UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CONSERVATION LAW FOUNDATION, INC., *Plaintiff*,	)	3:21-CV-00932 (SVN)
v.	)	
GULF OIL LIMITED PARTNERSHIP, *Defendant*.	)	November 21, 2025

RULING ON DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT

Sarala V. Nagala, United States District Judge.

In this environmental suit, Plaintiff Conservation Law Foundation, Inc. had previously alleged that Gulf Oil Limited Partnership ("Gulf Oil") violated the Clean Water Act (the "CWA"), 33 U.S.C. § 1251 *et seq.* by failing to account for the effects of climate change in its operation of a bulk petroleum storage terminal in New Haven, Connecticut (the "Terminal").[1] *See* First Am. Compl. ("FAC"), ECF No. 123. Plaintiff sought declaratory and injunctive relief, as well as civil penalties and attorney's fees. *Id.* at 97–98. On April 9, 2024—while this litigation was pending—Gulf Oil sold the Terminal to another entity, Global Companies LLC ("Global"), and later changed its name to Pike Fuels Limited Partnership ("Pike"). *See* Second. Am. Compl. ("SAC"), ECF No. 230, at 1 n.1 & ¶ 22; *see also* Not. of Name Change, ECF No. 209; Joint St. of Parties, ECF No. 224. Plaintiff thereafter filed its SAC. ECF No. 230.

Despite previously representing to the Court that it intended to name both Pike and Global (and various Global entities) in its SAC, *see* ECF No. 224 at 3, Plaintiff opted to file a SAC naming

[1] As explained below, Plaintiff also alleged that Gulf Oil violated the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.* *See generally* First Am. Compl., ECF No. 123. Plaintiff does not pursue any RCRA claims in its Second Amended Complaint.

only Pike, accusing it of both "past and ongoing" failures to comply with the CWA. *See generally* ECF No. 230. Plaintiff has removed its request for injunctive relief, and now seeks only declaratory relief, civil penalties, and attorney's fees against Pike. *Id.* at 85.

Pike has now moved to dismiss the SAC under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *See* Mot. to Dismiss SAC, ECF No. 231-1. Pike contends that the Court lacks subject matter jurisdiction over this action because: (a) Plaintiff lacks standing to sue Pike, as it is not engaging in any ongoing violations of the CWA; and (b) Plaintiff's request for civil penalties has become moot because of the sale of the Terminal to Global. Pike also contends that, in any event, Counts One through Nine and Counts Fourteen through Fifteen of the SAC fail to state a claim for relief under the CWA. Plaintiff opposes the motion. *See* Pl.'s Opp. Br., ECF No. 233. For the reasons described below, the Court concludes that Plaintiff has constitutional standing to pursue this action; that Plaintiff's CWA claim and request for civil penalties are not moot; and that Plaintiff's SAC states plausible claims for relief. Thus, the Court DENIES Pike's motion to dismiss.

I. RELEVANT FACTUAL BACKGROUND

Plaintiff filed its initial complaint in July of 2021. Compl., ECF No. 1. The Court assumes the parties' familiarity with the facts alleged in that complaint, which the Court described in its September 2022 dismissal ruling, *Conservation L. Found., Inc. v. Gulf Oil Ltd. P'ship*, No. 3:21-CV-00932 (SVN), 2022 WL 4585549 (D. Conn. Sept. 29, 2022) ("*CLF I*"), and the facts alleged in the FAC, which the Court described in its June 2023 ruling on Plaintiff's motion for leave to amend the complaint, *Conservation L. Found., Inc. v. Gulf Oil Ltd. P'ship*, No. 3:21-CV-00932 (SVN), 2023 WL 4145000 (D. Conn. June 23, 2023) ("*CLF II*"). Accordingly, the Court summarizes the facts only briefly here.

As noted above, the parties' dispute centers on a bulk petroleum storage terminal previously owned and operated by Gulf Oil (now named Pike Fuels). ECF No. 230 ¶ 2. The Terminal is immediately adjacent to the New Haven Harbor, and houses "multiple, multi-million-gallon petroleum storage tanks at or below sea level." *Id.* ¶ 28.

