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05609-1001

March 22, 2018

Christopher C. Horner  
Senior Fellow, CEI  
Competitive Enterprise Institute  
1310 L Street, 7<sup>th</sup> Floor  
Washington, D.C. 20005

BY ELECTRONIC MAIL to: [chris.horner@cei.org](mailto:chris.horner@cei.org)

Dear Mr. Horner:

I write in response to your Vermont Access to Public Records Act request dated March 7, 2018 and received by this office on March 8, 2018. In that request you seek:

*Copies of all correspondence dated from June 1, 2015 through December 31, 2015, inclusive, and its accompanying information<sup>1</sup>, including also any attachments, which was sent to or from or copying (whether as cc: or bcc:) Nicholas Persampieri, Scot Kline and/or Wendy Morgan which were also sent from or to, including also copying (again whether as cc: or bcc:):*

- 1) *mp@pawalaw.com*
- 2) *any @ucsusa.org address (including but not limited to e.g., PFromhoff@ucsusa.org)*
- 3) *any @fahr.llc.com email address*
- 4) *lemuel.srolovic@ag.ny.gov*
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- 7) *brian.Mahanna@ag.ny.gov*
- 8) *any @rffund.org email address, and/or*
- 9) *any @nextgenclimate.org address*

<sup>1</sup>*This includes public records, and associated public information, see discussion of Data Delivery Standards, infra.*

Attached please find potentially responsive documents.

Please be advised that the attorney associated with the "mp@pawalaw.com" e-mail address, Matthew Pawa, is co-counsel representing the State of Vermont in the matter of *State of Vermont v. Atlantic Richfield Co. et al.*, Docket No. 340-6-14 Wncv, a matter currently active

before the Vermont Superior Court, Civil Division. Potentially responsive records to your request that were related to Attorney Pawa's work as co-counsel for the State of Vermont have been withheld from production as attorney work product, attorney-client privilege, and/or because they are relevant to pending litigation. *See*, 1 V.S.A. § 317(c)(3), (4) and (14). During the window of time your request covers, the parties in *State of Vermont v. Atlantic Richfield Co. et al.* were at the Vermont Supreme Court on interlocutory appeal. Approximately 1160 pages of public documents relating to Court Orders and filings before the Vermont Supreme Court which fall in your correspondence window are provided in the attached.

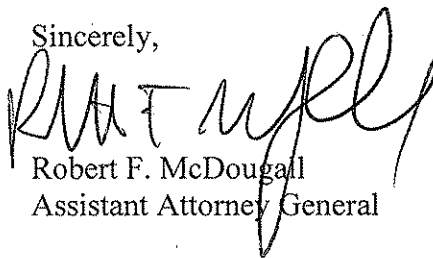
Additionally, attorney-client communications, attorney work product and/or documents relevant to pending litigation exchanged with other state Attorney General Offices have not been provided. These potentially responsive documents are also exempt from disclosure under 1 V.S.A. § 317(c)(3), (4) and (14).

To the extent you consider that this response constitutes a denial of your request, you may appeal to the Deputy Attorney General. Any appeal should be in writing and addressed to:

Joshua Diamond, Esq.  
Deputy Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 50609-1001

Please note that the attached documents are being provided at no cost.

Sincerely,

A handwritten signature in black ink, appearing to read "R. F. McDougall", is written over the typed name and title.

Robert F. McDougall  
Assistant Attorney General

Enclosures

---

**From:** Waters, Donna  
**Sent:** Thursday, July 30, 2015 2:59 PM  
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**Subject:** Docket No. 340-6-14 Wncv, State of Vermont vs. Atlantic Richfield Company et, ENTRY  
ORDER  
**Attachments:** State of VT v. Atlantic Richfield Co., et al.; 340-6-14Wncv.pdf  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Please see the attached document: ENTRY ORDER

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VT SUPERIOR COURT  
WASHINGTON UNIT  
STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

2015 JUL 29 P 4: 06

CIVIL DIVISION  
Docket No. 340-6-14 Wncv

State of Vermont vs. Atlantic Richfield Company et

**ENTRY REGARDING MOTION**

Count 1, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 2, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 3, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 4, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 5, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 6, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 7, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 8, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 9, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 10, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 11, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 12, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 13, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 14, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 15, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 16, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 17, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 18, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 19, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 20, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
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Count 22, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
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Count 24, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 25, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 26, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 27, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 28, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)  
Count 29, Natural Resources Damages/Groundwater pr (340-6-14 Wncv)

Title: Motion (Renewed)For Designation as Complex Action (Motion 71)  
Filer: Exxon Mobil Corporation  
Attorney: Ritchie E. Berger  
Filed Date: June 12, 2015

Response filed on 07/06/2015 by Attorney Scot L. Kline for Plaintiff State of Vermont  
Reply filed on 07/15/2015 by Attorney Ritchie E. Berger for Defendant Mobil Corporation

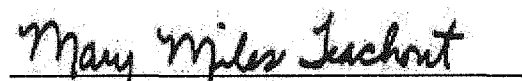
**Referred to the Chief Superior Judge for reasons stated below.**

The undersigned has reviewed the criteria for a complex action set forth in V.R.C.P. 16.1 (a), and hereby designates this action a complex action based on the following findings:

1. This action is a claim of widespread contamination of Vermont waters by methyl tertiary butyl ether ("MTBE"), a gasoline additive. The State has filed this action against 29 defendants, all of whom allegedly participated in the promotion, marketing, distribution, and/or sale of gasoline containing MTBE in Vermont. The State seeks remediation and recovery costs under a number of legal theories, including violation of Vermont groundwater and natural resource protection statutes, negligence, strict liability, public and private nuisance, trespass, and civil conspiracy.
2. The issues in the case are both factually and legally unusually complicated. This court has issued two decisions on motions to dismiss addressing dispositive issues, and has granted permission for interlocutory appeal of those decisions on three fundamental and complicated legal issues. The Vermont Supreme Court accepted all three issues on an interlocutory basis. The case is at the Supreme Court on appeal now. No matter what rulings are made on appeal, there will be an ongoing case.
3. There are numerous defendants and attorneys, and numerous *pro hac vice* attorneys representing nonresident defendants. The case is in its early stages and will require a lengthy period of discovery involving a number of alleged contamination sites. There will be many legal issues as the claim is advanced on several legal theories.
4. The undersigned has already invested a significant amount of judicial time and attention in the case. The case is likely to last over a period of three or more judicial rotations. There would be an inefficient use of judicial resources if different judges rotating into the Washington Civil Division on an annual basis are called upon to duplicate the process of becoming familiar with the issues in the case.
5. The case will call for consistent oversight and case management over a lengthy period of time.

Pursuant to V.R.C.P. 16.1 (b), having made the findings pertinent to the issue of designating the case as a complex action, the undersigned refers the case to the Chief Superior Judge for approval or disapproval and appropriate followup under the Rule. It will be in the discretion of the Chief Superior Judge to determine when to make any decisions, given the fact that the case is presently before the Vermont Supreme Court on interlocutory appeal and the timing of remand is unknown.

Electronically signed on July 28, 2015 at 07:46 PM pursuant to V.R.E.F. 7(d).

  
\_\_\_\_\_  
Mary Miles Teachout  
Superior Court Judge



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Good Morning:

Attached please find Total Petrochemicals & Refining, USA, Inc.'s Brief that has been filed with the Vermont Supreme Court.

Thank you.

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**IN THE SUPREME COURT OF  
THE STATE OF VERMONT**

**VERMONT SUPREME COURT DOCKET NUMBER 2015-204**

**STATE OF VERMONT,**

**Plaintiff-Appellee**

**vs.**

**ATLANTIC RICHFIELD COMPANY, et al.,**

**Defendants**

**TOTAL PETROCHEMICALS & REFINING USA, INC.,**

**Defendant-Appellant**

**APPEAL FROM**

**VERMONT SUPERIOR COURT  
DOCKET NUMBER 340-6-14 Wncv**

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## **STATEMENT OF THE ISSUES**

### ISSUE NO. 1

THE SUPERIOR COURT ERRED BY DENYING TOTAL PETROCHEMICALS & REFINING USA, INC.'S MOTION TO DISMISS UNDER V.R.C.P. 12(b)(2) BECAUSE THE VERMONT LONG ARM STATUTE AND ESTABLISHED PRINCIPLES OF FEDERAL DUE PROCESS DO NOT PERMIT THE EXERCISE OF PERSONAL JURISDICTION OVER A NONRESIDENT DEFENDANT BASED SOLELY ON THE UNILATERAL CONDUCT OF A THIRD PARTY OR MERE PARTICIPATION IN AN ALLEGED NATIONAL MARKET.

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## **STATEMENT OF THE CASE**

The State of Vermont (“Plaintiff”) brought this action on June 5, 2014 against twenty-nine defendants, each of whom allegedly supplied the Vermont market with gasoline containing the chemical additive, methyl tertiary-butyl ether (“MTBE”). Plaintiff broadly alleges it has suffered untold damages caused by releases of gasoline containing MTBE into the groundwaters of the State. Total Petrochemicals & Refining USA, Inc. (“TPRI”) was named as a defendant despite the undisputed fact that it has never sold a single gallon of gasoline in the State.

TPRI is a Delaware corporation headquartered in Houston, Texas. TPRI is not currently, nor has it ever been, qualified to do business in Vermont or registered with the Vermont Secretary of State. It has never refined, manufactured, or otherwise blended any gasoline containing MTBE in Vermont, nor has it ever sold, distributed, marketed, or advertised the product anywhere within its borders. Plaintiff does not dispute these facts. Instead, Plaintiff’s Complaint simply lumps TPRI with the other twenty-eight defendants vaguely asserting that all of them have “avail[ed] themselves of the Vermont market . . . to render the exercise of jurisdiction . . . by the Vermont courts consistent with traditional notions of fair play and substantial justice.” [\[P.C. 056, ¶ 20\]](#). Plaintiff’s jurisdictional allegations are patently insufficient.

Based on the foregoing, TPRI challenged the exercise of personal jurisdiction and filed a Motion to Dismiss under V.R.C.P. 12(b)(2) on August 21, 2014. [\[P.C. 118\]](#). Attached to its motion was an affidavit executed by TPRI’s Senior Manager of Financial Accounting, Kim Arterburn (“Arterburn Affidavit”) conclusively establishing TPRI’s lack of any jurisdictionally relevant ties to Vermont and specifically refuting any assertion that TPRI ever supplied the Vermont market with gasoline containing MTBE. [\[P.C. 132\]](#). Plaintiff’s Opposition to TPRI’s Motion to Dismiss failed to dispute a single fact in the Arterburn Affidavit. [\[P.C. 136\]](#).

Instead, Plaintiff relied on a hastily prepared expert report by Bruce Burke (“Burke Affidavit”) [P.C. 173] to assert that jurisdiction was nevertheless proper because at some unspecified point in time, an unknown volume of gasoline containing MTBE—either manufactured by TPRI in Texas or distributed by TPRI in New Jersey—*may have* reached Vermont at the hands of a third party. Despite serious concerns over the reliability of Mr. Burke’s opinions, TPRI grounded its Reply brief on the law, arguing that even if the court were to accept Mr. Burke’s speculation as fact, the exercise of personal jurisdiction over TPRI would still be improper as a matter of law. [P.C. 236]. Foreseeability alone has never been a sufficient benchmark for the exercise of personal jurisdiction, and recent United States Supreme Court precedent specifically forbids the exercise of personal jurisdiction based solely on the unilateral conduct of a third party or mere participation in an alleged national market.

On November 13, 2014, the Superior Court heard oral argument on TPRI’s motion. [P.C. 340]. On January 16, 2015, the Superior Court denied TPRI’s Motion accepting Plaintiff’s outdated and flawed view of the stream of commerce theory of personal jurisdiction. [P.C. 001]. On February 2, 2015, TPRI moved to reconsider, or in the alternative, for an interlocutory appeal to this Court. [P.C. 426]. On May 22, 2015, the Superior Court denied TPRI’s motion to reconsider, but granted its request for interlocutory review of the jurisdictional issue conceding that it could not state with certainty “that a reasonable appellate judge could not determine that TPRI lacked sufficient contacts with the State of Vermont, and reverse the conclusion that personal jurisdiction over TPRI is proper.” [P.C. 466]. This Court accepted review of the appeal on June 24, 2015. [P.C. 467].

### **APPELLATE STANDARD OF REVIEW**

Whether the Superior Court has personal jurisdiction over TPRI is a question of law. *See, e.g., Godino v. Cleanthes*, 163 Vt. 237, 239, 656 A.2d 991, 992 (1995). The Vermont

Supreme Court reviews the Superior Court’s decision to deny a motion to dismiss for lack of personal jurisdiction under 12(b)(2) of the Vermont Rules of Civil Procedure *de novo*. *N. Sec. Ins. Co. v. Mitec Elecs., Ltd.*, 2008 VT 96, ¶ 29, 106 A.3d 919, cert. denied, 135 S. Ct. 952, 190 L. Ed. 2d 831 (2015)13, 184 Vt. 303, 965 A.2d 447. Appellate jurisdiction is nondeferential and plenary. *Godino*, 163 Vt. At 239, 656 A.2d at 993. Factual findings of the Superior Court are reviewed for clear error. *Conley v. Crisafulli*, 2010 VT 38, ¶ 3, 188 Vt. 11, 999 A.2d 677 (2010) (citing *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)). This Court has inherent authority to reverse the Superior Court’s ruling and render judgment dismissing all claims against TPRI with prejudice. VT Const. CH II, § 30; V.R.A.P. 5.

### **SUMMARY OF THE ARGUMENT**

Plaintiff’s seventy-five page Complaint makes a single factual allegation specific to TPRI, namely that it is a Delaware corporation with its principal place of business in Houston, Texas. [P.C. 053, ¶ 16x]. Without any factual support, Plaintiff lumps TPRI in with the other twenty-eight defendants and asserts that personal jurisdiction is proper over each of them “because they either are or at the relevant time were: authorized to do business in Vermont, registered with the Vermont Secretary of State, transacting sufficient business with sufficient minimum contacts in Vermont, or otherwise . . . [involved in] the sale, manufacturing, distribution, and/or processing of petroleum-related products in Vermont . . .” [P.C. 056, ¶ 20].

Each of the foregoing allegations was specifically rebutted by the testimony offered by TPRI in the Arterburn Affidavit. Although critical of the Affidavit, Plaintiff never disputed or contradicted a single jurisdictional fact. Instead, Plaintiff attempted to fabricate jurisdiction by arguing that TPRI’s product *may have* found its way to Vermont through the stream of commerce. The Burke Affidavit, which fails to even explain how gasoline is distributed to Vermont, nevertheless concludes that “it is more likely than not that [gasoline containing MTBE

either manufactured or distributed by TPRI] ended up supplying the State of Vermont . . . .” [P.C. 189].

Setting aside the faulty logic underpinning Mr. Burke’s opinions, the exercise of personal jurisdiction over TPRI is still improper. Even if the Court were to accept Mr. Burke’s conclusion that some unknown volume of TPRI’s product did, in fact, reach Vermont, it unquestionably did so at the hands of a third party. The United States Supreme Court, in a unanimous opinion issued in *Walden v. Fiore*, has foreclosed the possibility of resting personal jurisdiction on the unilateral conduct of a third party. 134 S. Ct. 1115 (2014). The Superior Court failed to address the implications of the Supreme Court’s opinion in *Walden* in either its original Order denying TPRI’s Motion to Dismiss [P.C. 001] or its Order denying TPRI’s Motion to Reconsider [P.C. 464].

TPRI urged the Superior Court to consider a recent decision issued by the Southern District of New York interpreting *Walden* to prohibit the exercise of personal jurisdiction in an MTBE case substantially similar to Plaintiff’s where the defendant’s product reached the forum State as a result of the unilateral conduct of a third party. *In re MTBE Prods. Liab. Litig.*, Master File No. 1:00-1898, MDL No. 1358 (SAS), No. M21-88, 2014 WL 1778984 (S.D.N.Y. May 5, 2014). [P.C. 267]. The Superior Court rejected the analogous opinion, arguing that the defendant there only gained knowledge that the product was destined for the forum State “*after the fact.*” (emphasis in original). [P.C. 465]. The Southern District’s opinion, however, clearly indicates that fact was of no consequence in reaching its decision: “Even if [the defendant] knew that [third parties] were shipping the MTBE to [the forum], foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause.” *In re MTBE*, 2014 WL 1778984, at \*3 (internal quotation marks omitted). Because TPRI’s products could only

have reached Vermont through the unilateral conduct of a third party, the exercise of personal jurisdiction is improper pursuant to binding United States Supreme Court precedent in *Walden*.

The related argument that TPRI should be subject to personal jurisdiction in Vermont due to its alleged participation in a “national distribution network” is similarly unavailing. [P.C. 465]. The United States Supreme Court grappled with this exact same issue in *J. McIntyre Mach., Ltd. v. Nicastro* and rejected the theory that “a producer [can be] subject to jurisdiction for a products-liability action so long as it knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states.” 131 S. Ct. 2780, 2793 (2011) (J. Breyer concurring) (emphasis in original). Although Plaintiff criticizes *McIntyre* for failing to produce a majority opinion, both the plurality and the concurrence are clear on this critical point—participation in a national market alone is an insufficient basis for subjecting a nonresident product manufacturer to personal jurisdiction.

Even if this Court accepts every inference drawn in Mr. Burke’s expert opinion, the exercise of personal jurisdiction over TPRI would still be improper. It is undisputed that TPRI has never participated in the Vermont market for gasoline containing MTBE. Personal jurisdiction must rest on contacts “the ‘defendant *himself*’ creates with the forum State.” *Walden*, 134 S. Ct. at 1122 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)) (emphasis in original). Neither the unilateral conduct of a third party nor alleged participation in a national market can serve to confer specific personal jurisdiction over a nonresident defendant with no other constitutionally relevant ties to the forum. This Court should reverse the ruling by the Superior Court and dismiss all claims against TPRI with prejudice.



Furthermore, there are no other grounds on which the Superior Court's opinion can be affirmed. TPRI's extremely limited contacts with Vermont are insufficient as a matter of law to establish general jurisdiction. Additionally, Plaintiff's asserted interest in protecting Vermont's groundwater resources does not override the constitutional protections afforded to nonresident defendants. The exercise of jurisdiction by Vermont courts over TPRI based solely on the speculative argument that TPRI's gasoline may have ended up in Vermont would offend traditional notions of fair play and substantial justice.

## **ARGUMENT**

### **A. The Legal Standard**

On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, Plaintiff bears the burden of proof. *See, e.g., Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 507 (2d Cir. 1994) ("The burden of proving jurisdiction is on the party asserting it."). To establish jurisdiction over a nonresident defendant, "the plaintiff must show that the Vermont long arm statute reaches the defendant, and that jurisdiction over [the defendant] may be maintained without offending the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *N. Aircraft, Inc. v. Reed*, 154 Vt. 36, 40, 572 A.2d 1382, 1385 (1990).

A court's exercise of personal jurisdiction over an out-of-state defendant comports with due process only "if the defendant has certain minimum contacts with the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal citation and punctuation omitted). The "the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Fox v. Fox*, 2014 VT 100, ¶ 29, 106 A.3d 919, cert. denied, 135 S. Ct. 952, 190 L. Ed. 2d 831 (2015)

(quoting *Burger King*, 471 U.S. at 474). “It is essential to a finding of personal jurisdiction that a defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Schwartz*, 169 Vt. at 293, 733 A.2d at 79 (internal citation omitted).

To establish specific jurisdiction, the suit must “arise out of or relate to” the defendant’s contacts with the forum. *Burger King*, 471 U.S. at 472. General jurisdiction, on the other hand, requires the defendant’s “affiliations with the State [to be] so continuous and systematic as to render [it] essentially at home in the forum State.” *Daimler*, 134 S. Ct. at 761 (citing *Goodyear*, 131 S. Ct. at 2851); *see also Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 223 (2d Cir. 2014) (per curiam), *cert. denied*, 134 S. Ct. 2888 (2014) (“[G]eneral jurisdiction extends beyond an entity’s state of incorporation and principal place of business only in the exceptional case where its contacts with another forum are so substantial as to render it ‘at home’ in that state.” (citing *Daimler*, 134 S. Ct. 746)).

To meet this burden, Plaintiff must make a prima facie showing of jurisdiction “based upon evidence of specific facts set forth in the record.” *Schwartz v. Frankenhoff*, 169 Vt. 287, 295, 733 A.2d 74, 81 (1999). “Lumping all the defendants together for the purposes of alleging personal jurisdiction is patently insufficient.” *Savage v. Galaxy Media & Mktg. Corp.*, No. 11 Civ. 6791 (NRB), 2012 WL 2681423, at \*6 n.13 (S.D.N.Y. July 5, 2012) (internal punctuation omitted); *see also Schwartz*, 169 Vt. at 294, 733 A.2d at 80 (quoting *Calder v. Jones*, 465 U.S. 783, 790 (1983) for the proposition that “each defendant’s contacts with the forum State must be assessed individually”). In Vermont, a plaintiff seeking to establish personal jurisdiction is “require[d] . . . to go beyond the pleadings and make affirmative proof.” *Schwartz*, 169 Vt. at

295, 733 A.2d at 81 (internal citation omitted). Plaintiff has made no such individual assessment and makes no affirmative proof as to TPRI.

**B. The Undisputed Jurisdictional Facts Require Dismissal**

In its Motion to Dismiss, TPRI refuted Plaintiff's vague jurisdictional allegations with specific facts conclusively establishing TPRI never participated in the Vermont market for MTBE or gasoline containing MTBE. *See generally* [P.C. 132]. Specifically, TPRI established the following:

- (1) TPRI has never refined, manufactured, blended, or otherwise made, marketed, advertised, stored, or sold any product containing MTBE in Vermont [P.C. 132, ¶ 3];
- (2) TPRI has never been qualified to do business in Vermont and has never been registered with the Vermont Secretary of State [P.C. 132, ¶ 4];
- (3) TPRI has never owned or leased any real estate in Vermont [P.C. 132, ¶ 5];
- (4) TPRI has never owned, operated, or leased any gasoline service stations, terminals, underground storage tanks, or any other gasoline distribution or storage facilities located in Vermont [P.C. 133, ¶ 6];
- (5) TPRI has never entered into any contractual relationship with any jobber or other distributor for the delivery of MTBE or gasoline containing MTBE to Vermont [P.C. 133, ¶ 7];
- (6) TPRI has no knowledge of any third party who delivered MTBE or gasoline containing MTBE to Vermont that TPRI refined, manufactured, or to which it ever held title [P.C. 133, ¶ 7];
- (7) TPRI has never employed officers or directors in Vermont [P.C. 133, ¶ 9];
- (8) TPRI has never maintained an office, agent for service of process, bank account, phone number, or physical address in Vermont [P.C. 133, ¶¶ 8, 10, 11]; and
- (9) The sum total of TPRI's contacts with Vermont amount to a limited volume of sales of an unrelated product that amount to no more than 0.0013% of TPRI's total revenue over the course of 2006 through August of 2014. [P.C. 133-134, ¶¶ 12].

Despite Plaintiff's cursory attempt to discredit the foundation of the Arterburn Affidavit, Plaintiff never disputed a single fact set forth therein. Because Plaintiff came forward with no

evidence to dispute any of these critical, jurisdictionally relevant facts, this Court is bound to consider Plaintiff's broad-sweeping allegations as having been refuted. When a "defendant rebuts plaintiffs' unsupported allegations with direct, highly specific, testimonial evidence regarding a fact essential to jurisdiction—and plaintiffs do not counter that evidence—the allegation may be deemed refuted." *In re Stillwater Capital Partners Inc. Litig.*, 851 F. Supp. 2d 556, 567 (S.D.N.Y. 2012) (quoting *Schenker v. Assicurazioni Generali S.p.A., Consol.*, No. 98 Civ. 9186, 2002 WL 1560788, at \*3 (S.D.N.Y. July 15, 2002)).

**C. TPRI's Contacts are Insufficient to Support Specific Jurisdiction**

It is undisputed that TPRI never directed or delivered any MTBE or gasoline containing MTBE to Vermont.<sup>1</sup> Recognizing it cannot base specific jurisdiction on TPRI's Vermont-based conduct, Plaintiff attempts to manufacture jurisdiction based on the argument that TPRI placed its products in the so-called national stream of commerce. Its overbroad theory is legally deficient and factually unsupported. Plaintiff relies on a multi-layered set of assumptions to conclude that some unknown volume of TPRI's product may have been physically transported to Vermont by the unilateral actions of an unidentified third party.

The Superior Court, in its two opinions, however, reaches factual conclusions that go beyond Plaintiff's speculative theory. First, in its January 16, 2015 opinion, the Superior Court states as follows: "Because TPRI undisputedly manufactured neat MTBE and MTBE gasoline and sold those products to national distributors who in turn distributed those products for sale . . . in Vermont, TPRI has sufficient contacts with the State of Vermont for the exercise of personal jurisdiction . . . ." [P.C. 003]. There is simply no evidence in the record to suggest that any

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<sup>1</sup> Numerous times in the Superior Court briefing, factual statements (arguments really) are made by Plaintiff which are unsupported by any citation, or which are cited to a source which does not contain the alleged fact. See, e.g. [P.C. 146] (incorrectly citing the affidavit of Mr. Knight for the statement that certain entities "delivered gasoline with MTBE to Vermont" and further alleging that "gasoline radiated out from the New Jersey nucleus to New England, including Vermont" with no foundation whatsoever).

unidentified “national distributor” to whom TPRI may have sold MTBE or gasoline containing MTBE then “in turn” delivered those products to Vermont. The Superior Court had no basis in its January 16, 2015 opinion on which to conclude that TPRI’s products were “undisputedly . . . distributed . . . for sale in Vermont.”

Second, in its May 22, 2015 opinion, the Superior Court concluded that TPRI “actively directed its products for distribution and use throughout the entire northeastern United States gasoline market, including Vermont.” [P.C. 465]. There is no evidence in the record as to such “active direct[ion]” by TPRI. Plaintiff provided no evidence that TPRI carried out even the most minimal activity in Vermont, much less some greater plan contemplating the “entire northeastern United States.” The Superior Court’s conclusion exceeds all reasonable inferences that can be drawn from the evidence in the record.

Plaintiff’s own expert only speculates as to what might have happened. Mr. Burke never reaches any conclusion that TPRI’s product was delivered to Vermont, only stating over and over that the possibility is merely “more likely than not.” See [P.C. 189-190, ¶ 24]; [P.C. 190-191, ¶¶ 25, 27]. He fails to even describe the route or method of transportation that any of TPRI’s products could have taken to end up in Vermont. Following Mr. Burke’s logic, a court would need to overlook that critical flaw in his reasoning and accept each of the following unsupported presumptions: (1) that at some unknown point in time, (2) an unidentified third party (3) *may have* made a unilateral decision (4) to deliver an unspecified volume of MTBE or gasoline containing MTBE (5) that TPRI either manufactured or distributed outside Vermont (6) through some unknown method of transportation (7) to an undisclosed location in Vermont. Not even Mr. Burke can conclusively state that each of the foregoing hypothetical events ever occurred.

Based on the foregoing record, the Superior Court’s conclusions that TPRI’s product “undisputedly” reached Vermont and that TPRI “actively directed its products for distribution and use throughout the entire northeastern United States gasoline market, including Vermont” are clearly erroneous. These factual misstatements, while concerning, should have ultimately been irrelevant to the Superior Court’s analysis because the issue can be resolved as a matter of law. Due to binding United States Supreme Court precedent, TPRI may not be haled before a Vermont court based solely on the unilateral conduct of a third party or its participation in an alleged “national market.”

1. The United States Supreme Court’s Unanimous Opinion in *Walden* Bars the Exercise of Personal Jurisdiction Based on the Unilateral Conduct of a Third Party

A unanimous United States Supreme Court recently affirmed the longstanding, bedrock principle that personal jurisdiction must rest on contacts that “the ‘defendant *himself*’ creates with the forum State.” *Walden*, 134 S. Ct. at 1122 (quoting *Burger King*, 471 U.S. at 475.) (emphasis in original). In *Walden*, the Court addressed the question of whether a federal court in Nevada could exercise personal jurisdiction over a Georgia police officer for his allegedly tortious conduct in connection with the seizure of plaintiffs’ funds at an Atlanta airport. Plaintiffs argued jurisdiction was proper because the defendant knew his conduct would result in foreseeable harm in Nevada, where plaintiffs maintained one of their two primary residences. The Court found plaintiffs’ argument unconvincing in light of the requirement that personal jurisdiction analysis “focus[] on the relationship among the defendant the forum and the litigation.” *Id.* at 1121 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)). The Court’s opinion clarifies that the conduct of a plaintiff or a third party cannot confer specific jurisdiction on a nonresident defendant with no relevant connection to the forum state.

For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State . . . . Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties. We have consistently rejected attempts to satisfy the defendant-focused “minimum contacts” inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State. **The unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.**

*Id.* at 1121-22 (emphasis added, internal citations and punctuation omitted).

In the absence of any forum-related contacts, the foreseeable nature of any injury in Nevada was irrelevant. “[I]t is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Id.* at 1122. “Due process requires that a defendant be haled into court in a forum State based on *his own* affiliation with the State, not based on . . . ‘random, fortuitous, or attenuated’ contacts . . . .” *Id.* at 1123 (quoting *Burger King*, 471 U.S. at 475) (emphasis added). As Plaintiff admitted in failing to contest a single fact set forth in the Arterburn Affidavit, TPRI has no affiliation with Vermont that bears any relation to the nature of this suit. The theory that an unidentified third party *may have* delivered TPRI’s product to Vermont at some unknown point in time cannot suffice to support personal jurisdiction in light of the unanimous holding in *Walden*.

2. United States Supreme Court Jurisprudence on the Stream of Commerce Theory Prohibits the Exercise of Personal Jurisdiction Based Solely on Foreseeability

The United States Supreme Court’s holding in *Walden* is in keeping with the body of case law developed in response to personal jurisdiction arguments based on the stream of commerce theory. Despite Plaintiff’s attempts to mischaracterize the United States Supreme Court’s holding in *World-Wide Volkswagen Corp. v. Woodson*, the Court’s opinion clearly indicates that “foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause.” 444 U.S. 286, 296 (1980); *see also*, *Fox*, 2014 VT

100, ¶ 29, 106 A.3d 919, cert. denied, 135 S. Ct. 952, 190 L. Ed. 2d 831 (2015)13, 184 Vt. 303, 965 A.2d 447.29, 106 A.3d 919 (“The Supreme Court has expressly rejected the suggestion that foreseeability of causing injury in another state is itself a sufficient benchmark for exercising personal jurisdiction . . .”). The Court explained further that while foreseeability is not wholly irrelevant, “the foreseeability that is critical to the due process analysis is ***not the mere likelihood that a product will find its way into the forum State.***” *World-Wide Volkswagen*, 444 U.S. at 297 (emphasis added). Setting aside the credibility of the Burke Affidavit, Plaintiff’s conclusion that personal jurisdiction is proper because “it is more likely than not that some of [TPRI’s product] ended up supplying the State of Vermont,” is in direct conflict with *World-Wide Volkswagen*, which as Plaintiff admits, “remains controlling precedent.” [P.C. 189-190, ¶ 24]; [P.C. 190-191, ¶¶ 25, 27]; [P.C. 154].

Plaintiff seeks to avoid the majority’s conclusion in *World-Wide Volkswagen* by focusing on dicta reasoning that jurisdiction may be proper where “the sale of a product . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in [the forum] State[.]” *World-Wide Volkswagen*, 444 U.S. at 297. Without identifying even one such isolated occurrence, however, Plaintiff nevertheless argues that TPRI’s purported efforts to serve the national market for gasoline containing MTBE should render it subject to jurisdiction in Vermont. The Supreme Court has consistently rejected that argument.

In *Asahi Metal Industry Co. v. Superior Court of California., Solano County*, the Court declined to exercise jurisdiction even though the defendant was “fully aware that [its product] would end up throughout the United States . . . .” 480 U.S. 102, 107 (1987) (plurality opinion). The plurality reasoned as follows:



The “substantial connection” between the defendant and the forum State necessary for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State*. The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed towards the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example designing a product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant’s awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.

*Id.* at 112 (emphasis in original) (internal citations and punctuation omitted). It is undisputed that TPRI has not engaged in any of the “additional conduct” the Court stated could be relevant in its jurisdictional analysis. Like *Asahi*, “[TPRI is not registered to] do business in [Vermont]. It has no office, agents, employees, or property in [Vermont]. It does not advertise or otherwise solicit business in [Vermont]. It did not create, control, or employ the distribution system that [may have] brought [its product] to [Vermont]. There is no evidence that [TPRI] designed its product in anticipation of sales in [Vermont.]” *Id.* at 112–13; [\[P.C. 132-133, ¶¶ 3-10\]](#). Thus, “[o]n the basis of these facts, the exertion of personal jurisdiction . . . [would] exceed[] the limits of due process.” *Asahi*, 480 U.S. at 113.

Plaintiff’s Superior Court briefing focused on the concurrence in *Asahi*, which questioned whether a showing of “additional conduct” was necessary in light of “Asahi’s regular and extensive sales of component parts to a manufacturer it knew was making regular sales of the final product in California.” *Id.* at 121 (Brennan, J., concurring). Plaintiff here failed to establish that any of TPRI’s product was ever sold in Vermont, much less that it had the requisite knowledge contemplated by Justice Brennan’s concurrence. Plaintiff instead argued that because TPRI participated in the “national market” for MTBE and gasoline containing MTBE, it should be subject to personal jurisdiction in every state in the northeast, including Vermont. [\[P.C. 155\]](#).

The absurdity of this position is highlighted by Plaintiff's contention that jurisdiction should lie "[e]ven if TPRI could show that none of its own gasoline made it to Vermont." *Id.* Regardless, any lingering questions left open by the concurrence in *Asahi*, have been foreclosed by the Court's opinion in *McIntyre*.

In *McIntyre*, the Court reiterated that a "defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State." *McIntyre*, 131 S. Ct. at 2788. "It is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment." *Id.* at 2789. Plaintiff's briefing in the Superior Court argued that reliance on the plurality opinion in *McIntyre* is improper. Instead it argued that "the rule of law announced in *McIntyre* is set forth in the concurrence." [P.C. 154]. However, even under the rule of law advocated by the concurrence, the exercise of personal jurisdiction over TPRI by a Vermont court would still be improper.

Writing for the concurrence, Justice Breyer concluded that the facts in the record did "not provide contacts between the British [defendant] and the State of New Jersey constitutionally sufficient to support New Jersey's assertion of jurisdiction." *McIntyre*, 131 S. Ct. at 2791 (Breyer, J., concurring). The facts in *McIntyre* established that the foreign defendant manufacturer (1) sold the allegedly defective product to a customer in New Jersey; (2) engaged the services of a U.S. distributor "as its exclusive distributor for the entire United States;" and (3) attended trade shows in at least six U.S. cities with the stated intention to reach "anyone interested in the machine from anywhere in the United States." *Id.* at 2791, 2796. Yet the concurrence still required the existence of "something more," citing Justice O'Connor's plurality opinion in *Asahi*. *Id.* at 2792. Critical to Justice Breyer was the fact that the record showed no

“‘regular course’ of sales in New Jersey” and “no ‘something more’ such as special state-related design, advertising, advice, marketing, or anything else.” *Id.* Under those facts, the concurrence concluded that the exercise of jurisdiction would be improper:

I am not persuaded by the absolute approach adopted by the New Jersey Supreme Court and urged by respondent and his *amici*. Under that view, a producer is subject to jurisdiction for a products-liability action so long as it knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states.

*Id.* at 2793 (emphasis in original) (internal citations and quotation marks omitted).

Plaintiff’s argument is identical. It is foreclosed by the holding in *McIntyre*, regardless of whether this Court looks to the plurality or the concurrence for the applicable standard. The exercise of personal jurisdiction over TPRI based solely on its alleged participation in a “nationwide distribution system” is unconstitutional—even under the rule of law advocated by the *McIntyre* concurrence.

3. Plaintiff’s Reliance on Outdated Opinions Issued by the MTBE MDL Court in the Southern District of New York is Improper

Plaintiff attempts to disregard controlling United States Supreme Court precedent by urging the Superior Court to rely on two outdated opinions issued by the Southern District of New York in the MTBE MDL. *See In re MTBE Prods. Liab. Litig.*, Master File No. 1:00-1898, MDL 1358 (SAS), M21-88, 2005 WL 106936 (S.D.N.Y. Jan. 18, 2005); *In re MTBE Prods. Liab. Litig.*, 399 F. Supp. 2d 325 (S.D.N.Y. 2005). Plaintiff argues these cases support its theory that “deliberate participation in the national market for MTBE” shows “intent to serve the markets of [Vermont].” [P.C. 157] (citing *In re MTBE*, 399 F. Supp. 2d at 333). Plaintiff’s argument ignores the fact that both opinions were decided six years before the Supreme Court’s decision in *McIntyre* and nine years before its decision in *Walden*. Plaintiff’s argument also ignores a more recent pronouncement from the same New York District Court reaching the

opposite conclusion and refusing to exercise personal jurisdiction based on a strict stream of commerce theory in light of *McIntyre* and *Walden*. See *In re MTBE*, 2014 WL 1778984, at \*2 [P.C. 267].

In *In re MTBE*, defendant Tauber Oil Company (“Tauber”) moved to dismiss the complaint brought by the Commonwealth of Puerto Rico for lack of personal jurisdiction. See 2014 WL 1778984, at \*1. Tauber sold neat MTBE to Phillips Petroleum Company (“Phillips”) in a series of spot sales. Phillips independently arranged for the delivery of certain batches to its blending facility in Puerto Rico. *Id.* Apart from Phillips’ conduct, Tauber maintained no connection to Puerto Rico. *Id.* at \*1, \*3. “Tauber never manufactured, marketed, traded, stored, sold, solicited, advertised, or otherwise handled finished gasoline, gasoline containing MTBE or neat MTBE in Puerto Rico. Tauber was not involved in any decision by any Phillips entity to use or ship MTBE to Puerto Rico.” *Id.* at \*1. However, plaintiff contended that Tauber was aware that its MTBE was being transported to Puerto Rico for blending and further distribution. *Id.* at \*3.

In its Motion to Dismiss, Tauber pointed to the same controlling United States Supreme Court precedent at issue here. It urged that under the holdings in *Walden* and *McIntyre*, the exercise of personal jurisdiction by the Commonwealth of Puerto Rico would be improper. See *Puerto Rico v. Shell Oil Co.*, No. 1:07-cv-10470-SAS, at Dkt. No. 365, at 13-24 (S.D.N.Y. filed June 12, 2007) [P.C. 275]. The court agreed, finding the Commonwealth’s argument regarding the foreseeable nature of deliveries to Puerto Rico unconvincing:

Even if Tauber knew that the Phillips entities were shipping the MTBE to Puerto Rico, foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. Instead, due process requires that a defendant be haled into court in a forum State based on *his own* affiliation with the State, not based on the random, fortuitous, or attenuated contacts he makes by targeting other persons affiliated with the State. Here Tauber never

manufactured, marketed, delivered, or sold its MTBE in Puerto Rico. Nor did it solicit or advertise in Puerto Rico. Instead, Tauber merely sold MTBE to the Oklahoma-based Phillips entities in a series of isolated spot sales. The independent decision of the Phillips entities to ship the MTBE to Puerto Rico does not establish jurisdiction over Tauber.

*In re MTBE*, 2014 WL 1778984, at \*3. (emphasis in original) (internal citations and quotation marks omitted). The jurisdictionally relevant facts are directly analogous to the present case. The only material difference is the fact that Plaintiff here has no evidence that *any* of TPRI's product ever actually reached Vermont. Otherwise, the facts are identical and this Court's analysis should end in the same result.

The Superior Court's cursory attempt to distinguish the Southern District's opinion in the *Puerto Rico* matter is unsupported by the record. The Superior Court writes in conclusory fashion, "This case is . . . distinguishable. Here TPRI directed its products through a national distribution network from Texas to New Jersey and from New Jersey to the northeastern United States. It did not engage in individual, stand-alone sales of specified quantities 'on the spot' with no reason to know the ultimate destination of the product." [P.C. 465]. The Superior Court cites to no evidence to support any of these bald assertions. In fact, the evidence submitted by Plaintiff in its Opposition is directly contrary to the court's conclusions because it details TPRI's spot sales. For example, Exhibit C to Plaintiff's Opposition includes an affidavit TPRI submitted in another MTBE case detailing every individual, spot sale of gasoline containing MTBE that TPRI made to third parties via the Colonial Pipeline. [P.C. 202]. The third party recipient, the precise quantity of the product being sold, and the title transfer point are all listed in detail. *Id.* The overwhelming majority of these sales were consummated in Hebert, Texas. *Id.* In fact, less than 5% of the gasoline TPRI manufactured in Texas and sold to third parties via the Colonial Pipeline was even delivered to New Jersey, and there is no evidence that the two third parties that received TPRI's product in New Jersey distributed any portion of it to Vermont. *Id.*

Plaintiff's evidence also includes a similar affidavit detailing each and every individual, spot sale of gasoline containing MTBE that TPRI made to third parties from its operations in New Jersey. [P.C. 207]. Again the individual third parties, quantities, and methods of transportation are all set forth in detail. *Id.* The majority of these sales were made to third parties via barge—the same method of transportation at issue in the *Puerto Rico* opinion. Like Tauber, TPRI had no control over the ultimate destination of any of those barge shipments, and furthermore, there is no evidence that any of those shipments were even delivered to terminals that could conceivably service the land-locked State of Vermont. The Superior Court's mischaracterization of TPRI's conduct as an effort to serve “the entire northeastern United States” is clearly not supported by the evidence in the record. Like Tauber, TPRI made individual, spot sales of gasoline containing MTBE to third parties who controlled the ultimate destination of the product. Even if there were any evidence that some portion of that product was actually delivered to Vermont, it would only have occurred solely at the discretion of a third party—conduct which is not sufficient to confer jurisdiction over TPRI.

