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August 27, 2018

Via Electronic Filing

Honorable William E. Smith
Federal Building and Courthouse
One Exchange Terrace
Providence, RI 02903

Re: *Conservation Law Foundation, Inc. v. Shell Oil Products US, et al.*
C.A. No. 1:17-cv-00396-WES-LDA

Dear Judge Smith,

On behalf of Plaintiff, Conservation Law Foundation, in this matter please accept the below as a status update regarding Plaintiff's planned amendment to its Complaint.¹ As described in Plaintiff's Memorandum of Objections to the Shell Defendants' Motion to Dismiss, at 44 n. 37, Doc. 24-1, Plaintiff intends to file a request to amend the pending Complaint, Doc. 11 (filed Oct. 25, 2017). Because the Local Rules direct that a party seeking to file an amended pleading shall, in part, make such motion to amend "promptly after the party seeking to amend first learns the facts that form the basis for the proposed amendment," DRI LR Cv 15, Plaintiff hereby seeks to update the Court on its intention so as to not violate the letter and spirit of this Local Rule.

The proposed "Second Amended Complaint" will seek to include the following changes² from the Amended Complaint that is currently the subject of the Court's review.

1. The removal of Royal Dutch Shell without prejudice from the Complaint based upon a stipulation reached by the parties and memorialized at Doc. 22 entered by the Court on February 1, 2018;
2. The addition of Triton Terminaling LLC and Equilon Enterprises LLC as additional defendants;³ and

¹ Plaintiff has consulted with Defendants who do not oppose the submission of this letter to the Court.

² A Supplemental Notice detailing these proposed changes was provided to Defendants on February 12, 2018. See Letter from H. Miller (formerly Murray), CLF, to M. Sullivan et al., Shell (Feb. 12, 2018), attached as Exhibit A (without attachments). The notice period for these additional facts and claim passed, using the longest potential delay period of ninety days, on May 14, 2018.

³ An issue remains between the parties as to the propriety of the continued inclusion of Motiva Enterprises LLC as a defendant in this matter. The issue relating to Motiva was

3. The addition of facts regarding Shell's Terminal's, status as a RCRA facility and a correlating count under the Resource Conservation and Recovery Act regarding Conditionally Exempt Small Quantity Generators "CESQG" requirements.

Briefing on the Motion to Dismiss filed, by Defendants that were already parties to this matter, was completed on February 22, 2018 and the parties argued this Motion before the Court on June 27, 2018. Plaintiff noted the planned amendments, but did not move forward on them in an effort to limit additional briefing and potentially incorporate any guidance following this Court's ruling on that Motion. Also, in an effort to limit the number of issues needing Court intervention and consideration, Plaintiff provided a copy of the proposed Second Amended Complaint - with draft changes identified - to Defendants on July 30, 2018. Defendants have advised that, consistent with the parties' stipulation, they do not consent to an Amendment of the Complaint prior to a ruling on the Motion to Dismiss and reserve their rights related to any issues arising under F.R.C.P., Rule 12. Under these circumstances, and in the event the Court allows for the Amendment pursuant to F.R.C.P., Rule 15 and Local Rule 15, any additional briefing pursuant to F.R.C.P., Rule 12 should be limited to the following possible issues:

- Whether Equilon⁴ is proper defendant for the Clean Water Act and RCRA Counts; and
- Whether the addition of the RCRA count and CESQG language associated therewith, are appropriate for amendment at this time.

Accordingly, due to the Local Rule's directions on timing, Plaintiff seeks to provide this update to the Court and welcomes any guidance therefrom. Should the Court wish to hear further from the parties, we can set up a status call at the Court's convenience. Your consideration is greatly appreciated.

Sincerely,

KANNER & WHITELEY, L.L.C.

By: /s/Elizabeth B. Petersen
Elizabeth B. Petersen

Attachment

Via electronic transmission and filing.

John Guttman/Bina Reddy
C. Kilian

briefed to the Court, but the parties are currently discussing a potential resolution of the issue by stipulation similar in fashion to how the dismissal of Royal Dutch Shell was resolved.

⁴ Defendants have argued that Triton Terminaling, instead of Motiva, is the proper defendant to these claims and have stipulated to Triton's status as a party.