Plaintiff, a nonprofit organization dedicated to conservation and protection of New England's environmental and natural resources, alleges that the Terminal is vulnerable to flooding risks, worsened by climate change, due to its geographic location, design, and operation, *id.* ¶¶ 1, 8, 189–277, 228, 296–342. Gulf Oil owned and operated the Terminal from at least October 1, 2011, until April 9, 2024. *Id.* ¶¶ 21, 42. Gulf Oil changed its name after the sale, in June of 2024, to Pike Fuels Limited Partnership. *Id.* at 1, n.1. Plaintiff does not dispute that, after April 9, 2024, Gulf Oil/Pike no longer owns or operates the Terminal. *See id.* ¶ 21, ECF No. 233 at 12; ECF No. 224 at 5 ("Global took control of the [T]erminal in April 2024."). Plaintiff nonetheless alleges that current Defendant Pike has committed "past and ongoing" violations of the Clean Water Act ("CWA"). *Id.* ¶ 1. Plaintiff brings its suit pursuant to the citizen suit enforcement provisions of the CWA, which are described further below. *Id.*

The CWA prohibits discharges of pollutants into waters of the United States in violation of the terms of a valid National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to the CWA. *Id.* ¶¶ 32–33. In Connecticut, the Commissioner of the Connecticut Department of Energy & Environmental Protection ("DEEP") has been delegated authority to implement the NPDES permit program. *Id.* ¶ 39 (citing relevant state regulations). Under its NPDES Permit, the Terminal must "minimize the discharge of pollutants" by implementing "best management practices." *Id.* ¶¶ 149, 380. The Terminal must also develop and implement a

Stormwater Pollution Prevention Plan ("SWPPP") to identify pollutant sources and describe control measures. *Id.* ¶¶ 158, 373.

Plaintiff alleges that Pike's violations include failing to eliminate non-stormwater discharges, such as pollutant discharges from storm surge flooding and sea-level rise, *id.* ¶¶ 343–49 (Count One); acting inconsistently with "the applicable goals and policies in section 22a-92 of the Connecticut General Statutes" by failing to "consider in the planning process the potential impact of a rise in seal level, coastal flooding, and erosion patterns," *id.* ¶¶ 350–58 (Count Two); certifying its SWPPP without disclosing climate-change-related risks allegedly known to it, *id.* ¶¶ 359–71 (Count Three); failing to identify possible sources of pollutants resulting from climate change, *id.* ¶¶ 372–77 (Count Four); failing to describe and implement practices to reduce pollutants and ensure Permit compliance, *id.* ¶¶ 378–84 (Count Five); failing to implement measures to manage runoff, *id.* ¶¶ 385–89 (Count Six); failing to minimize the potential for leaks and spills, *id.* ¶¶ 390–94 (Count Seven); failing to submit required facts of information to the state Department of Energy and Environmental Protection, *id.* ¶¶ 395–401 (Count Eight); and failing to amend or update the SWPPP, *id.* ¶¶ 402–09 (Count Nine). Plaintiff also alleges various claims relating to discharges to impaired waters, *see id.* ¶¶ 410–418 (Count Ten) and 419–24 (Count Eleven); allegedly illegal infiltration of stormwater, *id.* ¶¶ 425–432 (Count Fourteen); and failure to maintain an impervious containment area, *id.* ¶¶ 433–438 (Count Fifteen). Plaintiff has withdrawn certain of its CWA counts and the counts alleged in its FAC under RCRA, *see id.* at 82 (withdrawing Counts Twelve and Thirteen); *id.* at 84 (withdrawing Counts Sixteen through Eighteen). In its SAC, Plaintiff requests declaratory relief, civil penalties, and costs of litigation, including attorney's fees. *Id.* at 85.

II. RELEVANT PROCEDURAL HISTORY

Following the Court's ruling granting in part and denying in part Plaintiff's motion for leave to amend in *CLF II*, Plaintiff filed its FAC, alleging CWA and RCRA claims against Gulf Oil on June 26, 2023. The parties continued to engage in discovery. On April 9, 2024, Global closed on its purchase of the Terminal. *See* ECF No. 231-1 (citing publicly-available Form 10-Q for Global Partners LP). The parties attempted to settle the case throughout 2024, but were unsuccessful. Plaintiff thereafter represented that it would file a motion for leave to amend, in order to file a SAC that named various Global entities as Defendants. ECF No. 224 at 1.