4. Vermont Precedent is in Accord with the United States Supreme Court

In *Emery v. Shell Oil Company*, the Washington Unit of the Vermont Superior Court was presented with the same unconvincing argument being asserted by Plaintiff here. No. 80-2-09 Wncv (Vt. Super. Ct. Jan. 14, 2011) (unpublished) [P.C. 306]. The *Emery* plaintiffs alleged Mr. Emery suffered injury due to his exposure to benzene-containing products that were manufactured and distributed to Vermont by a number of defendants, including Cleveland Lithichrome (“Cleveland”). [P.C. 306]. Cleveland, in turn, sought indemnification from Barton Solvents based on the theory that any injury suffered by Mr. Emery resulted from exposure to benzene-containing components that were manufactured by Barton. Barton, an out-of-state

defendant with no presence in Vermont, filed a motion to dismiss for lack of personal jurisdiction. [P.C. 307].

Cleveland's argument in support of personal jurisdiction rested on the allegation that "Barton Solvents knew that its product was being incorporated into Cleveland Lithichrome products that would be distributed nationally." [P.C. 311]. After a thorough discussion of the controlling Supreme Court precedent in *World-Wide Volkswagen* and the divided opinion of the Court in *Asahi*, the Vermont court summarily rejected Cleveland's argument:

This argument has several defects. First, Cleveland's argument reflects an even broader stream-of-commerce theory than even Justice Brennan endorsed in [his concurrence] in *Asahi*. Justice Brennan's analysis was not that *Asahi* should be subject to the jurisdiction of every state because it was aware that its products were being marketed nationally. *Asahi* specifically knew that the stream of commerce was taking its products to California routinely, not incidentally. Contacts thus were sufficient in California [according to the standard set forth in his concurrence]. The United States Supreme Court has never endorsed a stream of commerce theory as broad as that apparently advocated here by Cleveland.

*Id.* The opinion was issued just a few days after *McIntyre* was argued before the Supreme Court, foreshadowing the rule of law ultimately announced a few months later in the *McIntyre* concurrence confirming that a manufacturer's mere knowledge that "its products are distributed through a nationwide distribution system that *might* lead to those products being sold" in the forum state is insufficient to establish personal jurisdiction. *McIntyre*, 131 S. Ct. at 2793 (Breyer, J., concurring) (emphasis in original).

The Superior Court's opinion also relies heavily on its interpretation of the Vermont Supreme Court's nearly twenty-year-old ruling in *Dall v. Kaylor*, 163 Vt. 274, 658 A.2d 78 (1995). The court cited to *Dall* in reaching its conclusion that "where a defendant intentionally acts to place its product into a national distribution system in order to advance its commercial interests, 'it should reasonably anticipate being sued in Vermont if a dispute arises from these activities.'" [P.C. 002] (citing *Dall*, 163 Vt. at 276, 658 A.2d at 79-80). Not only is this

statement at odds with the more recently decided precedent outlined above confirming that participation in a national market alone is insufficient to establish personal jurisdiction, it is an unreasonably broad expansion of the Vermont Supreme Court's holding in *Dall*.

In *Dall*, the defendant's product did not reach the forum State through a national distribution network, nor through the hands of a third party. The defendant advertised its products for sale in a nationally circulated publication that reached potential customers in Vermont "over a hundred times." *Dall*, 163 Vt. at 275, 658 A.2d at 79. Upon viewing one such advertisement, the plaintiff contacted the defendant directly and entered into a contract to purchase one of the advertised Hanoverian horses. *Id.* The defendant arranged for delivery of the horse to Vermont, whereupon the plaintiff discovered that it suffered from a congenital and chronic bone disease and subsequently filed suit. *Id.*

The product in question reached Vermont through the direct and purposeful conduct of the defendant, making the exercise of personal jurisdiction proper. The court reasoned that it did not offend the traditional notions of fair play and substantial justice to subject the defendant to personal jurisdiction in Vermont because the defendant not only advertised its products for sale in the state but also because it "'creat[ed] continuing relationships and obligations' with [its] citizens." *Id.*, 162 Vt. at 277, 658 A.2d at 80 (citing *Burger King*, 471 U.S. at 473). TPRI never advertised its products for sale in Vermont, nor did it ever create any "continuing relationships [or] obligations" with its citizens. *See, e.g.,* [P.C. 132]. In fact, there is no evidence that TPRI's product ever made it to Vermont at all. None of the facts critical to the holding in *Dall* are present here, making the Superior Court's reliance on it to support its ruling questionable.



**D. Vermont Courts Cannot Exercise General Jurisdiction Over TPRI Based on its Extremely Limited Contacts with Vermont**

The Superior Court’s denial of TPRI’s Motion to Dismiss was based on a finding of specific jurisdiction. [\[P.C. 003\]](#). That error is addressed in the argument sections above. Additionally, Plaintiff failed to meet its burden in the Superior Court to establish any basis for general jurisdiction over TPRI. To have done so, it would have needed to produce evidence of “continuous and systematic” contacts with Vermont. Based on the facts in the record, TPRI’s *de minimus* contacts with Vermont are clearly insufficient to establish general jurisdiction. The Superior Court failed to give credence to any of Plaintiff’s general jurisdiction arguments, and there is no mention of general jurisdiction in its opinions.

The general jurisdiction analysis is a stringent test allowing jurisdiction to “extend[] beyond an entity’s state of incorporation and principal place of business only in the exceptional case where its contacts with another forum are **so substantial as to render it ‘at home’ in that state.**”<sup>2</sup> *Sonera Holding*, 750 F.3d at 223 (citing *Daimler*, 134 S. Ct. 746 (emphasis added)); *see also Upshaw v. WMB Const., Inc.*, No. 2:13-CV-76, 2013 WL 4874169, at \*3 (D. Vt. Sept. 12, 2013) (“Because the contacts that establish general jurisdiction are unrelated to the events giving rise to the lawsuit, courts impose a ‘more stringent’ version of the minimum contacts test for general jurisdiction than for specific jurisdiction.” (citing *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 674 (2d Cir. 2013))). Indeed, the United States Supreme Court recently made “clear that even a company’s ‘engage[ment] in a substantial, continuous, and systematic

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<sup>2</sup> In determining whether a court has general jurisdiction, it will “examine a defendant’s contacts with the forum state over a period that is reasonable under the circumstances—up to and including the date the suit was filed.” *Porina v. Marward Shipping Co., Ltd.*, 521 F.3d 122, 128 (2d Cir. 2008) (quoting *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 569 (2d Cir. 1996)). The number of years a court will consider is highly fact-intensive and can range from approximately three to seven years. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 409-411 (1984) (considering contacts going back six years); *Metro. Life*, 84 F.3d at 569 (considering contacts going back six years); *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1329-31 (9th Cir. 1984) (considering contacts going back three years).

course of business is alone insufficient to render it at home in a forum[.]” *Sonera Holding*, 750 F.3d at 226 (quoting *Daimler*, 134 S. Ct. at 761).

TPRI’s contacts with Vermont do not come close to the “systematic and continuous” contacts required to render it “at home” in the State. *See Daimler*, 134 S. Ct. at 761-62; *see also Sonera Holding*, 750 F.3d at 226. TPRI’s contacts with Vermont consist of extremely limited sales and the temporary storage of polypropylene in an in-transit rail car at the end of 2012. [P.C. 133-134]. Even sizable sales into a state do not establish general jurisdiction, let alone *de minimis* sales such as these. *Daimler*, 134 S. Ct. at 761-62 (finding that asserting general jurisdiction in every state in which a defendant’s “sales are sizable” would be an “exorbitant exercise[.]” that “would scarcely permit out-of-state defendants ‘to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit’” (citing *Burger King*, 471 U.S. at 472)); *Johnston v. Multidata Sys. Int’l Corp.*, 523 F.3d 602, 612 (5th Cir. 2008) (finding sales to the forum State for “four out of five years [that] accounted for 1.7%, 0.5%, 1.1%, and 2.5%” of the defendant’s global sales did not amount to “substantial, systematic, and continuous contacts”); *Viko v. World Vision, Inc.*, No. 2:08-CV-221, 2009 WL 2230919, at \*16 (D. Vt. July 24, 2009) (“This Court and this Circuit have found mere sales . . . to be an insufficient basis for general jurisdiction.” (citations omitted)); *Dearwater v. Bond Mfg. Co.*, No. 1:06-CV-154, 2007 WL 2745321, at \*1 (D.Vt. Sept. 19, 2007) (finding defendant’s sales to customers in Vermont over a seven year period representing between 2.3% and 0.03% of its yearly total sales did not establish general jurisdiction). Plaintiff cited no authority in the Superior Court that would support general jurisdiction based on TPRI’s limited sales and temporary storage of polypropylene.

Consequently, because TPRI's contacts with Vermont do not approach the "continuous and systematic" contacts required to render a nonresident defendant "at home" in the forum, TPRI is not subject to general jurisdiction in Vermont. *See Daimler*, 134 S. Ct. at 761-62; *Helicopteros*, 466 U.S. at 416-17 (finding general jurisdiction did not exist even where defendant purchased significant equipment and services from the forum State, sent its personnel to train in the forum State, and sent its CEO to negotiate in the forum State). TPRI's contacts with Vermont are precisely the type of "random, fortuitous, [and] attenuated" contacts that are insufficient to establish general personal jurisdiction. *See Burger King*, 471 U.S. at 475.

**E. Asserting Jurisdiction Over TPRI Would Violate Traditional Notions of Fair Play and Substantial Justice**

Because TPRI's contacts with Vermont do not satisfy the minimum contacts requirement for either specific or general jurisdiction, a court need not consider whether the exercise of personal jurisdiction would nevertheless be reasonable. *See, e.g., Porina*, 521 F.3d at 129; *Metro. Life*, 84 F.3d at 568 ("[I]f the constitutionally necessary first-tier minimum [contacts are] lacking, the inquiry ends."); *Dearwater*, 2007 WL 2745321, at \*8. However, even if Plaintiff had established the requisite minimum contacts, TPRI's Motion should have been granted because asserting jurisdiction over it would offend traditional notions of fair play and substantial justice. *See Asahi*, 480 U.S. at 113-14.

Courts consider the following factors when determining the reasonableness of the exercise of jurisdiction: (i) "the burden on the defendant;" (ii) "the interests of the forum State;" (iii) "the plaintiff's interest in obtaining relief;" (iv) "the interstate judicial system's interest in obtaining the most efficient resolution of controversies;" and (v) "the shared interest of the several States in furthering fundamental substantive social policies." *Id.* at 113 (quoting *World-Wide Volkswagen*, 444 U.S. at 292). In this case, TPRI would be significantly and unduly

burdened by being forced to litigate in Vermont. It has no presence in Vermont, and all of its officers and most of its employees are located almost 2,000 miles away in Texas. Thus, the exercise of personal jurisdiction over TPRI would be improper:

[T]he Due Process Clause does not contemplate that a state may make binding a judgment *in personam* against [a] corporate defendant with which the State has no contacts, ties, or relations. Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

*World-Wide Volkswagen*, 444 U.S. at 294 (internal citations and quotations omitted). Moreover, Vermont's interest in resolving this dispute will not be prejudiced by the dismissal of TPRI because TPRI never refined, manufactured, distributed, marketed, or sold either MTBE or gasoline containing MTBE in Vermont, and therefore has no connection to the allegations underlying Plaintiff's causes of action. Accordingly, asserting jurisdiction over TPRI under the circumstances of this case would be unreasonable and a violation of TPRI's due process rights. *See Asahi*, 480 U.S. at 115-16; *Upshaw*, 2013 WL 4874169, at \*4.

In the Superior Court, Plaintiff argued that the exercise of jurisdiction over TPRI was fair and just, principally because of Plaintiff's interest in bringing this suit on behalf of the public to prevent pollution of its groundwater resources. [P.C. 163]. While such an interest is arguably legitimate, it cannot overcome TPRI's lack of minimum contacts with Vermont. Courts have rejected similar arguments made by other states asserting a strong desire to protect their citizens. In *Asahi*, the United States Supreme Court rejected the Supreme Court of California's argument that "the State had an interest in 'protecting its customers by ensuring that foreign manufacturers comply with the state's safety standards.'" 480 U.S. at 114. In *McIntyre*, the Supreme Court similarly disregarded "the State's 'strong interest' in protecting its citizens from defective

products.” 131 S. Ct. at 2791 (“That interest is doubtless strong, but the Constitution commands restraint before discarding liberty in the name of expediency.”). TPRI’s lack of a meaningful connection Vermont cannot be cured solely by Plaintiff’s interests, however strong it may allege them to be.<sup>3</sup>

### **CONCLUSION**

Based on the foregoing, the Superior Court erred in denying TPRI’s Motion to Dismiss, because Plaintiff did not meet its burden of establishing personal jurisdiction. Additionally, the factual finding by the Superior Court, that TPRI’s product was “undisputedly” delivered to Vermont, is clearly erroneous. TPRI therefore respectfully requests that this Court reverse the ruling of the Superior Court and render judgment dismissing Plaintiff’s Complaint against TPRI with prejudice.

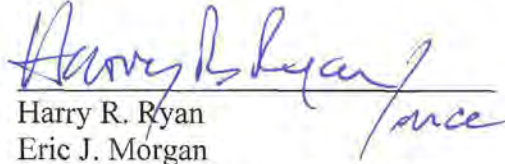
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<sup>3</sup> The primary case cited by Plaintiff in support of its argument that the exercise of jurisdiction over TPRI would be “fair and just” bears no resemblance to the facts of this case. In *State of Vermont v. MPHJ Tech. Inv., LLC*, defendant sent “‘hundreds or thousands’ of letters to businesses in Vermont alleging potential patent infringement,” and, in fact, “threatening litigation.” No. 282-5-13 Wncv, at 2 (Vt. Super. Ct. August 28, 2014) [P.C. 228]. The Vermont Superior Court found personal jurisdiction particularly appropriate in that case because the letters themselves were alleged to be “violations of the law, purposefully directed at Vermont residents.” [P.C. 233]. No such facts are present in the underlying case.

Dated: August 10, 2015

Respectfully submitted,

RYAN SMITH & CARBINE, LTD.

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### **CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitations of V.R.A.P. 32(a)(7)(A)(i) because this brief consists of 8,692 words, excluding the parts of the brief exempted by V.R.A.P. 32(a)(7)(C). In preparation of this brief, the undersigned relied upon the word count function of Microsoft Word 2010.

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3. A virus check using Microsoft System Center Endpoint Protection was performed on the PDF file of this brief, and no viruses were found.

  
M. Coy Connelly

**IN THE SUPREME COURT OF  
THE STATE OF VERMONT**

**VERMONT SUPREME COURT DOCKET NUMBER 2015-204**

**STATE OF VERMONT,**

**Plaintiff-Appellee**

**vs.**

**ATLANTIC RICHFIELD COMPANY, et al.,**

**Defendants**

**TOTAL PETROCHEMICALS & REFINING USA, INC.,**

**Defendant-Appellant**

**APPEAL FROM**

**VERMONT SUPERIOR COURT  
WASHINGTON UNIT, CIVIL DIVISION  
DOCKET NUMBER 340-6-14 Wncv**

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**APPELLANT'S PRINTED CASE**

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VT SUPERIOR COURT  
WASHINGTON UNIT  
STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

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CIVIL DIVISION  
Docket No. 340-6-14 Wncv

STATE OF VERMONT,  
Plaintiff

v.

ATLANTIC RICHFIELD COMPANY, et al.  
Defendants.

FILED

### DECISION

#### Defendant Total Petrochemicals & Refining USA, Inc.'s Motion to Dismiss for lack of Personal Jurisdiction

This matter is before the Court on a Motion to Dismiss for lack of personal jurisdiction filed August 21, 2014 by defendant Total Petrochemicals & Refining USA, Inc. ("TPRI"). Plaintiff State of Vermont opposes the motion. Oral argument was held on the motion on November 13, 2014. At oral argument TPRI was represented by Attorney Amy Parker. The State of Vermont was represented by Assistant Attorney General Gavin J. Boyles.

#### Background

This action relates to contamination of Vermont waters by methyl tertiary butyl ether ("MTBE"), a gasoline additive. The State has filed this action against 29 defendants, all of whom allegedly participated in the promotion, marketing, distribution, and/or sale of gasoline containing MTBE in Vermont. Due to its chemical characteristics, MTBE spreads farther through groundwater and is more difficult to remediate than other gasoline constituents. The State seeks remediation and recovery costs under a number of legal theories, including violation of Vermont groundwater and natural resource protection statutes, negligence, strict liability, public and private nuisance, trespass, and civil conspiracy.

In the present motion TPRI seeks to dismiss the state's claims against it for lack of personal jurisdiction. A pretrial motion to dismiss for lack of personal jurisdiction may be decided on the basis of affidavits alone. *Godino v. Cleanthes*, 163 Vt. 237, 239 (1995). The court must determine whether, on the basis of the affidavits, the party opposing the motion has made a "prima facie showing of jurisdiction, or, in other words, [has demonstrated] facts which would support a finding of jurisdiction." *Id.* Both parties have submitted affidavits, establishing the following facts.

TPRI has never refined gasoline, manufactured MTBE, blended MTBE into gasoline, or itself sold, stored, marketed, or advertised gasoline containing MTBE or neat MTBE in Vermont. TPRI also avers that it has no awareness of a third party delivering MTBE gasoline or neat MTBE to Vermont that TPRI refined or manufactured.

TPRI has, however, sold MTBE gasoline and neat MTBE to national distributors. Prior to sale, TPRI refined the gasoline in Texas before shipping it via the Colonial Pipeline to New Jersey, where it is stored and subsequently distributed to the entire northeastern United States, including Vermont. As part of this national gasoline distribution system, gasoline from various refineries is comingled making it practically impossible to determine at the point of distribution or sale what refinery produced any given gallon of gasoline. TPRI sold millions of barrels of gasoline containing MTBE to major national distributors that distribute gasoline in Vermont. One could not say with certainty whether the exact MTBE or MTBE gasoline manufactured by TPRI was sold in Vermont.

### Analysis

Under the Vermont long arm statute, 12 V.S.A. § 913(b), the court may “assert jurisdiction over individual defendants to the full extent permitted by the Due Process Clause.” *Northern Aircraft, Inc. v. Reed*, 154 Vt. 36, 40 (1990). “In order to invoke personal jurisdiction over an individual defendant, the defendant must have ‘certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Id.* at 41 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Applying the minimum contacts test, jurisdiction over a nonresident defendant is improper if it is based solely on “fortuitous, attenuated or random contacts.” *Id.* at 41–42. The key determination is whether a defendant “purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

The parties dispute under what circumstances a plaintiff can establish a defendant’s purposeful availment through the so called “stream of commerce” doctrine. “[The stream of commerce] refers to the movement of goods from manufacture through distributors to consumers . . . .” *J. McIntyre Machinery, Ltd. V. Nicaastro*, \_\_ U.S. \_\_, 131 S.Ct. 2780, 2788 (2011) (Kennedy, J.). “[A] defendant may in an appropriate case be subject to jurisdiction without entering the forum—itself an unexceptional proposition—as where manufacturers or distributors ‘seek to serve’ a given State’s market.” *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980)). It is not sufficient, however, that the product causing injury foreseeably made its way to the forum state. *World-Wide Volkswagen Corp.*, 444 U.S. at 295–97. “[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” *Id.* at 297. Thus, “if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States . . . .” *Id.* Therefore, where a defendant intentionally acts to place its product into a national distribution system in order to advance its commercial interest, it “should reasonably anticipate being sued in Vermont if a dispute arises from these activities.” *Dall v. Kaylor*, 163 Vt. 274, 276 (1995).

The Federal District Court for the Southern District of New York, in a consolidated multi-district litigation involving numerous alleged injuries caused by MTBE, held that a defendant manufacturer of MTBE gasoline, Lyondell-Citgo Refining LP (“LCR”), “[was] subject to personal jurisdiction in each of the forum states because it supplie[d] MTBE-

containing gasoline to the national market.” *In re Methyl Tertiary Butyl Ether (“MTBE”) Products Liability Litigation*, 399 F.Supp.2d 325, 332 (S.D.N.Y., 2005). The court rejected LCR’s argument that personal jurisdiction was lacking because it only sold MTBE gasoline to one buyer as “that buyer [was] Citgo, whose nationwide distribution network reach[ed] every one of the relevant states.” *Id.* The court held that “[b]y selling large volumes of MTBE-containing gasoline to a nationwide distributor, LCR expected, or reasonably should have expected, its product to reach all of the states in the nation. Thus, LCR purposefully availed itself of the privilege of doing business in the forum states, such that it could reasonably foresee being haled into court in those states.” *Id.*

TPRI argues that because it does not have any direct contacts with Vermont and all of the contacts alleged by the State between TPRI and Vermont are through third parties, this court does not have personal jurisdiction over TPRI. Much like LCR in the multi-district MTBE litigation, however, TPRI took affirmative action when it chose to sell neat MTBE and MTBE blended gasoline through the national distribution scheme and specifically the Colonial Pipeline and its operations within New Jersey. TPRI argues that although it sold millions of gallons of MTBE containing gasoline into the northeastern United States gasoline market, it cannot reasonably expect to be haled into court in any specific jurisdiction because it did not distribute that gasoline itself and remained ignorant of where its gasoline was distributed. This, however, is contrary to the U.S. Supreme Court’s reasoning in *World-Wide Volkswagen* and the Vermont Supreme Court’s decision in *Dale*.

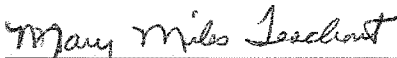
### **Conclusion**

Because TPRI undisputedly manufactured neat MTBE and MTBE gasoline and sold those products to national distributors who in turn distributed those products for sale in the northeast market, including in Vermont, TPRI has sufficient contacts with the State of Vermont for the exercise of personal jurisdiction over it with respect to alleged injuries resulting from the sale of MTBE gasoline in Vermont.

### **Order**

For the foregoing reasons, TPRI’s motion to dismiss is *denied*.

Dated at Montpelier, Vermont this 15th day of January 2015.

  
\_\_\_\_\_  
Mary Miles Teachout  
Superior Judge

## Current Case Docket Information

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Vermont Superior Court

Washington Civil Division

Docket No. 340-6-14 Wncv

State of Vermont vs. Atlantic Richfield

Case Type: Last judge: Mary Miles Teachout  
 Case Track: Not set Recused: None  
 Case Status: Inactive - Appeal Pending  
 Court/Jury: Jury Trial  
 Next Hearing:

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p# 6  def   CITG Refining and Chemicals, C      Lynn, Pietro J.             802-860-1500
p# 7  def   Coastal Eagle Point Oil, Compa       Ryan, Harry R. III          786-1000
p# 8  def   ConocoPhillips Company              Vitt, Geoffrey J.           649-5700
p# 9  def   El Paso Merchant Energy-Petrol      Ryan, Harry R. III          786-1000
p# 10 def   Equilon Enterprises LLC               Byrne, Matthew B.
p# 11 def   Exxon Mobil Corporation              Berger, Ritchie E.           864-5751
p# 12 def   ExxonMobil Oil Corporation          Berger, Ritchie E.           864-5751
p# 13 def   Hess Corporation                    Ryan, Harry R. III          786-1000
p# 14 def   Highlands Fuel Delivery, LLC        Sartore, John Thornton      658-2311
p# 15 def   Irving Oil Limited                  Sartore, John Thornton      658-2311
p# 16 def   Mobil Corporation                    Berger, Ritchie E.           864-5751
p# 17 def   Motiva Enerprises LLC                Byrne, Matthew B.
p# 18 def   PDV Midwest Refining, LLC            Lynn, Pietro J.             802-860-1500
p# 19 def   Shell Oil Company                    Byrne, Matthew B.
p# 20 def   Shell Oil Products Company, LL        Byrne, Matthew B.
p# 21 def   Shell Petroleum Inc.                 Byrne, Matthew B.
p# 22 def   Shell Trading(US) Company            Byrne, Matthew B.
p# 23 def   Sunoco, Inc. (R&M)                   Ryan, Harry R. III          786-1000
p# 24 def   TMR Company                          Byrne, Matthew B.
p# 25 def   Total Petrochemicals &, Refini        Ryan, Harry R. III          786-1000
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p# 133cp6	Co-counsel	Klafeta, Ameri R.	312-660-7635
p# 134cp18	Co-counsel	Klafeta, Ameri R.	312-660-7635
p# 135cp8	Co-counsel	Kraus, Alan E.	212-906-3014
p# 136cp8	Co-counsel	Thurlow, Matthew D.	202-637-1051
p# 137cp2	Co-counsel	Langan, James A.	
p# 138cp3	Co-counsel	Langan, James A.	
p# 139cp19	Co-counsel	Kampman, John W.	
p# 140cp19	Co-counsel	Dennis, Marie S.	
p# 141cp19	Co-counsel	Pittman, Freggie P.	
p# 142cp19	Co-counsel	Cooper, Harmon	301-875-5399
p# 143cp19	Co-counsel	Condron, Peter C.	202-204-1000
p# 144cp19	Co-counsel	Wallace, Richard E. Jr.	202-204-1000
p# 145cp4	Co-counsel	Correll, Charles C.	415-318-1209
p# 146cp1	Co-counsel	Kelman, Wesley	
p# 147cp27	Co-counsel	Aspinall, Jennifer	314-889-7300
p# 148cp28	Co-counsel	Aspinall, Jennifer	314-889-7300
p# 149cp29	Co-counsel	Aspinall, Jennifer	314-889-7300
p# 150cp30	Co-counsel	Aspinall, Jennifer	314-889-7300
p# 151cp27	Co-counsel	Murrie, Kelly J.H.	314-889-7300
p# 152cp28	Co-counsel	Murrie, Kelly J.H.	314-889-7300
p# 153cp29	Co-counsel	Murrie, Kelly J.H.	314-889-7300
p# 154cp30	Co-counsel	Murrie, Kelly J.H.	314-889-7300

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DISPUTES			
DisptCase	Name	Disputants	Dispo Date
1	cmpl Natural Resources Damages/Groundwater pr p#1 v p#2		
2	cmpl Natural Resources Damages/Groundwater pr p#1 v p#3		
3	cmpl Natural Resources Damages/Groundwater pr p#1 v p#4		
4	cmpl Natural Resources Damages/Groundwater pr p#1 v p#5		
5	cmpl Natural Resources Damages/Groundwater pr p#1 v p#6		



6 cmpl Natural Resources Damages/Groundwater pr p#1 v p#7  
 7 cmpl Natural Resources Damages/Groundwater pr p#1 v p#8  
 8 cmpl Natural Resources Damages/Groundwater pr p#1 v p#9  
 9 cmpl Natural Resources Damages/Groundwater pr p#1 v p#10  
 10 cmpl Natural Resources Damages/Groundwater pr p#1 v p#11  
 11 cmpl Natural Resources Damages/Groundwater pr p#1 v p#12  
 12 cmpl Natural Resources Damages/Groundwater pr p#1 v p#13  
 13 cmpl Natural Resources Damages/Groundwater pr p#1 v p#14  
 14 cmpl Natural Resources Damages/Groundwater pr p#1 v p#15  
 15 cmpl Natural Resources Damages/Groundwater pr p#1 v p#16  
 16 cmpl Natural Resources Damages/Groundwater pr p#1 v p#17  
 17 cmpl Natural Resources Damages/Groundwater pr p#1 v p#18  
 18 cmpl Natural Resources Damages/Groundwater pr p#1 v p#19  
 19 cmpl Natural Resources Damages/Groundwater pr p#1 v p#20  
 20 cmpl Natural Resources Damages/Groundwater pr p#1 v p#21  
 21 cmpl Natural Resources Damages/Groundwater pr p#1 v p#22  
 22 cmpl Natural Resources Damages/Groundwater pr p#1 v p#23  
 23 cmpl Natural Resources Damages/Groundwater pr p#1 v p#24  
 24 cmpl Natural Resources Damages/Groundwater pr p#1 v p#25  
 25 cmpl Natural Resources Damages/Groundwater pr p#1 v p#26  
 26 cmpl Natural Resources Damages/Groundwater pr p#1 v p#27  
 27 cmpl Natural Resources Damages/Groundwater pr p#1 v p#28  
 28 cmpl Natural Resources Damages/Groundwater pr p#1 v p#29  
 29 cmpl Natural Resources Damages/Groundwater pr p#1 v p#30

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MOTIONS/PETITIONS/REQUESTS FOR RELIEF				
No.	Type	Status	Judge	Date
1	M/(Stipulated) to Extend Time to File Answ	granted	HT	07/09/14
2	M/for Pro Hac Vice (Tsekerides)	granted	HT	07/23/14
3	M/for Pro Hac Vice (Lender) der	granted	HT	07/23/14
4	M/for Pro Hac Vice(Brown)	granted	HT	07/23/14
5	M/for Pro Hac Vice(James)	granted	HT	07/23/14
6	M/for Pro Hac Vice (Winer)	granted	HT	07/23/14
7	M/for Pro Hac Vice(Akhavan)	granted	HT	07/23/14
8	M/(CITGO) for Designation as a Complex Act	denied	AMD	09/11/14
9	R/(CITGO) Request for Status Conference	granted	HT	07/23/14
10	M/for Pro Hac Vice (Pogust)	granted	HT	07/23/14
11	M/for Pro Hac Vice (Vicari)	granted	HT	07/23/14
12	M/for Pro Hac Vice (Herschlein)	granted	HT	07/23/14
13	M/(Exxon Mobil) to Dismiss	grntprt	MT	01/16/15
14	M/(Exxon) for Designation as a Complex Act	error	MT	07/18/14
15	M/for hearing (Status Conference)	granted	HT	07/23/14
16	M/for Pro Hac Vice (Klafeta)	granted	HT	07/23/14
17	M/for Pro Hac Vice (Meyer)	granted	HT	07/23/14
18	M/for Pro Hac Vice (Eimer)	granted	HT	07/23/14
19	M/for Pro Hac Vice (Hanebutt)	granted	HT	07/23/14
20	M/for Pro Hac Vice (Maroney)	granted	HT	07/23/14
21	M/for Pro Hac Vice (Barnard)	granted	HT	07/23/14
22	M/Limited Joinder In Motions-#8,13,14	moot	HT	07/22/14
23	M/For Admission Pro Hac Vice - Summy	granted	HT	07/23/14
24	M/for Admission Pro Hac Vice-Evangelisti	granted	HT	07/23/14
25	M/for admission Pro Hac Vice-Burke	granted	HT	07/23/14
26	M/For Pro Hac Vice- Ellison	granted	HT	07/28/14
27	M/for Pro Hac Vice - Allen	granted	HT	07/28/14
28	M/For Pro Hac Vice - S Evans	granted	HT	07/31/14
29	M/For Pro Hac Vice - Bennett	granted	HT	07/31/14
30	M/For Pro Hac Vice - Epps	granted	HT	07/31/14
31	M/To Reschedule hearing	granted	HT	07/30/14
32	M/To (Consented) to reschedule Status Conf	other	HT	07/31/14
33	M/For Admission Pro Hac Vice - Danley	granted	HT	07/31/14
34	M/For Admission Pro Hac Vice-Leifer	granted	HT	07/31/14

35	M/Joint Stipulation for Extension	granted	HT	07/31/14
36	M/For Admission Pro Hac Vice - Langan	granted	HT	08/04/14
37	M/For Admission Pro HAC Vice - Running	granted	HT	08/04/14
38	M/For admission Pro Hac Vice - Winston	granted	HT	08/04/14
39	M/For Admission Pro Hac Vice - Kassof	granted	HT	08/04/14
40	M/(Chevron) for Designation as Complex Act	error	MT	08/04/14
41	M/(Chevron & TRMI) to Dismiss	error	MT	08/04/14
42	M/for Admission Pro Hac Vice - Nessa Horew	granted	HT	08/11/14
43	M/for Admission Pro Hac Vice - John S. Gut	granted	HT	08/11/14
44	M/for Admission Pro Hac Vice - Daniel M. K	granted	HT	08/11/14
45	M/for Admission of Counsel Pro Hac Vice	granted	HT	08/12/14
46	M/for Admission Pro Hac Vice - Robin Green	granted	HT	08/12/14
47	M/for Admission Pro Hac Vice of Benjamin K	granted	HT	08/12/14
48	M/for Admission Pro Hac Vice of William Wa	granted	HT	08/12/14
49	M/for Admission of Counsel Pro Hac Vice	granted	HT	08/18/14
50	M/for Admission Pro Hac Vice - Matthew Paw	granted	HT	08/22/14
51	M/for Admission Pro Hac Vice - Robert Gord	granted	HT	08/22/14
52	M/(Total Petro) to Dismiss for Lack of Per	denied	MT	01/16/15
53	M/for Pro Hac Vice (Kraus & Thurlow)	granted	MT	09/04/14
54	M/(Plf) for Extension of time to respond t	granted	MT	09/09/14
55	M/(State) for Leave to file Preliminary Su	judge	MT	11/06/14
56	M/for Admission Pro Hac Vice - Amy Parker,	granted	MT	09/17/14
57	M/for Admission Pro Hac Vice of M. Coy Con	granted	MT	09/17/14
58	M/for Admission Pro Hac Vice of Robert Aye	granted	MT	09/17/14
59	M/(CITGO) for Entry of Order Authorizing E	judge	MT	09/22/14
60	M/(Joint) for Entry of Order re: Use of MD	judge	MT	11/06/14
61	M/(Dfts) Motion for Entry of a Case Manage	judge	MT	09/22/14
62	M/for Admission Pro Hac Vice	granted	MT	10/08/14
63	M/to Withdraw as Attorney -Willie Epps	granted	MT	04/17/15
64	M/for Admission of Counsel Pro Hac Vice (C	granted	MT	11/20/14
65	M/for Admission Pro Hac Vice of Kelly Murr	granted	MT	01/12/15
66	M/for Admission Pro Hac Vice of Jennifer A	granted	MT	01/12/15
67	M/(State) to Permit Interlocutory Appeal	grntprt	MT	05/22/15
68	M/(State) to Toll Deadline to File Amended	granted	MT	02/24/15
69	M/(Total Petrochemical) to Reconsider or,	denprt	MT	05/22/15
70	M/(State) for Admission Pro Hac Vice	judge	MT	04/09/15
71	M/(Renewed)For Designation as Complex Acti	judge	MT	07/16/15

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06/05/14

**1435928 - partyadd**

State of Vermont, Plaintiff.

**1435929 - partyadd**

Atlantic Richfield Company, Defendant.

**1435930 - partyadd**

BP Products North America Inc. Defendant.

**1435931 - partyadd**

Chevron U.S.A.Inc. Defendant.

**1435932 - partyadd**

CITGO Petroleum Corporation, Defendant.

**1435933 - partyadd**

CITG Refining and Chemicals Company, L.P. Defendant.

**1435934 - partyadd**

Coastal Eagle Point Oil Company, Defendant.

**1435935 - partyadd**

ConocoPhillips Company, Defendant.

**1435936 - partyadd**

El Paso Merchant Energy-Petroleum Company, Defendant.

**1435937 - partyadd**

Equilon Enterprises LLC, Defendant.

**1435938 - partyadd**

Exxon Mobil Corporation, Defendant.

**1435940 - partyadd**

ExxonMobil Oil Corporation, Defendant.

**1435941 - partyadd**

Hess Corporation, Defendant.

**1435942 - partyadd**

Highlands Fuel Delivery, LLC, Defendant.

**1435943 - partyadd**

Irving Oil Limited, Defendant.

**1435944 - partyadd**

Mobil Corporation, Defendant.

**1435945 - partyadd**

Motiva Enterprises LLC, Defendant.

**1435946 - partyadd**

PDV Midwest Refining, LLC, Defendant.

**1435947 - partyadd**

Shell Oil Company, Defendant.

**1435948 - partyadd**

Shell Oil Products Company LLC, Defendant.

**1435949 - partyadd**

Shell Petroleum Inc. Defendant.

**1435951 - partyadd**

Shell Trading(US) Company, Defendant.

**1435952 - partyadd**

Sunoco, Inc. (R&M), Defendant.

**1435953 - partyadd**

TMR Company, Defendant.

**1435954 - partyadd**

Total Petrochemicals & Refining, USA, Inc. Defendant.

**1435955 - partyadd**

TRMI-H LLC, Defendant.

**1435956 - partyadd**

Ultramar Energy, Inc. Defendant.

**1435957 - partyadd**

Valero Energy Corporation, Defendant.

**1435958 - partyadd**

Valero Marketing and Supply Company, Defendant.  
**1435959 - partyadd**

Valero Refining-Texas, L.P. Defendant.  
**1435960 - cvfile - status set to asd**

Natural Resources Damages/Groundwater pr case filed by Plaintiff State of Vermont against Defendant Atlantic Richfield Company and Defendant BP Products North America Inc. and Defendant Chevron U.S.A.Inc. and Defendant CITGO Petroleum Corporation and Defendant CITG Refining and Chemicals Company, L.P. and Defendant Coastal Eagle Point Oil Company and Defendant ConocoPhillips Company and Defendant El Paso Merchant Energy-Petroleum Company and Defendant Equilon Enterprises LLC and Defendant Exxon Mobil Corporation and Defendant ExxonMobil Oil Corporation and Defendant Hess Corporation and Defendant Highlands Fuel Delivery, LLC and Defendant Irving Oil Limited and Defendant Mobil Corporation and Defendant Motiva Enterprises LLC and Defendant PDV Midwest Refining, LLC and Defendant Shell Oil Company and Defendant Shell Oil Products Company LLC and Defendant Shell Petroleum Inc. and Defendant Shell Trading(US) Company and Defendant Sunoco, Inc. (R&M) and Defendant TMR Company and Defendant Total Petrochemicals & Refining, USA, Inc. and Defendant TRMI-H LLC and Defendant Ultramar Energy, Inc. and Defendant Valero Energy Corporation and Defendant Valero Marketing and Supply Company and Defendant Valero Refining-Texas, L.P. Jury trial requested.

**1435963 - jurreq**

Jury trial requested by Plaintiff State of Vermont.  
**1435964 - partyadd**

Co-counsel, party 1.  
**1435965 - partyadd**

Co-counsel, party 1.  
**1435967 - letsent**

letter advising of docket number assigned letter sent to Plaintiff State of Vermont.

07/02/14

**1440252 - couappr**

Appearance entered by Ritchie E. Berger on behalf of Defendant Exxon Mobil Corporation and Defendant ExxonMobil Oil Corporation and Defendant Mobil Corporation.

**1441145 - mprfile**

MPR 1) Motion (Stipulated) to Extend Time to File Answ filed by Plaintiff State of Vermont. Motion (Stipulated) to Extend Time to File Answ. Documents filed: Stipulated Motion to Extend Time to File; Answer.

07/03/14

**1440357 - couappr**

Appearance entered by John Thornton Sartore on behalf of Defendant Highlands Fuel Delivery, LLC.

07/09/14

**1441108 - letsent**

Copies of Order mailed to counsel letter sent to Plaintiff State of Vermont and Defendant Exxon Mobil Corporation and Defendant Highlands

Fuel Delivery, LLC.  
**1441109 - letsent**

Copies of Order mailed to counsel letter sent to party 1 Co-counsel  
and party 1 Co-counsel.  
**1441146 - mpreo**

07/10/14 Entry order re MPR 1) Motion (Stipulated) to Extend Time to File  
Answ. Decision/Order. granted by HT. Compliance by 8/21/14.  
**1441190 - cstat - status set to aad**

07/11/14 Case status changed.  
**1441469 - mprfile**

MPR 2) Motion for Pro Hac Vice (Tsekerides) filed by Defendant Mobil  
Corporation. Motion for Pro Hac Vice (Tsekerides). Documents filed:  
Motion for Admission Pro Hac Vice/; Tsekerides; Proposed Order. Filed  
by; Atty. Berger.  
**1441470 - mprfile**

MPR 3) Motion for Pro Hac Vice (Lender) der filed by Defendant Exxon  
Mobil Corporation and Defendant ExxonMobil Oil Corporation. Motion  
for Pro Hac Vice (Lender) der. Documents filed: Motion for Adm. Pro  
Hac Vice/Lender; Proposed Order filed by Atty. Berger.  
**1441471 - mprfile**

MPR 4) Motion for Pro Hac Vice(Brown) filed by Defendant Exxon Mobil  
Corporation and Defendant ExxonMobil Oil Corporation. Motion for Pro  
Hac Vice(Brown). Documents filed: Motion for Adm. Pro Hac Vice/Brown;  
Proposed Order filed by Atty. Berger.  
**1441472 - mprfile**

MPR 5) Motion for Pro Hac Vice(James) filed by Defendant Exxon Mobil  
Corporation and Defendant ExxonMobil Oil Corporation. Motion for Pro  
Hac Vice(James). Documents filed: Motion for Adm. Pro Hac Vice/James;  
Proposed Order filed by Atty. Berger.  
**1441473 - mprfile**

MPR 6) Motion for Pro Hac Vice (Winer) filed by Defendant Exxon Mobil  
Corporation and Defendant ExxonMobil Oil Corporation. Motion for Pro  
Hac Vice (Winer). Documents filed: Motion for Adm. Pro Hac  
Vice/Winer; Proposed Order filed by Atty. Berger.  
**1441474 - mprfile**

07/16/14 MPR 7) Motion for Pro Hac Vice(Akhavan) filed by Defendant Exxon  
Mobil Corporation and Defendant ExxonMobil Oil Corporation. Motion  
for Pro Hac Vice(Akhavan). Documents filed: Motion for Adm. Pro Hac  
Vice/Akhavan; Proposed Order filed by Atty. Berger.  
**1442104 - couappr**

Appearance entered by Eric S. Miller on behalf of Defendant Ultramar  
Energy, Inc. and Defendant Valero Energy Corporation and Defendant  
Valero Marketing and Supply Company and Defendant Valero  
Refining-Texas, L.P.  
**1442217 - couappr**

Appearance entered by Pietro J. Lynn on behalf of Defendant CITGO  
Petroleum Corporation.  
**1442219 - partyadd**

Co-counsel, party 5.

