memoranda in Civil Cases will be filed by March 15, 2024.

## VI. TRIAL READINESS

The case will be ready for trial by April 8, 2024.

As officers of the Court, undersigned counsel agree to cooperate with each other and the Court to promote the just, speedy and inexpensive determination of this action.

January 21, 2022

Respectfully submitted,

*/s/Alexandra St. Pierre*

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 21, 2022, a copy of the foregoing document was filed through the ECF system, by which means a copy of the filing will be sent electronically to all parties registered with the ECF system.

*/s/ Alexandra St. Pierre*
Alexandra St. Pierre