The Court then held a scheduling conference at which Plaintiff represented—contrary to what it had previously represented to the Court—that it intended to file a SAC that would name only Pike, and not any Global entities. Pike consented to the filing of the SAC, provided that it retained its right to move to dismiss the SAC. *See* ECF No. 228. That motion to dismiss is presently pending before the Court.

III. CLEAN WATER ACT CITIZEN SUIT PROVISION

Under the Clean Water Act, the holder of a state NPDES Permit is subject to both federal and state enforcement action if it fails to comply with the requirements of its Permit or the statute. *See* 33 U.S.C. §§ 1319, 1342(b)(7); *see also Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49, 52 (1987). "In the absence of federal or state enforcement, private citizens may commence civil actions against any person 'alleged to be in violation of' the conditions of either a federal or state NPDES permit." *Gwaltney*, 484 U.S. at 53 (quoting 33 U.S.C. § 1365(a)(1)). This is known colloquially as the CWA's "citizen suit" provision. If the citizen prevails in the action, a federal court may "order injunctive relief and/or impose civil penalties payable to the United States treasury." *Gwaltney*, 484 U.S. at 53; 33 U.S.C. § 1365(a)(1).

A court may also award costs of litigation, including reasonable attorney and expert witness fees, to the citizen plaintiff if it prevails in the suit. *Id.* § 1365(d).

IV. SUBJECT MATTER JURISDICTION

A. Legal Standard

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a defendant may move to dismiss a case for lack of subject matter jurisdiction. A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) "when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). When adjudicating a motion to dismiss for lack of subject matter jurisdiction, the Court may consider matters beyond the pleadings. *Id.*; *see also Doherty v. Bice*, 101 F.4th 169, 172 (2d Cir. 2024).

Pike's arguments for dismissal invoke two doctrines related to a federal court's subject matter jurisdiction: standing and mootness. Both of these doctrines stem from the requirement of Article III of the Constitution that federal judicial authority is limited to "cases" and "controversies." *See Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc*. ("*Laidlaw*"), 528 U.S. 167, 180 (2000).

B. Discussion

The Court holds that Plaintiff has constitutional standing to bring this action. It further holds that Plaintiff's CWA claims are not moot.

1. Article III Constitutional Standing

"Constitutional standing refers to the requirement that parties suing in federal court establish that a 'Case' or 'Controversy' exists within the meaning of Article III of the United States Constitution." *Am. Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 358 (2d Cir. 2016). To establish Article III constitutional standing, a plaintiff must demonstrate "(1) that he or

she suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief." *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 540 (2020); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Article III standing "is to be determined as of the commencement of the suit." *Doe v. McDonald*, 128 F.4th 379, 384 (2d Cir. 2025) (quoting *Lujan*, 540 U.S. at 570 n.5).

In its prior rulings regarding the sufficiency of Plaintiff's complaints, the Court discussed constitutional standing—in particular, whether Plaintiff had adequately alleged an injury in fact. *See CLF I*, 2022 WL 4585549, at *3–4; *CLF II*, 2023 WL 4145000, at *5–7. In Pike's present motion to dismiss, it does not revive its prior arguments that Plaintiff lacks constitutional standing. Rather, without meaningfully distinguishing between constitutional standing and the concept formerly known as "statutory standing," it argues that Plaintiff lacks standing to pursue a citizen suit against it because it fails to allege in good faith that Pike is engaged in an ongoing violation of the CWA. The Court discusses this issue below.

Because Pike has not challenged Plaintiff's constitutional standing, the Court holds—consistent with its prior rulings—that Plaintiff had such standing at the onset of this litigation, as required to proceed with this case.

2. Mootness

The Court also holds that Plaintiff's CWA claims are not moot.

The doctrine of mootness also stems from Article III's case-or-controversy requirement. *Laidlaw*, 528 U.S. at 180. "To sustain jurisdiction, a dispute must not only be alive when filed, but throughout its pendency." *McDonald*, 128 F.4th at 385. Thus, "a case is moot 'when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome, . . .

making it 'impossible for the court to grant any effectual relief whatever to the prevailing party.'" *Id.* (first quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) and then quoting *Am. Freedom Def. Initiative v. Metro Transp. Auth.*, 815 F.3d 105, 109 (2d Cir. 2016) (*per curiam*)).