**1442220 - mprfile**

MPR 8) Motion (CITGO) for Designation as a Complex Act filed by Defendant CITGO Petroleum Corporation. Motion (CITGO) for Designation as a Complex Act. Documents filed: CITGO Petroleum Corporation's Motion for; Designation as a Complex Action.

**1442221 - mprfile**

MPR 9) Request (CITGO) Request for Status Conference filed by Defendant CITGO Petroleum Corporation. Request (CITGO) Request for Status Conference. Documents filed: CITGO Petroleum Corporation's Request; for a Status Conference.

07/17/14

**1442347 - couappr**

Appearance entered by John Thornton Sartore on behalf of Defendant Irving Oil Limited.

**1442348 - mprfile**

MPR 10) Motion for Pro Hac Vice (Pogust) filed by Defendant Highlands Fuel Delivery, LLC and Defendant Irving Oil Limited. Motion for Pro Hac Vice (Pogust). Documents filed: Motion for Admission Pro Hac Vice of; Glenn Pogust, Esq on behalf of Def's; Proposed Order.

**1442349 - mprfile**

MPR 11) Motion for Pro Hac Vice (Vicari) filed by Defendant Highlands Fuel Delivery, LLC and Defendant Irving Oil Limited. Motion for Pro Hac Vice (Vicari). Documents filed: Motion for Admission Pro Hac Vice of; Angela R. Vicari, Esq. on behalf of; Def's; Proposed Order.

**1442351 - mprfile**

MPR 12) Motion for Pro Hac Vice (Herschlein) filed by Defendant Highlands Fuel Delivery, LLC and Defendant Irving Oil Limited. Motion for Pro Hac Vice (Herschlein). Documents filed: Motion for Admission Pro Hac Vice of; James D. Herschlein, Esq. on behalf of; Def's; Proposed Order.

07/18/14

**1442476 - mprfile**

MPR 13) Motion (Exxon Mobil) to Dismiss filed by Defendant Exxon Mobil Corporation and Defendant ExxonMobil Oil Corporation and Defendant Mobil Corporation. Motion (Exxon Mobil) to Dismiss. Documents filed: Exxon Mobil, ExxonMobil Oil & Mobil; Corp's Mo. to Dismiss, Affidavit of; Atty Berger in support.

**1442477 - mprfile**

MPR 14) Motion (Exxon) for Designation as a Complex Act filed by Defendant Exxon Mobil Corporation and Defendant ExxonMobil Oil Corporation and Defendant Mobil Corporation. Motion (Exxon) for Designation as a Complex Act.

**1442479 - mprfile**

MPR 15) Motion for hearing (Status Conference) filed by Defendant Exxon Mobil Corporation and Defendant ExxonMobil Oil Corporation and Defendant Mobil Corporation. Motion for hearing (Status Conference).

**1450378 - mprstat**

MPR 14 status changed to error.

07/21/14

**1442610 - couappr**

Appearance entered by Matthew B. Byrne on behalf of Defendant Motiva Enerprises LLC and Defendant Shell Oil Company and Defendant Shell Oil Products Company LLC and Defendant Shell Petroleum Inc. and Defendant Shell Trading(US) Company.

**1442612 - couappr**

Appearance entered by Matthew B. Byrne on behalf of Defendant TMR Company.

**1442613 - couappr**

Appearance entered by Matthew B. Byrne on behalf of Defendant Equilon Enterprises LLC.

**1442614 - partyadd**

Co-counsel, party 10.

**1442615 - partyadd**

Co-counsel, party 17.

**1442616 - partyadd**

Co-counsel, party 19.

**1442617 - partyadd**

Co-counsel, party 20.

**1442618 - partyadd**

Co-counsel, party 21.

**1442619 - partyadd**

Co-counsel, party 22.

**1442620 - partyadd**

Co-counsel, party 24.

**1442627 - couappr**

Appearance entered by Harry R. Ryan III on behalf of Defendant Coastal Eagle Point Oil Company and Defendant El Paso Merchant Energy-Petroleum Company and Defendant Hess Corporation.

**1442628 - couappr**

Appearance entered by Harry R. Ryan III on behalf of Defendant Sunoco, Inc. (R&M).

**1442632 - mprfile**

MPR 16) Motion for Pro Hac Vice (Klafeta) filed by Defendant CITGO Petroleum Corporation. Motion for Pro Hac Vice (Klafeta). Documents filed: Motion of Defendant Citgo Petroleum Corp; for the Admission Pro Hac Vice of Ameri; R. Klafeta; Proposed Order.

**1442637 - mprfile**

MPR 17) Motion for Pro Hac Vice (Meyer) filed by Defendant CITGO Petroleum Corporation. Motion for Pro Hac Vice (Meyer). Documents filed: Motion of Defendant Citgo Petroleum Corp; for the Admission Pro Hac Vice of Lisa S; Meyer; Proposed Order.

**1442638 - mprfile**

MPR 18) Motion for Pro Hac Vice (Eimer) filed by Defendant CITGO Petroleum Corporation. Motion for Pro Hac Vice (Eimer). Documents filed: Motion of Defendant Citgo Petroleum Corp; for the Admission

Pro Hac Vice of Nathan.

**1442639 - mprfile**

MPR 19) Motion for Pro Hac Vice (Hanebutt) filed by Defendant CITGO Petroleum Corporation. Motion for Pro Hac Vice (Hanebutt). Documents filed: Motion of Def. Citgo Petroleum Corp. for; the Admission Pro Hac Vice of Pamela R; Hanebutt; Proposed Order.

**1442642 - couappr**

Appearance entered by Robin L. Stern on behalf of Defendant Atlantic Richfield Company and Defendant BP Products North America Inc.

**1442664 - partyadd**

Co-counsel, party 23.

**1442666 - partyadd**

Co-counsel, party 13.

**1442667 - partyadd**

Co-counsel, party 7.

**1442668 - partyadd**

Co-counsel, party 23.

**1442669 - partyadd**

Co-counsel, party 9.

07/22/14

**1442796 - mprfile**

MPR 20) Motion for Pro Hac Vice (Maroney) filed by Defendant Exxon Mobil Corporation. Motion for Pro Hac Vice (Maroney). Documents filed: Motion for Admission Pro Hac Vice of; Michael T. Maroney; Proposed Order.

**1442797 - mprfile**

MPR 21) Motion for Pro Hac Vice (Barnard) filed by Defendant Exxon Mobil Corporation. Motion for Pro Hac Vice (Barnard). Documents filed: Motion for Admission Pro Hac Vice of; Deborah E. Barnard, Esq; Proposed Order.

**1442806 - mprfile**

MPR 22) Motion Limited Joinder In Motions-#8,13,14 filed by Defendant Highlands Fuel Delivery, LLC and Defendant Irving Oil Limited. Motion Limited Joinder In Motions-#8,13,14. Documents filed: Highland's & Irving Oil limited; joinder in Motions.

**1442878 - mprfile**

MPR 23) Motion For Admission Pro Hac Vice - Summy filed by Plaintiff State of Vermont. Motion For Admission Pro Hac Vice - Summy. Documents filed: Mo. for admission pro hac vice of; Paul Scott Summy.

**1442879 - mprfile**

MPR 24) Motion for Admission Pro Hac Vice-Evangelisti filed by Plaintiff State of Vermont. Motion for Admission Pro Hac Vice-Evangelisti. Documents filed: Mo. for admission pro hac vice of; Celeste A. Evangelisti.

**1442880 - mprfile**

MPR 25) Motion for admission Pro Hac Vice-Burke filed by Plaintiff State of Vermont. Motion for admission Pro Hac Vice-Burke. Documents filed: Mo. for admission Pro Hac Vice; Carla m. Burke.



**1442881 - mprjudge**

MPR's 23-25: 23) Motion For Admission Pro Hac Vice - Summy; 24) Motion for Admission Pro Hac Vice-Evangelisti; 25) Motion for admission Pro Hac Vice-Burke given to Judge Helen M. Toor. Service complete on party(s) 2: other. Documents served: Aff. of Service serving Summons & Complaint. Service complete on party(s) 3: personal service. Documents served: Return of Service serving Summons & Complaint; Jury Demand. Service complete on party(s) 4: personal service. Documents served: Return of Service serving Summons & Complaint; Jury Demand. Service complete on party(s) 5: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 6: other. Documents served: Aff. of Service serving Summons & Complaint. Service complete on party(s) 7: other. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 8: personal service. Documents served: Return of Service serving Summons & Complaint; Jury Demand. Service complete on party(s) 9: other. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 10: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 11: personal service. Documents served: Return of Service serving Summons & Complaint; Jury Demand. Service complete on party(s) 12: personal service. Documents served: Return of Service serving Summons & Complaint; Jury Demand. Service complete on party(s) 13: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 14: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 15: personal service. Documents served: Return of Service serving Summons & Complaint; Jury Demand. Service complete on party(s) 16: other. Documents served: Aff. of Service serving Summons & Complaint. Service complete on party(s) 17: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 18: other. Documents served: Aff. of Service serving Summons & Complaint. Service complete on party(s) 19: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 20: other. Documents served: Aff. of Service serving Summons & Complaint. Service complete on party(s) 21: other. Documents served: Aff. of Service serving Summons & Complaint. Service complete on party(s) 22: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 23: personal service. Documents served: Return of Service serving Summons & Complaint; Jury Demand. Service complete on party(s) 24: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 25: other. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 26: other. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 27: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 28: other. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 29: personal service. Documents served: Return of Service serving Summons & Complaint. Service complete on party(s) 30: other. Documents served: Return of Service serving Summons & complaint.

**1443096 - cstat**

Case status changed.

**1443097 - cstat**

Case status changed.

**1446073 - mprstat**

MPR 22 status changed to moot.

**1446074 - mprmemo**

Party 14-15 filed response to MPR 8,13-14.

07/23/14

**1443030 - mpreo**

Entry order re MPR 9) Request (CITGO) Request for Status Conference. M/Reaction Form. granted by HT.

**1443031 - mpreo**

Entry order re MPR 15) Motion for hearing (Status Conference). M/Reaction Form. granted by HT. The court suggests that defendants select representatives rather than attempting to have all counsel part-icipate. Counsel may participate by phone if they are all on one conference call.

**1443037 - hrgset**

Status Conference set for 08/13/14 at 02:30 PM. ONE HOUR HAS BEEN ALLOTTED.

**1443042 - letsent**

Copies of Order mailed to counsel letter sent to Plaintiff State of Vermont and Defendant Atlantic Richfield Company and Defendant CITGO Petroleum Corporation and Defendant Coastal Eagle Point Oil Company.

**1443043 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Equilon Enterprises LLC and Defendant Exxon Mobil Corporation and Defendant Highlands Fuel Delivery, LLC.

**1443045 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Mobil Corporation and Defendant Motiva Enterprises LLC and Defendant Ultramar Energy, Inc.

**1443046 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Ultramar Energy, Inc. and party 1 Co-counsel and party 1 Co-counsel and party 5 Co-counsel and party 10 Co-counsel.

**1443047 - letsent**

Copies of Order mailed to counsel letter sent to party 23 Co-counsel.

**1443055 - note**

Letter from Atty McDougall RE: Hearing date 8/19/ or 8/20.

**1443103 - note**

Phone call from Atty Weiner - Parties would really like 8/19 or 8/20.

**1443105 - note**

Per Judge Toor ( parties do not like the date of 8/13) Parties are to agree on a date & send Mo. to reschedule. They may not get the date they want. Called Atty Weimer - told him what Judge said. He will talk with Attorneys.

**1443113 - mpreo**

Entry order re MPR 7) Motion for Pro Hac Vice(Akhavan). M/Reaction Form. granted by HT. Order filed ( Melody E. Akhavan), copy sent to Atty Berger.

**1443114 - mpreo**

Entry order re MPR 6) Motion for Pro Hac Vice (Winer). M/Reaction Form. granted by HT. Order filed, (Jed P. Winer) copy sent Atty Berger.

**1443116 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Exxon Mobil Corporation.

**1443117 - mpreo**

Entry order re MPR 5) Motion for Pro Hac Vice(James). M/Reaction Form. granted by HT. Order filed ( Cheryl James), copy sent to Atty Berger.

**1443118 - mpreo**

Entry order re MPR 4) Motion for Pro Hac Vice(Brown). M/Reaction Form. granted by HT. Order filed, ( Allison Brown ) copy sent to Atty Berger.

**1443119 - mpreo**

Entry order re MPR 3) Motion for Pro Hac Vice(Lender) der. M/Reaction Form. granted by HT. Order filed, ( David J. Lender ) copy sent to Atty Berger.

**1443122 - mpreo**

Entry order re MPR 2) Motion for Pro Hac Vice (Tsekerides). M/Reaction Form. granted by HT. Order filed, ( Theodore Tsekerides ) copy sent to Atty Berger.

**1443125 - mpreo**

Entry order re MPR 12) Motion for Pro Hac Vice (Herschlein). M/Reaction Form. granted by HT. Order filed, ( James Herschlein ).

**1443128 - mpreo**

Entry order re MPR 10) Motion for Pro Hac Vice (Pogust). M/Reaction Form. granted by HT. Order filed, ( Glenn Pogust) copy sent to Atty Sartore.

**1443133 - mpreo**

Entry order re MPR 11) Motion for Pro Hac Vice (Vicari). M/Reaction Form. granted by HT. Order filed, ( Angela Vicari ) copy sent to Atty Sartore.

**1443139 - mpreo**

Entry order re MPR 16) Motion for Pro Hac Vice (Klafeta). M/Reaction Form. granted by HT. Order filed, ( Ameri Klafeta)copy sent to Atty Lynn.

**1443143 - mpreo**

Entry order re MPR 19) Motion for Pro Hac Vice (Hanebutt). M/Reaction Form. granted by HT. Order filed, ( Pamela Hanebutt ) copy sent to Atty Lynn.

**1443146 - mpreo**

Entry order re MPR 18) Motion for Pro Hac Vice (Eimer). M/Reaction Form. granted by HT. Order filed, (Nathan Eimer) copy sent to Atty Lynn.

**1443147 - mpreo**

Entry order re MPR 17) Motion for Pro Hac Vice (Meyer). M/Reaction Form. granted by HT. Order filed, ( Lisa Meyer ) copy sent to Atty Lynn.

**1443148 - mpreo**

Entry order re MPR 21) Motion for Pro Hac Vice (Barnard). M/Reaction Form. granted by HT. Order filed, ( Deborah Barnard) copy sent to Atty Berger.

**1443150 - mpreo**

Entry order re MPR 20) Motion for Pro Hac Vice (Maroney). M/Reaction Form. granted by HT. Order filed, ( Michael Maroney) copy sent to Atty Berger.

**1443151 - mpreo**

Entry order re MPR 24) Motion for Admission Pro Hac Vice-Evangelisti. M/Reaction Form. granted by HT. Order filed, ( Celeste Evangelisti) copy sent to Atty Kline.

**1443154 - mpreo**

Entry order re MPR 23) Motion For Admission Pro Hac Vice - Summy. M/Reaction Form. granted by HT. Order filed, ( Paul Scott Summy) copy sent to Atty Kline.

**1443156 - mpreo**

Entry order re MPR 25) Motion for admission Pro Hac Vice-Burke. M/Reaction Form. granted by HT. Order filed, ( Carla Burke) copy sent To Atty Kline.

**1443157 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Highlands Fuel Delivery, LLC.

**1443158 - letsent**

Copies of Order mailed to counsel letter sent to Defendant CITGO Petroleum Corporation.

**1443159 - letsent**

Copies of Order mailed to counsel letter sent to Plaintiff State of Vermont.

**1443179 - partyadd**

Co-counsel, party 14.

**1443182 - partyadd**

Co-counsel, party 15.

**1443183 - partyadd**

Co-counsel, party 14.

**1443186 - partyadd**

Co-counsel, party 15.

**1443187 - partyadd**

Co-counsel, party 11.

**1443193 - partyadd**

Co-counsel, party 12.

**1443194 - partyadd**

Co-counsel, party 16.  
**1443195 - partyadd**

Co-counsel, party 11.  
**1443196 - partyadd**

Co-counsel, party 12.  
**1443197 - partyadd**

Co-counsel, party 16.  
**1443198 - partyadd**

Co-counsel, party 11.  
**1443199 - partyadd**

Co-counsel, party 12.  
**1443200 - partyadd**

Co-counsel, party 16.  
**1443201 - partyadd**

Co-counsel, party 11.  
**1443202 - partyadd**

Co-counsel, party 12.  
**1443203 - partyadd**

Co-counsel, party 16.  
**1443204 - partyadd**

Co-counsel, party 11.  
**1443205 - partyadd**

Co-counsel, party 12.  
**1443206 - partyadd**

Co-counsel, party 16.  
**1443207 - partyadd**

Co-counsel, party 11.  
**1443208 - partyadd**

Co-counsel, party 12.  
**1443209 - partyadd**

Co-counsel, party 16.  
**1443210 - partyadd**

Co-counsel, party 1.  
**1443211 - partyadd**

Co-counsel, party 1.  
**1443212 - partyadd**

Co-counsel, party 1.  
**1443213 - partyadd**

Co-counsel, party 11.  
**1443214 - partyadd**

Co-counsel, party 12.  
**1443215 - partyadd**

Co-counsel, party 16.  
**1443216 - partyadd**

Co-counsel, party 11.  
**1443217 - partyadd**

Co-counsel, party 12.  
**1443218 - partyadd**

Co-counsel, party 16.  
**1443219 - partyadd**

Co-counsel, party 5.  
**1443221 - partyadd**

Co-counsel, party 5.  
**1443223 - partyadd**

Co-counsel, party 5.  
**1443224 - partyadd**

Co-counsel, party 5.  
**1443226 - partyadd**

Co-counsel, party 14.  
**1443227 - partyadd**

Co-counsel, party 15.  
**1444086 - mprfile**

MPR 31) Motion To Reschedule hearing filed by party 1 Co-counsel.  
Motion To Reschedule hearing.  
**1444087 - mprjudge**

07/24/14 MPR 31) Motion To Reschedule hearing given to Judge Helen M. Toor.  
**1443235 - letsent**

Copies of Order mailed to counsel letter sent to Plaintiff State of Vermont and Defendant Atlantic Richfield Company and Defendant CITGO Petroleum Corporation and Defendant Coastal Eagle Point Oil Company.

**1443236 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Equilon Enterprises LLC and Defendant Exxon Mobil Corporation and Defendant Highlands Fuel Delivery, LLC.  
**1443237 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Motiva Enterprises LLC and Defendant Ultramar Energy, Inc. and party 1 Co-counsel.  
**1443239 - letsent**

Copies of Order mailed to counsel letter sent to party 1 Co-counsel and party 5 Co-counsel and party 10 Co-counsel and party 23 Co-counsel.  
**1443240 - letsent**

Copies of Order mailed to counsel letter sent to party 14 Co-counsel and party 14 Co-counsel and party 11 Co-counsel.

**1443241 - letsent**

Copies of Order mailed to counsel letter sent to party 11 Co-counsel and party 11 Co-counsel and party 11 Co-counsel.

**1443242 - letsent**

Copies of Order mailed to counsel letter sent to party 11 Co-counsel and party 11 Co-counsel and party 1 Co-counsel.

**1443243 - letsent**

Copies of Order mailed to counsel letter sent to party 1 Co-counsel and party 1 Co-counsel and party 11 Co-counsel and party 11 Co-counsel.

**1443244 - letsent**

Copies of Order mailed to counsel letter sent to party 5 Co-counsel and party 5 Co-counsel and party 5 Co-counsel and party 5 Co-counsel and party 14 Co-counsel.

07/25/14

**1443599 - mprfile**

MPR 26) Motion For Pro Hac Vice- Ellison filed by Defendant Coastal Eagle Point Oil Company and Defendant El Paso Merchant Energy-Petroleum Company. Motion For Pro Hac Vice- Ellison. Documents filed: Mo. for Pro Hac Vice of Dawn Ellison.

**1443601 - mprfile**

MPR 27) Motion for Pro Hac Vice - Allen filed by Defendant Coastal Eagle Point Oil Company and Defendant El Paso Merchant Energy-Petroleum Company. Motion for Pro Hac Vice - Allen. Documents filed: MO. for Pro Hac Vice - Brent Allen.

**1443603 - mprjudge**

MPR's 26-27: 26) Motion For Pro Hac Vice- Ellison; 27) Motion for Pro Hac Vice - Allen given to Judge Helen M. Toor.

07/28/14

**1443659 - mpreo**

Entry order re MPR 27) Motion for Pro Hac Vice - Allen. M/Reaction Form. granted by HT. Order filed, copy sent.

**1443661 - mpreo**

Entry order re MPR 26) Motion For Pro Hac Vice- Ellison. M/Reaction Form. granted by HT. Order filed, copy sent.

**1443672 - letsent**

Copies of Order mailed to counsel letter sent to Plaintiff State of Vermont and Defendant Atlantic Richfield Company and Defendant CITGO Petroleum Corporation and Defendant Equilon Enterprises LLC.

**1443674 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Exxon Mobil Corporation and Defendant Hess Corporation and Defendant Highlands Fuel Delivery, LLC.

**1443677 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Ultramar Energy, Inc. and party 1 Co-counsel and party 1 Co-counsel and party 5 Co-counsel and party 10 Co-counsel.

**1443680 - letsent**

Copies of Order mailed to counsel letter sent to party 23 Co-counsel.

**1443771 - partyadd**

Co-counsel, party 7.

**1443773 - partyadd**

Co-counsel, party 9.

**1443774 - partyadd**

Co-counsel, party 7.

**1443775 - partyadd**

Co-counsel, party 9.

**1443776 - letsent**

Copies of Order mailed to counsel letter sent to party 7 Co-counsel and party 7 Co-counsel.

07/30/14

**1444063 - mprfile**

MPR 28) Motion For Pro Hac Vice - S Evans filed by Defendant Valero Energy Corporation. Motion For Pro Hac Vice - S Evans. Documents filed: Mo. for Admission Pro Hac Vice of; Selena L. Evans.

**1444065 - mprfile**

MPR 29) Motion For Pro Hac Vice - Bennett filed by Defendant Ultramar Energy, Inc. Motion For Pro Hac Vice - Bennett. Documents filed: Mo. for Admission Pro Hac Vice of; James F. Bennett.

**1444066 - mprfile**

MPR 30) Motion For Pro Hac Vice - Epps filed by Defendant Ultramar Energy, Inc. Motion For Pro Hac Vice - Epps. Documents filed: Mo. for Admission Pro Hac Vice of; Willie J. Epps.

**1444067 - mprjudge**

MPR's 28-30: 28) Motion For Pro Hac Vice - S Evans; 29) Motion For Pro Hac Vice - Bennett; 30) Motion For Pro Hac Vice - Epps given to Judge Helen M. Toor.

**1444154 - mpreo**

Entry order re MPR 31) Motion To Reschedule hearing. M/Reaction Form. granted by HT. As the letter states that the 19th or 20th both work for both sides. The court will reschedule to one of those dates. Please discuss in advance a proposed discovery schedule.

**1444156 - hrgset**

Status Conference set for 08/19/14 at 01:00 PM. THIS HEARING HAS BEEN RESCHEDULED FROM 8/13/14, ONE HOUR HAS BEEN ALLOTTED.

**1444159 - letsent**

Copies of Order mailed to counsel letter sent to Plaintiff State of Vermont and Defendant Atlantic Richfield Company and Defendant CITGO Petroleum Corporation and Defendant Coastal Eagle Point Oil Company.

**1444160 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Equilon Enterprises LLC and Defendant Exxon Mobil Corporation and Defendant Hess Corporation.

**1444161 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Highlands



Fuel Delivery, LLC and Defendant Mobil Corporation and Defendant Motiva Enterprises LLC.

**1444162 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Ultramar Energy, Inc. and party 1 Co-counsel and party 1 Co-counsel and party 5 Co-counsel and party 10 Co-counsel.

**1444168 - hrgcan**

Status Conference scheduled for 08/13/14 rescheduled.

**1444170 - mpreo**

Entry order re MPR 30) Motion For Pro Hac Vice - Epps. M/Reaction Form. granted by HT. Order Pro Hac Vice - Willie J. Epps.

**1444171 - mpreo**

Entry order re MPR 29) Motion For Pro Hac Vice - Bennett. M/Reaction Form. granted by HT. Order filed, pro hac vice- James F. Bennett.

**1444172 - mpreo**

Entry order re MPR 28) Motion For Pro Hac Vice - S Evans. M/Reaction Form. granted by HT. Order filed, pro hac vice -Selena L. Evans.

**1444176 - letsent**

Copies of Order mailed to counsel letter sent to Plaintiff State of Vermont and Defendant Atlantic Richfield Company and Defendant CITGO Petroleum Corporation and Defendant CITG Refining and Chemicals Company, L.P. and Defendant Coastal Eagle Point Oil Company.

**1444177 - letsent**

Copies of Order mailed to counsel letter sent to Plaintiff State of Vermont and Defendant Atlantic Richfield Company and Defendant BP Products North America Inc. and Defendant Chevron U.S.A.Inc. and Defendant CITGO Petroleum Corporation and Defendant CITG Refining and Chemicals Company, L.P. and Defendant Coastal Eagle Point Oil Company and Defendant ConocoPhillips Company and Defendant El Paso Merchant Energy-Petroleum Company and Defendant Equilon Enterprises LLC and Defendant Exxon Mobil Corporation and Defendant ExxonMobil Oil Corporation and Defendant Hess Corporation and Defendant Highlands Fuel Delivery, LLC.

**1444178 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Ultramar Energy, Inc. and party 1 Co-counsel and party 1 Co-counsel and party 5 Co-counsel and party 10 Co-counsel.

**1444180 - partyadd**

Co-counsel, party 27.

**1444181 - partyadd**

Co-counsel, party 28.

**1444182 - partyadd**

Co-counsel, party 29.

**1444183 - partyadd**

Co-counsel, party 30.

**1444184 - partyadd**

Co-counsel, party 27.

**1444185 - partyadd**

Co-counsel, party 28.

**1444186 - partyadd**

Co-counsel, party 29.

**1444187 - partyadd**

Co-counsel, party 30.

**1444188 - partyadd**

Co-counsel, party 27.

**1444189 - partyadd**

Co-counsel, party 28.

**1444190 - partyadd**

Co-counsel, party 29.

**1444191 - partyadd**

Co-counsel, party 30.

**1444192 - letsent**

Copies of Order mailed to counsel letter sent to party 27 Co-counsel and party 27 Co-counsel and party 27 Co-counsel.

**1444195 - mprmemo**

Party 1 filed response to MPR 8.

**1444197 - mprfile**

MPR 32) Motion To (Consented) to reschedule Status Conf filed by Plaintiff State of Vermont. Motion To (Consented) to reschedule Status Conf. Documents filed: Plfs Consented-To Motion to reschedule; status conference.

**1444198 - mprjudge**

MPR 31) Motion To Reschedule hearing given to Judge Helen M. Toor.

**1444305 - mprstat**

MPR 31 status changed to granted.

07/31/14

**1444225 - mprfile**

MPR 33) Motion For Admission Pro Hac Vice - Danley filed by Defendant Coastal Eagle Point Oil Company. Motion For Admission Pro Hac Vice - Danley. Documents filed: Mo. for Admission Pro Hac Vice of; Christopher Dwight Danley; proposed order; Certificate of Service.

**1444226 - mprfile**

MPR 34) Motion For Admission Pro Hac Vice-Leifer filed by Defendant Coastal Eagle Point Oil Company. Motion For Admission Pro Hac Vice-Leifer. Documents filed: Mo. for Admission Pro Hac Vice; Steven L. Leifer, proposed order.

**1444227 - mprjudge**

MPR's 33-34: 33) Motion For Admission Pro Hac Vice - Danley; 34) Motion For Admission Pro Hac Vice-Leifer given to Judge Helen M. Toor.

**1444228 - mprjudge**

MPR 32) Motion To (Consented) to reschedule Status Conf given to Judge Helen M. Toor.

**1444230 - mprfile**

MPR 35) Motion Joint Stipulation for Extension filed by party 1 Co-counsel. Motion Joint Stipulation for Extension. Documents filed: Joint Stipulation for extension of; deadlines relating to Exxons Motion; to Dismiss; Proposed ORder.

**1444242 - mprstat**

MPR 35 status changed to granted.

**1444243 - mpreo**

Entry order re MPR 34) Motion For Admission Pro Hac Vice-Leifer. M/Reaction Form. granted by HT. Order filed, Pro Hac Vice Steven L. Leifer, Copies sent to Vermont counsel only, plus Atty Leifer.

**1444244 - mpreo**

Entry order re MPR 33) Motion For Admission Pro Hac Vice - Danley. M/Reaction Form. granted by HT. Order filed, Pro Hac Vice Christopher Dunley. Copies sent to Vermont counsel & Atty Dunley.

**1444246 - partyadd**

Co-counsel, party 13.

**1444247 - partyadd**

Co-counsel, party 13.

**1444248 - letsent**

Copies of Order mailed to counsel letter sent to party 13 Co-counsel and party 13 Co-counsel.

**1444250 - mpreo**

Entry order re MPR 32) Motion To (Consented) to reschedule Status Conf. M/Reaction Form. other by HT. Moot. Already rescheduled.

**1444261 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Highlands Fuel Delivery, LLC and Defendant Ultramar Energy, Inc.

08/01/14

**1444435 - mprfile**

MPR 36) Motion For Admission Pro Hac Vice - Langan filed by Defendant Atlantic Richfield Company and Defendant BP Products North America Inc. Motion For Admission Pro Hac Vice - Langan. Documents filed: Mo. for admission Pro Hac Vice-; J. Andrew Langan.

**1444436 - mprfile**

MPR 37) Motion For Admission Pro HAC Vice - Running filed by Defendant Atlantic Richfield Company and Defendant BP Products North America Inc. Motion For Admission Pro HAC Vice - Running. Documents filed: Mo. for Admission Pro Hac Vice -; Andrew Richard Running.

**1444437 - mprfile**

MPR 38) Motion For admission Pro Hac Vice - Winston filed by Defendant Atlantic Richfield Company and Defendant BP Products North America Inc. Motion For admission Pro Hac Vice - Winston. Documents filed: Mo. for Admission Pro Hac Vice -; Sylvia Nichole Winston.

**1444438 - mprfile**

MPR 39) Motion For Admission Pro Hac Vice - Kassof filed by Defendant Atlantic Richfield Company and Defendant BP Products North America Inc. Motion For Admission Pro Hac Vice - Kassof. Documents filed: Mo. for Admission Pro Hac Vice -; Andrew A. Kassof.

**1444439 - mprjudge**

MPR's 36-39: 36) Motion For Admission Pro Hac Vice - Langan; 37) Motion For Admission Pro HAC Vice - Running; 38) Motion For admission Pro Hac Vice - Winston; 39) Motion For Admission Pro Hac Vice - Kassof given to Judge Helen M. Toor.

08/04/14

**1444540 - couappr**

Appearance entered by R. Bradford Fawley on behalf of Defendant Chevron U.S.A.Inc.

**1444541 - couappr**

Appearance entered by R. Bradford Fawley on behalf of Defendant TRMI-H LLC.

**1444542 - mprfile**

MPR 40) Motion (Chevron) for Designation as Complex Act filed by Defendant Chevron U.S.A.Inc. and Defendant TRMI-H LLC. Motion (Chevron) for Designation as Complex Act. Documents filed: defendants Chevron & TRMI's Motion for; Designation as a Complex Action.

**1444543 - mprfile**

MPR 41) Motion (Chevron & TRMI) to Dismiss filed by Defendant Chevron U.S.A.Inc. and Defendant TRMI-H LLC. Motion (Chevron & TRMI) to Dismiss. Documents filed: Defendants Chevron and TRMI's Motion to; Dismiss.

**1444672 - note**

Order issued:. The court hereby orders that in this case all rulings and hrgs. notices from the court shall be sent by the clerk's office only to the local counsel. Local counsel will be responsible for passing along such materials to the pro hac vice attorneys with whom they are associated. (See order for complete ruling).

**1444704 - mpreo**

Entry order re MPR 38) Motion For admission Pro Hac Vice - Winston. M/Reaction Form. granted by HT. Although the pro hac vice licenses for 4 of these attorneys were attached to the wrong motions, all were accounted for so the court has shuffled the licenses to the correct motions and grants them all. Order issued re: Sylvia Nichole Winston, Esq.

**1444718 - partyadd**

Co-counsel, party 2.

**1444735 - mpreo**

Entry order re MPR 36) Motion For Admission Pro Hac Vice - Langan. M/Reaction Form. granted by HT. Order issued re: James Andrew Langan, Esq.

**1444737 - mpreo**

Entry order re MPR 37) Motion For Admission Pro HAC Vice - Running. M/Reaction Form. granted by HT. Order issued re: Andrew Richard Running, Esq.

**1444738 - mpreo**

Entry order re MPR 39) Motion For Admission Pro Hac Vice - Kassof.  
M/Reaction Form. granted by HT. Order issued re: Andrew A. Kassof,  
Esq.

**1444739 - letsent**

Copies of Order mailed to counsel letter sent to Plaintiff State of  
Vermont and Defendant Atlantic Richfield Company and Defendant  
Chevron U.S.A.Inc. and Defendant CITGO Petroleum Corporation.

**1444740 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Coastal  
Eagle Point Oil Company and Defendant Equilon Enterprises LLC and  
Defendant Exxon Mobil Corporation.

**1444741 - letsent**

Copies of Order mailed to counsel letter sent to Defendant Highlands  
Fuel Delivery, LLC and Defendant Ultramar Energy, Inc. and Defendant  
Valero Energy Corporation.

**1444742 - letsent**

Copies of Order mailed to counsel letter sent to party 1 Co-counsel  
and party 1 Co-counsel and party 5 Co-counsel and party 10 Co-counsel  
and party 23 Co-counsel.

**1445036 - partyadd**

Co-counsel, party 2.

**1445037 - partyadd**

Co-counsel, party 3.

**1445038 - partyadd**

Co-counsel, party 2.

**1445039 - partyadd**

Co-counsel, party 3.

**1445040 - partyadd**

Co-counsel, party 2.

**1445041 - partyadd**

Co-counsel, party 3.

**1445042 - partyadd**

Co-counsel, party 2.

**1445043 - partyadd**

Co-counsel, party 3.

**1449262 - mprmemo**

Party 4,26 filed response to MPR 13.

**1449263 - mprstat**

MPR 41 status changed to error.

**1449282 - mprstat**

MPR 40 status changed to error.

**1449283 - mprmemo**

Party 4,26 filed response to MPR 8.

**1451366 - partyadd**

Co-counsel, party 2.  
**1451367 - partyadd**

08/08/14  
Co-counsel, party 3.  
**1445323 - disco**

Discovery: Certificate of Service serving Motions for Admission Pro Hac Vice upon counsel, filed by Atty. Ryan.  
**1445348 - mprfile**

MPR 42) Motion for Admission Pro Hac Vice - Nessa Horew filed by Defendant Sunoco, Inc. (R&M). Motion for Admission Pro Hac Vice - Nessa Horew. Documents filed: Motion for Admission Pro Hac Vice of; Nessa Horewitch Coppinger, Esq. with; copy of pro hac vice license.

**1445354 - mprfile**

MPR 43) Motion for Admission Pro Hac Vice - John S. Gut filed by Defendant Sunoco, Inc. (R&M). Motion for Admission Pro Hac Vice - John S. Gut. Documents filed: Motion for Admission Pro Hac Vice of; John S. Guttman, Jr. Esq; copy of; pro hac vice license.  
**1445355 - mprfile**

MPR 44) Motion for Admission Pro Hac Vice - Daniel M. K filed by Defendant Sunoco, Inc. (R&M). Motion for Admission Pro Hac Vice - Daniel M. K. Documents filed: Motion for Admission Pro Hac Vice of; Daniel M. Krainin, Esq; copy of pro hac; vice license.  
**1445356 - mprjudge**

08/11/14  
MPR's 42-44: 42) Motion for Admission Pro Hac Vice - Nessa Horew; 43) Motion for Admission Pro Hac Vice - John S. Gut; 44) Motion for Admission Pro Hac Vice - Daniel M. K given to Judge Helen M. Toor.  
**1445538 - mpreo**

Entry order re MPR 42) Motion for Admission Pro Hac Vice - Nessa Horew. M/Reaction Form. granted by HT. Order issued granting Nessa Horewitch Coppinger's pro hac vice appearance.  
**1445544 - mpreo**

Entry order re MPR 43) Motion for Admission Pro Hac Vice - John S. Gut. M/Reaction Form. granted by HT. Order issued granting Atty. Daniel M. Krainin's pro hac vice appearance.  
**1445546 - mpreo**

Entry order re MPR 44) Motion for Admission Pro Hac Vice - Daniel M. K. M/Reaction Form. granted by HT. Order issued granting John S. Guttman, Jr's pro hac vice appearance.  
**1445559 - partyadd**

Co-counsel, party 23.  
**1445560 - partyadd**

Co-counsel, party 23.  
**1445561 - partyadd**

Co-counsel, party 23.  
**1445564 - letsent**

Copies mailed to counsel letter sent to Plaintiff State of Vermont and Defendant Atlantic Richfield Company and Defendant BP Products

North America Inc. and Defendant Chevron U.S.A.Inc. and Defendant CITGO Petroleum Corporation and Defendant CITG Refining and Chemicals Company, L.P. and Defendant Coastal Eagle Point Oil Company and Defendant ConocoPhillips Company and Defendant El Paso Merchant Energy-Petroleum Company and Defendant Equilon Enterprises LLC and Defendant Exxon Mobil Corporation and Defendant ExxonMobil Oil Corporation and Defendant Hess Corporation and Defendant Highlands Fuel Delivery, LLC and Defendant Irving Oil Limited and Defendant Mobil Corporation and Defendant Motiva Enterprises LLC and Defendant PDV Midwest Refining, LLC and Defendant Shell Oil Company and Defendant Shell Oil Products Company LLC and Defendant Shell Petroleum Inc. and Defendant Shell Trading(US) Company and Defendant Sunoco, Inc. (R&M) and Defendant TMR Company and Defendant Total Petrochemicals & Refining, USA, Inc. and Defendant TRMI-H LLC and Defendant Ultramar Energy, Inc. and Defendant Valero Energy Corporation and Defendant Valero Marketing and Supply Company and Defendant Valero Refining-Texas, L.P. and party 1 Co-counsel and party 1 Co-counsel and party 5 Co-counsel and party 10 Co-counsel and party 17 Co-counsel and party 19 Co-counsel and party 20 Co-counsel and party 21 Co-counsel and party 22 Co-counsel and party 24 Co-counsel and party 23 Co-counsel.

**1445659 - mprfile**

MPR 45) Motion for Admission of Counsel Pro Hac Vice filed by Defendant TRMI-H LLC. Motion for Admission of Counsel Pro Hac Vice. Documents filed: Motion for Admission of Counsel Pro Hac; Vice re: James J. Maher, Esq. and; Jeremiah J. Anderson, Esq.

08/12/14

**1445738 - mprfile**

MPR 46) Motion for Admission Pro Hac Vice - Robin Green filed by Plaintiff State of Vermont. Motion for Admission Pro Hac Vice - Robin Green. Documents filed: State of Vermont's Motion for Admission; Pro Hac Vice of Robin Greenwald, Esq; proposed Order.

**1445740 - mprfile**

MPR 47) Motion for Admission Pro Hac Vice of Benjamin K filed by Plaintiff State of Vermont. Motion for Admission Pro Hac Vice of Benjamin K. Documents filed: State of Vermont's Motion for Admission; Pro Hac Vice of Benjamin A. Krass, Esq; proposed Order.

**1445741 - mprfile**

MPR 48) Motion for Admission Pro Hac Vice of William Wa filed by Plaintiff State of Vermont. Motion for Admission Pro Hac Vice of William Wa. Documents filed: State of Vermont's Motion for Admission; Pro Hac Vice of William Walsh, Esq; proposed Order.

**1445786 - mprjudge**

MPR's 45-48: 45) Motion for Admission of Counsel Pro Hac Vice; 46) Motion for Admission Pro Hac Vice - Robin Green; 47) Motion for Admission Pro Hac Vice of Benjamin K; 48) Motion for Admission Pro Hac Vice of William Wa given to Judge Helen M. Toor.

**1445932 - mpreo**

Entry order re MPR 45) Motion for Admission of Counsel Pro Hac Vice. M/Reaction Form. granted by HT. James J. Maher and Jeremiah J. Anderson admitted pro hac vice.

**1445933 - partyadd**

Co-counsel, party 4.

**1445934 - partyadd**

Co-counsel, party 26.  
**1445935 - partyadd**

Co-counsel, party 4.  
**1445936 - partyadd**

Co-counsel, party 26.  
**1445938 - mpreo**

Entry order re MPR 46) Motion for Admission Pro Hac Vice - Robin Green. M/Reaction Form. granted by HT. Order issued admitting Robin L. Greenwald, Esq. pro hac vice.  
**1445939 - mpreo**

Entry order re MPR 47) Motion for Admission Pro Hac Vice of Benjamin K. M/Reaction Form. granted by HT. Order issued admitting Benjamin A. Krass, Esq. pro hac vice.  
**1445940 - mpreo**

Entry order re MPR 48) Motion for Admission Pro Hac Vice of William Wa. M/Reaction Form. granted by HT. Order issued admitting William Walsh, Esq. pro hac vice.  
**1445941 - partyadd**

Co-counsel, party 1.  
**1445942 - partyadd**

Co-counsel, party 1.  
**1445943 - partyadd**

08/13/14 Co-counsel, party 1.  
**1446178 - couappr**

Appearance entered by Harry R. Ryan III on behalf of Defendant Total Petrochemicals & Refining, USA, Inc.  
**1446287 - partyadd**

Co-counsel, party 25.  
**1446291 - mprfile**

08/18/14 MPR 49) Motion for Admission of Counsel Pro Hac Vice filed by Defendant Chevron U.S.A.Inc. and Defendant TRMI-H LLC. Motion for Admission of Counsel Pro Hac Vice. Documents filed: Motion for Admission of Counsel Pro Hac; Vice re: Robert E. Meadows, Esq.  
**1446453 - mpreo**

Entry order re MPR 49) Motion for Admission of Counsel Pro Hac Vice. M/Reaction Form. granted by HT. Robert E. Meadows, Esq. admitted pro hac vice.  
**1446455 - partyadd**

Co-counsel, party 4.  
**1446456 - partyadd**

Co-counsel, party 26.  
**1446519 - mprmemo**

08/19/14 Party 1 filed response to MPR 13.  
**1446837 - hrgheld**



Status Conference held. HT/TAPE.

