UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

CONSERVATION LAW FOUNDATION, INC., *Plaintiff*, v. 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, *Defendants*.	Civil Action No. 3:21-cv-00933-SALM

PLAINTIFF CONSERVATION LAW FOUNDATION, INC.'S
OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER

Plaintiff Conservation Law Foundation ("CLF") files this response in opposition to Defendants Shell Oil Company, Equilon Enterprises LLC d/b/a Shell Oil Products (US) Company, Triton Terminaling LLC, and Motiva Enterprises LLC's ("Defendants") Motion to Transfer in Accordance with Local Rule 40(b)(2) Due to a Related Case ("Motion") (ECF No. 42). In their Motion, Defendants seek to transfer the instant case to another U.S. District Court judge within the District of Connecticut who currently presides over another matter, *Conservation Law Foundation Inc. v. Gulf Oil Limited Partnership*, Case No. 3:21-cv-00932-SVN ("Gulf action"), which Defendants claim is a related case. The Gulf action and the instant matter are not related cases and transfer is inappropriate.

While the District of Connecticut Local Rules do not define "related case," a suitable analog has been adopted by the Eastern District of New York. *Guidelines for the Division of Business Among District Judges, Eastern District of New York* (Oct. 15, 2021), ("Guidelines"),

available at https://www.nyed.uscourts.gov/content/guidelines-division-business-among-district-judges. Rule 50.3.1 of the Guidelines defines a related case as one where, "because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a *substantial saving* of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1(a) (emphasis added). The Rule also defines when a case is *not* related: "A civil case shall not be deemed 'related' to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1(b). The word "related" here "requires a factually or transactionally related matter. Similar legal issues alone will generally not support assignment to the same judge." *Ukrainian Nat. Ass'n of Jewish Former Prisoners of Concentration Camps & Ghettos v. United States*, 205 F.R.D. 102, 103 (E.D.N.Y. 2001) (citing *United States v. Escobar*, 803 F. Supp. 611, 619 (E.D.N.Y. 1992); *Am. Direct Marketing, Inc. v. Azad Int'l, Inc.*, 783 F. Supp. 84, 87 (E.D.N.Y. 1992)). The Gulf action is not "related" to this action because (i) the parties in both cases are not the same, (ii) the cases have different facts, and (iii) even with similar legal theories, any rulings on those theories may still differ depending on the arguments and facts presented to the court in each case.

First, the two cases involve different parties; only the plaintiff is the same in both cases. Meanwhile, the defendants in the two cases are very different. The instant case involves multiple Defendants that are part of a complex, vertically integrated group of companies that make up the multi-national Royal Dutch Shell group of companies—one of the largest oil companies in the world. This case will involve complex issues of higher-level corporate policy and control of the subsidiaries tasked with operating Defendants' bulk petroleum storage terminal in the Port of

New Haven. The Gulf action, meanwhile, includes only a single defendant that is based in Wellesley, Massachusetts.

Second, the two cases do not arise from the same facts or transaction. The cases involve two separate oil terminals. While CLF alleges similar Clean Water Act and Resource Conservation and Recovery Act ("RCRA") causes of action based primarily on the defendants' failure to adapt their terminals to withstand the effects of climate change, the way in which climate change will impact each terminal—and therefore the bases for the alleged violations—will differ depending on the physical characteristics of each terminal. *Compare* Gulf Compl. ¶¶ 63, 431 (ECF No. 45) (showing that Gulf's terminal has an area of approximately 13 acres and is located directly adjacent to the water near the mouth of the Quinnipiac and Mill Rivers) *with* Defs. Compl. (ECF No. 1) ¶¶ 73, 425 (showing that Defendants' terminal has an area of approximately 38 acres and is located further from the rivers and more inland in the Port of New Haven); Gulf Compl. ¶¶ 69–72 (Gulf's terminal has bulk oil storage capacity of less than 10 million gallons) *with* Defs. Compl. ¶ 76 (Defendants' terminal has bulk oil storage capacity of approximately 76 million gallons); Gulf Compl. ¶¶ 82, 85 (Gulf's terminal has two drainage areas and primarily discharges directly to New Haven Harbor) *with* Defs. Compl. ¶¶ 84, 94, 404, 410 (Defendants' terminal has four drainage areas and discharges to the New Haven storm sewer).

Moreover, many of CLF's Clean Water Act claims, while alleging a violation of Connecticut's General Permit for the Discharge of Stormwater Associated with Industrial Activities, are specific to each terminal's Stormwater Pollution Prevention Plan, which also differ based on the specific physical characteristics, manner of operations, and management of the terminals. In fact, CLF has asserted four additional claims against Gulf that are specific to its

terminal and Stormwater Pollution Prevention Plan. *See* Gulf Compl. (Counts 12–15). Although Defendants posit there will likely be "some of the same witnesses and evidence . . . used in both cases," Motion at 3, the terminals in each case are owned, operated, and controlled by different defendants with different employees, and it is only CLF's witnesses that might overlap in both cases. Much of the expert testimony will also likely be specific to the defendants' planning, operations, and handling of the pollution generated at or discharged from these two distinct terminals. Accordingly, even if the same judge presides over both cases, the court will spend a considerable amount of time familiarizing itself with and distinguishing the facts of both cases, resulting in at most a *limited* increase of judicial efficiency rather than a substantial increase of judicial efficiency.

Finally, even if the legal theories in both cases are similar, the manner in which the legal issues will be presented to the Court will likely differ based on the defendants, rendering potentially divergent outcomes even before one judge because a court generally only rules on the arguments as they are presented to it by the parties. *See Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (describing how the federal judicial system "rel[ies] on the parties to frame the issues for decision and assign[s] to courts the role of neutral arbiter of matters the parties present."); *compare* Defs.' Motion to Dismiss at 35–39 (ECF No. 41-1) (arguing the Court should defer to the state under the doctrine of *Burford* abstention) *with* Gulf Motion to Dismiss, Case No. 3:21-cv-00932-SVN, (ECF 43-1) (no argument that *Burford* abstention applies). And while familiarity with the Clean Water Act permitting regime or RCRA may assist a court in rendering a decision on the issues more easily, the same can be said for a court's familiarity with *any* permitting regime or statutory framework, such as claims brought under the Social Security Act, including

the Medicare and Medicaid programs, the Americans with Disability Act, and many others. There is therefore little judicial efficiency to be gained in a transfer of the case.

In conclusion, CLF respectfully submits that transfer is inappropriate and unnecessary because this matter and the Gulf action are not related cases.

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Respectfully submitted,

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