In the context of a citizen suit under the CWA, the U.S. Supreme Court has held that "'[a] case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Laidlaw*, 528 U.S. at 189 (quoting *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968)); *see also Gwaltney*, 484 U.S. at 66. In *Laidlaw*, the defendant had achieved substantial compliance with the terms of its permit during the course of the litigation; as a result, the district court denied the citizen plaintiff's request for injunctive relief. *Id.* at 173. Finding that there was a deterrent effect to civil penalties, however, the district court awarded such penalties (and attorney's fees). *Id.* The Supreme Court ultimately held that the issues related to mootness—whether the defendant's closure of the offending facility and substantial compliance with its permit requirements had made it "absolutely clear that [the defendant's] permit violations could not reasonably be expected to recur"—were questions of fact best addressed on remand. *Id.* at 173, 193. The Supreme Court further acknowledged that the "'heavy burden of persuad[ing]' the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness." *Id.* at 189 (quoting *Concentrated Phosphate Export Assn.*, 393 U.S. at 203).

Here, the Court holds that Pike has not sustained its "heavy burden" of demonstrating that the challenged conduct cannot reasonably be expected to start up again. Pike relies solely on Plaintiff's concession in the SAC that Pike sold the Terminal on April 9, 2024. *See* ECF No. 23-1 at 15–18. But—despite that a court assessing its subject matter jurisdiction can consider affidavits and other materials beyond the pleadings, *see Doherty*, 101 F.4th at 172—Pike has not

submitted any *evidence* to sustain its heavy burden of establishing that the challenged conduct cannot reasonably be expected to recur. Although Pike's counsel asserted at oral argument that Pike doesn't "own any coastal terminals anymore" and no longer has "a Connecticut permit," *see* Tr., ECF No. 311 at 12, the Court cannot conclude that those representations of counsel—even when combined with Plaintiff's concession in the SAC that Pike sold the Terminal on or around April 9, 2024—make it "absolutely clear" that there will be no future violations of the law by Pike. *See Laidlaw*, 528 U.S. at 189. The record presently before the Court simply does not support a finding that Pike has sustained its heavy burden of demonstrating mootness with respect to Plaintiff's request for declaratory relief. *See Building and Constr. Trades Council of Buffalo, New York and Vicinity v. Downtown Development, Inc.*, 448 F.3d 138, 152 (2d Cir. 2006) ("*Trades Council*") (affirming district court's conclusion that the current record did not make it "'absolutely clear' that the cause of action asserted as to alleged violations" was moot because it remained unclear whether the permit that the defendant had obtained during the litigation covered the entire site).

In any event, Plaintiff's request for civil penalties remains live. Civil penalties can "encourage defendants to discontinue current violations and deter them from committing future ones." *Laidlaw*, 528 U.S. at 186. In *Trades Council*, the Second Circuit held that, even if acquisition of a permit mooted a CWA claim, "dismissal of the cause of action would not follow because the claim for civil penalties would still remain." 448 F.3d at 152. In so holding, the Second Circuit cited to Justice Stevens' concurring opinion in *Laidlaw*, which had noted that, at that time, the United States Courts of Appeals had "uniformly concluded" that "a polluter's voluntary postcomplaint cessation of an alleged violation will not moot a citizen-suit claim for civil penalties even if it is sufficient to moot a related claim for injunctive or declaratory relief."

Laidlaw, 528 U.S. at 196 (Stevens, J., concurring) (citing, among other cases, *Atl. States Legal Found. v. Pan Am. Tanning Corp.*, 993 F.2d 1017 (2d Cir. 1993)). As Justice Stevens recognized, the Second Circuit had held in *Pan American Tanning* that a defendant's post-complaint compliance with discharge limits would not "render a citizen suit for civil penalties moot," because "[c]ivil penalties may still be imposed for post-complaint violations and for violations that were ongoing at the time the suit was filed." *Pan Am. Tanning Corp.*, 993 F.2d at 1021. The Second Circuit reasoned that the civil penalties provision of the CWA speaks in mandatory terms—"any person who violates effluent limitations or permit conditions '*shall*' be subject to a civil penalty"—and that "[a]llowing a discharger to escape all liability by virtue of its post-complaint compliance cannot be squared with this mandatory language." *Id.* at 1020–21 (citing 33 U.S.C. § 1319(d) and *Chesapeake Bay Foundation, Inc. v. Gwaltney of Smithfield, Ltd.*, 890 F.2d 690, 697 (4th Cir. 1989)). The Second Circuit also noted that "mooting an entire suit based on post-compliant compliance would weaken the deterrent effect of the Act by diminishing the incentives for citizen plaintiffs to sue and by encouraging defendants to use dilatory tactics in litigation." *Id.* at 1021.