**1446838 - note**

S. Kline, G. Boyles, R. McDougal present for plf; R. Stern present for Atlantic Richfield/BP; R. Fawley present for Chevron/TRMI; P. Lynn present for Citgo; H. Ryan present for Total Petro/Hess/Coastal/El Paso/Sunoco; M. Byrne present for Shell Co's; Equilon/Motivia/TMR; R. Berger present for Exxon Mobil(3); J. Sartore present for Highland Fuel/ Irving Oil; E. Miller present for Valero (3).

**1446843 - entorder**

Entry Order by Judge Helen M. Toor: Court discusses scheduling, motion to designate as complex action, and motion to dismiss. Oral motion made by Atty. Berger for oral argument on M. to Dismiss(which will be ripe in Sept.). Court to issue written order.

08/20/14

**1447168 - mprfile**

MPR 50) Motion for Admission Pro Hac Vice - Matthew Paw filed by Plaintiff State of Vermont. Motion for Admission Pro Hac Vice - Matthew Paw. Documents filed: Motion to Admit Counsel Pro Hac Vice of; Matthew F. Pawa, Esq; proposed Order.

**1447169 - mprfile**

MPR 51) Motion for Admission Pro Hac Vice - Robert Gord filed by Plaintiff State of Vermont. Motion for Admission Pro Hac Vice - Robert Gord. Documents filed: Motion for Admission Pro Hac Vice of; Robert Gordon, Esq; proposed Order.

08/21/14

**1447172 - mprjudge**

MPR's 50-51: 50) Motion for Admission Pro Hac Vice - Matthew Paw; 51) Motion for Admission Pro Hac Vice - Robert Gord given to Judge Helen M. Toor.

**1447174 - mprmemo**

Party 7,9 filed response to MPR 13.

**1447175 - mprmemo**

Party 13 filed response to MPR 13.

**1447177 - mprmemo**

Party 23 filed response to MPR 13.

**1447260 - mprmemo**

Party 25 filed response to MPR 13.

**1447261 - mprfile**

MPR 52) Motion (Total Petro) to Dismiss for Lack of Per filed by Defendant Total Petrochemicals & Refining, USA, Inc. Motion (Total Petro) to Dismiss for Lack of Per. Documents filed: Total Petrochemicals & Refining USA; Inc.'s Motion to Dismiss for Lack of; Personal Jurisdiction.

**1447310 - couappr**

Appearance entered by Pietro J. Lynn on behalf of Defendant CITG Refining and Chemicals Company, L.P.

**1447314 - couappr**

Appearance entered by Pietro J. Lynn on behalf of Defendant PDV

Midwest Refining, LLC.  
**1447316 - partyadd**

Co-counsel, party 6.  
**1447322 - partyadd**

Co-counsel, party 18.  
**1447323 - partyadd**

Co-counsel, party 6.  
**1447324 - partyadd**

Co-counsel, party 18.  
**1447325 - partyadd**

Co-counsel, party 6.  
**1447326 - partyadd**

Co-counsel, party 18.  
**1447327 - partyadd**

Co-counsel, party 6.  
**1447329 - partyadd**

Co-counsel, party 18.  
**1447330 - partyadd**

Co-counsel, party 6.  
**1447331 - partyadd**

Co-counsel, party 18.  
**1447332 - mprmemo**

Party 6,18 filed response to MPR 8,13.  
**1447341 - mprmemo**

08/22/14 Party 27-30 filed response to MPR 13.

**1447300 - mpreo**

Entry order re MPR 50) Motion for Admission Pro Hac Vice - Matthew Paw. M/Reaction Form. granted by HT. Order granting pro hac vice admission to Matthew F. Pawa, Esq. issued.  
**1447301 - mpreo**

Entry order re MPR 51) Motion for Admission Pro Hac Vice - Robert Gord. M/Reaction Form. granted by HT. Order granting pro hac vice admission to Robert J. Gordon, Esq. issued.  
**1447302 - partyadd**

Co-counsel, party 1.  
**1447303 - partyadd**

Co-counsel, party 1.  
**1447393 - couappr**

08/26/14 Appearance entered by Geoffrey J. Vitt on behalf of Defendant ConocoPhillips Company.

**1447766 - mprmemo**

Party 11-12,16 filed response to MPR 13.

08/29/14

**1448634 - mprfile**

MPR 53) Motion for Pro Hac Vice (Kraus & Thurlow) filed by Defendant ConocoPhillips Company. Motion for Pro Hac Vice (Kraus & Thurlow). Documents filed: Motion ForPro Hac Vice Admission of Alan; E. Kraus & Matthew D. Thurlow.

09/02/14

**1448877 - mprjudge**

MPR 53) Motion for Pro Hac Vice (Kraus & Thurlow) given to Judge Mary Miles Teachout.

09/03/14

**1449141 - mprfile**

MPR 54) Motion (Plf) for Extension of time to respond t filed by Plaintiff State of Vermont. Motion (Plf) for Extension of time to respond t. Documents filed: State of Vt's. Assented to Motion for; Extension of Time to Respond to Total; Petrochemicals & Refining USA, Inc.'s; Motion to Dismiss.

09/04/14

**1449139 - mpreo**

Entry order re MPR 53) Motion for Pro Hac Vice (Kraus & Thurlow). M/Reaction Form. granted by MT.

**1449140 - partyadd**

Co-counsel, party 8.

**1449142 - partyadd**

Co-counsel, party 8.

**1449239 - mprjudge**

MPR 54) Motion (Plf) for Extension of time to respond t given to Judge Mary Miles Teachout.

09/05/14

**1449640 - mprfile**

MPR 55) Motion (State) for Leave to file Preliminary Su filed by Plaintiff State of Vermont. Motion (State) for Leave to file Preliminary Su. Documents filed: State of Vermont's Motion for Leave to; File Preliminary Sur-Reply in; Opposition to Exxon's Motion to Dismiss; Sur-Reply.

**1449711 - mprmemo**

Party 1 filed response to MPR 13.

09/09/14

**1449970 - mpreo**

Entry order re MPR 54) Motion (Plf) for Extension of time to respond t. M/Reaction Form. granted by MT. Extended to 9/19/14.

**1450385 - mprmemo**

Party 11-12 filed response to MPR 55.

09/11/14

**1450379 - mpreo**

Entry order re MPR 8) Motion (CITGO) for Designation as a Complex Act. Decision/Order. denied by AMD. The motion is denied at this time. The parties or the presiding judge may renew the motion if it appears that a second change in judge is imminent due to rotation and would be detrimental to the just and efficient administration of the

case.

**1450381 - note**

Copy of Judge Davenport's order denying CITGO's motion as a complex action scanned/e-mailed to local counsel.

**1450554 - mprfile**

MPR 56) Motion for Admission Pro Hac Vice - Amy Parker, filed by Defendant Total Petrochemicals & Refining, USA, Inc. Motion for Admission Pro Hac Vice - Amy Parker. Documents filed: Motion for Admission Pro Hac Vice of Amy; Parker, Esq; proposed Order.

**1450557 - mprfile**

MPR 57) Motion for Admission Pro Hac Vice of M. Coy Con filed by Defendant Total Petrochemicals & Refining, USA, Inc. Motion for Admission Pro Hac Vice of M. Coy Con. Documents filed: Motion for Admission Pro Hac Vice of M; Coy Connelly, Esq; proposed Order.

**1450558 - mprfile**

MPR 58) Motion for Admission Pro Hac Vice of Robert Aye filed by Defendant Total Petrochemicals & Refining, USA, Inc. Motion for Admission Pro Hac Vice of Robert Aye. Documents filed: Motion for Admission Pro Hac Vice of; Robert D. Ayers, Jr. Esq; proposed; Order.

**1450559 - mprjudge**

MPR's 56-58: 56) Motion for Admission Pro Hac Vice - Amy Parker; 57) Motion for Admission Pro Hac Vice of M. Coy Con; 58) Motion for Admission Pro Hac Vice of Robert Aye given to Judge Mary Miles Teachout.

09/12/14

**1450383 - hrgset**

Motion, Petition, Request set for 11/13/14 at 01:00 PM. TWO HOURS HAS BEEN SCHEDULED FOR ORAL ARGUMENT ON MOTIONS TO DISMISS.

09/17/14

**1451095 - mpreo**

Entry order re MPR 56) Motion for Admission Pro Hac Vice - Amy Parker. M/Reaction Form. granted by MT. Order issued granting Atty. Parker's Admission pro hac vice.

**1451096 - mpreo**

Entry order re MPR 57) Motion for Admission Pro Hac Vice of M. Coy Con. M/Reaction Form. granted by MT. Order issued granting Atty. Connelly's Admission pro hac vice.

**1451097 - mpreo**

Entry order re MPR 58) Motion for Admission Pro Hac Vice of Robert Aye. M/Reaction Form. granted by MT. Order issued granting Atty. Ayers' Admission pro hac vice.

**1451166 - note**

Uploaded log notes, and audio to eScribers as per request of Lynn, Lynn, & Blackman, P.C. for hearing 8/19/14.

09/19/14

**1451930 - mprfile**

MPR 59) Motion (CITGO) for Entry of Order Authorizing E filed by Defendant CITGO Petroleum Corporation and Defendant CITG Refining and Chemicals Company, L.P. and Defendant PDV Midwest Refining, LLC.

Motion (CITGO) for Entry of Order Authorizing E. Documents filed:  
Joint Motion for Entry of Order; Authorizing Electronic Service;  
proposed Order.

**1451943 - mprfile**

MPR 60) Motion (Joint) for Entry of Order re: Use of MD filed by  
Defendant CITGO Petroleum Corporation and Defendant CITG Refining and  
Chemicals Company, L.P. and Defendant PDV Midwest Refining, LLC.  
Motion (Joint) for Entry of Order re: Use of MD. Documents filed:  
Joint Motion for Entry of Order re: Use; of MDL 1358 Discovery and  
Gap Filling; Discovery; proposed Order.

**1451944 - mprfile**

MPR 61) Motion (Dfts) Motion for Entry of a Case Manage filed by  
Defendant CITGO Petroleum Corporation and Defendant CITG Refining and  
Chemicals Company, L.P. and Defendant PDV Midwest Refining, LLC.  
Motion (Dfts) Motion for Entry of a Case Manage. Documents filed:  
Defendants' Motion for Entry of a Case; Management Order; proposed  
Case; Management Order.

**1451954 - mprmemo**

Party 1 filed response to MPR 52.

**1453593 - document**

4 documents filed by Attorney Gavin Boyles for party 31: Proposed  
Discovery and Case Management; Order; Memorandum in Support of State;  
of VT's proposed Discovery and Case; Management Order.

09/22/14

**1451942 - mprjudge**

MPR's 59,61: 59) Motion (CITGO) for Entry of Order Authorizing E; 61)  
Motion (Dfts) Motion for Entry of a Case Manage given to Judge Mary  
Miles Teachout.

10/03/14

**1454185 - mprmemo**

Party 1 filed response to MPR 61.

**1454194 - mprmemo**

Party 25 filed response to MPR 52.

10/07/14

**1454768 - mprfile**

MPR 62) Motion for Admission Pro Hac Vice filed by Defendant Shell  
Oil Company and Defendant Shell Oil Products Company LLC and  
Defendant Shell Petroleum Inc. and Defendant Shell Trading(US)  
Company. Motion for Admission Pro Hac Vice. Documents filed: Motion  
for Admission Pro Hac Vice re;; Richard Wallace, Jr; Peter Condron;  
Harman Cooper; Paul Pittman; Marie; Dennis; and John Kampman.

**1454769 - mprjudge**

MPR 62) Motion for Admission Pro Hac Vice given to Judge Mary Miles  
Teachout.

**1454852 - document**

3 documents filed by Attorney Pietro J. Lynn for parties 5-6:  
Defendants' Response to the State of; Vermont's Proposed Discovery  
and Case; Management Order.

10/08/14

**1454840 - mpreo**

Entry order re MPR 62) Motion for Admission Pro Hac Vice. M/Reaction

Form. granted by MT.  
**1454843 - partyadd**

Co-counsel, party 19.  
**1454846 - partyadd**

Co-counsel, party 19.  
**1454847 - partyadd**

Co-counsel, party 19.  
**1454848 - partyadd**

Co-counsel, party 19.  
**1454849 - partyadd**

Co-counsel, party 19.  
**1454851 - partyadd**

Co-counsel, party 19.

11/06/14

**1459719 - mprjudge**

MPR's 55,60: 55) Motion (State) for Leave to file Preliminary Su; 60) Motion (Joint) for Entry of Order re: Use of MD given to Judge Mary Miles Teachout.

11/10/14

**1460050 - mprfile**

MPR 63) Motion to Withdraw as Attorney -Willie Epps filed by party 27 Co-counsel and party 28 Co-counsel and party 29 Co-counsel and party 30 Co-counsel. Motion to Withdraw as Attorney -Willie Epps. Documents filed: Request to Withdraw as counsel.

11/12/14

**1460397 - mprjudge**

MPR 63) Motion to Withdraw as Attorney -Willie Epps given to Judge Mary Miles Teachout.

11/13/14

**1460629 - hrgheld**

Motion, Petition, Request held. MT/CDVIDEO.  
**1460630 - note**

S. Kline, G. Boyles, R. McDougal, R. Greenwald, C. Burke present for plf; R. Stern present for Atlantic R./BP; R. Fawley present for Chevron/TRMI; P. Lynn, L. Meyer present for Citgo(2); A. Parker, H. Ryan present for Total Petro/Hess/Coastal/El Paso/Sunoco; M. Bryne present for Shell Co.'s(4)/ Equilon/Motiva/TMR; S. Fewell, R. Berger D. Lender present for Exxon Mobil(3); J. Sartore present for Irving/Highland; E. Miller present for Valero(3); G. Vitt Conoco Phillips. for.

**1460666 - entorder**

Entry Order by Judge Mary Miles Teachout: Oral argument heard. Under advisement.

**1460667 - cstat - status set to aua**

Case status changed.

11/17/14

**1461059 - mprfile**

MPR 64) Motion for Admission of Counsel Pro Hac Vice (C filed by

Defendant Chevron U.S.A.Inc. Motion for Admission of Counsel Pro Hac Vice (C. Documents filed: Motion for Admission of Counsel Pro Hac Vice re: Charles Correll, Esq.

**1461134 - mprjudge**

MPR 64) Motion for Admission of Counsel Pro Hac Vice (C given to Judge Mary Miles Teachout.

11/18/14

**1461189 - note**

Uploaded Audio/Log Sheets to AvTranz as requested by R. Berger for 11/13/14 hearing.

11/20/14

**1461711 - mpreo**

Entry order re MPR 64) Motion for Admission of Counsel Pro Hac Vice (C. M/Reaction Form. granted by MT.

**1461713 - partyadd**

Co-counsel, party 4.

01/09/15

**1469040 - mprfile**

MPR 65) Motion for Admission Pro Hac Vice of Kelly Murr filed by Defendant Ultramar Energy, Inc. and Defendant Valero Energy Corporation and Defendant Valero Marketing and Supply Company and Defendant Valero Refining-Texas, L.P. Motion for Admission Pro Hac Vice of Kelly Murr. Documents filed: Motion for Admission Pro Hac Vice of; Kelly J.H. Murrie; proposed Order.

**1469042 - mprfile**

MPR 66) Motion for Admission Pro Hac Vice of Jennifer A filed by Defendant Ultramar Energy, Inc. and Defendant Valero Energy Corporation and Defendant Valero Marketing and Supply Company and Defendant Valero Refining-Texas, L.P. Motion for Admission Pro Hac Vice of Jennifer A. Documents filed: Motion for Admission Pro Hac Vice of; Jennifer L. Aspinall; proposed Order.

01/12/15

**1469209 - mpreo**

Entry order re MPR 65) Motion for Admission Pro Hac Vice of Kelly Murr. M/Reaction Form. granted by MT. Order issued re: Kelly J.H. Murrie, Esq.

**1469210 - mpreo**

Entry order re MPR 66) Motion for Admission Pro Hac Vice of Jennifer A. M/Reaction Form. granted by MT. Order issued re: Jennifer L. Aspinall, Esq.

**1482822 - partyadd**

Co-counsel, party 27.

**1482823 - partyadd**

Co-counsel, party 28.

**1482825 - partyadd**

Co-counsel, party 29.

**1482827 - partyadd**

Co-counsel, party 30.

**1482828 - partyadd**

Co-counsel, party 27.  
**1482829 - partyadd**

Co-counsel, party 28.  
**1482830 - partyadd**

Co-counsel, party 29.  
**1482831 - partyadd**

01/16/15 Co-counsel, party 30.  
**1470145 - mpreo**

Entry order re MPR 52) Motion (Total Petro) to Dismiss for Lack of Per. Decision/Order. denied by MT. For the foregoing reasons, TPRI's motion to dismiss is denied.  
**1470146 - mpreo**

Entry order re MPR 13) Motion (Exxon Mobil) to Dismiss. Decision/Order. Granted in part by MT. For the foregoing reasons, the motion to dismiss is granted as to pursuit of a claim for a generalized injury to the State waters as a whole, and otherwise denied at this time. The State is granted 60 days to file an amended complaint that complies sufficiently with VRCP 9(f) for purposes of Rule 12(b)(6). Pending motions regarding case management will not be addressed until the filing of an amended complaint and answer to the amended complaint.  
**1472075 - cstat - status set to atri**

02/02/15 Case status changed.  
**1472442 - mprfile**

MPR 67) Motion (State) to Permit Interlocutory Appeal filed by Plaintiff State of Vermont and party 1 Co-counsel and party 1 Co-counsel. Motion (State) to Permit Interlocutory Appeal. Documents filed: State of Vermont's Motion to Permit; Interlocutory Appeal Pursuant to VRAP; 5(b)(1).  
**1472446 - mprfile**

MPR 68) Motion (State) to Toll Deadline to File Amended filed by Plaintiff State of Vermont and party 1 Co-counsel and party 1 Co-counsel. Motion (State) to Toll Deadline to File Amended. Documents filed: Motion to Toll Deadline to File Amended; Complaint.  
**1472454 - mprfile**

02/09/15 MPR 69) Motion (Total Petrochemical) to Reconsider or, filed by Defendant Total Petrochemicals & Refining, USA, Inc. Motion (Total Petrochemical) to Reconsider or. Documents filed: Total Petrochemicals & Refining USA; Inc.'s Motion to Reconsider, or in the; alternative for Permission to Appeal; the Court's Order on its Motion to; Dismiss for Lack of Personal; Jurisdiction.  
**1473445 - mprmemo**

02/12/15 Party 11-12 filed response to MPR 68.  
**1474031 - mprmemo**

02/13/15 Party 31 filed response to MPR 68.



**1474485 - mprmemo**

Party 31 filed response to MPR 69.

02/18/15

**1474627 - mprmemo**

Party 11-12 filed response to MPR 67.

02/20/15

**1474835 - note**

Copy of decision on Dfts. Exxon Mobil's Motion to Dismiss sent to Freggie Pittman returned undelivered by P.O; unable to forward.

02/24/15

**1475367 - mprjudge**

MPR's 67-68: 67) Motion (State) to Permit Interlocutory Appeal; 68) Motion (State) to Toll Deadline to File Amended given to Judge Mary Miles Teachout.

**1475397 - mprstat**

MPR 67 status changed to tickled.

**1475398 - mpreo**

Entry order re MPR 68) Motion (State) to Toll Deadline to File Amended. Decision/Order. granted by MT. The motion is granted on a temporary basis. The State is excused from the 60- day deadline for filing an amended complaint until further order of the court. The issue will be addressed at the time of ruling on the pending State's Motion to Permit an Interlocutory Appeal.

02/27/15

**1475863 - mprmemo**

Party 25 filed response to MPR 69.

03/04/15

**1476289 - disco**

Discovery: Certificate of Service serving Total's reply in support of Mo. to reconsider filed by Atty Ryan.

03/05/15

**1476543 - mprmemo**

Party 1 filed response to MPR 67.

03/06/15

**1476544 - mprjudge**

MPR's 67,69: 67) Motion (State) to Permit Interlocutory Appeal; 69) Motion (Total Petrochemical) to Reconsider or, given to Judge Mary Miles Teachout.

04/09/15

**1482116 - mprfile**

MPR 70) Motion (State) for Admission Pro Hac Vice filed by Plaintiff State of Vermont. Motion (State) for Admission Pro Hac Vice. Documents filed: State of Vermont's Motion for Admission; Pro Hac Vice of Wesley Kelman, Esq; proposed Order.

**1482117 - mprjudge**

MPR 70) Motion (State) for Admission Pro Hac Vice given to Judge Mary Miles Teachout.

**1482123 - mpreo**

Entry order re MPR 70) Motion (State) for Admission Pro Hac Vice.

M/Reaction Form. granted by HT. Order appointing Wesley Kelman, Esq. pro hac vice granted; copy sent to parties.

**1482124 - partyadd**

Co-counsel, party 1.

04/17/15

**1484497 - mpreo**

Entry order re MPR 63) Motion to Withdraw as Attorney -Willie Epps. M/Reaction Form. granted by MT.

**1484498 - couwith**

Attorney Willie J. Epps Jr. withdraws.

**1484499 - couwith**

Attorney Willie J. Epps Jr. withdraws.

**1484500 - couwith**

Attorney Willie J. Epps Jr. withdraws.

**1484501 - couwith**

Attorney Willie J. Epps Jr. withdraws.

**1484502 - partyrem**

Party 87 party 27 removed:.

**1484503 - partyrem**

Party 88 party 28 removed:.

**1484504 - partyrem**

Party 89 party 29 removed:.

**1484505 - partyrem**

Party 90 party 30 removed:.

05/22/15

**1492407 - mpreo**

Entry order re MPR 67) Motion (State) to Permit Interlocutory Appeal. Decision/Order. Granted in part by MT. For the foregoing reasons, the State of Vermont's Motion for Permission to take an Interlocutory Appeal is granted with respect to the statute of limitations issues based on 12 V.S.A. Sec. 462 and on 10 V.S.A. Sec. 1390 arguments, and denied with respect to the issue of additional time to file a complaint that includes averments as to time and place. (See Decision for complete ruling).

**1492410 - mpreo**

Entry order re MPR 69) Motion (Total Petrochemical) to Reconsider or. Decision/Order. Denied in part by MT. For the foregoing reasons, TPRI's Motion for Reconsideration is denied, and TPRI's Motion in the Alternative for Permission to take an Interlocutory Appeal is granted. (See Decision for complete ruling).

**1492560 - cstat - status set to iap**

Case status changed.

05/26/15

**1492802 - note**

One accordion folder containing three files and certified copy of docket entries to date forwarded to Vermont Supreme Court; copy of cover letter sent to counsel.

05/27/15

**1492930 - note**

Letter received from Vermont Supreme Court assigning Docket No. 2015-201 to this case re: interlocutory appeals.

05/29/15

**1493252 - note**

Letter received from Vermont Supreme Court assigning Docket No. 2015-201 to the Interlocutory Appeal filed by State of Vermont, and Docket No. 2015-204 to the Interlocutory Appeal filed by Total Petrochemicals & Refining USA, Inc.

06/12/15

**1496109 - mprfile**

MPR 71) Motion (Renewed)For Designation as Complex Acti filed by Defendant Exxon Mobil Corporation. Motion (Renewed)For Designation as Complex Acti. Documents filed: Renewed Motion for Designation as a; complex action, attachments.

06/22/15

**1497373 - couappr**

Appearance entered by Craig S. Nolan on behalf of Defendant Ultramar Energy, Inc. and Defendant Valero Energy Corporation and Defendant Valero Marketing and Supply Company and Defendant Valero Refining-Texas, L.P.

06/24/15

**1499261 - note**

Entry Order received from Vermont Supreme Court: The motion to dismiss the interlocutory appeal as improvidently granted, filed by Exxon, et al. is denied. Appl. State of VT's docketing statement. shall be filed within 10 days from the date of this order. (See order for complete decision).

**1499264 - note**

Entry Order received from Vermont Supreme Court re: motion for interloc. appeal filed by Total Petro; the Court accepts review of the appeal. Docketing statement. shall be filed within 10 days of this order. (See order for complete decision).

07/06/15

**1501360 - mprmemo**

Party 1 filed response to MPR 71.

07/15/15

**1502485 - mprmemo**

Party 11-12 filed response to MPR 71.

07/16/15

**1502531 - mprjudge**

MPR 71) Motion (Renewed)For Designation as Complex Acti given to Judge Mary Miles Teachout.

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STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

CIVIL DIVISION  
DOCKET NO. 340-6-14

Wncv

**State of Vermont**

vs.

**Atlantic Richfield Company**, (formerly known as Atlantic Richfield Delaware Corporation), individually, as successor-by-merger to Atlantic Richfield Company (a Pennsylvania corporation), and doing business as ARCO Products Company

**BP Products North America Inc.**, (f/k/a Amoco Oil Company and The American Oil Company, individually and as successor-by-merger to BP Exploration and Oil, Inc. and as successor-in-interest to BP North America Inc.)

**Chevron U.S.A. Inc.**, (f/k/a Gulf Oil Corporation, and d/b/a Chevron Products Company and Chevron Chemical Company)

**CITGO Petroleum Corporation**, (f/k/a Cities Service RMT Corporation)

**CITGO Refining and Chemicals Company L.P.**, individually, and as successor-by-merger to Citgo Refining and Chemicals Company, Inc.

**Coastal Eagle Point Oil Company**

**ConocoPhillips Company**, (f/k/a Phillips Petroleum Company and d/b/a Phillips 66 Company, Phillips Chemical Company, and Phillips Oil Company), individually, as successor-by-merger to Conoco, Inc. and Tosco Corporation

**El Paso Merchant Energy-Petroleum Company**, (f/k/a Coastal Refining & Marketing, Inc., Coastal Derby Refining Company, Derby Refining Company and as Colorado Oil and Gas Corporation)

**Equilon Enterprises LLC**, (d/b/a Shell Oil Products US) individually, as successor-by-merger to Equiva Services LLC

**Exxon Mobil Corporation**, (f/k/a Exxon

FILED

2014 JUN -5 1 A 10:36

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

Corporation and d/b/a ExxonMobil Refining and Supply Company, Exxon Chemical U.S.A., and ExxonMobil Chemical Corporation)

**ExxonMobil Oil Corporation**, (f/k/a Mobil Oil Corporation, Socony Mobil Oil Company, Inc., and Socony Vacuum Oil Company, Incorporated)

**Hess Corporation** (f/k/a Amerada Hess Corporation)

**Highlands Fuel Delivery, LLC** (f/k/a Irving Oil Corporation)

**Irving Oil Limited**

**Mobil Corporation**

**Motiva Enterprises LLC**, (f/k/a Star Enterprises LLC)

**PDV Midwest Refining, L.L.C.**

**Shell Oil Company**

**Shell Oil Products Company LLC**, (d/b/a Shell Oil Products Company)

**Shell Petroleum, Inc.**

**Shell Trading (US) Company**, (individually, f/k/a Equiva Trading Company and d/b/a Stusco)

**Sunoco, Inc. (R&M)**, (f/k/a Sun Company, Inc. (R&M), Sun Refining and Marketing Company, and Sun Oil Company of Pennsylvania)

**TMR Company**, (f/k/a Texaco Refining and Marketing, Inc.), individually and as successor-by-merger to TRME Company (f/k/a Texaco Refining and Marketing (East), Inc.)

**Total Petrochemicals & Refining USA, Inc.**, (f/k/a TOTAL Petrochemicals USA, Inc., Atofina Petrochemicals, Inc., Fina Oil and Chemical Company, and American Petrofina Company of Texas)

**TRMI-H LLC** (f/k/a TRMI Holdings Inc., Texaco Refining and Marketing Inc., Getty Refining and Marketing Company, and Getty Oil Company (Eastern Operations), Inc.)

**Ultramar Energy, Inc.**

**Valero Energy Corporation**

**Valero Marketing and Supply Company**

**Valero Refining-Texas, L.P.** (f/k/a Valero Refining Company and Valero Refining Company-Texas)

## **PLAINTIFF'S ORIGINAL COMPLAINT**

Plaintiff, the State of Vermont, makes the following allegations against the Defendants listed above.

### **I. SUMMARY OF THE CASE**

1. The State of Vermont, by and through Attorney General William H. Sorrell, brings this action to protect and remedy important State interests affected by widespread contamination of the waters of the State with methyl tertiary butyl ether ("MTBE"), a chemical used in some gasoline, and tert butyl alcohol ("TBA"), a degradation product of MTBE.

2. The waters of the State, whether located above or below ground, are limited, precious, and invaluable public resources that are held in trust for the public benefit and that the State has the authority and responsibility to protect, conserve, and manage, in the interest of present and future generations. The State has a significant property interest in its waters and a quasi-sovereign interest in protecting the quality of such waters. The contamination of State waters by MTBE constitutes injury to the environment and to property held in public trust by the State for which the State seeks damages in its capacity as *parens patriae*. The State also acts to protect its own possessory interests in property.

3. Defendants' decision to use MTBE in gasoline, and their promotion, marketing, distribution, and sale of such gasoline has created an unprecedented and widespread degradation of, and future threat to, both the surface and ground waters of the State, including many public and private drinking water supplies and wells. Compared to other gasoline constituents, MTBE contaminates and spreads in water resources more quickly and resists removal and treatment, thereby presenting a serious threat to the State's property and waters. MTBE and TBA have

already contaminated numerous drinking water sources in the State and threaten to contaminate more, as a result of normal and foreseen storage, purchase, and use of gasoline in the State.

4. MTBE can cause significant adverse health effects and, even at very low concentrations, can render drinking water unpotable.

5. The defendants in this action are major oil and chemical companies that have refined gasoline, manufactured MTBE, blended MTBE into gasoline, and/or supplied gasoline containing MTBE to the State. The defendants include MTBE manufacturers and refiners and major brand marketers of gasoline containing MTBE that was sold and supplied in the State. Gasoline containing MTBE has damaged and continues to damage the State's waters and other property, both that owned by the State and that owned by citizens of the State.

6. In addition to manufacturing and/or supplying MTBE or gasoline containing MTBE for importation into and sale within the State, the defendants knowingly and willfully promoted, marketed, and sold MTBE and gasoline and other petroleum products (collectively referred to as "gasoline") containing MTBE, when they knew or reasonably should have known that MTBE would be released into the environment and cause contamination of property, water, water supplies, and wells throughout the State in violation of State law, would interfere with the State's interest in protecting and preserving both surface and ground waters as well as both public and private drinking water supplies, and would threaten public health and welfare and the environment, as has occurred and is continuing to occur within the State.

7. The State alleges that the defendants are: liable for natural resource damages and restoration under 10 V.S.A. § 1390; liable for altering the quality of groundwater as prohibited by 10 V.S.A. §1410; liable for reimbursing the State's expenditures related to MTBE contamination; strictly liable for manufacturing and supplying a defective product; strictly

liable for failing to provide adequate warnings in connection with that product; liable for negligently causing damage to the State's property and waters and to the property of citizens of the State; liable for creating a public nuisance; liable for creating a private nuisance; liable for trespass upon the State's property and waters and property of citizens of the State; in a subgroup, liable as co-conspirators with certain other defendants; and liable for all resulting damages, including punitive damages.

8. Plaintiff brings this action to recover compensatory damages and all other remedies, including all costs to investigate, monitor, abate, contain, prevent, treat, and remove MTBE and TBA from the State's property and waters, property of the citizens of the State, and public and private drinking water supplies, and to ensure that the responsible parties bear such expense, rather than the State or its citizens and taxpayers. The State also seeks punitive damages to reflect the aggravating circumstances caused by the defendants' willful, wanton, malicious, oppressive, fraudulent, and/or outrageously reprehensible conduct, and harms caused to public trust resources by defendants' intentional business choices.

## **II. PLAINTIFF**

9. Plaintiff is the State of Vermont, as represented by and through the Attorney General of the State of Vermont, with its principal office at 109 State Street, Montpelier, Vermont 05609-1001.

10. The State brings this action as an exercise of its statutory authority to protect groundwater, and its common law police power, which includes, but is not limited to, its power to prevent pollution of the State's property and waters, to prevent nuisances, and to prevent and abate hazards to public health, safety, welfare, and the environment.



11. The State also brings this action in its *parens patriae* capacity for the benefit of the citizens of the State, whose private property, groundwater, and/or water supplies have been contaminated with MTBE; for the benefit of public water providers, whose property and/or water supplies have been contaminated with MTBE; for the benefit of governmental subdivisions, whose property and/or water supplies have been contaminated with MTBE and/or who have spent funds associated with MTBE contamination; and for the benefit of all citizens of the State who rely on public and private drinking water wells at their residences, schools, churches, workplaces, recreational sites, and elsewhere. The State holds its groundwater resources in trust for all citizens of the State, 10 V.S.A. § 1390(5), and all persons within the State have a right to the beneficial use and enjoyment of groundwater free from unreasonable interference by other persons. 10 V.S.A. § 1410(a)(4).

12. By bringing this suit, the State intends to occupy the field of litigation for property-related tort and public trust claims arising from MTBE contamination in the State of Vermont and to recover damages arising from any and all MTBE contamination in the State, except for any proceeds recovered in previous lawsuits for MTBE contamination of water supplies and wells in the State. The State intends specifically to preempt any similar or related action filed after the date of filing of this Complaint except, for example, private lawsuits alleging personal injury or diminution in property value associated with MTBE.

13. The contamination of the State's property and waters by MTBE is an injury to the environment and to property held in trust by the State, for which the State seeks damages. The State has a quasi-sovereign interest in protecting the quality of waters of the State.

14. The contamination of the State's property and waters by MTBE is also an injury to property the State owns in fee for which the State seeks damages. The State has an interest in remediating the contamination of its property and in preventing future contamination.

15. In this Complaint, the term "State's property and waters" refers to all property for which the State seeks damages, including: public property the State holds in trust; property the State owns in fee, property owned by citizens and others, surface water and groundwater in the State, drinking water supplies in the State, and State-owned, public, and private drinking water wells.

### III. DEFENDANTS

16. Defendants are petroleum industry corporations including manufacturers and promoters of MTBE and the refiners and marketers of MTBE and/or gasoline containing MTBE. The following defendants, at times relevant to this action, refined, marketed, and/or otherwise supplied (directly or indirectly) MTBE and/or gasoline containing MTBE that each such defendant knew or should have known would be delivered into areas affecting the State's property and waters, or otherwise did business in the State:

a. **Atlantic Richfield Company**, (formerly known as Atlantic Richfield Delaware Corporation), individually, as successor-by-merger to Atlantic Richfield Company (a Pennsylvania corporation), and doing business as ARCO Products Company), is a Delaware corporation with its principal place of business at: 501 Westlake Park Boulevard, Houston, Texas 77079. Atlantic Richfield Company may be served with process through its registered agent, CT Corporation Company, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201.

b. **BP Products North America Inc.**, (f/k/a Amoco Oil Company and The American Oil Company, individually and as successor-by-merger to BP Exploration and

Oil, Inc. and as successor-in-interest to BP North America Inc.), is a Maryland corporation with its principal place of business at: 501 Westlake Park Boulevard, Houston, Texas 77079. BP Products North America Inc. may be served with process through its registered agent, Prentice-Hall Corporation System, 104 N. Main Street, Barre, Vermont 05634.

c. **Chevron U.S.A. Inc.**, (f/k/a Gulf Oil Corporation, and d/b/a Chevron Products Company and Chevron Chemical Company), is a Pennsylvania corporation with its principal place of business at: 6001 Bollinger Canyon Road, San Ramon, California 94583. Chevron U.S.A. Inc. may be served with process through its registered agent, Prentice-Hall Corporation System, 104 N. Main Street, Barre, Vermont 05634.

d. **CITGO Petroleum Corporation**, (f/k/a Cities Service RMT Corporation), is a Delaware corporation with its principal place of business at: 1293 Eldridge Parkway, Houston, Texas 77077. Citgo Petroleum Corporation may be served with process through its registered agent, CT Corporation System, 400 Cornerstone Dr., #240, Williston, Vermont 05495.

e. **CITGO Refining and Chemicals Company L.P.**, individually, and as successor-by-merger to Citgo Refining and Chemicals Company, Inc., is a Delaware limited partnership with its principal place of business at: 6100 South Yale Avenue, Tulsa, Oklahoma 74136. Citgo Refining and Chemicals Company, LP may be served with process through its registered agent, CT Corporation Company, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201.

f. **Coastal Eagle Point Oil Company** is a Delaware corporation with its principal place of business at: 1001 Louisiana Street, Suite 1000, Houston, Texas 77002. Coastal

Eagle Point Oil Company may be served with process through its registered agent, CT Corporation Company, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201.

g. **ConocoPhillips Company**, (f/k/a Phillips Petroleum Company and d/b/a Phillips 66 Company, Phillips Chemical Company, and Phillips Oil Company), individually, as successor-by-merger to Conoco, Inc. and Tosco Corporation, is a Delaware corporation with its principal place of business at: 600 North Dairy Ashford Road, Houston, Texas 77079. ConocoPhillips Company may be served with process through its registered agent, U.S. Corporation Company, 159 State Street, Montpelier, Vermont 05602.

h. **El Paso Merchant Energy-Petroleum Company**, (f/k/a Coastal Refining & Marketing, Inc., Coastal Derby Refining Company, Derby Refining Company and as Colorado Oil and Gas Corporation), is a Delaware corporation with its principal place of business at: 1001 Louisiana Street, Suite 1000, Houston, Texas 77002. El Paso Merchant Energy-Petroleum Company may be served with process through its registered agent, CT Corporation Company, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201.

i. **Equilon Enterprises LLC**, (d/b/a Shell Oil Products US) individually, as successor-by-merger to Equiva Services LLC, is a Delaware limited liability company with its principal place of business at: 910 Louisiana, Houston, Texas 77002. Equilon Enterprises LLC may be served with process through its registered agent, CT Corporation System, 400 Cornerstone Dr., #240, Williston, Vermont 05495.

j. **Exxon Mobil Corporation**, (f/k/a Exxon Corporation and d/b/a ExxonMobil Refining and Supply Company, Exxon Chemical U.S.A., and ExxonMobil Chemical Corporation), is a New Jersey corporation with its principal place of business at: 5959 Las Colinas Boulevard, Irving, Texas 75039. Exxon Mobil Corporation may be served with

process through its registered agent, Corporation Service Company, 104 N. Main Street, Barre, Vermont 05641.

k. **ExxonMobil Oil Corporation**, (f/k/a Mobil Oil Corporation, Socony Mobil Oil Company, Inc., and Socony Vacuum Oil Company, Incorporated), is a New York corporation with its principal place of business at: 5959 Las Colinas Boulevard, Irving, Texas 75039. ExxonMobil Oil Corporation may be served with process through its registered agent, Prentice-Hall Corporation System, 104 N. Main Street, Barre, Vermont 05634.

l. **Hess Corporation (f/k/a Amerada Hess Corporation)** is a Delaware corporation with its principal place of business at: 1185 Avenue of the Americas, New York, New York 10036. Hess Corporation may be served with process through its registered agent, CT Corporation System, 400 Cornerstone Dr., #240, Williston, Vermont 05495.

m. **Highlands Fuel Delivery, LLC (f/k/a Irving Oil Corporation)** is a Maine corporation with its principal place of business at 190 Commerce Way, Portsmouth, New Hampshire 03801. Highlands Fuel Delivery, LLC may be served with process through the Vermont Secretary of State.

n. **Irving Oil Limited**, is a Canadian corporation with its principal place of business at 1 Germain Street, Saint John, E2L 4V1 NB Canada. Irving Oil Limited may be served with process through the Vermont Secretary of State.

o. **Mobil Corporation**, is a Nevada corporation with its principal place of business at: 800 Bell Street, Suite 1503, Houston, Texas 77002. Mobil Corporation may be served

with process through the Office of the Secretary for Mobil Corporation, 5959 Las Colinas Blvd., Irving, Texas 75039-2298.

p. **Motiva Enterprises LLC**, (f/k/a Star Enterprises LLC), is a Delaware limited liability company with its principal place of business at: OSP 25<sup>th</sup> Floor, 910 Louisiana Street, Houston, Texas 77002. Motiva Enterprises LLC may be served with process through its registered agent, CT Corporation System, 400 Cornerstone Dr., #240, Williston, Vermont 05495.

q. **PDV Midwest Refining, L.L.C.**, is a Delaware limited liability company with its principal place of business at: 1293 Eldridge Parkway, Houston Texas 77077. PDV Midwest Refining, LLC may be served with process through its registered agent, CT Corporation Company, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201.

r. **Shell Oil Company** is a Delaware corporation with its principal place of business at: 910 Louisiana Street, Houston, Texas 77002. Shell Oil Company may be served with process through its registered agent, CT Corporation System, 400 Cornerstone Dr., #240, Williston, Vermont 05495.

s. **Shell Oil Products Company LLC**, (d/b/a Shell Oil Products Company), is a Delaware limited liability company with its principal place of business at: 910 Louisiana Street, Houston, Texas 77002. Shell Oil Products Company, LLC may be served with process through its registered agent, CT Corporation Company, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201.

t. **Shell Petroleum, Inc.**, is a Delaware corporation with its principal place of business at: 910 Louisiana Street, Houston, Texas 77002. Shell Petroleum, Inc. may be

served with process through its registered agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801.

u. **Shell Trading (US) Company**, (individually, f/k/a Equiva Trading Company and d/b/a Stusco), is a Delaware corporation with its principal place of business at: 1000 Main, 12<sup>th</sup> Floor, Houston, Texas 77002. Shell Trading (US) Company may be served with process through its registered agent, CT Corporation System, 400 Cornerstone Dr., #240, Williston, Vermont 05495.

v. **Sunoco, Inc. (R&M)**, (f/k/a Sun Company, Inc. (R&M), Sun Refining and Marketing Company, and Sun Oil Company of Pennsylvania), is a Pennsylvania corporation with its principal place of business at: 1818 Market Street, Suite, 1500, Philadelphia, Pennsylvania, 19103. Sunoco, Inc. (R&M) may be served with process through its registered agent, Corporation Service Company, 104 N. Main St., Barre, Vermont 05641.

w. **TMR Company**, (f/k/a Texaco Refining and Marketing, Inc.), individually and as successor-by-merger to TRME Company (f/k/a Texaco Refining and Marketing (East), Inc.), is a Delaware corporation with its principal place of business at: 910 Louisiana, Houston, Texas 77002. TMR Company may be served with process through its registered agent, CT Corporation System, 400 Cornerstone Dr., #240, Williston, Vermont 05495.

x. **Total Petrochemicals & Refining USA, Inc.**, (f/k/a TOTAL Petrochemicals USA, Inc., Atofina Petrochemicals, Inc., Fina Oil and Chemical Company, and American Petrofina Company of Texas), is a Delaware corporation with its principal place of business at: 1201 Louisiana Street, Suite 1800, Houston, Texas 77002. Total Petrochemicals & Refining USA, Inc. may be served with process through General

Counsel for Total Petrochemicals & Refining USA, Inc., 1201 Louisiana Street, Suite 1800, Houston, Texas 77002.

y. **TRMI-H LLC (f/k/a TRMI Holdings Inc., Texaco Refining and Marketing Inc., Getty Refining and Marketing Company, and Getty Oil Company (Eastern Operations), Inc.)** is a Delaware corporation with its principal place of business at: 6001 Bollinger Canyon Road, San Ramon, California 94583. TRMI-H LLC may be served with process through its registered agent Corporation Service Company, 2338 West Royal Palm Road, Suite J, Phoenix, Arizona 85021.

z. **Ultramar Energy, Inc.** is a Delaware corporation with its principal place of business at: One Valero Way, San Antonio, Texas 78249. Ultramar Energy, Inc. may be served with process through its registered agent CT Corporation System, 400 Cornerstone Dr., #240, Williston, Vermont 05495.

aa. **Valero Energy Corporation** is a Delaware corporation with its principal place of business at: One Valero Way, San Antonio, Texas 78429. Valero Energy Corporation may be served with process through its registered agent CT Corporation Company, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201.

bb. **Valero Marketing and Supply Company**, is a Delaware corporation with its principal place of business at: One Valero Way, San Antonio, Texas 78429. Valero Marketing and Supply Company may be served with process through its registered agent, CT Corporation System, 400 Cornerstone Dr., #240, Williston, Vermont 05495.

cc. **Valero Refining-Texas, L.P.** (f/k/a Valero Refining Company and Valero Refining Company-Texas) is a Texas Limited Partnership with principal place of business at: One Valero Way, San Antonio, Texas 78429. Valero Refining-Texas, L.P. may be



served with process through its registered agent CT Corporation System, 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201.