Pike encourages the Court to disregard *Pan American Tanning* in favor of a more recent Ninth Circuit decision, *Coastal Environmental Rights Foundation v. Naples Restaurant Group, LLC*, 115 F.4th 1217, 1227 (9th Cir. 2024), which reads *Laidlaw* as "establish[ing] a mootness standard for Clean Water Act citizen suits that applies both to claims for civil penalties *and* for injunctive relief." The Court notes that in November of 2025—after the parties fully briefed the instant motion—the Ninth Circuit issued an opinion withdrawing and replacing its 2024 decision. *See Coastal Env't Rights Found. v. Naples Restaurant Group, LLC*, No. 23-55469, __ F.4th __, 2025 WL 3085956 (9th Cir. Nov. 5, 2025). In the 2025 opinion, the Ninth Circuit recognized a circuit split on the issue of whether *Laidlaw* sets forth a uniform mootness standard applying to

both injunctive relief requests *and* civil penalties. *Id.* at *7–8. Specifically, it noted that the Second Circuit, along with the Third, Fourth, Seventh, and Eleventh Circuits, "all view civil penalties as distinct from injunctive relief and agree that, even when injunctive relief becomes inappropriate, *any* request for civil penalties defeats mootness." *Id.* at *7 (citing *Pan Am. Trading*). The Ninth Circuit, for its part, aligned itself with the minority view held by the Eighth Circuit, and held that *Laidlaw* effectively overruled the other circuits' decisions, setting forth a "clear" mootness rule: "even when a defendant's compliance moots injunctive relief, civil penalties remain available to deter future violations, unless it's absolutely clear that the alleged violation could not reasonably be expected to recur." *Id.* at *8. Having found that the defendant had acquired a permit for its annual fireworks display and would not engage in such a display without a permit in the future, the Ninth Circuit concluded that the defendant had met its heavy burden of demonstrating mootness, and even the plaintiff's claim for civil penalties was moot. *Id.* at *10.

Of course, this Court is bound by Second Circuit law, not Ninth Circuit law. And the law in the Second Circuit is clear: even if a claim may be moot for purposes of injunctive relief, a request for civil penalties may keep the claim alive. *See Pan Am. Tanning Corp.*, 993 F.2d at 1021.[2] *Pan American Tanning* has never been explicitly overruled by the Second Circuit or the U.S. Supreme Court. Indeed, in *Trades Council*, the Second Circuit relied on *Pan American Tanning* to again conclude that a request for civil penalties can save a CWA claim from dismissal, even if such a claim may be moot for purposes of injunctive relief. *See Trades Council*, 448 F.3d at 152. And even assuming *arguendo* that *Laidlaw* undercuts the reasoning of *Pan American Tanning*—an issue on which the Court expresses no opinion—the Court would still be bound by

[2] Although *Pan Am. Tanning* holds that requests for civil penalties survive only otherwise-moot requests for injunctive relief, its analysis applies equally to requests for declaratory relief. *See* 993 F.2d at 1020. In any event, the Court has held above that Plaintiff's request for declaratory relief is not moot.

the Second Circuit's holding in *Trades Council*, which was decided after *Laidlaw* and maintains *Pan American Tanning*'s rule that dismissal of a CWA claim would be inappropriate even if the defendant's actions mooted the CWA claim, "because the claim for civil penalties would still remain." *Trades Council*, 448 F.3d at 152.[3] Finally, even if the Ninth Circuit's rule applied here, Pike's argument for dismissal would still fail, as the Court has concluded above that Pike has not sustained its heavy burden to show that it is absolutely clear alleged violations could not recur.[4] Thus, even the Ninth Circuit's test for mootness of a request for civil penalties is not met on the present record.

For these reasons, the Court cannot find that Plaintiff's CWA claims are subject to dismissal on grounds of mootness. Plaintiff may continue to pursue its requests for declaratory relief, civil penalties, and attorney's fees.

V. FAILURE TO STATE A CLAIM

Pike also moves to dismiss Plaintiff's SAC for failure to state a claim for relief on various grounds. For the reasons explained below, the Court rejects these arguments.

1. "Statutory Standing"

First, the Court cannot accept Pike's argument that Plaintiff lacks standing to pursue its CWA claims.

Under the citizen suit provision of the CWA, a citizen plaintiff may bring suit against a defendant "alleged to be in violation of" the conditions of either a federal or state NPDES permit, if the citizen plaintiff has given advance notice to federal and state authorities of the alleged

[3] Recognizing that *Trades Council* was decided after *Laidlaw*, the Ninth Circuit distinguished *Trades Council* on the ground that factual disputes remained there about whether the violation was likely to recur. *See Coastal Env't Found.*, 2025 WL 3085956, at *8 n.2. Here, as in *Trades Council*, the heavy burden of showing mootness has not been met.

[4] The Court recognizes that the factual scenario at issue here—sale of the facility at which the alleged violations occurred—differs from the permit acquisition scenario at issue in *Trades Council*. But there, as here, the record was not "absolutely clear" that the alleged violations could not recur.

violation and neither initiates a suit. 33 U.S.C. § 1365(a)(1); *Gwaltney*, 484 U.S. at 53. In *Gwaltney*, the Supreme Court held that the "interest of the citizen-plaintiff is primarily forward-looking," and "[t]he most natural reading of 'to be in violation of' is a requirement that citizen-plaintiffs allege either a state of continuous or intermittent violation—that is, a reasonable likelihood that a past polluter will continue to pollute in the future." *Gwaltney*, 484 U.S. at 57, 59. Thus, "citizens, unlike the [Environmental Protection Agency's] Administrator, may seek civil penalties only in a suit brought to enjoin or otherwise abate an ongoing violation." *Id.* at 59. Pike contends that Plaintiff's SAC lacks good-faith allegations that Pike is engaged in an ongoing violation of the CWA, and thus Plaintiff lacks standing to pursue its SAC.

The Court begins by situating Pike's standing argument into the proper legal framework. As discussed above, a plaintiff must establish constitutional standing at the outset of a litigation, to satisfy Article III's case-or-controversy requirement. A separate, but related, concept is that previously known as "statutory standing." *Am. Psychiatric Ass'n*, 821 F.3d at 359. This inquiry is not actually "a standing issue, but simply a question of whether the particular plaintiff 'has a cause of action under the statute.'" *Id.* (quoting *Lexmark Int'l Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014)). As such, the doctrine formerly known as statutory standing "does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional *power* to adjudicate the case." *Lexmark Int'l Inc.*, 572 U.S. at 128, n.4; *see also Nw. Airlines, Inc. v. Cnty. of Kent*, 510 U.S. 355, 365 (1994) ("The question whether a federal statute creates a claim for relief is not jurisdictional.").

Although *Gwaltney* does not use the term "statutory standing" to describe its holding, later courts have characterized it in this manner. For instance, *Laidlaw* describes *Gwaltney* as holding that "citizens lack *statutory standing* under [the citizen-suit provision] to sue for violations that

have ceased by the time the complaint is filed." *Laidlaw*, 528 U.S. at 175 (emphasis added); *see also Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 90–92 (1998) (suggesting that *Gwaltney*'s holding does not relate to subject matter jurisdiction); *Borough of Upper Saddle River, N.J. v. Rockland Cnty. Sewer Dist. #1*, 16 F. Supp. 3d 294, 318 (S.D.N.Y. 2014) (labeling section of ruling discussing *Gwaltney* with heading "Statutory Standing"). Pike, too, references "statutory standing" in its briefing. *See* ECF No. 231-1 at 11, 14. The Court believes that *Gwaltney*'s requirement that a citizen plaintiff allege that the defendant is engaged in an ongoing violation is not a question of subject matter jurisdiction but, rather, a question of whether the citizen plaintiff has stated a plausible claim under the CWA. The Court thus treats Pike's dismissal argument based on standing as one brought under Rule 12(b)(6).[5]