17. The entities identified in paragraph 16 will be collectively referred to as "Defendants." Defendants, among other things: (a) designed, manufactured, formulated, refined, set specifications for, exchanged, promoted, marketed, sold, and/or otherwise supplied (directly or indirectly) MTBE and/or gasoline containing MTBE that was delivered into areas affecting the State's property and waters, such that releases of MTBE contaminate and threaten the State's property and waters; (b) acted with actual or constructive knowledge that blended gasoline containing MTBE would be delivered into areas affecting the State's property and waters; (c) are legally responsible for and committed each of the multiple tortious and wrongful acts alleged in this Complaint; (d) participated in one or more joint enterprises to promote MTBE and/or gasoline containing MTBE, despite the availability of reasonable alternatives and their actual or constructive knowledge that the pollution alleged in this Complaint would be the inevitable result of their conduct; and/or (e) in doing the tortious and wrongful acts alleged in this Complaint, acted in the capacity of joint venturer, partner, agent, principal, successor in interest, surviving corporation, controller, alter ego, co-conspirator, licensee, licensor, patent holder and/or indemnitor of other Defendants.

18. To the extent any act or omission of any of the Defendants is alleged in this Complaint, the officers, directors, agents, employees or representatives of each such defendant committed or authorized each such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of such Defendants, and did so while acting within the scope of their duties, employment or agency.

19. Any and all references to a Defendant or Defendants in this Complaint include any predecessors, successors, parents, subsidiaries, affiliates, and divisions of the named Defendants.

#### IV. JURISDICTION AND VENUE

20. This Court has jurisdiction over the subject matter of this action pursuant to 4 V.S.A. § 31. In addition, this Court may exercise jurisdiction over Defendants because they either are or at the relevant time were: authorized to do business in Vermont, registered with the Vermont Secretary of State, transacting sufficient business with sufficient minimum contacts in Vermont, or otherwise intentionally availing themselves of the Vermont market through the sale, manufacturing, distribution, and/or processing of petroleum-related products in Vermont to render the exercise of jurisdiction over Defendants by the Vermont courts consistent with traditional notions of fair play and substantial justice.

21. Venue is proper in this Court because the principal *situs* of the State is in Montpelier, in Washington County.

#### V. LIABILITY SUMMARY

22. The injuries to the State's property and waters caused and/or threatened by Defendants' conduct as alleged in this Complaint constitute an unreasonable interference with, and alteration of, limited, precious, and invaluable natural resources that the State holds in trust for the benefit of the public and protects in its *parens patriae* capacity. The State's unique public trust interest in protecting the quality of its waters constitutes a sufficient basis for the State to seek damages for harm to and restoration of such waters. Defendants' conduct has also caused injuries to property owned by the State. The State's exclusive possessory interest in such property constitutes a sufficient basis for the State to seek damages for those injuries.

23. Defendants knew, or reasonably should have known, that: (a) the gasoline distribution and retail system contained leaking gasoline storage and delivery systems; (b) MTBE is more readily released from gasoline storage and delivery systems than the constituents of conventional gasoline; (c) releases of MTBE into the environment would be an inevitable consequence of placing MTBE into the stream of commerce; (d) when released into the environment, MTBE would travel great distances, mix easily with groundwater, resist biodegradation, and render drinking water unsafe and/or non-potable; and (e) removing such contamination from property, surface water, groundwater, drinking water supplies, and water wells would require significant expense.

24. At all times relevant to this litigation, Defendants were or should have been aware that MTBE contamination of groundwater and drinking water was inevitable due to MTBE's water-seeking properties, recalcitrance to biodegradation and bioremediation, and the long and ongoing history of nationwide gasoline spills, leaks, and other losses during distribution, sale, and use.

25. Despite their knowledge that MTBE posed a devastating risk of groundwater and drinking water contamination, and despite the availability of reasonable alternatives, Defendants failed to warn customers, retailers, regulators, or public officials, and failed to take any other precautionary measures to prevent or mitigate such contamination. Instead, Defendants promoted MTBE, and gasoline containing MTBE, as environmentally sound products appropriate for widespread use. Moreover, certain Defendants engaged in separate and joint activities to suppress, conceal, and/or discredit studies and other information regarding the hazards of MTBE. Defendants' intentional business choices harmed the State.

26. In their Material Safety Data Sheets and other materials, Defendants provided instructions regarding the use, handling, and storage of MTBE that affirmatively misrepresented

or omitted the risks involved in those activities. Indeed, Defendants represented that gasoline containing MTBE could be handled in the same fashion as conventional gasoline and required no special measures to protect against, respond to, or mitigate suspected releases to the subsurface.

27. Defendants made such misrepresentations or material omissions although they had not conducted adequate testing before they began adding MTBE to gasoline. Defendants did not perform the standard toxicological studies before placing MTBE into the stream of commerce, and they did not conduct long-term cancer studies, although research showed that MTBE caused cancer in animals. Certain Defendants misled the EPA and convinced the Agency not to test MTBE. In 1986, the federal Interagency Testing Committee (“ITC”), established pursuant to the Toxic Substances Control Act, recommended testing and review to assess MTBE’s health and environmental risks. Recognizing its high water solubility and persistence in groundwater, ITC recommended chemical fate monitoring of MTBE to determine the risk MTBE poses to the environment as well as medical testing of MTBE. The oil industry, including certain Defendants, mobilized to convince the EPA that additional testing of MTBE was not needed. They downplayed the risks of groundwater contamination with MTBE and omitted material facts known to Defendants at the time, even when government officials expressed concern over the need to assess the potential for MTBE to cause groundwater contamination.

28. Certain Defendants also misled Congress when it was preparing to take action to address the nation’s smog problem. As a result of tremendous lobbying efforts by the industry, including Defendants, Congress adopted the Reformulated Gasoline (RFG) Program as part of the 1990 Amendments to the Clean Air Act. According to the EPA, “The concept of reformulated gasoline (RFG) was originally generated, developed and promoted by industry, not the Environmental Protection Agency (EPA) or other parts of the federal government.”

29. At times relevant to this action:

- a. Defendants manufactured, promoted, marketed, supplied, and/or sold MTBE for use as a component of gasoline and/or refined, blended, promoted, marketed, supplied, and/or sold gasoline containing MTBE.
- b. Gasoline containing MTBE was delivered to commercial and consumer users such as retail gasoline stations and other gasoline delivery systems in the State (and areas affecting the State's property and waters).
- c. Gasoline containing MTBE was released to the subsurface from retail gasoline facilities, from other commercial and consumer uses, and from other sources at locations throughout the State and/or in areas affecting the State's property and waters. Such releases of gasoline containing MTBE occurred over time in varying amounts at different locations.
- d. MTBE, which takes time to migrate from release points through the subsurface to locations where it may be detected in groundwater, has migrated and continues to migrate from dispersed release points at or near the surface at retail gasoline facilities and other sources and facilities within or near the State's boundaries, causing and threatening to cause pollution, contamination, and substantial and continuing damage to the State's property and waters, including drinking water, causing damage to the State.

30. As a direct and proximate result of Defendants' negligent and intentional acts described in this Complaint, MTBE was released into the environment, where it remains, causing and threatening to cause widespread contamination of the State's property and waters and endangering water supplies including drinking water supplies.

## VI. FACTUAL ALLEGATIONS

### A. The Contaminant at Issue - MTBE

31. MTBE is a synthetic chemical blended into some gasolines by some refiners at some times since 1979. As used in this Complaint, “MTBE” refers not only to methyl tertiary butyl ether, but also to the contaminants in and degradation byproducts of MTBE, including TBA.

32. One way that MTBE contaminates the environment is through releases, leaks, overfills, and spills from gasoline delivery facilities — including, but not limited to, gasoline stations, gasoline storage, transfer, delivery, and dispensing systems (“gasoline delivery systems”).

33. Another way that MTBE contaminates the environment is through releases, leaks, overfills, and spills of gasoline associated with or incident to certain consumer activities, such as use of snowmobiles, motorized watercraft, and lawnmowers and operation of junkyards and vehicle maintenance and repair facilities, which result in releases of MTBE into the State’s property and waters.

34. As a result of its physical characteristics, MTBE finds pathways for release into the environment from gasoline delivery systems and is more readily released from such systems than conventional gasoline components.

35. Once released to the environment, MTBE’s unique characteristics cause extensive environmental contamination and a corresponding threat to the public health and welfare beyond that caused by gasoline that does not contain MTBE. In particular, the fate and transport of MTBE in the subsurface differs significantly from that of gasoline constituents that have historically been of environmental and/or toxicological concern, specifically the “BTEX compounds” (benzene, toluene, ethylbenzene, and xylene).

36. In groundwater, MTBE moves freely at approximately the rate of the water's movement, unlike BTEX compounds, which tend to adhere to soil and float on the surface of water. This makes MTBE contamination more difficult to remediate than contamination involving only BTEX compounds.

37. MTBE is also more persistent than BTEX compounds because it does not readily biodegrade in groundwater. Because of its recalcitrance, plumes of MTBE can persist in underground aquifers for decades, far longer than other gasoline components. Once an MTBE plume reaches a well, it continues to contaminate the water drawn from that well. As a result, MTBE is more difficult and expensive to remove from groundwater than BTEX compounds.

38. In sum, when MTBE is released into the environment, it migrates farther and faster through soil and groundwater, penetrates deeply into aquifers, resists biodegradation, and results in persistent contamination that is very costly to address. As a result of these properties, MTBE has contaminated, and continues to contaminate and threaten, the State's property and waters.

39. Not all of the MTBE contamination of water resources in the State can be traced to a specific source or release.

40. MTBE is a fungible product: MTBE made and/or used by one Defendant is chemically identical to MTBE made and/or used by any other Defendant. Once blended into gasoline, it is impossible, based on physical characteristics, to identify the manufacturer of the MTBE.

41. Once MTBE leaves the refinery and enters the stream of commerce, it is impossible, based on physical characteristics, to identify the refiner of the gasoline containing it. In addition, gasoline containing MTBE from various refiners is commingled during transmission from refineries to distribution centers. The gasoline at any particular service station is, therefore, an intentionally blended product made up of gasoline from many different refiners. Thus, a

subsurface plume, even if released from a single identifiable tank, pipeline, or vessel, is the product of mixed batches of gasoline originating from different refiners. It is impossible, based on any physical characteristics, to identify what portions of commingled gasoline containing MTBE were refined, manufactured, and/or supplied by any particular defendant.

42. Once released into the environment, MTBE lacks characteristics or a chemical signature that would enable identification of the refinery or company that manufactured the product. Even when a source of a plume of MTBE — such as a leaking underground storage tank — is identified, the identity of the manufacturer of the MTBE and refiner of the offending gasoline generally cannot be determined due to the commingled and fungible nature of the products. Identification is further complicated by the Defendants' practice of trading, bartering, or otherwise exchanging product.

43. Federal and other studies link MTBE to a variety of adverse health effects. MTBE is a known animal carcinogen and a possible human carcinogen.

44. In addition to the health and environmental risks MTBE poses in drinking water supplies, MTBE imparts a turpentine odor and chemical taste onto previously potable water. MTBE's taste and odor alone can render water unfit for human consumption.

45. TBA also threatens and contaminates the waters of the State.

46. TBA, a chemical used to produce MTBE and sometimes blended into gasoline, is also an intermediate product of MTBE biodegradation. As a result, TBA may appear wherever there is MTBE contamination.

47. TBA has the same characteristics as MTBE that make it a persistent and pernicious groundwater contaminant including high solubility (even higher than MTBE) and resistance to biodegradation. In addition, TBA is highly toxic when inhaled and is irritating to the skin, eyes,



and mucous membranes. Some animal studies link TBA to cancer and kidney and thyroid tumors.

48. TBA contamination is even more expensive to clean up than MTBE. In fact, the presence of TBA in water being treated for MTBE may generate additional compounds of health and environmental concern, limiting the usefulness of these technologies and further increasing costs.

49. Defendants failed to warn the State, regulators, and the general public that Defendants often added TBA to their gasoline and that MTBE breaks down into TBA. Further, Defendants failed to warn the State of the need to test its water supplies for contamination by TBA.

#### **B. History of MTBE Use**

50. Oil companies began blending MTBE into gasoline in the late 1970s. Initially used as an octane enhancer, MTBE was used throughout the 1980s at low concentrations in some gasoline by some refiners, primarily in high-octane grades. MTBE was not the only viable option to achieve higher octane in gasoline. Rather, its use reflected Defendants' intentional business decision to find a profitable use for a waste byproduct of the refining process.

51. Prior to 1990, Congress was preparing to take action to address the nation's smog problem.

52. During this timeframe, the oil industry, including Defendants, became concerned that Congress might consider requiring alternative non-petroleum based fuels.

53. As a result of tremendous lobbying efforts by the industry, including Defendants, Congress adopted the Reformulated Gasoline Program as part of the 1990 Amendments to the Clean Air Act. According to the EPA, "The concept of reformulated gasoline (RFG) was

originally generated, developed and promoted by industry, not the Environmental Protection Agency (EPA) or other parts of the federal government.”

54. Congress mandated the use of RFG containing at least 2% oxygen by weight in those areas of the country with the worst ozone or smog problems. The 1990 Amendments authorized the EPA to designate certain areas of the country to participate in RFG programs.

55. In 1992, in conjunction with the Clean Air Act, the EPA initiated the Oxygenated Fuel Program (“Oxyfuel Program”), which required at least 2.7% oxygen by weight in gasoline in certain metropolitan areas to reduce carbon monoxide emissions during the fall and winter months.

56. The Clean Air Act’s RFG program required the use of an oxygenate in certain gasoline beginning in 1995, but it did not require the oxygenate to be MTBE. Rather, MTBE became Defendants’ “oxygenate of choice” because it was the most inexpensive oxygenate to produce and offered Defendants the highest profit margin of all the oxygenates available. Defendants could manufacture MTBE from their already available refinery by-products and therefore were not forced to purchase a different oxygenate, such as ethanol, from a third party.

57. National annual production figures for MTBE reflect the oil industry’s decision to make MTBE its oxygenate of choice: MTBE production increased from 1.5 million barrels in 1980 to 75 million barrels in 1998.

58. Much of the gasoline sold in air quality non-attainment areas under the RFG Program exceeded that Program’s minimum 2% or 2.7% oxygenate requirements, and MTBE composed up to 15% of every gallon of gasoline used in those areas. MTBE composed a significant amount of gasoline even in areas that did not participate in the RFG Program.

59. Defendants started shipping high MTBE-content gasoline for sale in certain metropolitan areas in 1992 as part of the Oxyfuel Program.

60. In or around January 1995, Defendants started placing gasoline containing higher levels of MTBE into the stream of commerce when moved by market factors and financial considerations to do so. Gas station owners and pump operators, whom Defendants did not warn about the properties of MTBE or gasoline containing MTBE, started selling Defendants' gasoline with greatly elevated concentrations of MTBE.

61. At its peak, most if not all gasoline supplied to the RFG areas contained high concentrations (11 to 15 percent) of MTBE. In addition, gasoline containing elevated concentrations of MTBE was often sold at other locations, including Vermont, at the discretion of the oil industry, including Defendants.

62. In making MTBE their oxygenate of choice, Defendants decided to forgo safer oxygenates, such as ethanol. In fact, belatedly, some gasoline sellers subsequently publicly acknowledged that MTBE is neither environmentally safe nor necessary. Getty Marketing, for example, placed full page ads in the New York Times on October 13, 1999 stating:

Protecting our water supply means making a commitment to doing business in environmentally-friendly ways. That's what we're doing at Getty. We have replaced MTBE with ethanol in our gasoline because it helps clean the air without harming our drinking water.

63. Safer, more environmentally sound alternatives were at all times available and known to Defendants.

64. Defendants, not the State, chose to use MTBE in gasoline in Vermont.

65. As a result of Defendants' intentional business choices, MTBE was widely used throughout the United States, including Vermont, and it now widely contaminates the State's property and waters.

66. In addition, combustion of gasoline containing MTBE in car engines actually increases exhaust emissions of formaldehyde, nitrous oxide and other toxic chemicals including MTBE itself.

**C. Defendants Were Well Aware of MTBE's Threat to Groundwater**

67. At times relevant to this litigation, Defendants were aware that, on a nationwide level, gasoline was leaking from multiple sources, including underground storage tanks ("USTs"). Industry reports, Congressional testimony, and EPA concerns reflect Defendants' knowledge that the systems used for shipping, storing, pumping, and using gasoline involved leaks and spillages at all links in the gasoline distribution chain.

68. At times relevant to this litigation, Defendants were or should have been aware that thousands of gallons of gasoline entered the soil annually from gasoline-dispensing stations due to UST releases and leaks, consumer and jobber overfills, and mishandling.

69. At times relevant to this litigation, Defendants were or should have been aware that additional quantities of MTBE reached the soil and groundwater through vaporization from USTs, and that such vaporization and other small releases occurred even when a tank is considered to have tested tight.

70. Defendants also knew or should have known that releases, leaks, overfills, and spills of gasoline associated with or incident to certain consumer activities, such as use of snowmobiles, motorized watercraft, and lawnmowers, and operation of junkyards and vehicle maintenance and repair facilities, would result in releases of MTBE into waters of the State.

71. At times relevant to this litigation, Defendants were or should have been aware that MTBE contamination of groundwater was inevitable. MTBE's water-seeking properties, recalcitrance to biodegradation and bioremediation, and the long and ongoing history of nationwide gasoline spills, leaks, and other losses during distribution, sale, and use guaranteed substantial and repeated releases of MTBE-containing gasoline into the environment.

72. For example, the American Petroleum Institute ("API"), a trade association representing the domestic petroleum industry, including certain Defendants, in a broad range of topics, formed a Toxicology Committee in or around 1980. The Toxicology Committee included representatives from Exxon, Mobil, Shell, Atlantic Richfield Company ("ARCO"), and Chevron Texaco, among others.

73. API's Toxicology Committee meeting minutes make plain that committee members shared information and repeatedly discussed MTBE's propensity to contaminate groundwater. The Committee specifically acknowledged the need for certain toxicological information due to MTBE's propensity to contaminate groundwater and the resulting likelihood of extensive ingestion of MTBE through drinking water.

74. Despite early knowledge and a shared recognition of the need to do long-term, low-level ingestion studies on the effects of MTBE, Defendants postponed such studies for decades and never completed such a study during the relevant time period.

75. Defendants possess and have always possessed vastly superior knowledge, resources, experience and other advantages, in comparison to anyone or any agency, concerning the manufacture, distribution, nature, and properties of gasoline in general and MTBE in particular.

76. By virtue of their tremendous economic power and analytical resources, including the employment of scientists such as hydrogeologists, chemists, engineers, and toxicologists,

Defendants have at all relevant times been in a position to know, identify, and confirm the threat MTBE posed and poses to groundwater.

77. In addition, by virtue of this superior knowledge, and/or by virtue of the Defendants' partial and incorrect statements regarding the nature and impacts of MTBE, Defendants had a duty to disclose the truth and to act in accordance with the truth about MTBE.

78. Defendants knew or should have known of the impact of MTBE and its contamination of water prior to their widespread introduction of MTBE into the nation's gasoline system.

79. In or around October 1980, certain Defendants learned of a serious incident of MTBE groundwater contamination in Rockaway, New Jersey, which substantiated the threat that MTBE poses to drinking water supplies. Approximately 4,000 residents of Rockaway tasted MTBE or DIPE (another ether) in water from a municipal well. This evidence of contamination prompted leading oil industry insiders to further investigate the groundwater threat posed by MTBE.

80. In April 1983, a serious MTBE incident in Jacksonville, Maryland came to public attention. Spills or leaks that occurred at least two years earlier at two different gas stations, one owned by what is now ExxonMobil, created a large underground reservoir of MTBE that fouled the domestic wells of local residents and stalled a planned housing project.

81. Certain Defendants were also aware of two MTBE groundwater contamination events in Liberty, New York and East Patchogue, New York, both of which preceded by several years the introduction of gasoline with higher concentrations of MTBE and presaged the now widespread calamity.

82. At the East Patchogue site, spilled gasoline left over from the operation of a filling station whose underground storage tanks had been dug up and removed in 1988 sent a plume of MTBE into Long Island's sole source aquifer. The MTBE plume was detected when the water from a

private well 4,000 feet from the old filling station site was rendered undrinkable with 350 ppb of MTBE. Although trace levels of BTEX were eventually found in neighboring wells, that did not happen until the MTBE levels had reached the astounding level of 7,600 ppb.

83. A decade after the spill in East Patchogue, government officials were still tracking the MTBE plume through the aquifer thousands of feet from the site. In contrast, BTEX compounds were found concentrated in the soils and water much closer to the spill site, and the mass of these compounds was observed to be steadily decreasing.

84. The Liberty incident started sometime before August 1990, which is when state health officials detected MTBE in the public water supply.

85. In December 1992, MTBE was again found in Liberty's water at concentrations approximately three times higher than the New York State Department of Health drinking water standard of 50 ppb at the time.

86. In 1986, Peter Garrett and Marcel Moreau of the Maine Department of Environmental Protection drafted a paper titled "Methyl Tertiary Butyl Ether as a Ground Water Contaminant" ("the Garrett Report").<sup>1</sup> The Garrett Report described approximately 30 wells in Maine that were contaminated with MTBE. The authors explained that as a result of their experience dealing with the contamination, they learned that: (a) groundwater contaminated with MTBE is difficult to remediate, (b) MTBE is more soluble than the other constituents of gasoline and therefore a plume of MTBE in groundwater will be more extensive than the plume of the other gasoline components, and (c) MTBE has a distressing "terpene-like" odor in low concentrations.

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<sup>1</sup> Peter Garrett, Marcel Moreau & J.D. Lowry, "MTBE as a Ground Water Contaminant," in NWWA/API Conference on Petroleum Hydrocarbons and Organic Chemicals in Ground Water - Prevention, Detection, and Restoration, Houston, TX, November 12-14, 1986 [Proceedings]: Dublin, OH, National Water Well Ass'n, pp. 227-238.

87. As a result of MTBE's characteristics, the Garrett Report's authors recommended that MTBE be banned as a gasoline additive or at least be stored in double-contained facilities. The authors planned to present their paper and have it published in the proceedings of the "Petroleum Hydrocarbons and Organic Chemicals in Ground Water Conference" sponsored by the National Well Water Association and the API in November of 1986.

88. As soon as the existence of the Garrett Report was known, even before it was published, the draft was widely circulated throughout the oil industry. Oil industry representatives, including many of the Defendants, joined forces to pressure the authors to radically revise their negative conclusions and recommendations about MTBE. Even after succeeding in having the report's language softened, Defendants attempted to discredit the report.

89. Arco Chemical, which was then a part of ARCO, aggressively challenged the initial draft of the Garrett Report before its presentation. Arco Chemical provided "data that indicated that many of their theories were incorrect" to the authors of the paper in an attempt to change their opinions. Despite Arco Chemical's efforts, however, the authors concluded that "MTBE presented an environmental hazard different to other gasoline components" and proceeded with their presentation of the paper to the National Well Water Association in November of 1986.

90. On December 23, 1986, a staff member to API's Groundwater Technical Task Force ("GWTTF") forwarded the Garrett Report to members of the GWTTF, including representatives of Shell and Exxon. API asked these individuals to review the Garrett Report and provide comments and critiques. API asked for responses because the article was "of possible grave concern to the oxygenate producers."

91. The comments from the GWTTF members culminated in a letter from API to the National Well Water Association, which was to present the paper. The letter stated in part:



The authors' "recommendations" that MTBE ... be either banned as gasoline additives or require double-lined storage is clearly a policy statement and not an objective credible scientific conclusion. Further, data presented in this paper as well as those generated by ongoing API research indicate that such a policy is reactionary, unwarranted and counter-productive.

92. But the API letter to the National Well Water Association in no way refuted the Garrett Report's conclusions regarding MTBE's solubility, MTBE's low odor and taste threshold, the fact that MTBE could travel faster in groundwater than the other gasoline constituents, or the conclusion that MTBE was difficult to remediate. These issues were not even addressed.

93. BP Corporation (then known as "Amoco") publicly denounced the Garrett Report, stating flatly that the report "isn't true."

94. Privately, however, Defendants acknowledged that the major findings of the Garrett Report were correct. For instance, while the oil companies, via the GWTF, attacked the authors of the Garrett Report, saying the paper had a "general lack of technical data to support the rather strong policy statements," they admitted internally that the authors might in fact be correct. Arco Chemical, in communications to others within the oil industry, admitted that it had no data to refute the Garrett Report's conclusions. For example, a letter dated February 4, 1987, stated, "we don't have any data to refute comments made in the paper that MTBE may spread farther in a plume or may be more difficult to remove/clean up than other gasoline constituents."

95. On or around May 6, 1987, Mobil's laboratory prepared and circulated a memo based on a compilation of data on MTBE contamination of groundwater in New York State and elsewhere in the region, including laboratory analyses verifying the presence of MTBE in water samples from three wells in Harrison, New York and four wells in Port Jefferson, New York. In its report, Mobil's laboratory stated: "We agree that MTBE in gasoline will dissolve in groundwater at a faster rate than any gasoline hydrocarbon, including benzene." The report further stated that

“[b]ecause of its more frequent occurrence, even when other hydrocarbons are not found, we feel it is important for you to be aware of MTBE. From an environmental and engineering standpoint, you may need to be informed of its presence to assist you in responding effectively to regulatory and remedial requirements.”

96. Similar communications circulated among officials at Chevron Texaco (Chevron). A 1987 memo, widely circulated within the company, stated:

Two considerations impact MTBE. One is potential health risk, and the second is increased solubility over normally regulated constituents of interest, i.e. benzene, toluene and xylene (BTX).

MTBE is significantly more soluble in water than BTX. Consequently, the dissolved “halo” from a leak containing MTBE can be expected to extend farther and spread faster than a gasoline leak that does not include MTBE as one of its constituents.

Further compounding the problem of increased solubility, MTBE is more difficult to remove from groundwater using current technology (air stripping or carbon adsorption). Because of its lower volatility, MTBE requires more than double the air stripping capacity to reach a 95 percent reduction. Removal using carbon adsorption is even worse. MTBE breaks through activated carbon four times faster than BTX.

97. In 1992, Shell employees C. C. Stanley, W.G. Rixey, and C.Y. Chiang created a document titled “MTBE WHITE PAPER - The Impact of MTBE on Groundwater.” They intended to circulate among the employees of various Shell companies a report about the movement of MTBE in groundwater.

98. According to Shell’s MTBE White Paper, MTBE is nearly 25 times more soluble than benzene and, therefore, MTBE’s plumes would move faster and farther than benzene plumes emanating from a gasoline spill. Further, the White Paper indicated that MTBE would not biodegrade in the subsurface environment. Finally, the document confirmed that MTBE has a

low odor and taste threshold and, further, that “at many locations odor and taste criteria may determine clean-up levels.”

99. Shell’s MTBE White Paper further stated:

MTBE has had an impact on groundwater management at only a few Shell marketing terminals and service stations to date. However, as the usage of this oxygenate begins to increase, a stringent clean-up criteria for MTBE will become adopted in more states, we should anticipate increased concerns over how its release to groundwater is managed.

This paper was never published outside of Shell.

100. A June 1997 Shell document titled “Summary of Current MTBE Issues and Status” stated:

MTBE is relatively quite soluble in water (compared to other components in gasoline, like BTEX), and it moves essentially with the ground water, thus MTBE tends to “lead the plume” whenever there is a gasoline spill or leak. MTBE also has a very low biodegradation potential, which makes it more difficult to remove from ground water than other gasoline components such as BTEX.

**D. Defendants Concealed the Risks Associated with MTBE**

101. Defendants added MTBE to gasoline even though no long-term cancer studies had been undertaken. Existing studies showed MTBE causes cancer in animals. Although it is and was at all relevant times common practice to conduct toxicological tests before introducing a widely-used chemical like MTBE, Defendants did not perform any such tests to determine MTBE’s effects before placing it into the stream of commerce. Instead, certain Defendants attempted to convince the EPA that health testing was not needed. Thus, Defendants exposed millions of Americans to potential harm without warning of MTBE’s potential health risks.

102. Despite their superior knowledge of the groundwater threat MTBE posed, certain Defendants, beginning in the early 1980s, formed various formal and informal task-forces and committees for the purpose of concealing MTBE’s actual threat, facilitating the Defendants’

MTBE use without regard to its impact on the State, and convincing the public and regulators that increasing concentrations of MTBE in gasoline was desirable. These joint task-forces and committees were formed under the auspices of trade organizations such as the API and the Oxygenated Fuels Association (“OFA”). Certain Defendants, as members of these joint task forces and committees, conspired to conceal the risk of MTBE contamination of groundwater and used MTBE, thereby placing corporate profits above known-but-concealed harm to the environment and the State. Certain Defendants manufactured and distributed MTBE with actual knowledge of MTBE’s defects and with actual knowledge that MTBE would cause harm in groundwater and production wells, and took affirmative steps to conceal those effects.

103. In 1986, the federal Interagency Testing Committee (“ITC”), established pursuant to the Toxic Substances Control Act, recommended testing and review to assess MTBE’s health and environmental risks.<sup>2</sup> The ITC characterized MTBE as having relatively high water solubility, and stated that MTBE’s persistence in groundwater following spills was unknown but that it was likely not to be readily biodegradable. The ITC recommended chemical fate monitoring of MTBE to determine the risk MTBE poses to the environment. The ITC also recommended additional medical testing of MTBE and invited written comments. The 1986 Notice credited the Dynamac Corporation for supplying the government with MTBE information.

104. The oil industry, including certain Defendants, mobilized to convince the EPA that additional testing of MTBE was not needed.

105. On or about December 12, 1986, ARCO, speaking on behalf of and/or with the approval of certain Defendants, responded to the 1986 Notice in an effort to derail further testing of

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<sup>2</sup> Nineteenth Report of the ITC to the Administrator, Receipt and Request for Comments Regarding Priority List of Chemicals, 51 Fed. Rep. 220 (1986) (the “1986 Notice”).

MTBE. ARCO's comments included a critique of the Dynamac Corporation's information review of MTBE, on which the ITC had relied. ARCO stated that its "critique of the CRCS/Dynamac report revealed that some erroneous assumptions had been made that cause the hazards of MTBE to be seriously overestimated." In further comments to the EPA, ARCO stated the following:

Characteristics - Moderate water solubility is reported. However, an ARCO Technical Bulletin states that 'MTBE is only slightly soluble in water ...'

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The CRSC/Dynamac report states that potential environmental exposure is 'high.' This conclusion is not supported by the available information.

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Exposure from accidental spills of MTBE could occur, but should be regarded as a minimal possibility. The closed nature of the manufacturing and transportation process reduces worker exposure and product loss. Training and safety programs also lower the possibility of accidental spills. Many current programs at EPA and industry are underway to monitor and reduce the possibility of gasoline loss from leaking underground storage tanks .... MTBE losses would be extremely small from this source.

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#### Environmental Information

As has been repeatedly stated, environmental entry would not occur in every stage of the gasoline marketing chain .... Environmental entry of MTBE from this source would be considerably less than the report indicates.

MTBE is only slightly soluble so environmental fate projections based on this assumption will not be correct.

ARCO's comments, made with certain other Defendants' explicit or implicit approval, were misleading when made. The comments improperly downplayed the risks of MTBE contamination of groundwater and omitted material facts known to Defendants at the time.

106. On or around December 17, 1986, EPA held a Public Focus Meeting to hear comments on the need for additional testing of MTBE. The minutes of the meeting show that government officials expressed concern over the need to assess the potential for groundwater contamination. The minutes show that ARCO and Exxon made a presentation to support the industry position that additional medical testing of MTBE was unnecessary. Other Defendants assented to these representations either explicitly or by their silence.

107. In or around early 1987, certain Defendants formed the "MTBE Committee," with the express and stated purpose, as set forth in a written agreement, of "addressing the environmental, health, safety, legislative and regulatory issues concerning MTBE of importance to the public and the producers and users of MTBE." The MTBE Committee included Defendants BP Corporation (Amoco), Arco, Chevron Texaco (Chevron), Citgo, ExxonMobil (Exxon), Shell, and Sunoco, among others.

108. The MTBE Committee lauded itself as "being a source of information to MTBE producers, users, the government and the public" and stated that its goal was to "address environmental health and safety issues relating to MTBE ... , provide technical data to appropriate regulatory agencies and legislative bodies ... , conduct[] and fund[] testing of MTBE required under a Toxic Substances Control Act Section 4 Consent Order or Test Rule ... , [and] make available to interested parties and the general public technical and scientific information relating to the use of MTBE in fuels."

109. On January 29, 1987, the MTBE Technical Subcommittee, a subcommittee of the MTBE Committee, had its first meeting. The meeting minutes, circulated February 2, 1987, indicate:

[T]he plan of attack on the combined response to the EPA on the ITC report is as follows: Since each producer must respond to the EPA before February 12 on the SA and SD [sic] questions and many will respond individually to production and economic questions which were also sought by EPA, a letter will be sent by George Dominguez requesting that information requested by the EPA be sent to the MTBE Committee before February 9. A form will be included in George's letter .... the Technical Committee will then meet on February 19 to combine the three reports from the working groups and draft a response to the EPA which will then be passed on to the Steering Committee for their approval on February 20 ... The combined response to the EPA will be submitted by February 27, to be followed shortly thereafter by a formal visit to EPA. Dominguez will meet with EPA and notify them that the MTBE Committee has been formed and will be submitting its overview.

110. Although Defendants were keenly aware that the EPA was interested in obtaining more information about MTBE in groundwater, the Defendants, generally, were not forthcoming with their responses. On February 12, 1987, Arco Chemical responded to the EPA's request for information about "data gaps" concerning MTBE's environmental and health effects in a letter stating:

Item D requests more information on the presence and persistence of MTBE in groundwater. We are not aware of any incidents where MTBE contaminated groundwater at manufacturing facilities. Where gasoline containing MTBE is stored at refineries, terminals, or service stations, there is little information on MTBE in groundwater. We feel there are no unique handling problems when gasoline containing MTBE is compared to hydrocarbon-only gasoline.

111. At nearly the same time that Arco Chemical was telling the EPA that MTBE posed no significant environmental or health problems, Arco Chemical admitted to other Defendants that it "had no data to refute the claims made in the Garrett Report that MTBE posed a significant threat of groundwater contamination."

112. On or around February 27, 1987, the MTBE Committee submitted written comments drafted to convince the EPA not to require additional health and environmental testing of MTBE. The information was misleading and false. For example, the MTBE Committee provided information to the EPA representing that MTBE is only slightly soluble in water, that potential environmental exposure is not high, and that MTBE has excellent biodegradation characteristics. The MTBE Committee's Statement added:

The following discussion establishes that there is no evidence that MTBE poses any significant risk of harm to health or the environment, that human exposure to MTBE and release of MTBE to the environment is negligible, that sufficient data exists to reasonably determine or predict that manufacture, processing, distribution, use and disposal of MTBE will not have an adverse effect on health or the environment, and that testing is therefore not needed to develop such data. Furthermore, issuance of a test rule requiring long term chronic testing will have a significant adverse environmental impact.

113. The MTBE Committee's agenda is reflected in the following excerpt from those comments addressed to the issue of medical testing:

If a test rule is issued requiring chronic testing that will take 3-4 years to complete, great uncertainty will be created as to whether MTBE is a safe fuel additive. As a result, demand for MTBE and expansion of productive capacity is not likely to grow significantly. Refiners will be likely to commit capital to more costly alternative methods of octane enhancement such as isomerization and reformat plants that do not have the environmental benefits of MTBE. Thus, requiring long term testing of MTBE will have a significant adverse environmental and economic impact.

114. The MTBE Committee acknowledged in its February 27, 1987 comments that MTBE had not been the subject of long term chronic health testing, but claimed that such testing was unnecessary. Under the heading "MTBE in Groundwater," it stated that:

[T]he results of a number of acute and sub-chronic health effect studies are presented in the Health Effects Summary of this report. These data suggest that the odor detection level of 700 ppb (approximately 0.7 mg/l) is such that the organoleptic properties of



MTBE are sufficient to protect against human ingestion of toxic quantities of MTBE.

The Committee sought to represent that MTBE did not present a health risk, without conducting the research needed to reach such a conclusion.

115. On the issue of biodegradation, the MTBE Committee publicly stated that “a Japanese study ... reports that MTBE in the presence of gasoline has excellent biodegradation characteristics.” This representation, however, omitted the contrary and more accurate information that MTBE was already known to be recalcitrant to biodegradation. This significant misrepresentation further illustrates the efforts of certain Defendants to conceal evidence from government regulators and the public about the actual risk that MTBE poses to groundwater.

116. On or around January 21, 1988, MTBE and/or gasoline manufacturers and distributors, including BP Corporation (Amoco), ExxonMobil (Exxon) and Sunoco among others, signed a Testing Consent Order with EPA.<sup>3</sup> Those companies, however, subsequently convinced EPA that the chemical fate of MTBE was sufficiently understood so that it posed no undue risk to the environment, and further testing was not necessary.

117. The oil industry, including certain Defendants, thus succeeded in withholding their knowledge concerning the fate and transport of MTBE from the EPA.

118. The MTBE Committee’s representations provide evidence of a pattern of exaggerating MTBE’s environmental benefits while understating or concealing its environmental hazards, all of which Defendants knew or should have known at the time. The comments also reveal the plans to forestall all public scrutiny of Defendants’ decision to increase concentrations of MTBE in gasoline and avoid or obstruct important health and environmental safety research that would

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<sup>3</sup> Testing Consent Order on Methyl Tert-Butyl Ether and Response to the Interagency Testing Committee, 53 Fed. Reg. 62 (1988).

have corroborated Defendants' knowledge of MTBE's harmful effect on groundwater. In making and supporting, and/or not correcting, such representations, the Defendants demonstrated their willingness to place their economic interests above the health, property and well-being of citizens of the State, particularly, and the American public, generally. These statements also confirm that Defendants intended to continue to use MTBE without regard to its impact on the State and the environment, and that some Defendants intended to affirmatively prevent governments and citizens, including the State, from becoming aware of the potential for contamination and/or impact of contamination from MTBE.

119. Although the MTBE Committee represented to the EPA that the Committee was going to "address environmental issues related to MTBE by a) collecting data from member companies and other sources, and b) sponsoring programs to develop data unavailable from other sources," the MTBE Committee did no such thing. The MTBE Committee's Charter statement was intended to mislead the government and the public, including the State. The MTBE Committee disbanded approximately one year after achieving its goal of preventing testing.