The parties agree that *Gwaltney* requires a citizen plaintiff to allege that the defendant is engaged in an ongoing violation of the CWA, but they dispute whether Plaintiff's *SAC*—as opposed to its original complaint—needs to allege as much. Plaintiff's original complaint alleged in several places that Gulf Oil was engaged in ongoing and continuous violations of the CWA. *See* ECF No. 1, ¶¶ 1, 320, 329, 342, 348, 354, 359, 364, 371, 379, 388. The SAC likewise alleges that Pike's CWA violations are "ongoing and continuous." *See* ECF No. 230 ¶¶ 349, 358, 371, 377, 384, 389, 394, 401, 409, 418, 424, 432, 438. Pike contends that these allegations in the SAC could not have been made in good faith, given that Pike sold the Terminal on April 9, 2024, and the SAC was filed nearly ten months later, on February 7, 2025. It is not clear whether Plaintiff

[5] The Court recognizes that the Second Circuit has, on at least one occasion, framed *Gwaltney* as a decision based on subject matter jurisdiction. *See Conn. Coastal Fishermen's Ass'n v. Remington Arms Co.*, 989 F.2d 1305, 1311 (2d Cir. 1993) ("*To satisfy federal subject matter jurisdiction*, plaintiff's allegations of continuing violation must be made in 'good faith.'") (emphasis added) (quoting *Gwaltney*, 484 U.S. at 64). But that decision predates both *Laidlaw*'s characterization of *Gwaltney* as assessing "statutory standing" and *Steel Co.*'s discussion casting doubt on whether *Gwaltney* was based on subject matter jurisdiction. Thus, the Court believes that, to the extent *Conn. Coastal Fishermen's Ass'n* characterized *Gwaltney* as a federal subject matter jurisdiction decision, it has been implicitly overruled.

stands by its allegations in the SAC concerning Pike's alleged ongoing and continuing violations, as Plaintiff argues only that it made such good faith allegations in its *original* complaint and that the SAC relates back to the original complaint. *See* ECF No. 233 at 15–18.

While the Court questions whether Plaintiff truly acted in good faith in alleging that Pike's alleged violations were ongoing and continuous at the time of the filing of the SAC, Plaintiff is correct that it is the allegations of its *original* complaint—not any amended complaint—that matter here under the Second Circuit's decision in *Trades Council*. There, the original complaint had alleged that the defendant discharged polluted water without a permit. *Trades Council*, 448 F.3d at 151. A couple of months later, the plaintiff amended its complaint, without "material alteration" to the relevant cause of action. *Id.* Between the filing of the original complaint and the filing of an amended complaint, the defendant obtained the permit at issue, and thus moved to dismiss the amended complaint because the alleged lack-of-permit violation was no longer ongoing at the time the amended complaint was filed. *Id.* The district court accepted this argument, but the Second Circuit reversed, holding that the district court "erred in dismissing the amended complaint on this ground because the alleged violation had not ceased before the *initial* complaint was filed." *Id.* In so holding, the Second Circuit noted that the "'critical time for determining whether there is an ongoing violation is when the *complaint* is filed,'" and held that the amended complaint related back to the original complaint under Federal Rule of Civil Procedure 15(c)'s relation-back provision. *Id.* at 151 (emphasis added) (quoting *Conn. Coastal Fishermen's Ass'n*, 989 F.2d at 1311). Because the "relevant claim was filed before the violation was allegedly rectified," the citizen plaintiff could pursue its CWA claim. *Id.*

This Court is bound by the Second Circuit's holding in *Trades Council*, which is on point here. Because (a) Plaintiff's original complaint alleged in good faith that Gulf Oil was engaged in

continuous and ongoing violations of the CWA; (b) the determination of whether a violation is ongoing is made at the time the complaint was filed; and (c) an amended complaint relates back to the original complaint with respect to allegations of an ongoing violation, Plaintiff has satisfied this pleading requirement (even as to the SAC). *See Trades Council*, 448 F.3d at 151; *see also Borough of Upper Saddle River, N.J.*, 16 F. Supp. 3d at 319 (applying Rule 15(c)'s relation back rule to find that the plaintiff's original complaint established statutory standing). Although the Court's research has revealed that Rule 15(c)'s relation back provision is typically invoked to avoid dismissal on statute of limitations grounds, *see* 6A Fed. Prac. & Proc. Civ. § 1496 (3d ed.), the Second Circuit has clearly held that it can also apply in the exact factual scenario at issue here, and the Court is bound by that holding. Thus, the Court concludes that Plaintiff has adequately alleged an ongoing and continuous violation under the CWA.