**E. Defendants Combined to Protect the Use of MTBE**

120. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

121. At all times relevant to this lawsuit, Defendants knew or should have known of the hazards which MTBE posed to groundwater throughout Vermont. Defendants combined and acted in concert throughout the relevant time period to ensure their ability to use MTBE as an oxygenate in gasoline.

122. Defendants have demonstrated a pattern and practice of failing to warn the public, those that handle gasoline containing MTBE, water providers, federal and state regulators, and federal

and state governments about MTBE and its harmful effects on human health and the environment.

123. Indeed, oftentimes the Oil Industry in general and various Defendants in particular, provided inaccurate and misleading information about MTBE and its characteristics, both when they had an affirmative duty to provide honest information without inquiry, and/or in response to direct inquiries by the EPA and others for such information.

#### **Ad Hoc MTBE Group**

124. One of the earlier examples of a concerted effort to protect MTBE involved the Ad Hoc MTBE Group created in 1979, whose sole purpose was to assess the health effects of MTBE and conduct toxicological testing on MTBE.

125. Members of the Ad Hoc MTBE Group included Defendants Arco, Gulf, Exxon, Phillips, Texaco, and Shell.

126. This group supported certain limited studies on MTBE.

127. Even though the Ad Hoc MTBE Group members specifically agreed that they had a duty to make the studies public, they did not immediately publish the studies. Rather, they waited an unreasonable and unjustified period of time after completion to publish them. And when the Ad Hoc MTBE Group finally published the studies, the abstracts were misleading and did not accurately describe their results.

128. The Ad Hoc MTBE Group routinely reported its on-going efforts to the members of the API Toxicology Committee, whose members were aware of the studies and aware that they were not being reported within a reasonable time after completion. Members of the API Toxicology Committee in that general time frame included Defendants Conoco, BP, Marathon, Texaco, Exxon, Shell, Mobil, Arco, Unocal, Sun, Phillips, Gulf, and Chevron.

129. As a direct result of these actions, public health officials did not have the information that was available to the Defendants because it was not in the public domain. Public health officials, accordingly, could not use the information when responding to the public's health effects concerns.

130. As a result of these Defendants' collective actions, regulators and the public were kept in the dark regarding MTBE's health effects. The full understanding of MTBE's risks, which ultimately resulted in MTBE largely being removed from gasoline in the United States, was significantly delayed.

#### **The Oxygenated Fuel Association's MTBE Committee**

131. On November 1, 1986, the ITC transmitted its nineteenth report to the EPA, and the report included an "intent to designate" MTBE under §§ 8(a) and 8(d) of the Toxic Substances Control Act.

132. The ITC's presentation indicates that the designation "will allow preliminary review of health and safety data which will be used by the Committee to either designate or not designate MTBE in a subsequent report to the Administrator."

133. The ITC recommended that MTBE be tested for "chemical fate" including "monitoring studies to determine typical concentrations of MTBE at representative sites where MTBE containing gasoline is transferred." In addition, the Test Rules Development Branch requested "more information on the presence and persistence of MTBE in groundwater."

134. In response, the MTBE Committee was formed in January of 1987, under the auspices of the OFA. Members of MTBE Committee included Defendants Texaco, Exxon, Citgo, Phillips, Amoco, Conoco, Valero, and Sun.

135. One of the MTBE Committee's stated purposes, as reflected in the proposal for its formation, was to "handle the development of communication between companies and the EPA."

136. The "rationale behind the establishment of an MTBE group" was "not only because of the EPA action which might necessitate [study of the] toxicological and environmental effects of MTBE," but "in order to provide an organization that would be responsive to the overall needs of the development of MTBE itself."

137. On February 27, 1987, the MTBE Committee presented a Statement to the EPA relative to the Federal Register announcement of the ITC's intention to designate MTBE for priority testing. In the MTBE Committee's Statement, its members represented to the EPA that:

The following discussion establishes that there is no evidence that MTBE poses any significant risk of harm to health or the environment, that human exposure to MTBE and release of MTBE to the environment is negligible, that sufficient data exists to reasonably determine or predict that manufacturer, processing, distribution, use and disposal of MTBE will not have an adverse effect on health or the environment, and that testing is therefore not needed to develop such data. Furthermore, issuance of a test rule requiring long term chronic testing will have a significant adverse environmental impact.

138. Despite the representation that they would collect and provide data from member companies to the EPA and the general public, the MTBE Committee members provided a statement that they knew was false.

139. The MTBE Committee was largely successful in its purpose of reducing testing and protecting MTBE. Although the EPA initially expressed interest in requiring testing with respect to the environmental aspects of MTBE, the Oil Industry ultimately signed a Consent Agreement with the EPA that did not require such testing.

140. The Oil Industry's response to the Garrett Report, described above, provides another example of the Defendants' coordinated effort to protect MTBE and its use as an oxygenate.

141. Various Defendants' involvements in these committees and others reflect their general participation in this combined effort.

142. Such activities were not limited to industry-wide organization committees.

143. Defendant Amoco coordinated the formation of the "Consumers for Fuel Quality" lobbying association to oppose alcohol fuel blend mandates and companies involved with this group included Exxon, Marathon, Phillips, Unocal, Mobil and others.

144. Had Defendants been open and honest about MTBE instead of doing their best to protect it, the publicity and interest in MTBE that began to develop later would have occurred substantially earlier than they did.

145. Illustrative of the delay in knowledge, the Defendants already knew and had discussed internally in the early-to-mid-1980s all of the areas of concern that the EPA discussed years later in its March 2000 Advance Notice of Intent to Initiate Rulemaking. Had the Defendants disclosed these concerns in the late 1980s, it is unlikely that the EPA or Congress would have approved the use of MTBE in gasoline.

146. The Defendants possessed information concerning MTBE's fate and transport, its low biodegradation rate, and its taste and odor thresholds at the time of the Clean Air Act Amendments and the subsequent regulatory negotiations with the EPA.

147. Certain Defendants' representatives formed part of the group involved in assisting the federal government in drafting regulations for the enforcement and requirements under the Clean Air Act Amendments of 1990.

148. In order to ensure that only MTBE-favorable information was presented to the EPA by the Oil Industry, the representatives frequently met to determine what information the Defendants would and would not disclose to the federal government.

149. Defendants failed to disclose to the EPA information concerning MTBE's negligible biodegradation rate and its probable long-term presence in groundwater.

150. Defendants failed to disclose to the EPA information concerning MTBE's low taste and odor detect thresholds and, accordingly, the adverse impact that a very small release of MTBE into an aquifer could have on water supplies.

151. Defendants failed to disclose to the EPA information concerning the known releases of MTBE into the environment, the characteristics of such releases, the number of these releases with the limited use of MTBE prior to 1990 and any projections of potential contamination of public water supplies from a widespread use of MTBE in gasoline.

152. Defendants failed to disclose to the EPA information concerning the significant environmental risk that MTBE presented to groundwater, aquifers, and private and public drinking water wells.

153. Defendants also failed to disclose to the EPA information concerning the extent of their near-total commitment to MTBE as their oxygenate to comply with the CAAA, and the hundreds of millions of dollars that Defendants had already committed to producing or purchasing MTBE before the regulatory process was even completed.

154. Defendants also worked in concert against other retail providers of gasoline and other companies to limit or block ethanol as an alternative permitted oxygenate.

**F. Defendants Misrepresented And/Or Withheld Their Knowledge About MTBE's Risks**

155. Defendants misrepresented MTBE's properties and/or withheld information even as they were insisting that no such information existed.

156. On April 1-2, 1987, George Dominguez of the MTBE Committee gave an oral presentation at a Conference on Alcohols and Octane. Mr. Dominguez represented that "MTBE

removal from groundwater is consistent with commercial experience. MTBE gasoline spills have been effectively dealt with.” Although the MTBE Committee was represented to have been formed to address environmental issues and to make available to the general public information regarding MTBE use in fuels, Mr. Dominguez did not inform the audience that MTBE is different from the other components of gasoline, that it is resistant to biodegradation, that it is difficult to remediate, or that it causes a greater risk of groundwater contamination.

157. In 1994, in response to an article that raised questions about the environmental and health benefits of MTBE, an official with the API, an agent of Defendants, wrote to rebut what he called “an inaccurate and negative view of methyl tertiary butyl ether (MTBE), one of the oxygenates that help make gasoline cleaner burning by reducing carbon monoxide emissions.” The letter unambiguously represented that there was “no basis to question the continued use of MTBE.” Given information known to Defendants and API at the time, this statement misrepresented to the general public the safety of gasoline with MTBE and concealed known hazards.

158. As the reality of widespread MTBE groundwater contamination started coming to light, Defendants continue to mislead. For example, in April 1996, the Oxygenated Fuels Association, an agent of Defendants, published and distributed a pamphlet titled “Public Health Issues and Answers” that stated: “On rare occasions, MTBE has been discovered in private drinking water wells where the source of MTBE has been attributed to leaks from nearby underground storage tanks.” OFA expressed confidence that federal regulations and industry practices made such contamination largely a thing of the past. Such minimizing and misleading communication concealed from public officials, persons and entities engaged in the storage, transport, handling, retail sale, use, and response to spills of such gasoline (referred to in this Complaint as



“downstream handlers”) and the general public the dangers posed by MTBE and omitted and concealed information required to reduce and respond to such dangers.

159. In its April 1996 pamphlet, OFA also suggested that MTBE in groundwater actually provides a public and environmental health service. According to OFA’s reasoning, when MTBE pollutes water it “can serve as an early indicator of gasoline contamination in groundwater, triggering its cleanup and remediation, and limiting the probability of harm from the usual constituents of gasoline.”

160. This “canary-in-the-coal-mine” spin, repeated often by Defendants, rings false in light of the fact that MTBE is usually not merely the first but also the worst, and sometimes the only, contaminant imported to groundwater by gasoline.

161. Had Defendants warned the government, users, and the general public of the known hazards MTBE presented to groundwater and drinking water supplies, the applicable federal and state agencies would have required alternatives and demanded that Defendants provide environmentally responsible gasoline free of MTBE.

162. As a result of Defendants’ failure to warn of the hazards posed by MTBE contamination of groundwater, the State was deprived of facts from which its injury from MTBE contamination could reasonably have been inferred, prevented, and/or mitigated.

**G. MTBE has had a Predictably Catastrophic Effect on Groundwater and Groundwater Wells**

163. Before the 1980s, production and sales totals for MTBE were negligible, but by 1996, MTBE ranked second among all organic chemicals produced in the United States, with virtually the entire production going into gasoline. As discussed above, Defendants dramatically increased their use of MTBE in gasoline following the RFG program’s creation.

164. Since gasoline containing MTBE at increased levels was introduced in the early 1990s, the United States Geological Survey ("USGS") has reported that MTBE is the second most frequently detected chemical in groundwater in the United States. MTBE-contaminated wells were found from coast-to-coast with serious incidents in states from Vermont to California.

165. The USGS annually tests the groundwater not near any known gasoline leaks or spills, and detected MTBE in over 20% of aquifers tested in places where high MTBE-content gasoline was used.

166. A September 15, 1999 report by a special EPA Blue Ribbon Panel stated that MTBE is a "threat to the nation's drinking water resources"; that MTBE "has caused widespread and serious contamination"; and that MTBE is found in 21% of ambient groundwater tested in areas where MTBE is used in RFG areas. As stated, the EPA's review of existing information on contamination of drinking water resources by MTBE "indicates substantial evidence of a significant risk to the nation's drinking water supply."

167. In its September 15, 1999 report, the EPA Blue Ribbon Panel recommended substantial reductions in MTBE use and some Panel members recommended that it be eliminated entirely. The Panel also recommended accelerating, particularly in areas where high MTBE-content gasoline was used, assessments of drinking water protection areas required under the Safe Drinking Water Act. The Panel further recommended "a nationwide assessment of the incidence of contamination of private wells by components of gasoline" and "regular water quality testing of private wells."<sup>4</sup>

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<sup>4</sup> "Achieving Clean Air and Clean Water: The Report of the Blue Ribbon Panel on Oxygenates in Gasoline" (Sept. 15, 1999).

168. Based upon the recommendations of the Blue Ribbon Panel, the EPA initiated another Advanced Notice of Proposed Rulemaking regarding MTBE under the Toxic Substances Control Act in an effort to eliminate or limit the use of MTBE as a fuel additive in gasoline.

169. The State of Vermont has experienced extensive environmental contamination from MTBE.

**H. Despite Vermont's MTBE ban, new MTBE contamination continues to be discovered.**

170. In Vermont, MTBE has contaminated public drinking water supplies, public drinking water wells, private drinking water wells, UST sites, natural resources, groundwater, and other property and waters. This contamination damages these resources, threatens State citizens' health, safety, and welfare, and interferes with the use of these precious resources.

171. Given MTBE's properties, including its resistance to degradation, MTBE plumes from releases that occurred years ago in Vermont continue to travel in the groundwater and cause initial groundwater contamination in new locations, adversely impacting public and private drinking wells as well as the general condition of the public-trust resource.

172. Despite Vermont's MTBE ban, new MTBE contamination continues to be found in new locations in Vermont's environment. Over the past six years, testing at sites and monitoring or production wells across the State has revealed for the first time newly discovered MTBE contamination in groundwater that was not reasonably discoverable prior to then.

173. In some instances, the State has traced these recent initial detections to newly discovered leaks or other faults in UST systems. In other instances, MTBE's presence in the groundwater and/or soil was unknown, undetected and not reasonably discoverable until soil testing was prompted by, for example, a newly discovered leaking UST or UST removal. In yet other instances, only the subsequent appearance of a petroleum odor in a well reasonably enabled

individuals to locate and identify an underlying contaminant plume, containing MTBE, within an aquifer.

174. Other testing in Vermont indicates past releases that only recently contaminated test and production wells.

175. Upon information and belief, MTBE's presence and migration in Vermont's groundwater, absent large-scale and costly remediation, is expected to continue for many years and will continue to threaten both known and unknown public and private wells throughout that period, as well as threatening Vermont's groundwater generally.

**I. Collective liability and indivisible injuries; punitive damages**

176. As discussed above, it is impossible, based on physical characteristics, to identify the manufacturer or refiner of any given quantity of gasoline that was the source of MTBE found in surface water, groundwater, or water wells. The State must therefore pursue all Defendants, jointly and severally, for those injuries that Defendants have collectively visited upon the State. Defendants are collectively liable under traditional causation theories as well as theories of market share liability, alternative liability, concert of action liability, commingled product liability, and/or enterprise liability for injuries caused by Defendants.

177. Defendants knew that it was substantially certain that their acts and omissions described above would threaten public health and result in extensive contamination of the State's property and waters, and public and private drinking water supplies. Defendants' conduct was outrageously reprehensible and malicious. Defendants acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm,

and/or as a matter of free and intentional business choices. Such conduct was not the result of a mistake of fact or law, honest error or judgment, overzealousness, or other human failing.

## **VII. FIRST CAUSE OF ACTION**

### **Civil Action for Natural Resources Damages and Restoration, 10 V.S.A. § 1390**

#### **(All Defendants)**

178. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

179. In June 2008 the Legislature declared that “[i]s the policy of the state that the groundwater resources of the state are held in trust for the public.” 10 V.S.A. § 1390. It is also the policy of the State “that the state shall protect its groundwater resources to maintain high-quality drinking water” and “that the groundwater resources of the state shall be managed to minimize the risks of groundwater quality deterioration . . . .” *Id.*

180. In accordance with such policy, the State must manage its groundwater resources for the benefit of its citizens, “who hold and share rights in such waters.”

181. The State, as trustee, is authorized to bring a cause of action to recover damages to and restoration of natural resources held in trust by the State.

182. By engaging in the acts and omissions alleged in this Complaint, Defendants have altered the character and/or quality of the groundwater of the State of Vermont and unreasonably interfered with the use and enjoyment of trust rights.

183. The Defendants’ conduct unreasonably interfered with trust rights by causing statewide contamination of groundwater.

184. Public and private drinking water supply wells draw their water from the groundwater held in trust for the public. The presence of MTBE has thus interfered with public and private drinking water supplies.

185. As a direct and proximate result of Defendants' acts and omissions as alleged in this Complaint, MTBE has unreasonably interfered with trust rights by causing statewide contamination of groundwater, drinking water supplies, public drinking water supply wells, private wells, and other waters and property of the State.

186. As a further direct and proximate result of the acts and omissions of the Defendants alleged in this Complaint, the State has sustained and will sustain substantial expenses and damages, for which defendants are strictly, jointly, and severally liable.

187. The injuries to the State's property and waters caused and/or threatened by Defendants' acts and omissions as alleged in this Complaint are indivisible.

188. Defendants' reprehensible conduct promoting sales of MTBE and/or gasoline containing MTBE was undertaken with conscious, willful, and wanton disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the State of Vermont, and warrants punitive damages. Defendants' conduct was outrageously reprehensible and malicious.

Defendants acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm, and/or as a matter of free and intentional business choices. Therefore, the State requests an award of punitive damages in an amount reasonable, appropriate, and sufficient to punish Defendants and deter them from committing the same or similar acts in the future.

## VIII. SECOND CAUSE OF ACTION

### Groundwater Protection Act, 10 V.S.A. § 1410

#### (All Defendants)

189. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

190. The State of Vermont is a “person” as defined by 10 V.S.A. § 1410(b)(3).

191. By engaging in the acts and omissions alleged in this Complaint, Defendants have altered the character and/or quality of the groundwater of the State of Vermont. For example, as discussed above, MTBE is associated with significant adverse health effects in humans and animals and can impart a foul taste and odor to drinking water at low concentrations.

192. This alteration caused unreasonable harm in the form of statewide contamination of groundwater, drinking water supplies, public drinking water supply wells, private wells, UST sites, public property, and/or other waters and property of the State.

193. MTBE has affected the waters of the State in a profound and unreasonable way, compromising their use for household purposes including drinking, cooking, and bathing, and risking public health via exposure to MTBE. In addition, the contamination poses an extraordinary and unjust financial burden on the State and its citizens, who bear the costs of testing, monitoring, and remediation although Defendants profited from the sale of MTBE-containing gasoline.

194. The Act authorizes the State to seek equitable relief and/or damages for the unreasonable harm caused by MTBE contamination.

195. As a direct and proximate result of Defendants’ acts and omissions as alleged in this Complaint, the State’s property and waters were and are contaminated with MTBE. The State

has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the State's groundwater, including drinking water, for which defendants are strictly, jointly, and severally liable.

196. As a further direct and proximate result of Defendants' acts and omissions alleged in this Complaint, the State has sustained and will sustain other substantial expenses and damages, for which Defendants are strictly, jointly, and severally liable.

197. The injuries to the State's property and waters caused and/or threatened by Defendants' acts and omissions as alleged in this Complaint are indivisible.

198. Defendants' reprehensible conduct to promote sales of MTBE and/or gasoline containing MTBE was undertaken with conscious, willful, and wanton disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the State of Vermont. Defendants' conduct was outrageously reprehensible and malicious. Defendants acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm, and/or as a matter of free and intentional business choices. Therefore, the State requests an award of punitive damages in an amount reasonable, appropriate, and sufficient to punish Defendants and deter them from committing the same or similar acts in the future.

## **IX. THIRD CAUSE OF ACTION**

### **Public Nuisance**

#### **(All Defendants)**

199. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.



200. Defendants have manufactured, distributed, marketed and promoted their product in a manner that created or participated in creating a public nuisance that unreasonably endangers or injures the property, health, safety and welfare of the general public and the State of Vermont, causing inconvenience and annoyance.

201. Defendants, by their negligent, reckless, and willful acts and omissions set forth above, have, among other things, knowingly unleashed massive, long-lasting, and still spreading contamination of groundwater and drinking water wells statewide in Vermont, having concealed the threat from all, thereby causing MTBE contamination of the State's groundwater and contamination and threat of contamination of wells within the State.

202. The public nuisance caused, contributed to, maintained, and/or participated in by Defendants, and each of them, has substantially and unreasonably interfered with, obstructed and/or threatened, among other things, Vermonters' common public rights to enjoy a water supply free from unacceptable health risk, taste, odor, pollution, and contamination as well as the State's *parens patriae* ability to protect, conserve and manage the State's waters, which are by law precious and invaluable public resources held by the State in trust for the benefit of the public.

203. Each Defendant has, at times relevant to this action, caused, maintained, participated in and/or assisted in the creation of such public nuisance. Among other things, each Defendant is a substantial contributor to such public nuisance as follows:

- a. Defendants manufactured, promoted, marketed, distributed, refined, supplied, sold, and/or otherwise placed into the stream of commerce MTBE and/or gasoline containing MTBE when they knew; or reasonably should have known, that

gasoline containing MTBE would then be placed into leaking gasoline delivery systems, including those in the State;

- b. Defendants manufactured, promoted, marketed, distributed, refined, supplied, sold, and/or otherwise placed into the stream of commerce MTBE and/or gasoline containing MTBE that was delivered into the State (and areas affecting the State's property and waters), when they knew, or reasonably should have known, that MTBE would be released even more readily than the constituents of conventional gasoline from gasoline delivery systems; and when released, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate soils, groundwater, and surface water, including drinking water supplies, and, ultimately, be difficult and costly to remove; and
- c. Defendants manufactured, promoted, marketed, distributed, refined, supplied, sold, and/or otherwise placed into the stream of commerce MTBE and/or gasoline containing MTBE that was delivered into the State (and areas affecting the State's property and waters), when they knew, or reasonably should have known, that MTBE would be released into the environment and would contaminate the State's property and waters.

204. Defendants also had first-hand knowledge and experience regarding leaking gasoline delivery systems and releases of MTBE to groundwater from those systems. These defendants obtained such first-hand knowledge and experience because each of them owned, operated and/or controlled individual gasoline stations and/or were aware of leaks at terminals, service stations and refineries.

205. Despite their knowledge that contamination of the State's property and waters with MTBE was the inevitable consequence of their conduct as alleged in this Complaint, Defendants failed to provide any warnings or special instructions, failed to take any other precautionary measures to prevent or mitigate such contamination, and/or affirmatively misrepresented the hazards of MTBE in their product information and/or instructions for use.

206. Indeed, through their Material Safety Data Sheets, Defendants represented that gasoline containing MTBE could be handled in the same fashion as conventional gasoline, and required no special measures to protect against, respond to, or mitigate suspected releases to the subsurface.

207. Defendants knew, or in the exercise of reasonable care should have known, that the introduction and use of MTBE in gasoline would and has unreasonably and seriously endangered, injured, and interfered with the ordinary comfort, use, and enjoyment of property and vital water resources relied upon by the State.

208. The public nuisance caused, contributed to, maintained, and/or participated in by Defendants has caused and/or threatens to cause substantial injury to the State's property and waters, in which the public has interests represented by and protected by the State in its *parens patriae* capacity. The public nuisance has also caused and/or threatens to cause substantial injury to property directly owned by the State.

209. The contamination of the State's property and waters with MTBE alleged in this Complaint has varied over time and has not yet ceased. MTBE continues to threaten, migrate into, and enter the State's property and waters. MTBE contamination is a current as well as prospective public nuisance.

210. As a direct and proximate result of Defendants' acts and omissions, the State's property and waters were and are contaminated with MTBE. The State has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the State's property, surface water, groundwater, drinking water supplies, and water wells, for which defendants are jointly and severally liable.

211. As a further direct and proximate result of the Defendants' acts and omissions, the State has sustained and will sustain other substantial expenses and damages, for which defendants are jointly and severally liable.

212. The injuries to the State's property and waters caused and/or threatened by Defendants' acts and omissions as alleged in this Complaint are indivisible.

213. Defendants' reprehensible conduct to promote sales of MTBE and/or gasoline containing MTBE was undertaken with conscious, willful, and wanton disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the State of Vermont. Defendants' conduct was outrageously reprehensible and malicious. Defendants acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm, and/or as a matter of free and intentional business choices. Therefore, the State requests an award of punitive damages in an amount reasonable, appropriate, and sufficient to punish Defendants and deter them from committing the same or similar acts in the future.

## **X. FOURTH CAUSE OF ACTION**

### **Private Nuisance**

#### **(All Defendants)**

214. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

215. The State's property and waters have been contaminated by MTBE as a direct and proximate result of the intentional and unreasonable, negligent and reckless conduct of Defendants, all as alleged in this Complaint.

216. As a direct and proximate result of Defendants' acts and omissions creating the above-described nuisance, the State has suffered injuries from contamination of State-owned property, water, and/or wells. Defendants' acts and omissions have substantially, intentionally, and unreasonably interfered with, obstructed, violated, and/or threatened, among other things, the State's interests in its property, water, and/or wells. This harm far outweighs any utility or benefit derived from this intentional conduct.

217. As a direct and proximate result of Defendants' acts and omissions as alleged in this Complaint, the State's property and waters were and are contaminated with MTBE. The State has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the State's property, surface water, groundwater, drinking water supplies, and/or water wells, for which defendants are jointly and severally liable.

218. As a further direct and proximate result of Defendants' acts and omissions alleged in this Complaint, the State has sustained and will sustain other expenses and damages, for which defendants are jointly and severally liable.

219. The injuries to the State's property and waters caused and/or threatened by Defendants' acts and omissions as alleged in this Complaint are indivisible.

220. Defendants' reprehensible conduct to promote sales of MTBE and/or gasoline containing MTBE was undertaken with conscious, willful, and wanton disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the State of Vermont. Defendants' conduct was outrageously reprehensible and malicious. Defendants acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm, and/or as a matter of free and intentional business choices. Therefore, the State requests an award of punitive damages in an amount reasonable, appropriate, and sufficient to punish Defendants and deter them from committing the same or similar acts in the future.

## **XI. FIFTH CAUSE OF ACTION**

### **Trespass**

#### **(All Defendants)**

221. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

222. The State has significant property interests in the waters of the State, which the State holds in trust for the benefit of the public. These property rights and interests include, but are not limited to, its *parens patriae* and public-trust interest and authority in protecting such waters from contamination and pollution.

223. In addition, the State owns in fee certain property within the State, including lands, water supplies, and water wells.

224. Defendants and their agents and employees knew, or in the exercise of reasonable care should have known, that MTBE is extremely hazardous to groundwater, surface water, and public water systems, including the property and interests of the State.

225. Defendants' acts and omissions, as alleged in this complaint, directly and proximately caused and continue to cause MTBE to intrude onto State property, contaminate water systems, surface water, groundwater systems, and zones of influence of the areas that supply production wells within the State.

226. At the time of Defendants' acts and omissions, Defendants knew with substantial certainty that MTBE would reach onto State property, contaminate water systems, surface water, groundwater systems, and zones of influence of the areas that supply production wells within the State. Such knowledge was based on Defendants' knowledge of the properties of MTBE and their knowledge and experience regarding leaking gasoline delivery systems and releases of MTBE to groundwater from those systems. Despite this knowledge, Defendants refined and marketed gasoline with MTBE with a profit motive in a way that has harmed the State.

227. As a direct and proximate result of the trespass, the State has been damaged and is entitled to compensatory damages for the costs of investigation, remediation, and treatment, damages for loss of use and enjoyment, diminution in property values, cost of restoring the properties to their original conditions, and/or other relief the State may elect at trial.

228. As a direct and proximate result of Defendants' acts and omissions as alleged in this Complaint, the State's property and waters were and are contaminated with MTBE. The State has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the State's

property, surface water, groundwater, drinking water supplies, and water wells, for which defendants are jointly and severally liable.

229. As a further direct and proximate result of Defendants' acts and omissions alleged in this Complaint, the State has sustained and will sustain other substantial expenses and damages, for which defendants are jointly and severally liable.

230. The injuries to the State's property and waters caused and/or threatened by Defendants' acts and omissions as alleged in this Complaint are indivisible.

231. Defendants' reprehensible conduct to promote sales of MTBE and/or gasoline containing MTBE was undertaken with conscious, willful, and wanton disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the State of Vermont. Defendants' conduct was outrageously reprehensible and malicious. Defendants acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm, and/or as a matter of free and intentional business choices. Therefore, the State requests an award of punitive damages in an amount reasonable, appropriate, and sufficient to punish Defendants and deter them from committing the same or similar acts in the future.

## **XII. SIXTH CAUSE OF ACTION**

### **Negligence**

#### **(All Defendants)**

232. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

233. As manufacturers, refiners, formulators, distributors, suppliers, sellers, marketers, shippers and handlers of petroleum products, including gasoline containing MTBE, Defendants



owed a duty to the State as well as to all persons whom Defendants' petroleum products might foreseeably harm to exercise due care in the design, manufacturing, formulation, handling, control, disposal, promotion, marketing, sale, distribution, testing, labeling, use, warning, and instructing for use of MTBE and/or gasoline containing MTBE.

234. Defendants had a duty and the financial and technical means to test MTBE and gasoline containing MTBE, and to warn public officials, downstream handlers, and the general public of the hazardous characteristics of MTBE.

235. Defendants had a duty not to contaminate the environment.

236. At times relevant to this litigation, Defendants knew or should have known that:

- a. Unintended discharges of gasoline are commonplace;
- b. When gasoline containing MTBE is released into the environment, MTBE has a tendency to mix with groundwater and migrate great distances;
- c. MTBE is highly soluble in water and many times more soluble in water than the other organic (BTEX) components of gasoline;
- d. When gasoline containing MTBE is released into the environment, MTBE persists over long periods of time because MTBE is recalcitrant to biodegradation and bioremediation;
- e. Very low concentrations of MTBE can ruin the taste and smell of water;
- f. MTBE is a known animal carcinogen and a possible human carcinogen;
- g. MTBE greatly increases the importance of preventing leaks of gasoline;
- h. MTBE increases the need to maintain underground storage tanks, prevent overfills, and respond immediately to the loss of any gasoline containing MTBE;
- i. MTBE creates the need to issue warnings to all groundwater users in the area of any spill of gasoline containing MTBE; and
- j. MTBE creates a need for more regular testing and monitoring of wells for early detection of MTBE.

237. The foregoing facts relating to the hazards which MTBE poses to groundwater are not the sort of facts which the State, downstream handlers, and the general public could ordinarily discover or protect themselves against absent sufficient warnings.

238. Defendants have negligently breached their duties of due care to the State, downstream handlers, and the general public by, among other things:

- a. failing to adequately test, identify and remediate wells that are contaminated with MTBE;
- b. forming joint committees and task-forces to promote and defend MTBE while concealing the threat MTBE poses to groundwater;
- c. voluntarily undertaking to conduct and report research related to the environmental hazards and purported benefits of gasoline containing MTBE and not conducting and reporting that research in a truthful manner;
- d. marketing, touting, and otherwise promoting the benefits of gasoline mixed with MTBE without disclosing the truth about the environmental and potential health hazards posed by MTBE;
- e. failing to eliminate or minimize the harmful impacts and risks posed by gasoline containing MTBE;
- f. failing to curtail or reduce MTBE's distribution;
- g. failing to instruct downstream handlers and the general public about the safe handling and use of gasoline containing MTBE;
- h. failing to inspect, test, and take the necessary steps to prevent their gasoline distribution and storage system from releasing MTBE to groundwater or threatening such release;
- i. negligently releasing MTBE into the environment; and/or
- j. failing to warn and instruct downstream handlers and the general public about the risks to groundwater posed by gasoline containing MTBE, about the necessary precautions and steps to prevent or minimize spills and leaks of gasoline in distribution, storage and use, and about how to remediate such spills and leaks promptly.

239. As a direct and proximate result of Defendants' acts and omissions as alleged in this Complaint, the State's property and waters were and are contaminated with MTBE. The State

has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment, and monitoring costs and expenses related to contamination of the State's property, surface water, groundwater, drinking water supplies, and water wells, for which defendants are jointly and severally liable.

240. As a further direct and proximate result of the acts and omissions of the Defendants alleged in this Complaint, the State has sustained and will sustain other substantial expenses and damages, for which defendants are jointly and severally liable.

241. The injuries to the State's property and waters caused and/or threatened by Defendants' acts and omissions as alleged in this Complaint are indivisible.

242. Defendants knew that it was substantially certain that their acts and omissions described above would threaten public health and cause extensive contamination of public drinking water supplies. Defendants' conduct in continuing to promote MTBE was outrageously reprehensible.

243. Defendants' reprehensible conduct to promote sales of MTBE and/or gasoline containing MTBE was undertaken with conscious, willful, and wanton disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the State of Vermont. Defendants' conduct was outrageously reprehensible and malicious. Defendants acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm, and/or as a matter of free and intentional business choices. Therefore, the State requests an award of punitive damages in an amount reasonable, appropriate, and sufficient to punish Defendants and deter them from committing the same or similar acts in the future.

### **XIII. SEVENTH CAUSE OF ACTION**

#### **Strict Liability for Design Defect and/or Defective Product**

##### **(All Defendants)**

244. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

245. Defendants during the relevant time period were designers, manufacturers, refiners, formulators, distributors, sellers, marketers and suppliers of petroleum products, including gasoline containing MTBE.

246. As manufacturers, designers, refiners, formulators, distributors, suppliers, sellers and marketers of petroleum products, including gasoline containing MTBE, Defendants owed a duty to all persons whom Defendants' petroleum products might foreseeably harm, including the State and its citizens, not to market any product which is unreasonably dangerous for its intended and foreseeable uses.

247. Defendants represented, asserted, claimed, and warranted that gasoline containing MTBE could be used in the same manner as gasoline not containing MTBE, or otherwise did not require any different or special handling or precautions.

248. When Defendants placed gasoline containing MTBE into the stream of commerce, it was defective, unreasonably dangerous, and not reasonably suited for its intended, foreseeable and ordinary transportation, storage, handling, and uses for the following reasons:

- a. Unintended discharges of gasoline are commonplace throughout Vermont;
- b. When gasoline containing MTBE is released into the environment, MTBE has a tendency to mix with groundwater and migrate great distances;
- c. MTBE is highly soluble in water and many times more soluble in water than the other organic (BTEX) components of gasoline;

- d. When gasoline containing MTBE is released into the environment, MTBE persists much longer than the other organic (BTEX) components of gasoline, because MTBE is recalcitrant to biodegradation and bioremediation;
- e. Very low concentrations of MTBE will ruin the taste and smell of water;
- f. MTBE is a known animal carcinogen and a possible human carcinogen and otherwise unhealthy to ingest;
- g. Defendants with knowledge of the risks failed to use reasonable care in the design of gasoline containing MTBE;
- h. Gasoline containing MTBE poses greater dangers to groundwater than would be expected by ordinary persons such as the State, downstream handlers and the general public exercising reasonable care;
- i. The risks which gasoline containing MTBE poses to groundwater outweigh MTBE's utility in boosting the octane level of gasoline and/or supposedly reducing air pollution by increasing the oxygen content of gasoline; and
- j. Safer alternatives to MTBE have existed and been available to Defendants at all times relevant to this litigation, for the purposes of increasing both the octane level and oxygen content of gasoline. Such sensible alternatives to MTBE included, but are not limited to, ethanol and other "oxygenates" and "octane enhancers."

249. The above-described defects exceeded the knowledge of the ordinary person and by the exercise of reasonable care the State would not be able to avoid the harm caused by gasoline with MTBE.

250. Gasoline containing MTBE was distributed and sold in the manner intended or reasonably foreseen by the Defendants, or as should have been reasonably foreseen by Defendants.

251. Gasoline containing MTBE reached consumers and the environment in a condition substantially unchanged from that in which it left Defendants' control.

252. Gasoline containing MTBE failed to perform as safely as an ordinary consumer would expect when used in its intended and reasonably foreseeable manner.

253. As a direct and proximate result of Defendants' acts and omissions as alleged in this Complaint, the State's property and waters were and are contaminated with MTBE. The State has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment, and monitoring costs and expenses related to MTBE contamination of surface water, groundwater, drinking water supplies, and water wells, for which defendants are strictly, jointly, and severally liable.

254. As a further direct and proximate result of the acts and omissions of the Defendants alleged in this Complaint, the State has sustained and will sustain other substantial expenses and damages, for which defendants are strictly, jointly, and severally liable.

255. The injuries to the State's property and waters caused and/or threatened by Defendants' acts and omissions as alleged in this Complaint are indivisible.

256. Defendants' reprehensible conduct to promote sales of MTBE and/or gasoline containing MTBE was undertaken with conscious, willful, and wanton disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the State of Vermont. Defendants' conduct was outrageously reprehensible and malicious. Defendants acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm, and/or as a matter of free and intentional business choices. Therefore, the State requests an award of punitive damages in an amount reasonable, appropriate, and sufficient to punish Defendants and deter them from committing the same or similar acts in the future.

#### **XIV. EIGHTH CAUSE OF ACTION**

##### **Strict Liability for Failure to Warn**

##### **(All Defendants)**

257. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

258. As manufacturers, distributors, suppliers, sellers, and marketers of gasoline containing MTBE, Defendants had a duty to issue warnings to the State, the public, public officials, and downstream handlers of the risk posed by MTBE.

259. Defendants knew that gasoline mixed with MTBE would be purchased, transported, stored, handled, and used without notice of the hazards which MTBE poses to groundwater and wells.

260. Defendants' failure to warn of these hazards made gasoline containing MTBE unreasonably dangerous.

261. At all times relevant to this litigation, Defendants have had actual and/or constructive knowledge of the following facts which rendered MTBE hazardous to groundwater and production wells:

- a. Unintended discharges of gasoline with MTBE are commonplace;
- b. When gasoline containing MTBE is released into the environment, MTBE has a tendency to mix with groundwater and migrate great distances;
- c. MTBE is highly soluble in water and many times more soluble in water than the other organic (BTEX) components of gasoline;
- d. When gasoline containing MTBE is released into the environment, MTBE persists much longer than the other organic (BTEX) components of gasoline, because MTBE is recalcitrant to biodegradation and bioremediation;
- e. At extremely low concentrations, MTBE can have a distressing and objectionable taste and odor that renders water unusable;

- f. MTBE is a known animal carcinogen and a possible human carcinogen and is otherwise unhealthful when ingested;
- g. MTBE greatly increases the importance of preventing leaks of gasoline, and for the first time makes it necessary to prevent very small quantities of gasoline from escaping containment to avoid groundwater contamination;
- h. MTBE increases the need to maintain underground storage tanks, prevent overfills, and respond immediately to the loss of any gasoline containing MTBE;
- i. MTBE creates the need to issue warnings to all groundwater users in the area of any spill of gasoline containing MTBE; and
- j. MTBE creates the need for more regular testing and monitoring of wells for early detection of MTBE.

262. The foregoing facts relating to the hazards that MTBE poses to groundwater are not the sort of facts that, at the relevant times, the State, downstream handlers, or the general public could ordinarily discover or protect themselves against absent sufficient warnings.

263. Defendants breached their duty to warn by unreasonably failing to provide warnings concerning any of the facts alleged here to the State, public officials, downstream handlers, and/or the general public.

264. Defendants' failure to warn proximately caused reasonably foreseeable injuries to the State. The State and others would have heeded legally adequate warnings and MTBE would not have gained approval in the marketplace for use in gasoline, and/or gasoline containing MTBE would have been treated differently in terms of procedures for handling, storage, emergency response and/or environmental clean-up. Since the source of MTBE in all contaminated wells and groundwater is gasoline, the absence of warnings was the proximate cause of such contamination.

265. As a direct and proximate result of Defendants' acts and omissions as alleged in this Complaint, the State's property and waters were and are contaminated with MTBE. The State



has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment and monitoring costs and expenses related to contamination of the State's property, surface water, groundwater, drinking water supplies, and water wells, for which defendants are strictly, jointly, and severally liable.

266. As a further direct and proximate result of the acts and omissions of the Defendants alleged in this Complaint, the State has sustained and will sustain other substantial expenses and damages, for which defendants are strictly, jointly, and severally liable.

267. The injuries to the State's property and waters caused and/or threatened by Defendants' acts and omissions as alleged in this Complaint are indivisible.

268. Defendants' reprehensible conduct to promote sales of MTBE and/or gasoline containing MTBE was undertaken with conscious, willful, and wanton disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the State of Vermont. Defendants' conduct was outrageously reprehensible and malicious. Defendants acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm, and/or as a matter of free and intentional business choices. Therefore, the State requests an award of punitive damages in an amount reasonable, appropriate, and sufficient to punish Defendants and deter them from committing the same or similar acts in the future.

## XV. NINTH CAUSE OF ACTION

### Civil Conspiracy

(Against Defendants Exxon Mobil Corporation, ExxonMobil Oil Corporation, Shell Oil Company, Shell Oil Products Company LLC, Shell Petroleum Inc., Shell Trading (US) Company, Equilon Enterprises LLC, Atlantic Richfield Company, Chevron U.S.A. Inc., TMR Company, TRMI-H LLC, BP Products North America Inc., Mobil Corporation, CITGO Petroleum Corporation, CITGO Refining and Chemicals Company L.P., Sunoco Inc. (R&M))

269. The State realleges and reaffirms each and every allegation set forth in all preceding paragraphs as if fully restated in this section.

270. As described earlier in this Complaint, the above listed Defendants (“Conspiracy Defendants”) knowingly and voluntarily engaged in a common plan and concerted action to commit, assist, and/or encourage an illegal or tortious act among themselves. Specifically, these Defendants formed joint task forces and committees and otherwise colluded for the avowed purpose of providing information about MTBE to the public and to government agencies, but with the true, unlawful purposes of:

- a. creating a market for MTBE with full knowledge of the hazards which MTBE poses to groundwater throughout the State of Vermont;
- b. concealing the nature of MTBE and its harmful impact on the State and the environment; and
- c. maximizing profits in a way Conspiracy Defendants knew would require them to contaminate waters, including groundwater, in the state.

271. These actions were not undertaken by each such Defendant acting individually; rather, the Conspiracy Defendants in many instances joined together and agreed to so act.

272. As a direct result of these concerted actions on behalf of the Oil Industry and the Conspiracy Defendants Defendants to protect MTBE, MTBE use increased dramatically in the

1990s and, as a result, MTBE has contaminated the nation's groundwater in general and water resources in Vermont in particular.

273. The Conspiracy Defendants carried out their conspiracy by one or more of the following wrongful overt acts or omissions:

- a. Intentionally misrepresenting to the EPA and the public that MTBE was safe and did not pose a risk to groundwater;
- b. Concealing MTBE's dangers (including MTBE's adverse fate-and-transport characteristics and its propensity to contaminate groundwater) from the government and the public by, among other means, repeatedly requesting that information about the dangers and health effects of MTBE be suppressed and not otherwise published by third parties and by downplaying any adverse findings related to MTBE;
- c. Concealing MTBE's dangers from downstream handlers and consumers; and
- d. Collectively deciding to use MTBE rather than other, safer oxygenates to satisfy the requirements of the RFG program because MTBE was the most profitable option.

274. As a result of the Conspiracy Defendants' continued and ongoing pattern and practice of intentionally failing to warn, intentionally failing to provide information, and being dishonest when asked, information about MTBE's risk to human health and the environment that was within Conspiracy Defendants' possession was withheld from the public and governmental regulators during the time when the releases of gasoline with MTBE occurred in the state.

275. As a direct and proximate result of the Conspiracy Defendants' acts and omissions as alleged in this Complaint, the State's property and waters were and are contaminated with MTBE. The State has incurred, is incurring, and will incur, investigation, remediation, cleanup, restoration, removal, treatment, and monitoring costs and expenses related to contamination of the State's property, surface water, groundwater, drinking water supplies, and water wells for which the Conspiracy Defendants are jointly and severally liable.

276. The injuries to the State's property and waters caused and/or threatened by the Conspiracy Defendants' acts and omissions as alleged in this Complaint are indivisible.

277. Further, as discussed above, it is impossible to identify, based on physical characteristics, the manufacturer or refiner of any given quantity of gasoline that was the source of MTBE found in surface water, groundwater, or water wells. The State must therefore pursue the Conspiracy Defendants, jointly and severally, for those injuries that they have collectively visited upon the State. The Conspiracy Defendants are collectively liable under traditional causation theories as well as theories of market share liability, alternative liability, concert of action liability, commingled product liability, and/or enterprise liability for injuries caused by these Defendants.

278. The Conspiracy Defendants' reprehensible conduct, including their misrepresentations and withholding of information, to promote sales of MTBE and/or gasoline containing MTBE was undertaken with conscious, willful, and wanton disregard of the probable dangerous consequences of that conduct and its foreseeable impact upon the State of Vermont. These Defendants' conduct was outrageously reprehensible and malicious. They acted and/or failed to act with conscious and deliberate disregard for a known, substantial, and intolerable risk of harm, with the knowledge that their acts or omissions were substantially certain to result in the threatened harm, and/or as a matter of free and intentional business choices. Therefore, the State requests an award of punitive damages in an amount reasonable, appropriate, and sufficient to punish these Defendants and deter them from committing the same or similar acts in the future.

#### **PRAYER FOR RELIEF**

The State of Vermont seeks judgment against all Defendants for:

1. Compensatory damages arising from MTBE contamination of natural resources, groundwater, release sites, public drinking water supply wells, private drinking water

supply wells, and other State and public properties and waters, according to proof, including, but not limited to:

- (i) natural resources damages;
  - (ii) costs of investigation;
  - (iii) costs of testing and monitoring;
  - (iv) costs of providing water from an alternate source;
  - (v) costs of installing and maintaining wellhead treatment;
  - (vi) costs of installing and maintaining a wellhead protection program;
  - (vii) costs of installing and maintaining an early warning system to detect MTBE and/or TBA before it reaches wells;
  - (viii) costs of remediating MTBE and/or TBA from natural resources including groundwater;
  - (ix) costs of remediating MTBE and/or TBA contamination at release sites;
  - (x) any other response costs or other expenditures incurred to address MTBE and/or TBA contamination;
  - (xi) interest on the damages according to law;
2. Injunctive and equitable relief to compel Defendants to abate the continuing nuisance and trespass by removing MTBE and TBA from soil and groundwater;
  3. Punitive damages;
  4. Costs (including reasonable attorney fees, court costs, and other expenses of litigation);
  5. Prejudgment interest;
  6. Any other and further relief as the Court deems just, proper, and equitable.

**JURY TRIAL DEMANDED**

The State demands a trial by jury.

**Dated:** June 5, 2014

STATE OF VERMONT

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VERMONT SUPERIOR COURT  
WASHINGTON UNIT, CIVIL DIVISION

STATE OF VERMONT,  
Plaintiff,

v.

ATLANTIC RICHFIELD COMPANY,  
et al.,  
Defendants.

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

2014 AUG 21 P 3:09

Docket No. 340-6-14 Wncv

FILED

**TOTAL PETROCHEMICALS & REFINING USA, INC.'S**  
**MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

1. Pursuant to V.R.C.P. 12(b)(2), and the Parties' Joint Stipulation to Extend Time for Filing Responsive Pleading, Defendant Total Petrochemicals & Refining USA, Inc. ("TPRI") submits this Motion to Dismiss Plaintiff's Original Complaint for Lack of Personal Jurisdiction, and would respectfully show the Court as follows:

**I. INTRODUCTION**

2. Plaintiff's Complaint should be dismissed with prejudice because Plaintiff has failed to allege any facts that would support this Court's exercise of personal jurisdiction over TPRI. In its seventy-five page Complaint, Plaintiff's factual allegations relating to TPRI are limited to the following:

[TPRI] is a Delaware corporation with its principal place of business at: 1201 Louisiana Street, Suite 1800, Houston, Texas 77002. TPRI may be served with process through General Counsel for Total Petrochemicals & Refining USA, Inc., 1201 Louisiana Street, Suite 1800, Houston, Texas 77002.

Complaint at ¶ 16(x). The remainder of Plaintiff's Complaint lumps TPRI with the other twenty-eight named Defendants and fails to articulate any facts regarding TPRI's purported connection to either the State of Vermont or the causes of action asserted. Specifically, "[n]o allegation links [TPRI] to the refining, supplying, marketing or addition of MTBE to gasoline in



[Vermont].” *In re MTBE Products Liability Litig.*, No. 14 CIV. 1014, 2014 WL 1778984, at \*3 (S.D.N.Y. May 5, 2014).

3. Plaintiff’s broad-sweeping, cursory attempt to establish personal jurisdiction over all Defendants is patently insufficient:

[T]his Court may exercise jurisdiction over Defendants because they either are or at the relevant time were: authorized to do business in Vermont, registered with the Vermont Secretary of State, transacting sufficient business with sufficient minimum contacts in Vermont, or otherwise intentionally availing themselves of the Vermont market through the sale, manufacturing, distribution, and/or processing of petroleum-related products in Vermont to render the exercise of jurisdiction over Defendants by the Vermont courts consistent with traditional notions of fair play and substantial justice.

Complaint at ¶ 20. Setting aside the legal insufficiency of attempting to plead personal jurisdiction by lumping all Defendants together, Plaintiff’s baseless and conclusory allegations are wholly inaccurate as they pertain to TPRI.

4. TPRI is a Delaware corporation headquartered in Houston, Texas. Affidavit of Kim Arterburn, attached hereto as Exhibit 1, at ¶ 2. TPRI is not currently, nor has it ever been, qualified to do business in Vermont or registered with the Vermont Secretary of State. *Id.* at ¶ 4. Further, it has never sold, manufactured, distributed, or processed any gasoline containing MTBE in the State of Vermont. *Id.* at ¶ 3. In fact, TPRI has never participated in the Vermont market for the retail or wholesale distribution of gasoline and thus has not “availed [itself] of the Vermont market . . . to render the exercise of jurisdiction . . . by the Vermont courts consistent with traditional notions of fair play and substantial justice.” Complaint at ¶ 20.

5. Despite the defective nature of Plaintiff’s Complaint, TPRI’s motion should be granted without leave to amend because any such opportunity would be futile. Plaintiff would never be capable of pleading any facts to support the exercise of either general or specific jurisdiction over TPRI under Vermont’s long arm statute. General jurisdiction does not exist as

any contacts TPRI has with the State of Vermont are *de minimis* and fall far short of the kind of continuous and systematic contacts with the forum state that are necessary to render the defendant essentially “at home” in the jurisdiction. TPRI cannot be subject to specific jurisdiction either because TPRI has never refined, manufactured, blended, distributed or sold MTBE or any gasoline containing MTBE in Vermont, and thus has no connection to the causes of action asserted in the Complaint. TPRI must therefore be dismissed with prejudice.

### **JURISDICTIONAL FACTS**

6. Plaintiff, the State of Vermont, generally alleges that all Defendants, including TPRI, “refined, marketed, and/or otherwise supplied (directly or indirectly) MTBE and/or gasoline containing MTBE that each such Defendant knew or should have known would be delivered into areas affecting that State’s property and waters, or otherwise did business in the State.” Complaint at ¶ 16. Plaintiff does not support this broad-sweeping allegation with any material facts regarding TPRI. Plaintiff accurately indicates that TPRI is a Delaware corporation that maintains its principal place of business in Houston, Texas. *Id.* at ¶ 16(x).

7. Plaintiff also correctly notes that TPRI was served through its General Counsel at its headquarters in Houston, Texas, but fails to admit that service of process in Houston was necessary as TPRI does not currently, nor has it ever, maintained a registered agent to accept service of process in the State of Vermont. Ex. 1 at ¶ 10.

8. TPRI has never been qualified to do business in Vermont, nor has it ever been registered with the Vermont Secretary of State. *Id.* at ¶ 4. Furthermore, TPRI has never owned or leased any real estate in Vermont; (iii) maintained an office in Vermont; (iv) had officers or directors in Vermont; or (v) maintained a bank account, telephone number, or physical address in Vermont. *Id.* at ¶¶ 5, 8, 9 and 11.

9. TPRI never refined gasoline containing MTBE, manufactured MTBE, blended MTBE, supplied gasoline containing MTBE, or otherwise made, marketed, advertised, stored, or sold any product containing MTBE in Vermont. *Id.* at ¶ 3. TPRI has never owned, operated, or leased any gasoline service stations, terminals, underground storage tanks, or other gasoline distribution facilities in Vermont. *Id.* at ¶ 6. Additionally, TPRI has never entered into any contractual relationship with any jobber or other distributor for the delivery of MTBE or gasoline containing MTBE to gasoline service stations or other gasoline distribution or storage facilities located in Vermont. *Id.* at ¶ 7.

10. Since 2006, TPRI's only contacts with Vermont consist of the temporary storage of \$120,126 of polypropylene at the end of 2012 due to an in-transit rail car and limited sales of polypropylene, which comprise less than 0.002% of TPRI's total sales revenue for that time period. *Id.* at ¶ 13.

## II. LEGAL STANDARD

11. On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, Plaintiff bears the burden of proof. *See e.g., Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 507 (2d Cir. 1994) ("The burden of proving jurisdiction is on the party asserting it."). To establish jurisdiction over a nonresident defendant, "the plaintiff must show that the Vermont long arm statute reaches the defendant, and that jurisdiction over [the defendant] may be maintained without offending the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *N. Aircraft, Inc. v. Reed*, 572 A.2d 1382, 1385 (Vt. 1990). To meet this burden, plaintiff must make a prima facie showing of jurisdiction "based upon evidence of specific facts set forth in the record." *Schwartz v. Frankenhoff*, 733 A.2d 74, 81 (Vt. 1999). "Lumping all the defendants together for the purposes of alleging personal jurisdiction is patently insufficient."

*Savage v. Galaxy Media & Mktg. Corp.*, No. 11 Civ. 6791(NRB), 2012 WL 2681423, at \*6 n.13 (S.D.N.Y. July 5, 2012) (internal punctuation omitted); *see also Schwartz*, 733 A.2d at 80 (quoting *Calder v. Jones*, 465 U.S. 783, 790 (1983) for the proposition that “each defendant’s contacts with the forum State must be assessed individually”). In Vermont, a plaintiff seeking to establish personal jurisdiction is “require[d] . . . to go beyond the pleadings and make affirmative proof.” *Schwartz*, 733 A.2d at 81 (internal citation omitted).

12. Vermont’s long arm statute confers jurisdiction over nonresident defendants to the full extent permitted by the Due Process Clause. *Vt. Stat. Ann. tit. 12, §§ 855 and 913* (2003); *Artec Distrib., Inc. v. Video Playback, Inc.*, 799 F. Supp. 1558, 1559-60 (D. Vt. 1992); *Schwartz*, 733 A.2d at 79 n.1. Accordingly, the jurisdictional analysis in this case is a single inquiry: whether the exercise of personal jurisdiction over TPRI offends due process. *Id.*

13. A court’s exercise of personal jurisdiction over an out-of-state defendant comports with due process only “if the defendant has certain minimum contacts with the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal citation and punctuation omitted); *see also Schwartz*, 733 A.2d at 79 (“[T]he question of whether a Vermont court has jurisdiction over [a] defendant[] is a question of federal constitutional law requiring the court to decide whether the defendant[] seeking dismissal [has] had sufficient ‘minimum contacts’ with Vermont . . . .” (citation omitted)). The “critical determination” for deciding whether a defendant has minimum contacts with the State is “whether the defendant’s conduct and connection with the forum State are such that [it] should reasonably anticipate being haled into court there.” *Lisenko v. Osadchuk*, No. 2007-487, 2008 WL 3976569, at \*2 (Vt. Aug. Term, 2008) (citation omitted); *see*

also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). “It is essential to a finding of personal jurisdiction that a defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Schwartz*, 733 A.2d at 79 (internal citation omitted).

14. The minimum contacts analysis requires the Court to distinguish between the two forms of jurisdiction, specific and general. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (2011); *Porina v. Marward Shipping Co., Ltd.*, 521 F.3d 122, 127-28 (2d Cir. 2008). To establish specific jurisdiction, the suit must “arise out of or relate to” the defendant’s contacts with the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). General jurisdiction, on the other hand, requires the defendant’s “affiliations with the State [to be] so continuous and systematic as to render [it] essentially at home in the forum State.” *Daimler*, 134 S. Ct. at 761 (citing *Goodyear*, 131 S. Ct. at 2851); see also *Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 223 (2d Cir. 2014), *cert. denied*, 134 S. Ct. 2888 (2014) (“[G]eneral jurisdiction extends beyond an entity’s state of incorporation and principal place of business only in the exceptional case where its contacts with another forum are so substantial as to render it ‘at home’ in that state.” (citing *Daimler*, 134 S. Ct. 746)).

### III. ARGUMENT

#### A. TPRI Does Not Have Minimal Contacts with Vermont

15. TPRI’s contacts with Vermont fall well short of the minimum contacts required to establish personal jurisdiction. See *Daimler*, 134 S. Ct. at 754. Specific jurisdiction does not exist because the allegations giving rise to this lawsuit are entirely unrelated to TPRI’s contacts with Vermont. General jurisdiction does not exist because TPRI’s nominal contacts with

Vermont are not so “continuous and systematic” as to render TPRI “essentially at home” in Vermont. *See id.*; *Sonera Holding*, 750 F.3d at 223.

- (i) *TPRI is Not Subject to Specific Jurisdiction Because this Lawsuit Does Not Arise Out of or Relate to TPRI's Contact With Vermont.*

16. To establish specific jurisdiction, “the defendant must have ‘purposefully directed’ its activities at the forum” and “*the litigation must ‘arise out of or relate to’ at least one of those activities.*” *Dearwater v. Bond Mfg. Co.*, No. 1:06-CV-154, 2007 WL 2745321, at \*4 (D. Vt. Sept. 19, 2007) (emphasis added) (citing *Burger King*, 471 U.S. at 472); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). This lawsuit arises out of Plaintiff’s unsupported allegation that all Defendants refined, manufactured, blended, and/or supplied MTBE or gasoline containing MTBE to Vermont, and that MTBE contaminated the State’s waters. Complaint at ¶¶ 1, 5.

17. It is impossible that any of the underlying allegations arise out of or relate to any activity that TPRI “purposefully directed” at Vermont because TPRI never refined, manufactured blended, distributed, supplied or sold either MTBE or gasoline containing MTBE in Vermont. Ex. 1 at ¶ 3. Further, TPRI has never entered into any contractual relationship with any jobber or other distributor for the delivery of MTBE or gasoline containing MTBE to service stations or other gasoline distribution or storage facilities located in Vermont. *Id.* at ¶ 7. TPRI has never owned, operated, or leased any gasoline service stations, terminals, underground storage tanks, or any other gasoline distribution or storage facilities in Vermont from which any MTBE or gasoline containing MTBE may have been released into the environment. *Id.* at ¶ 6.

18. Plaintiff’s allegations regarding “indirect” sales of gasoline containing MTBE that *may have* reached Vermont are vague, factually unsupported, and in any event legally insufficient to establish personal jurisdiction over TPRI. Complaint at ¶ 16. A “defendant’s

transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have *targeted the forum*; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.” *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011) (emphasis added) (further noting that “[i]t is a defendant's actions, not his expectations, that empower a State's courts to subject him to judgment”). The *McIntyre* court reasoned that a rule allowing for the consideration of foreseeability would result in “undesirable consequences[.] . . . . The owner of a small Florida farm might sell crops to a large nearby distributor . . . who might then distribute them to grocers across the country. If foreseeability were the controlling criterion, the farmer could be sued in Alaska or any number of other States’ courts without ever leaving town.” *Id.* at 2790.

19. Placing a product into the “stream of commerce” that eventually arrives in the forum state is not sufficient to establish jurisdiction. *Volkswagen*, 444 U.S. at 298 (nonresident defendant was not subject to jurisdiction where its product arrived in the forum state after being placed in the stream of commerce); *O’Brien v. Comstock Foods, Inc.*, 194 A.2d 568, 571 (Vt. 1963) (“The bare allegation that a [nonresident] defendant . . . put its product ‘into the stream of commerce,’ without more, is insufficient to show a voluntary contact or an intentional participation in Vermont. The fact that the [product] was ultimately purchased and consumed [in Vermont] does not cure the defect.”). Plaintiff has not pleaded any facts to suggest that TPRI ever “directly or indirectly” sold any MTBE or gasoline containing MTBE that ultimately reached the State of Vermont.<sup>1</sup> Furthermore, whether TPRI ever maintained the reasonable

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<sup>1</sup> TPRI is unaware of any gasoline containing MTBE it either refined, manufactured or ever held title to that ever entered the State of Vermont. Ex. 1 at ¶ 7. However, to the extent any such gasoline did enter Vermont, it did so entirely at the discretion and direction of third parties. *Id.* at ¶¶ 3, 7. Under these facts, personal jurisdiction does not exist. See *McIntyre*, 131 S. Ct. at 2788. For example, in *In re MTBE Product Liability Litigation*, the court found that a Texas-based defendant was not subject to personal jurisdiction in Puerto Rico even though its MTBE was blended and distributed in Puerto Rico because the defendant never manufactured, marketed, delivered, sold,

expectation that its products could potentially reach Vermont is legally insufficient to support personal jurisdiction under binding Supreme Court precedent. Actions, not expectations, remain the deciding factor.

20. Under the facts set forth above, specific jurisdiction cannot exist in this case as no part of TPRI's conduct either occurred in Vermont or bears any connection to the facts underlying the causes of action asserted. *See Walden*, 134 S. Ct. at 1118 (declining to permit the exercise of specific personal jurisdiction where "[n]o part of petitioner's course of conduct occurred in the [forum], and he maintained no jurisdictionally relevant contacts with that forum"); *see also Helicopteros*, 466 U.S. at 414 (holding specific jurisdiction does not exist where the claims do not arise out of, and are not related to defendant's contacts with the forum); *Dearwater*, 2007 WL 2745321, at \*5 (finding specific jurisdiction did not exist because defendant's "presence in Vermont [did] not meet the relatedness part of the specific jurisdictional inquiry").

(ii) *TPRI is Not Subject to General Jurisdiction Because its Contacts with Vermont are Virtually Inexistent.*

21. The general jurisdiction analysis is a stringent test allowing jurisdiction to "extend[] beyond an entity's state of incorporation and principal place of business only in the exceptional case where its contacts with another forum are *so substantial as to render it 'at home' in that state.*"<sup>2</sup> *Sonera Holding*, 750 F.3d at 223 (citing *Daimler*, 134 S. Ct. 746)

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solicited or advertised its MTBE in Puerto Rico; rather, it merely sold MTBE to third parties in a series of spot sales. 2014 WL 1778984, at \*2-4 (quoting *Walden v. Fiore* 134 S. Ct. 1115, 1122-23 (2014) for the proposition that the jurisdictionally relevant relationship "must arise out of contacts the 'defendant *himself*' creates with the forum[;] . . . a defendants' relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction" (emphasis in original)). *In re MTBE* is directly analogous to the present case and in line with the well-established law of Vermont and the United States Supreme Court.

<sup>2</sup> In determining whether a court has general jurisdiction, it will "examine a defendant's contacts with the forum state over a period that is reasonable under the circumstances—up to and including the date the suit was filed." *Porina v. Marward Shipping Co., Ltd.*, 521 F.3d 122, 128 (2d Cir. 2008). The number of years a court will consider is highly fact-intensive and can range from approximately three to seven years. *Helicopteros*, 466 U.S. at 409-411



(emphasis added)); *see also Upshaw v. WMB Const., Inc.*, No. 2:13-CV-76, 2013 WL 4874169, at \*3 (D. Vt. Sept. 12, 2013) (“Because the contacts that establish general jurisdiction are unrelated to the events giving rise to the lawsuit, courts impose a ‘more stringent’ version of the minimum contacts test for general jurisdiction than for specific jurisdiction.” (citing *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 674 (2d Cir. 2013))). Indeed, the United States Supreme Court recently made “clear that even a company’s ‘engage[ment] in a substantial, continuous, and systematic course of business is alone insufficient to render it at home in a forum[.]” *Sonera Holding*, 750 F.3d at 226 (quoting *Daimler*, 134 S. Ct. at 761).

22. TPRI’s contacts with Vermont do not come close to the “systematic and continuous” contacts required to render it “at home” in the state. *See Daimler*, 134 S. Ct. at 761-62; *Sonera Holding*, 750 F.3d at 226. As referenced above, TPRI is a Delaware corporation headquartered in Houston, Texas. Ex. 1 at ¶ 2. It has never been qualified to do business in Vermont. *Id.* at ¶ 4. It has never owned real estate or maintained an office in Vermont. *Id.* at ¶¶ 5, 8. It has never had any officers, directors, or agents for service of process in Vermont. *Id.* at ¶¶ 9-10. And it has never maintained a bank account, phone number or physical address in Vermont. *Id.* at ¶ 11. Under these facts, general jurisdiction does not exist. *See Dearwater*, 2007 WL 2745321, at \*1 (finding general jurisdiction did not exist where defendant did not own property in Vermont, was not registered to do business in Vermont, did not advertise in Vermont-based publications, and did not have sales personnel in Vermont); *Bechard v. Constanzo*, 810 F. Supp. 579, 585 (D. Vt. 1992) (finding general jurisdiction did not exist when defendant physicians did not maintain an office in Vermont, were not licensed to practice in

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(considering contacts going back six years); *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 569 (2d Cir. 1996) (considering contacts going back six years); *Learjet Corp. v. Jensen*, 743 F.2d 1325, 1329-31 (9th Cir. 1984) (considering contacts going back three years).

Vermont, did not own property in Vermont, and did not solicit business or actively pursue business contacts in Vermont).

23. The only contacts TPRI has ever had with Vermont consist of extremely limited sales and the temporary storage of polypropylene in an in-transit rail car at the end of 2012. TPRI's revenue from sales of polypropylene in Vermont since 2006 are as follows: \$104,184 in 2006; \$1,432 in 2007; \$2,383 in 2008; \$88,345 in 2009; \$0 in 2010; \$170,925 in 2011; \$221,800 in 2012; and \$568,783 in 2013; and \$139,320 to date in 2014. These revenues represent 0.0011%, 0.0000%, 0.0000%, 0.0012%, 0.0000%, 0.0013%, 0.0017%, and 0.0044% of TPRI's total sales for each year from 2006 through 2013, respectively. Ex. 1 at ¶ 13. These percentages are miniscule. Even sizable sales into a state do not establish general jurisdiction, let alone *de minimis* sales such as these. *Daimler*, 134 S. Ct. at 761-62 (finding that asserting general jurisdiction in every state in which a defendant's "sales are sizable" would be an "exorbitant exercise[]" that "would scarcely permit out-of-state defendants 'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit'" (citing *Burger King*, 471 U.S. at 472)); *Johnston v. Multidata Sys. Int'l Corp.*, 523 F.3d 602, 612 (5th Cir. 2008) (finding sales to the forum state for "four out of five years [that] accounted for 1.7%, 0.5%, 1.1%, and 2.5%" of the defendant's global sales did not amount to "substantial, systematic, and continuous contacts"); *Dearwater*, 2007 WL 2745321, at \*1 (finding defendant's sales to customers in Vermont over a seven year period representing between 2.3% and 0.03% of its yearly total sales did not establish general jurisdiction).

24. Consequently, because TPRI's contacts with Vermont do not approach the "continuous and systematic" contacts required to render a nonresident defendant "at home" in the forum, TPRI is not subject to general jurisdiction in Vermont. See *Daimler*, 134 S. Ct. at

761-62; *Helicopteros*, 466 U.S. at 416 (finding general jurisdiction did not exist even where defendant purchased significant equipment and services from the forum state, sent its personnel to train in the forum state, and sent its CEO to negotiate in the forum state). TPRI's contacts with the State of Vermont are precisely the type of "random, fortuitous, [and] attenuated" contacts that are insufficient to establish personal jurisdiction. *See Burger King*, 471 U.S. at 475.

**B. Asserting Jurisdiction Over TPRI Would Violate Traditional Notions of Fair Play and Substantial Justice**

25. Because TPRI's contacts with Vermont do not satisfy the minimum contacts requirement for personal jurisdiction, the Court need not consider whether the exercise of personal jurisdiction would nevertheless be reasonable. *Porina*, 521 F.3d at 129; *Dearwater*, 2007 WL 2745321, at \*8. However, even were Plaintiff capable of establishing the requisite minimum contacts, this motion should still be granted because asserting jurisdiction over TPRI would offend traditional notions of fair play and substantial justice. *Asahi Metal Indus. Co., Ltd. v. Super. Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 113-14 (1987).

26. Courts consider the following factors when determining the reasonableness of the exercise of jurisdiction: (i) "the burden on the defendant;" (ii) "the interests of the forum State;" (iii) "the plaintiff's interest in obtaining relief;" (iv) "the interstate judicial system's interest in obtaining the most efficient resolution of controversies;" and (v) "the shared interest of the several States in furthering fundamental substantive social policies." *Id.* at 113 (quoting *Volkswagen*, 444 U.S. at 292). In this case, TPRI would be significantly and unduly burdened by being forced to litigate in Vermont. It has no presence in Vermont and all of its officers are located almost 2,000 miles away in Houston, Texas. Notwithstanding, the exercise of personal jurisdiction over TPRI would be improper:

[T]he Due Process Clause does not contemplate that a state may make binding a judgment *in personam* against [a] corporate defendant with which the State has no contacts, ties, or relations. Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

*Volkswagen*, 444 U.S. at 294. Moreover, Vermont's interest in resolving this dispute will not be prejudiced by the dismissal of TPRI because TPRI never refined, manufactured, distributed, marketed, or sold either MTBE or gasoline containing MTBE in Vermont, and therefore has no connection to the allegations underlying Plaintiff's causes of action. Accordingly, asserting jurisdiction over TPRI under the circumstances of this case would be unreasonable and a violation of TPRI's due process rights. See *Asahi*, 480 U.S. at 115-16; *Upshaw*, 2013 WL 4874169, at \*4.

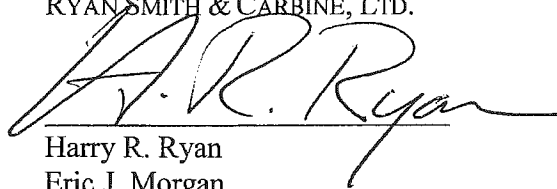
#### IV. CONCLUSION

27. Based on the foregoing, Plaintiff has not met its burden of establishing personal jurisdiction over TPRI, and any attempt to amend the Complaint would be futile. TPRI therefore respectfully requests that this Court issue an order dismissing Plaintiff's Complaint against TPRI with prejudice.

Dated: August 21, 2014

Respectfully submitted,

RYAN SMITH & CARBINE, LTD.



Harry R. Ryan

Eric J. Morgan

98 Merchants Row/P.O. Box 310

Rutland, VT 05702-0310

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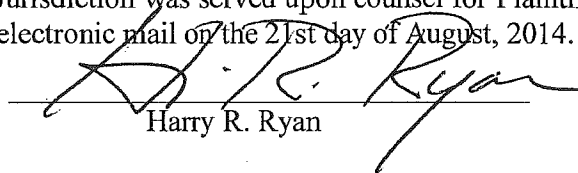
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[ejm@rsclaw.com](mailto:ejm@rsclaw.com)

**Counsel for Total Petrochemicals & Refining  
USA, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Total Petrochemicals & Refining USA, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction was served upon counsel for Plaintiff and all other counsel of record via first class or electronic mail on the 21st day of August, 2014.



Harry R. Ryan

VERMONT SUPERIOR COURT  
WASHINGTON UNIT, CIVIL DIVISION

STATE OF VERMONT,  
Plaintiff,

v.

ATLANTIC RICHFIELD COMPANY,  
et al.,  
Defendants.

Docket No. 340-6-14 Wncv

AFFIDAVIT OF KIM ARTERBURN

BEFORE ME, the undersigned authority, on this day personally appeared Kim Arterburn, a person known to me, who being duly sworn, did depose and say:

1. I am over eighteen (18) years of age, I have never been convicted of a felony, and I am fully competent to make this affidavit. I have personal knowledge of the matters stated herein, and they are true and correct.

2. I reside in Houston, Texas. I am employed as Senior Manager, Financial Accounting for Total Petrochemicals & Refining USA, Inc. ("TPRI"), a corporation engaged in petroleum refining and the manufacture of petrochemicals with facilities in Texas, Louisiana, Colorado, Connecticut, and Alabama. TPRI is a Delaware corporation headquartered in Houston, Texas.

3. TPRI never refined gasoline containing MTBE, manufactured MTBE, blended MTBE, supplied gasoline containing MTBE, or otherwise made, marketed, advertised, stored, or sold any product containing MTBE in Vermont.

4. TPRI is not now, and never has been, qualified to do business in Vermont, and has never been registered with the Vermont Secretary of State.

5. TPRI has never owned or leased any real estate in Vermont.

6. TPRI has never owned, operated, or leased any gasoline service stations, terminals, underground storage tanks, or any other gasoline distribution or storage facilities located in Vermont.

7. TPRI has never entered into any contractual relationship with any jobber or other distributor for the delivery of MTBE or gasoline containing MTBE to gasoline service stations or other gasoline distribution or storage facilities located in Vermont. TPRI is unaware of any third party who delivered MTBE or gasoline containing MTBE to Vermont that TPRI ever refined or manufactured, or to which it ever held title.

8. TPRI has never maintained an office in Vermont.

9. TPRI has never had officers or directors in Vermont.

10. TPRI has never had an agent for service of process in Vermont.


11. TPRI has never maintained a bank account, phone number, or physical address in Vermont.

12. For the time period 2006 through the present, TPRI has received a total of \$1,297,172 in revenue from sales in Vermont, representing 0.0013% of TPRI's total revenue of \$96,800,594,039 for that time period. A breakdown of this revenue is below. None of this revenue represents the sale of gasoline or any other motor fuel. All sales in Vermont were of polypropylene. TPRI has never sold motor fuel in Vermont.

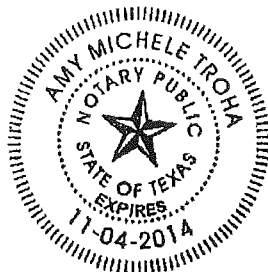
- a. 2006: Revenue from Vermont: \$104,184. Percentage of Total Revenue: 0.0011%.
- b. 2007: Revenue from Vermont: \$1,432. Percentage of Total Revenue: 0.0000%.
- c. 2008: Revenue from Vermont: \$2,383. Percentage of Total Revenue: 0.0000%.
- d. 2009: Revenue from Vermont: \$88,345. Percentage of Total Revenue: 0.0012%.
- e. 2010: Revenue from Vermont: \$0. Percentage of Total Revenue: 0.0000%.


- f. 2011: Revenue from Vermont: \$170,925. Percentage of Total Revenue: 0.0013%.
- g. 2012: Revenue from Vermont: \$349,378. Percentage of Total Revenue: 0.0026%.
- h. 2013: Revenue from Vermont: \$441,205. Percentage of Total Revenue: 0.0034%.
- i. 2014: Revenue from Vermont to date: \$139,320.

13. TPRI had \$120,126 of polypropylene temporarily stored in an in-transit rail car located in Vermont at the end of 2012.

  
\_\_\_\_\_  
Signature of Affiant, Kim Arterburn

SUBSCRIBED AND SWORN TO BEFORE ME on the 21<sup>st</sup> day of August, 2014, to certify which witness my hand and seal of office.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas  
Printed Name Amy Troha  
My commission expires 11-04-2014



VERMONT SUPERIOR COURT  
WASHINGTON UNIT, CIVIL DIVISION

STATE OF VERMONT,  
Plaintiff,

v.

ATLANTIC RICHFIELD COMPANY,  
et al.,  
Defendants.

Docket No. 340-6-14 Wncv

**CERTIFICATE OF SERVICE**

Pursuant to V.R.C.P. Rule 5(d), on the 21<sup>st</sup> day of August, 2014, I served the following:

- Defendant Total Petrochemicals & Refining USA, Inc.'s *Motion to Dismiss For Lack of Personal Jurisdiction*

on all parties by emailing copies of the same upon:

All Local Counsel of Record

DATED at Rutland, Vermont this 21<sup>st</sup> day of August, 2014.

TOTAL PETROCHEMICALS &  
REFINING USA, INC.

/s/ Harry R. Ryan

By: \_\_\_\_\_

Harry R. Ryan, III, Esq.  
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STATE OF VERMONT

Superior Court  
Washington Unit

Civil Division  
Docket No. 340-6-14 Wncv

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State of Vermont

v.

Atlantic Richfield Co., et al.

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State of Vermont's Opposition  
to TPRI's Motion to Dismiss

Plaintiff, the State of Vermont, opposes Defendant Total Petrochemicals & Refining USA, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction ("Motion"), filed August 21, 2014. In support of its opposition, the State submits the following memorandum of law.

**INTRODUCTION**

The State filed suit to recover damages arising from widespread contamination of Vermont's groundwater, public trust resources, public water wells, private water wells, and underground storage tank ("UST") sites with methyl tertiary butyl ether ("MTBE"). MTBE is a chemical that was blended into gasoline sold in certain areas of the United States from approximately 1980 to 2006. The State sued the oil companies that manufactured MTBE, produced gasoline containing MTBE, and/or blended

MTBE into gasoline that was supplied in the State. One of those companies is Defendant Total Petrochemicals & Refining USA, Inc. ("TPRI"). The State's Complaint alleges that TPRI "refined, marketed and/or otherwise supplied (directly or indirectly) MTBE and/or gasoline containing MTBE" that contaminates "the State's property and waters." See Plaintiff's Original Complaint ("Complaint") at ¶16.

TPRI now moves to dismiss the State's complaint under Rule 12(b)(2) on the ground that the Court lacks personal jurisdiction. TPRI argues that it is not subject to jurisdiction in Vermont courts because it did not physically make or personally sell MTBE or MTBE-containing gasoline in Vermont. It therefore claims not to have the "minimum contacts" with Vermont required to satisfy due process concerns.

This theory is not new; it has been advanced and rejected repeatedly. Indeed, it has been rejected specifically as to Vermont municipal plaintiffs (Craftsbury Fire District and the Town of Hartland). In the MTBE Multi-District Litigation ("MDL"),<sup>1</sup> the federal district court applied the *World-Wide Volkswagen* standard to deny similar motions to dismiss filed by other non-resident gasoline refiners who argued that jurisdiction was improper in several states including Vermont. In addition, although TPRI was a named

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<sup>1</sup> The federal MDL procedure allows for the consolidation in one district court of federal civil cases that involve common questions of law or fact, even if those cases were filed in different districts. See 28 U.S.C. §1407. Transferred cases remain in the MDL for all pre-trial proceedings and are then remanded to their original courts for trial. In 2004, more than 150 municipal plaintiffs' MTBE cases then pending in 17 states were consolidated in the MTBE MDL in the Southern District of New York, where additional federal cases continue to be transferred.

defendant in the two Vermont cases consolidated in MDL 1358, it did not challenge Vermont's exercise of jurisdiction in those cases.

The federal district court presiding over the MTBE MDL denied similar motions to dismiss for lack of personal jurisdiction filed by manufacturers of MTBE and refiners of MTBE-containing gasoline who alleged that they had not sold their products in Vermont or intentionally targeted the Vermont market. The MDL court found their supply of gasoline into the national market, which reached Vermont, through established commercial channels was sufficient to support jurisdiction in Vermont. The Court should deny TPRI's motion here on the same grounds, and also because the motion depends on an affidavit that the Court should disregard.

### **FACTS ABOUT TPRI'S ACTIVITIES IN VERMONT**

#### **I. Gasoline Has at All Relevant Times Been Supplied to Vermont through a Planned, Regular Distribution System.**

As alleged in the State's Complaint, gasoline containing MTBE was released from underground storage tanks at gasoline stations during normal storage and use and during routine transfer and delivery through the distribution system. Complaint at ¶¶ 32-33. The Complaint alleges that MTBE and gasoline containing MTBE are fungible — or generic — products, making it impossible, based on physical characteristics, to identify the manufacturer or refiner of any given quantity of gasoline that was the source of MTBE found in the environment. *Id.* at ¶¶ 40-42, 176. The

Complaint also alleges that gasoline from many different refiners is mixed or commingled during the transportation of gasoline from refinery to station, so that the gasoline that ultimately arrives at any particular station is an intentionally blended product made up of gasoline from many different refiners. *Id.* at ¶ 41. The State alleges that all Defendants — including TPRI — manufactured, supplied, and/or sold gasoline containing MTBE that was supplied to Vermont in this blended state and seeks, therefore, to hold them jointly and severally liable for contributing to the State's injuries. *Id.* at ¶¶ 17, 176-177.

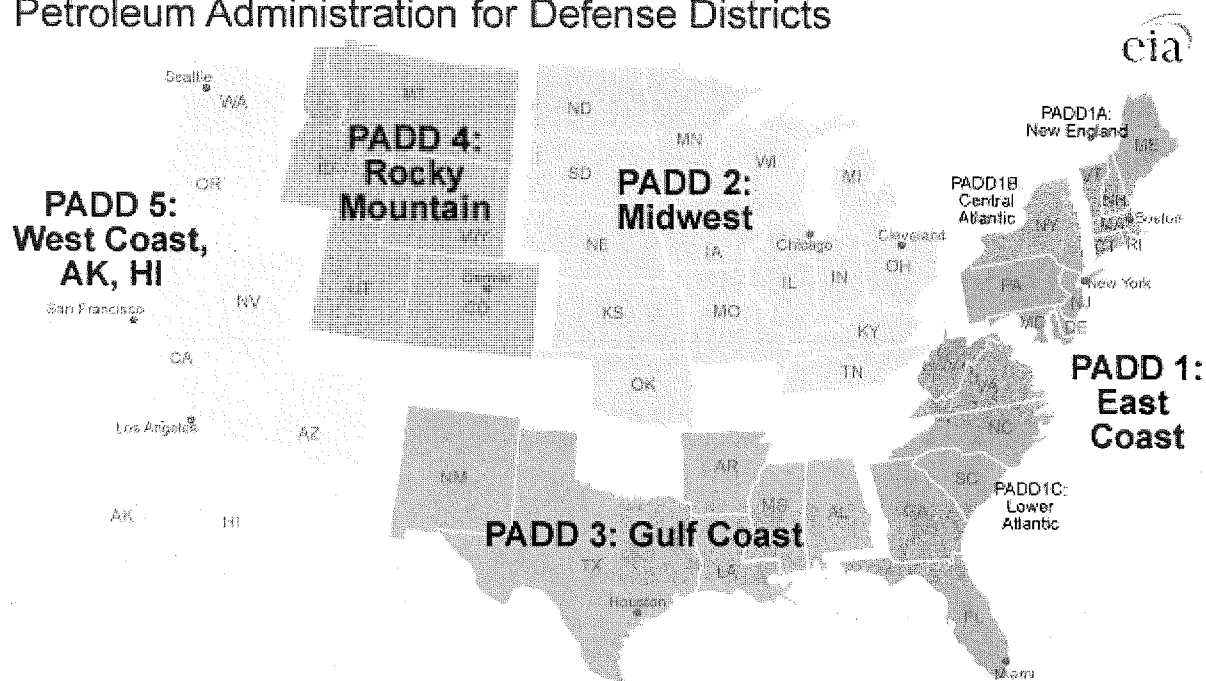
Because there are no gasoline refineries in Vermont, in-state stations are supplied with gasoline that is refined elsewhere. *See* Affidavit of Bruce F. Burke in Support of Plaintiff State of Vermont's Opposition to Defendant's Motion to Dismiss for Lack of Personal Jurisdiction ("Burke Aff.") at ¶ 15, attached as Exhibit A. The Energy Information Administration (EIA), created by Congress in 1977, is a statistical agency of the U.S. Department of Energy. EIA tracks national and regional fuel markets based on the five "Petroleum Administration for Defense Districts" (or "PADDs"), as shown below.<sup>2</sup> *See also* Burke Aff. at ¶ 13.

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

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<sup>2</sup> *See* U.S. Energy Information Administration, *PADD regions enable regional analysis of petroleum product supply and movements*, <http://www.eia.gov/todayinenergy/detail.cfm?id=4890&src=email> (last accessed September 8, 2014).

## Petroleum Administration for Defense Districts



According to EIA, in 2010, PADD 3 shipped more gasoline than any other PADD, and PADD 1 (which includes Vermont) *received* more gasoline than any other PADD. More than half of all inter-PADD shipments were from PADD 3 to PADD 1. *See* table below.<sup>3</sup> This reflects the historical trend. Although a larger percentage of pipeline-sourced gasoline is sold in PADD 1C and 1B, a certain amount is delivered to PADD 1A, which includes Vermont, via ocean vessels or land transport. *Burke Aff.* at ¶¶ 15-16.

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<sup>3</sup> *Id.*

Petroleum Product Inter-PADD Pipeline Movements, 2010  
million barrels

PADD	SHIPPING PADD					Total receipts
	From 1	From 2	From 3	From 4	From 5	
To 1	--	17	886	0	0	903
To 2	111	--	278	58	0	447
To 3	0	121	--	69	0	190
To 4	0	28	10	--	0	38
To 5	0	0	54	12	--	66
Total shipments	111	166	1228	139	0	1644

The majority of gasoline shipped from PADD 3 to PADD 1 travels by pipeline. Burke Aff. at ¶ 13. Gasoline that is shipped by pipeline is first stored in tanks that hold gasoline for shipment. Various refiners' gasolines are commingled in common storage tanks before injection into the pipeline. These tanks are generally segregated by fuel grades (*e.g.*, 87 octane, 89 octane, and 91 octane) but not by refinery of origin. *Id.* at ¶ 6. There is no way to match the provenance of gasoline drawn from community tanks to particular refinery products put into the tank: "Thus, early in the process of moving gasoline from refineries to retail users, the ability to track gasoline from a single refinery is lost." *Id.*

Pipeline transportation further commingles gasoline. In fact, commingling of gasolines is required for the pipelines to function efficiently. A petroleum industry spokesperson explained the gasoline distribution system in testimony to the United States Senate by likening it to the electrical power grid:

The distribution of gasoline is in many ways similar to the distribution of electricity. Throughout New England, power plants generate electricity and send it to customers through the power grid. This power is co-mingled with the power produced at other plants. ... The gasoline distribution system is very similar. Think of refineries as power plants and the pipelines and barges that deliver that product as the transmission system. **Gasoline produced at refineries is put into the transmission system where it is co-mingled with the product produced at other refineries. This co-mingled product travels through the system to a terminal. At the terminal it finally becomes a specific brand of gasoline.** It is loaded onto trucks and delivered to gasoline stations. ... The fungibility of Gasoline allows it to be moved efficiently and ensures adequate supply.

See Remarks of David Harrington, Executive Director of the New Hampshire Petroleum Council, a division of the American Petroleum Institute, February 19, 1999, BPX 047489, attached as Exhibit B.<sup>4</sup> As Harrington notes, gasoline is not converted to a particular refiner's brand until it is shipped by truck to the retail outlet. *Id.*; see also EIA, Frequently Asked Questions, *Can I tell where the gasoline at my local stations comes from?*, available at <http://www.eia.gov/tools/faqs/faq.cfm?id=21&t=10> (last accessed September 8, 2014).

Gasoline moves from PADD 3 to PADD 1 via the Colonial Pipeline System, which extends from the Gulf Coast refineries to its terminus in Linden, New Jersey, near New York City, and serves the New York region and Vermont as well as the other markets it traverses. Burke Aff. at ¶¶ 13-21. By the time gasoline products exit the Colonial Pipeline, refiners do not

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<sup>4</sup> Although BP marked this document "confidential," it waived that designation in 2005. See Letter from J. Andrew Langan to Celeste A. Evangelisti, June 22, 2005.



receive back the same gasoline they injected into the pipeline. As Colonial's own literature states, when fungible products are shipped on the Colonial Pipeline, "shippers will receive equivalent product but may not get back the actual product shipped." Colonial Pipeline Company, Frequently Asked Questions, <http://www.colpipe.com/home/about-colonial/frequently-asked-questions> (last accessed September 8, 2014).

The hub of gasoline distribution in PADD 1 is a vast storage and distribution center at Linden, New Jersey, which receives and stores gasoline from the Colonial Pipeline, the regional Sun and Harbor Pipelines, bulk storage terminals, and local refineries. Burke Aff. at ¶ 21. With a storage capacity of 3,000,000 barrels, Linden acts as a staging area for distribution of gasoline to the Central Atlantic and New England parts of PADD 1. *Id.*

Gasoline arrives in Vermont in only a few ways. First, as discussed above, gasoline arrives in northern New Jersey via the Colonial Pipeline as well as several other pipelines, and some of this gasoline is shipped by vessel to the New England regions, including Vermont. Second, some is supplied by the refineries in PADD 1, with shipping via vessel to the New England region. And some percentage is imported from foreign suppliers. See Burke Aff. at ¶ 13.

The most important characteristic of the distribution system, for purposes of the TPRI Motion, is that any entity like TPRI that places MTBE or gasoline containing MTBE into the Colonial Pipeline, blends MTBE into

gasoline within PADD 1, or sells MTBE to other nationwide refiners, is fully aware that its product will be distributed throughout PADD 1, including Vermont. Any supplier of gasoline into PADD 1 “will have, on average, supplied gasoline throughout the entire supply system.” Burke Aff. at ¶21. “[R]efiners in the United States have an understanding of the fungible nature of the gasoline that they produce, and also that, over time, through commingling their gasoline will end up throughout the distribution system.” *Id.*

## **II. TPRI Intentionally Used a National System to Supply Gasoline to all of PADD 1, Including Vermont.**

TPRI is “a corporation engaged in petroleum refining and the manufacture of petrochemicals with facilities in Texas, Louisiana, Colorado, Connecticut, and Alabama.” Affidavit of Kim Arterburn (“Arterburn Aff.”), attached as Exhibit 1 to Motion. TPRI participated in the Vermont market in four specific ways: it produced gasoline in Texas that was shipped via pipeline into PADD 1; it blended MTBE into gasoline in New Jersey for sale; it imported MTBE-gasoline into New Jersey for resale; and it made and sold MTBE in Texas for sale to other refiners who, in turn, blended that MTBE into gasoline marketed nationwide.

First, TPRI produced MTBE-containing gasoline at its Port Arthur, Texas refinery — approximately half of which (about 1.5 million barrels) was sold to third parties via shipment on the Colonial Pipeline, which serves New England, including Vermont. *See* Burke Aff. at ¶ 13; *see also* Rule

56.1 Statement in Support of the Motion for Partial Summary Judgment of Total Petrochemicals USA, Inc., *In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, MDL 1358 (SAS) (January 11, 2008), attached as Exhibit C. Most of the sales transactions for this gasoline occurred in Hebert, Texas, though a few occurred in North Carolina, Pennsylvania, and New Jersey. *Id.* at Ex. A. It is more likely than not that some of TPRI's gasoline refined in Texas supplied the State of Vermont. Burke Aff. at ¶26.

Second, TPRI leased storage tanks in Linden, New Jersey, where it blended MTBE into gasoline for sale. See Declaration of Total Petrochemicals USA, Inc. Pursuant to Case Management Order #4 ("Total Dec."), *In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, 1:00-1898 (SAS), MDL 1358 (February 25, 2005) at 4, attached as Exhibit D. This gasoline was "sold in the state of New Jersey to third parties ... either into barges ... or into a pipeline within the state of New Jersey." Total Dec. at 5. As discussed above, New Jersey's gasoline distribution center supplies gasoline to New England, including Vermont. It is more likely than not that some of TPRI's blended gasoline supplied the State of Vermont with gasoline containing MTBE. Burke Aff. at ¶ 24.

Third, TPRI leased similar tanks at the GATX Terminal in Carteret, New Jersey. Rule 56.1 Statement at 2. At Carteret, TPRI imported MTBE-containing gasoline that it resold to third parties. *Id.* at Affidavit of Tom Knight ("Knight Aff."), ¶¶ 2,4. All of these sales were made in New Jersey. The customers who bought this MTBE-gasoline from TPRI include Mobil Oil

Corporation, Amoco Oil Company, BP Oil Company, Shell Oil Company, Valero Refining & Marketing Company, and others, who delivered gasoline with MTBE to Vermont. *Id.* at Knight Aff., Ex. B. That gasoline radiated out from the New Jersey nucleus to New England, including Vermont. It is more likely than not that some of TPRI's gasoline supplied entities in Vermont with gasoline containing MTBE. Burke Aff. at ¶ 24.

And fourth, TPRI made and sold neat MTBE to other refiners, including many with a national sales presence, including BP Products North America, Inc., Mobil Oil Corporation, Citgo Petroleum Corporation, Conoco, Inc., Exxon Company USA, ExxonMobil Refining & Supply Company, ExxonMobil Oil Corporation, Shell Trading US Company, Valero Marketing and Supply Company, and others. Total Dec. at 2. From 1984 to 2005, Total sent a "mixed butylenes stream from the company's refinery in Port Arthur, Texas to a facility owned and operated by Huntsman Petrochemical Corporation . . . located in Port Neches, Texas at which isobutylene is extracted from the stream and reacted with methanol in the presence of catalyst [*sic*] to create MTBE for TOTAL Petrochemicals." *Id.* These sales transactions occurred "at the outlet of the tanks in which the manufactured neat MTBE was stored in Port Neches, Texas" or "at delivery points on or near the Gulf Coast of Texas or Louisiana." *Id.* at 3. Because TPRI sold neat MTBE to "national or regional suppliers of gasoline throughout the United States ... it is reasonable to conclude that it expected that its MTBE

would be distributed nationally, including in New England and Vermont.”

Burke Aff. at ¶27.

In its declaration, TPRI admitted that it blended gasoline with MTBE at its Port Arthur, Texas refinery and conceded that it cannot track the final destination of its refined gasolines. “TOTAL Petrochemicals does not, in the ordinary course of business, create or maintain data or records that track the ultimate destination of gasoline blended with MTBE that it sells to customers.” Total Dec. at 4. TPRI also admitted that it does know where its products are ultimately sold: “TOTAL Petrochemicals does not choose or dictate the marketing or retail outlets to which its customers ultimately send gasoline blended with MTBE, and does not know whether terminals owned and/or operated by third parties actually supply the [New York area] with such gasoline.” Total Dec. at 4. TPRI acknowledged that its MTBE-gasoline was supplied into the system that serves PADD 1 — including Vermont — although TPRI cannot now determine which stations ultimately sold that gasoline. *See id.* at 2; *see also* Rule 56.1 Statement, Aff. at ¶ 8.

### LEGAL STANDARD

Where no evidentiary hearing is held on the jurisdictional issue, the plaintiff need only make a *prima facie* showing of jurisdiction and the Court “must consider the pleadings and affidavits in a light most favorable to the plaintiff.” *N. Sec. Ins. Co. v. Mitec Elecs., Ltd.*, 184 V.t 303, 311, 965 A.2d 447, 453 (2008) (quotation omitted). The Court must accept the evidence

submitted by the plaintiff as true. *Schwartz v. Frankenhoff*, 169 Vt. 287, 295, 733 A.2d 74, 81 (1999).

## ARGUMENT

### I. This Court Has Personal Jurisdiction Over TPRI, Which Knowingly Placed Its Products In A Stream Of National Commerce That Included Vermont.

Vermont's long-arm statute, 12 V.S.A. § 855, "expresses a policy to assert jurisdiction over foreign corporations to the full extent permitted by the Due Process Clause of the Fourteenth Amendment." *Chittenden Trust Co. v. Bianchi*, 148 Vt. 140, 141, 530 A.2d 569, 570 (1987) (quotation omitted); *see also* 12 V.S.A. § 913 (same). A state court may assert jurisdiction compatible with due process over a nonresident defendant who has certain "minimum contacts" with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Int'l Shoe v. Washington*, 326 U.S. 310, 316 (1945). Those contacts with a state must be such that a defendant "should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). As a general rule, the state's exercise of power requires some act by which the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

Vermont courts have long applied a broad "stream of commerce" theory to find sufficient "minimum contacts" when a defendant's product

reaches Vermont through ordinary commercial channels. Vermont courts have explained that when manufacturers and sellers act “to advance their commercial interest[s], they should reasonably anticipate being sued in Vermont if a dispute arises from these activities.” *Northern Aircraft*, 572 A.2d at 1387. In applying the stream of commerce principle, the Supreme Court has observed that

[a]s technology and economic practices diminish the importance of geographic boundaries, it is not unreasonable to anticipate the expansion of personal jurisdiction to those who deliberately transcend those boundaries in pursuit of economic gain.

*Dall v. Kaylor*, 163 Vt. 276, 658 A.2d at 80 (1995). The Court maintains an expansive view of jurisdiction over defendants who exploit contacts with Vermont for financial benefit.

In *Pasquale v. Genovese*, the Supreme Court held that jurisdiction was properly exercised over a German car manufacturer who sold its cars to its wholly-owned subsidiary, who then resold the cars throughout the United States. 136 Vt. 417, 419, 392 A.2d 395, 397 (1978). The Court held that jurisdiction was proper: the nonresident manufacturer had engaged in “intentional and affirmative action” through “active, planned participation in the Vermont market, through a chain of manufacture and distribution set up for the purpose, and through eventual sale of the vehicle in question in Vermont.” *Id.* at 421, 392 A.2d at 398.

Vermont’s adherence to the broad stream of commerce theory allows it to reach defendants who merely advertise in the state because that

activity shows an intent to benefit from conducting sales, no matter how inconsequential, in Vermont. In *Dall v. Kaylor*, the plaintiff sued a Maryland horse farm that the plaintiff had found via a classified advertisement in a nationally circulated publication. 163 Vt. at 275, 658 A.2d at 79. The Supreme Court found that jurisdiction was proper because the horse farm was in the regular business of selling horses and had initiated the business transaction with the plaintiff by advertising, over 100 times, in a national market that included Vermont. *Id.* The Court applied the same rationale in *Brown v. Cal Dykstra Equip. Co., Inc.*, holding that jurisdiction was properly exercised over a Wisconsin crane seller because it advertised its equipment in a national magazine. 740 A.2d 793, 795 (Vt. 1999); *see also Sollinger v. Nasco Int'l, Inc.*, 655 F. Supp. 1385, 1388 (D. Vt. 1987) ("In sending its catalogs into Vermont to solicit sales and in actually entering into a transaction with a Vermont resident, though that transaction may not have been completed, Nasco has 'purposefully directed [its] activities at residents of the forum' and this 'litigation results from alleged injuries that 'arise out of or relate to' those activities.'").

Where, as here, the claim arises out of the defendant's contacts with the forum, the defendant is considered to reasonably anticipate being subjected to the jurisdiction of state's courts when the defendant purposefully directs activity toward the state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *Northern Aircraft*, 154 Vt. at 41, 572 A.2d at 1386. The forum state is said to exercise "specific jurisdiction" over



the suit arising from its contacts. *Burger King*, 471 U.S. at 473 n.15. By contrast, when the defendant's contacts with the forum are "continuous and systematic," the forum state is said to exercise "general jurisdiction" over any suit, whether or not it arises from the defendant's contacts.

*Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984).

A defendant's placement of goods into the stream of commerce "with the expectation that they will be purchased by consumers within the forum State" may satisfy these requirements and subject the defendant to specific jurisdiction in the forum. *World-Wide Volkswagen*, 444 U.S. at 298. In *World-Wide Volkswagen*, the Supreme Court explained that when

the sale of a product of a manufacturer is not simply an isolated occurrence, but arises from the *efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product* in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its own or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce *with the expectation that they will be purchased by consumers* in the forum State.

*Id.* at 297-98 (emphasis added). In the underlying case, New York residents bought an Audi from a Volkswagen dealer in New York and, a year later, were injured in an accident in Oklahoma as they drove the Audi to Arizona. *Id.* at 288. The purchasers filed a products liability lawsuit in Oklahoma against the German manufacturer of the car, the American importer, the regional distributor, and the New York dealer. *Id.*

The Supreme Court found that Oklahoma's exercise of jurisdiction did not comport with due process because the *plaintiff's* unilateral activities in Oklahoma did not demonstrate the *defendant's* connection with Oklahoma. "It is foreseeable that the purchasers of automobiles sold by World-Wide and Seaway may take them to Oklahoma. But the mere 'unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.'" *Id.* at 298 (quoting *Hanson*, 357 U.S. at 253). The holding in *World-Wide Volkswagen* was not — as TPRI states — that placing a product into the stream of commerce is not sufficient to establish jurisdiction. To the contrary, *World-Wide Volkswagen* stands for the proposition that placing a product into the stream of commerce with the expectation that the product will be used in the forum state *does*, in fact, support jurisdiction.

The Supreme Court revisited the issue in *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102 (1987), and two competing views of the "stream of commerce" standard emerged. The plurality opinion, authored by Justice O'Connor, disagreed with the *World-Wide Volkswagen* standard, taking the position that "a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State." *Id.* at 112. Justice Brennan's concurrence staked out a different view, explaining,

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The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for which there is no corresponding benefit. A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity.

*Id.* at 117.

The Supreme Court returned to the issue in *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011), and again produced divided philosophical approaches to "stream of commerce" theory. The issue was whether a New Jersey court could exercise jurisdiction over a foreign product manufacturer who knew that its products were being distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states. The Court began by acknowledging the fact that the standards for determining jurisdiction "have been unclear because of decades-old questions left open" in *Asahi*. *Id.* at 2785. It then recreated the *Asahi* divide, with the plurality opinion reiterating O'Connor's "stream-of-commerce plus" position from *Asahi*. The concurring opinion likewise cites the *Asahi* concurrence for the proposition that jurisdiction should lie where a sale in a State is part of "the regular and anticipated flow" of commerce into the State. *Id.* at 2792. Ultimately, the Court decided

that jurisdiction was not proper because the relevant facts showed “no regular flow’ or ‘regular course’ of sales in New Jersey.” *Id.*

Because neither *Asahi* nor *McIntyre* produced a majority opinion, *World-Wide Volkswagen* remains controlling precedent. See *In re Methyl Tertiary Butyl Ether Prods. Liab. Litig.*, 2005 U.S. Dist. LEXIS 753, at \*32 (S.D.N.Y. Jan. 18, 2005); *Marks v. United States*, 430 U.S. 188, 193 (1977) (holding in a case resulting in a plurality is “that position taken by the Members who concurred in the judgment on the narrowest grounds.”) Though relied on and cited extensively by TPRI, the *McIntyre* plurality’s statement that jurisdiction is proper only where the defendant “targeted” the forum is not the law. Rather, the rule of law announced in *McIntyre* is set forth in the concurrence, which more or less restated the rule from *World-Wide Volkswagen* — i.e., that a “single isolated sale” does not establish jurisdiction but jurisdiction *should* lie where a sale is part of the “regular flow” of commerce into the forum. *McIntyre*, 131 S. Ct. at 2792.

Thus, contrary to TPRI’s Motion, this Court remains bound by the rule from *World-Wide Volkswagen*: introducing a product into the stream of commerce supports the exercise of jurisdiction if the sale of the product “is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product . . . .” 444 U.S. at 297. “The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with

the expectation that they will be purchased by consumers in the forum State.” *Id.* at 297-98.

**A. TPRI Has Sufficient “Minimum Contacts” with Vermont to Support Specific Jurisdiction.**

The crux of TPRI’s argument against jurisdiction in Vermont is that it did not carry out any corporate business activities, refining processes, or sales activities within the state. These allegations do not negate TPRI’s active participation in the stream of commerce that predictably and necessarily carried its gasoline to all the states in PADD 1, including Vermont. Even if TPRI *could* show that none of its own gasoline made it to Vermont, this Court would have specific jurisdiction because TPRI sold MTBE and MTBE-gasoline to other national refiners and distributors who supply all of PADD 1, including Vermont.

In the MTBE MDL, the federal district court applied the *World-Wide Volkswagen* standard to deny similar motions to dismiss filed by non-resident gasoline refiners who argued that jurisdiction was improper in several states including Vermont. As mentioned above, although TPRI was a named defendant in the two Vermont cases consolidated in MDL 1358, it did not challenge Vermont’s exercise of jurisdiction. Lyondell Chemical Company, a producer who sold MTBE to oil refiners, traders, and blenders across the country for use in their gasolines, argued that it had no minimum contacts with Vermont. The district court disagreed, pointing to Lyondell’s activities in creating a national market for MTBE and selling to nationwide

distributors, including Exxon Mobil Corporation, which operates stores and gas stations across the United States. *See In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, 2005 WL 106936, at \*9 (S.D.N.Y. Jan. 18, 2005). Adopting Justice Brennan's definition of the "stream of commerce" as "the regular and anticipated flow of products from manufacture to distribution to retail sale," the district court observed that "[if] a corporation in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise." *Id.* (citing *Asahi*, 480 U.S. at 117). Moreover, a corporation "purposefully establishes minimum contacts with every state in the nation by introducing its products into the stream of commerce in vast amounts." *Id.*

In a second opinion, the MDL court denied the motions of Defendants Lyondell-Citgo Refining LP ("LCR") and Equistar Chemicals, LP, explaining that when a corporation sells its product to a nationwide distributor, it reasonably should have expected its product to reach all of the states in the nation. *In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, 399 F. Supp. 2d 325, 332 (S.D.N.Y. 2005). Although LCR's refinery in Houston produced MTBE-containing gasoline, LCR claimed that it did not sell products in other states but sold its gasoline only to Citgo. Similarly, Equistar's two Texas facilities produced MTBE, which it then sold to Lyondell. The district court found LCR subject to personal jurisdiction in each of the forum states — including Vermont — because it supplies MTBE-containing gasoline to the national market through Citgo, whose

“nationwide distribution network reaches every one of the relevant states.”

*Id.* The same rationale applied to Equistar: “Equistar’s MTBE is produced in Texas and then reaches the forum states through arrangements with members of the Lyondell enterprise and through sales to other refiners with nationwide distribution. For instance, Equistar sells MTBE to LCR and Lyondell, who in turn supply MTBE and MTBE-containing gasoline to Citgo and ExxonMobil, respectively.” *Id.* at 333. This “deliberate participation in the national market for MTBE” shows “intent to serve the markets of all the forum states.” *Id.*

The Court may properly exercise jurisdiction over TPRI here based upon the same principles. TPRI shipped its gasoline via the gasoline distribution system set up for the very purpose of moving gasoline from PADD 3 to PADD 1, thus demonstrating “active, planned participation in the Vermont market, through a chain of manufacture and distribution set up for the purpose, and through eventual sale of the [product] in question in Vermont.” *Pasquale*, 136 Vt. at 421, 392 A.2d at 398; *see also* Burke Aff. at ¶ 21 (the Colonial Pipeline system transports gasoline to the New Jersey distribution center that, in turn, supplies gasoline to New England, including Vermont). These sales, and the sales of gasoline products blended or imported in New Jersey, are the results of TPRI’s efforts “to serve, directly or indirectly, the market for its product in other States,” — here, all of PADD 1, at least. *See World-Wide Volkswagen*, 444 U.S. at 297-98. Like other refiners, TPRI knew that by using this system, its gasoline would end

up “throughout the distribution system” — including in Vermont. *See* Burke Aff. at ¶ 21.

In addition, TPRI sold both gasoline and neat MTBE to other refiners, including national distributors. By doing so, TPRI reasonably should have expected its product to reach all of the states in the nation. *In re MTBE*, 399 F. Supp. 2d at 332. TPRI sold to Citgo and ExxonMobil, sales that the *In re MTBE* court found to be sufficient to subject Texas companies to jurisdiction in Vermont because their “nationwide distribution network reaches every one of the relevant states.” *Id.* This “deliberate participation in the national market for MTBE” shows “intent to serve the markets of all the forum states.” *Id.* at 333; *see also* Burke Aff. at ¶ 27 (TPRI “expected that its MTBE would be distributed nationally, including in New England and Vermont.”).

TPRI’s gasoline and neat MTBE did not arrive in Vermont through an “unpredictable current” but from the “regular and anticipated flow of products from manufacturer to distributor to retail sale.” *Asahi*, 480 U.S. at 117. The fact that TPRI’s gasoline and MTBE were ultimately used in Vermont is not fortuitous but is the result of comprehensive distribution arrangements that carry it into the state. TPRI made use of the common carrier pipeline system that moves gasoline from the Gulf Coast to New England, including Vermont. *See* Burke Aff. at ¶25. And it carried out blending operations and sales in New Jersey, the center of gasoline distribution to New England and Vermont. *Id.* at ¶ 24. Further, it



knowingly sold to third-parties who operate on a national level, so that it participated in the national market through their sales. *Id.* at ¶ 27. Indeed, “given its activities and the known national distribution system for gasoline, [TPRI] would have (should have had) the expectation that some of its gasoline with MTBE, or neat MTBE would ultimately be sold into and used in Vermont.” Burke Aff. at ¶ 28.

TPRI’s Motion rests entirely on its corporate and transactional absence from Vermont. If its supporting affidavit is credited, (*see* discussion of its insufficiency, *infra*), TPRI has never refined, marketed, stored, or sold gasoline or MTBE in Vermont. Motion at 4. But courts have long rejected the notion that physical presence in the state is required for personal jurisdiction. *See Burger King*, 471 U.S. at 476. Physical presence is not required; rather, commercial business transacted solely out-of-state will support jurisdiction if purposefully directed at the state. *Id.*

The fact that TPRI transacted the sales or transferred title to the gasoline outside of Vermont “in no way determines the degree of contacts” between TPRI and the forum state. *See Kaplan v. DaimlerChrysler*, 99 F. Supp. 2d 1348, 1352 (M.D. Fla. 2000) (“The fact that title to the Mercedes-Benz vehicles passes to MBUSA in Germany rather than in the United States ‘in no way determines the degree of contacts’ between DaimlerChrysler and the United States.”). Courts have generally disregarded similar attempts to avoid jurisdiction. *See, e.g., Hypoxico, Inc. v. Colorado Altitude Training LLC*, 2003 WL 21649437, \*5 (S.D.N.Y. 2003)

(not reported) (“F.O.B. provisions in the contracts do not render personal jurisdiction in New York unconstitutional because those provisions do not undercut the fact that the defendants purposefully directed the allegedly infringing goods into New York and indeed assisted their use in this state.”); *R & J Tool, Inc. v. Manchester Tool Co.*, 2001 WL 1636435 at\*4 (D.N.H. 2001) (not reported) (the fact that title to product transfers to buyers in Ohio did not preclude the exercise of personal jurisdiction in New Hampshire); *North American Philips Corp. v. American Vending Sales, Inc.*, 35 F.3d 1576, 1578-80 (Fed. Cir. 1994) (title transfer to an Illinois purchaser in Texas did not affect analysis of jurisdiction when tort occurred in Illinois). This Court should disregard the argument here as a simple attempt to mask the extent of TPRI’s participation in the gasoline market supplying Vermont.

**B. TPRI’s Contacts Support General Jurisdiction in Vermont.**

TPRI is part of an expansive, global enterprise known as the TOTAL Group. See TOTAL S.A Form 20-F (2013).<sup>5</sup> Held by the parent company, TOTAL, S.A., the TOTAL Group comprises 898 consolidated subsidiaries, 98,799 employees, and operations in 130 countries. *Id.* at 77, 128. The Group’s consolidated sales revenues in 2013 exceeded \$221 billion (€ 171,655 million). *Id.* at F-3. TOTAL proclaims itself “[a]mong the world’s ten largest integrated producers,” and “[o]ne of the leading traders of oil and

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<sup>5</sup> Available at <http://www.total.com/en/investors/institutional-investors/publications/annual-publications> (last accessed September 2, 2014)

refined products worldwide” with a “[r]efining capacity of about 2 million barrels per day in year-end 2013.” See Total at a Glance: A Global Energy Company, <http://www.total.com/en/corporate-profile/thumbnail/total-glance-global-energy-company> (last accessed September 2, 2014).

Within the Group, TPRI is part of the “Refining and Chemicals” business, which produces base petrochemicals (olefins and aromatics) and polymer derivatives (polyethylene, polypropylene and polystyrene), as well as specialty chemicals including elastomer processing, adhesives and electroplating chemistry. TOTAL S.A Form 20-F at 35. Some of the specialty chemicals business is carried out through Bostik, a TOTAL subsidiary that touts itself as a “world leader in the adhesive sector” with “significant positions on the industrial, hygiene and construction markets, complemented by both consumer and professional distribution channels.” *Id.* TOTAL supplies Bostik products to customers in Vermont via in-state distributors: Lumber Liquidators, 329 Harvest Lane, Williston, Vermont, 05495 and Daltile, 44 Miller Lane, Suite 20, Williston, Vermont, 05495. See Bostik Distributor Locator, <http://distributorlocator.bostik-us.com/> (last accessed September 2, 2014).

In addition, TPRI admits that it made sales of polypropylene in Vermont exceeding \$1,200,000 from 2006 to present. Motion at 11. TPRI also stored polypropylene in Vermont in 2012. *Id.*

In *In re MTBE*, the district court concluded that defendants Lyondell, LCR, and Equistar were also subject to general jurisdiction in Vermont

based on evidence that: (1) Lyondell “has made tens of billions of dollars by selling a variety of chemicals nationwide over the last two decades. . . . These products, used to produce plastics such as foam cups and containers, are precisely the type of end products that are sold in every state in the nation including, of course, the forum states,” *In re Methyl Tertiary Butyl Ether (“MTBE”) Prods. Liab. Litig.*, 2005 WL 106396 at \*10, n.106; (2) LCR “derives substantial revenue from the production and sale of other chemicals throughout the country in addition to MTBE-containing gasoline,” *In re MTBE*, 399 F. Supp. 2d at 332, and; (3) Equistar regularly sold products to customers in each forum state, *id.* at 333. Thus, these defendants maintained “continuous and systematic” contacts sufficient to support *general* jurisdiction in Vermont.

Applying the *In re MTBE* analysis, this Court may find that TPRI, too, is subject to general jurisdiction. TPRI occupies a similar position as part of the TOTAL global enterprise, which sells chemical products in every state including Vermont, where it maintains regular sales relationships with Vermont distributors. In addition, TPRI regularly sells polypropylene products to Vermont customers.

## **II. Vermont’s Exercise of Jurisdiction Over TPRI is Fair And Just.**

Vermont’s exercise of jurisdiction over TPRI also satisfies the fairness prong of the due process test, which considers the following factors: (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the

interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining convenient and effective relief, and (5) the shared interest of the states in furthering substantive social policies. *Burger King*, 471 U.S. at 476.

This Court recently recognized that a key factor in this analysis is "the fact that the case is brought by the State on behalf of the public ... ." See *State of Vermont v. MPHJ Tech. Investments, LLC*, No. 282-5-13, at \*7 (Vt. Super. August 28, 2014) (opinion attached as Exhibit E). Here, the State "brings this action as an exercise of its statutory authority to protect groundwater and its common law police power, which includes, but is not limited to, its power to prevent pollution of the State's property and waters, to prevent nuisances, and to prevent and abate hazards to public health, safety, welfare, and the environment." Complaint at ¶ 10. The State also acts in its *parens patriae* capacity

for the benefit of the citizens of the State, whose private property, groundwater, and/or water supplies have been contaminated with MTBE; for the benefit of public water providers, whose property and/or water supplies have been contaminated with MTBE; for the benefit of governmental subdivisions, whose property and/or water supplies have been contaminated with MTBE and/or who have spent funds associated with MTBE contamination; and for the benefit of all citizens of the State who rely on public and private drinking water wells at their residences, schools, churches, workplaces, recreational sites, and elsewhere.

*Id.* at ¶ 11. The State has alleged the sort of “special interest in protecting its citizens, which is categorically different from an individual business suing to protect solely its own interests,” *State v. MPHJ, supra*, that weighs heavily in favor of jurisdiction in Vermont.

In addition to its interest in protecting the public interest, Vermont has a legitimate interest in sanctioning defendants who create relationships with Vermont citizens for the consequences of their activities in the state. *Dall*, 163 Vt. at 277, 658 A.2d at 80 (“It is hardly unfair for defendants to defend themselves in jurisdictions where they choose to advertise their products.”); *see also Pasquale*, 136 Vt. at 419, 392 A.2d at 397 (jurisdiction is fair when defendant’s conduct was purposefully directed toward Vermont and inevitably affected Vermont residents). The Court’s and parties’ interests are also best served by the exercise of jurisdiction. The properties, wells, and other resources were damaged in Vermont by MTBE sold in Vermont.

TPRI does not explain what burden it would face if it were required to litigate in Vermont. TPRI’s Motion merely concludes that “TPRI would be significantly and unduly burdened by being forced to litigate in Vermont.” Motion at 12. At this stage, however, *the burden is on TPRI* to make a “*compelling case*” that forcing it to litigate in Vermont would violate traditional notions of fair play and substantial justice. *Burger King*, 471 U.S. at 477 (emphasis added); *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 129 (2d Cir. 2002). Even if forcing TPRI to

litigate in Vermont were found to impose a burden, “the argument would provide defendant only weak support, if any, because ‘the conveniences of modern communication and transportation ease what would have been a serious burden only a few decades ago.’” *Bank Brussels Lambert*, 305 F.3d at 129. TPRI has provided no evidence to demonstrate any burden, much less enough of a burden to compel the Court to forgo jurisdiction.

Because of Vermont’s strong interest in having the claims litigated in Vermont, and because TPRI has not expressed any reason to the contrary, it would not be unfair to require TPRI to litigate the claims in Vermont. Vermont’s substantial interest in protecting the health and safety of its citizens and guaranteeing the availability of suitable drinking water outweighs any minimal burden TPRI might have identified..

In conclusion, Vermont’s assertion of jurisdiction comports with both steps of the two-part due process analysis. First, TPRI has intentionally established far more than “minimum” contacts with Vermont. Second, the exercise of jurisdiction is consistent with traditional notions of fair play and substantial justice.

**III. TPRI’s Motion should be denied outright because Ms. Arterburn’s affidavit is not based on personal knowledge.**

The Court may deny TPRI’s motion without reaching the merits of the argument, however, because the Affidavit of Kim Arterburn attached to TPRI’s Motion fails to comply with the minimum requirements of the civil rules. On a “challenge to personal jurisdiction, supporting and opposing

affidavits must 'be made on personal knowledge, ... set forth such facts as would be admissible in evidence, and ... show affirmatively that the affiant is competent to testify to the matters stated therein.'" *Gerling-Konzern Gen. Ins. Company-United Kingdom Branch v. Noble Assur. Co.*, 2006 U.S. Dist. LEXIS 85027, at \*28 n.11 (D. Vt. 2006) (*citing* Fed. R. Civ. P. 56 (e) and Fed. R. Evid. 602). Where an affidavit does not meet these requirements, a court may properly disregard it. *Id.*

The Supreme Court of Vermont also has held that an insufficient affidavit will not support a motion for summary judgment. In *U.S. Bank Nat. Ass'n v. Kimball*, the Court found lacking an affidavit that was not based on personal knowledge and contained conclusions rather than facts. 2011 VT 81, ¶ 17, 190 Vt. 210, 27 A.3d 1087. At issue was whether a homeowner's loan had been assigned from GMAC to U.S. Bank; the latter presented an affidavit in support of its argument that the mortgage had been properly assigned. *Id.* at ¶ 5. "The affiant, Zeitz, declared himself to be an employee of GMAC, the servicer of homeowner's loan. Zeitz averred that the note was endorsed to U.S. Bank in September 2005 but provided no explanation of how he gained personal knowledge about this endorsement that supposedly took place several years before his company began servicing homeowner's loan. Further, the affidavit failed to explain the obvious contradictions with other evidence." On appeal, the Court found the affidavit "[f]raught with contradictions and evidently lacking information based on personal knowledge," finding it insufficient to support U.S. Bank's



argument. *Id.* at ¶ 17. See also *Levy v. Town of St. Albans Zoning Bd. of Adjustment*, 152 Vt. 139, 145, 564 A. 2d 1361, 1365 (1989) (affidavit does not raise a genuine issue as to any material fact where its allegations pertaining to abandonment of a construction project are not based on personal knowledge or admissible evidence, and they do not “show affirmatively that the affiant is competent to testify to the matters stated therein.”); *Alpstaten Assoc., Inc. v. Kelly*, 137 Vt. 508, 408 A. 2d 644 (1979) (same).

The Affidavit of Kim Arterburn is flawed in exactly the same manner as the affidavits found lacking in *Gerling-Konzern*, *U.S. Bank*, and *Levy*. Arterburn declares that she is employed in Financial Accounting for TPRI and has personal knowledge of the matters stated in the affidavit. Arterburn Aff. at 1. As in *U.S. Bank*, however, the affidavit does not explain how the affiant gained personal knowledge about TPRI’s refining, marketing, sales, and distribution of gasoline and MTBE into Vermont. Nor does the affidavit provide foundations for the affiant’s conclusory statements regarding TPRI’s various activities. It does not explain, for example, the basis for any of the affiant’s statements regarding whether TPRI conducted activities in Vermont. Nor does it refer to any supporting materials, information, or interviews that would support the affiant’s statements. The affidavit does not purport to show that Ms. Arterburn is anything more than a mere fact witness.

For these reasons, the Court should disregard the Arterburn Affidavit as insufficient to support TPRI's Motion and deny the Motion outright.

**IV. In the Alternative, the State is Entitled to Discovery Regarding Jurisdiction.**

TPRI's placement of MTBE and MTBE-gasoline into the Vermont market via the stream of commerce is sufficient to subject it to personal jurisdiction in Vermont courts, and this Court should deny Defendants' Motion. In the alternative, however, Plaintiffs ask the Court to allow targeted jurisdictional discovery before ruling on TPRI's Motion.

This Court has the power to require Defendants to respond to discovery requests relevant to their motions to dismiss for lack of jurisdiction. *Godino v. Cleanthes*, 163 Vt. 237, 239, 656 A. 2d 991, 992 (1995). Other courts, both state and federal, agree. *See, e.g., Compagnie des Bauxites de Guinee v. L'Union Atlantique S.A. d'Assurances*, 723 F. 2d 357, 362 (3d Cir. 1983) (where a plaintiff's claim is not "clearly frivolous," the district court should ordinarily allow jurisdictional discovery); *El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 676 (D.C. Cir. 1996) ("A plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum.").

In fact, refusal to allow such limited discovery may constitute reversible error. *In re Magnetic Audiotape Antitrust Litigation*, 334 F.3d 204, 207-8 (2d Cir. 2003) (district court improperly denied plaintiffs the

opportunity to engage in limited discovery on the question of minimum contacts prior to dismissing defendant); *Renner v. Lanard Toys, Ltd.* 33 F. 3d 277, 283 (3d Cir. 1994) (“The Renners need not accept [the manufacturer’s] analysis of the facts without a chance to probe further. They are entitled to conduct discovery into the jurisdictional facts.”); *Wyatt v. Kaplan*, 686 F. 2d 276, 283 (5th Cir. 1982) (“When a defendant challenges personal jurisdiction, courts generally permit depositions confined to issues raised in the motion to dismiss. In an appropriate case, we will not hesitate to reverse a dismissal for lack of personal jurisdiction, on the ground that the plaintiff was improperly denied discovery.”); *Andersen v. Sportmart, Inc.*, 179 F.R.D. 236, 244 (N.D. Ind. 1998) (where the records reflect that foreign manufacturers sold the allegedly defective products to a distributor that then sold the goods in the forum, discovery regarding general and specific jurisdiction is warranted).

Here, TPRI’s Affidavit is, at best, conclusory and incomplete. It states that TPRI’s gasoline has never reached Vermont, an inference that is squarely contradicted by its own discovery responses and pleadings in MDL 1358. Further, the State “need not accept [TPRI’s] analysis of the facts without a chance to probe further” into the facts. Rather, as held in *Renner*, the State is “entitled to conduct discovery into the jurisdictional facts.” See 33 F.3d at 283. To respond fully to TPRI’s motion, should the Court not deny it outright for TPRI’s failure to meet its burden, Plaintiffs need

discovery regarding the following jurisdictional subjects that are relevant to responding to TPRI's motions to dismiss:

- TPRI's sales of MTBE-containing gasoline to PADD 1 refiners, suppliers, distributors, jobbers, wholesalers, and/or retailers for the years 1980 to 2007;
- TPRI's exchange agreements for MTBE-containing gasoline with PADD 1 refiners, suppliers, distributors, jobbers, wholesalers, and/or retailers for the years 1980 to 2007;
- TPRI's knowledge of any sales, distribution, marketing, supply, or transportation activities that occurred in Vermont and involving MTBE-containing gasoline sold by TPRI to any third-party; and
- TPRI's business activities in Vermont, including the more than \$1 million in polypropylene sales TPRI admits to transacting in Vermont.

### CONCLUSION

Jurisdiction is entirely proper in Vermont. The State's evidence demonstrates TPRI's active, planned participation in the Vermont market by shipping its gasoline via the gasoline distribution system set up for the very purpose of moving gasoline into New England, including Vermont. The evidence also shows that TPRI served, directly or indirectly, the market for its products in Vermont. In addition, the State's evidence shows that TPRI made regular sales to national distributors and, therefore, reasonably should have expected its product to reach all of the states in the nation — including Vermont.

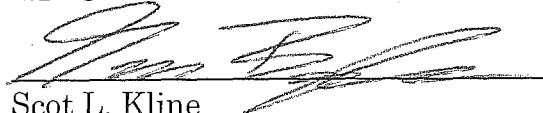
Finally, jurisdiction in Vermont is fair. The State acts on behalf of the public interest and public welfare in litigating a case involving public

trust resources, public drinking water supplies, public lands, and public health. All of the properties at issue as well as the relevant information and witnesses are in Vermont. Because jurisdiction is not only proper but fair, the State respectfully asks this Court to deny TPRI's motion to dismiss for lack of personal jurisdiction.

Dated: September 19, 2014

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