The cases on which Pike relies do not change the Court's conclusion. First, Pike points to *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025) in support of its argument that the SAC, rather than the original complaint, must plead an ongoing and continuous violation. There, the defendant removed the complaint from state court to federal court under federal question jurisdiction, prompting the plaintiff to amend her complaint to remove federal law causes of action. 604 U.S. at 25. The Supreme Court held that the federal courts must assess their subject matter jurisdiction based on "what the new complaint says." *Id.* at 30. Here, because the Court has concluded that Pike's *Gwaltney* standing argument is not one relating to the Court's subject matter jurisdiction, *Royal Canin* does not apply. Instead, the Court must follow *Trades Council* as the prevailing Second Circuit law. Likewise, *Conservation Law Found., Inc. v. Shell Oil Co.*, 628 F. Supp. 3d 416, 438 (D. Conn. 2022) is inapposite because the defendant there had ceased ownership and operation of the terminal at issue and transferred its permits before the original complaint was

filed. Thus, the original complaint there did not properly allege that that the defendant had engaged in ongoing and continuous violations, while the original complaint Plaintiff filed here does.

Thus, the Court rejects this argument for dismissal of the SAC.

2. Vagueness

Next, the Court concludes that Plaintiff's allegations in Counts One through Nine,[6] concerning Pike's purported failure to consider and prepare the Terminal for rising sea levels and severe weather events associated with climate change, may proceed because they are neither vague nor ambiguous.

As an initial matter, the Court rejects Plaintiff's contention that Pike waived its arguments as to Counts One through Nine by not raising them in response to the complaint or the amended complaint.[7] The defense of failure to state a claim may be raised through a motion brought under Rule 12(b)(6) or Rule 12(c) at any time up to the time of trial. *See Patel v. Contemp. Classics of Beverly Hills*, 259 F.3d 123, 125–26 (2d Cir. 2001); *Allstate Ins. Co. v. Elzanaty*, 929 F.Supp.2d 199, 214 (E.D.N.Y. 2013); *see also* Fed. R. Civ. P. 12(h)(2) (noting that a failure to state a claim defense may be raised in any pleading, by a motion for judgment on the pleadings, or at the trial on the merits). Additionally, the record demonstrates that when Pike consented to Plaintiff's request to file the SAC, it reserved its right to move to dismiss the pleading on appropriate grounds.

[6] Pike also moves to dismiss Counts Fourteen through Fifteen of the FAC, concerning its alleged illegal infiltration of stormwater and failure to maintain an impervious containment area, *see* ECF No. 233-1 at 2, but Pike does not address or otherwise advance any defenses to these claims at all. Nor does Pike respond to Plaintiff's arguments that any defenses to these claims are waived for failure to raise specific arguments regarding them. The Court thus addresses Pike's arguments for dismissal of Counts One through Nine only.

[7] Plaintiff cites to cases from the Northern District of New York for the proposition that, although "an amended complaint ordinarily supersedes a prior complaint, and renders it of no legal effect," the filing of an amended complaint does not "automatically revive all the defenses and objections the defendant may have waived in a first motion to dismiss," nor may the defendant "advance arguments that could have been made in the first motion to dismiss but neglected to do so." *AXH Air-Coolers, LLC v. Pioneer Bancorp, Inc.*, No. 1:20-CV-1022, 2022 WL 16790328, at *7 (N.D.N.Y. Aug. 2, 2022) (quoting *Sears Petroleum & Transp. Corp.*, 217 F.R.D. 305, 307 (N.D.N.Y. 2003)). But this is merely persuasive authority that is not binding on this Court. For the reasons discussed herein, the Court addresses Defendant's arguments.

See ECF No. 228 (memorializing Pike's intent to seek dismissal of Plaintiff's SAC and proposing a briefing schedule). Although it would have been prudent for Pike to raise all arguments for dismissal in its prior motions, the Court considers Pike's arguments now, in the interest of completeness, and to avoid the unnecessary filing of a Rule 12(c) motion. *See* Def.'s Reply Br., ECF No. 237 at 10 n.8.

As noted, Plaintiff alleges in the SAC that the NPDES Permit requires Pike to "minimize the discharge of pollutants" via implementation of "best management practices" and to develop and implement a SWPPP that identifies pollutant sources and describes control measures. SAC ¶¶ 149, 158, 373, 389. Counts One through Nine of the SAC detail how Pike allegedly violated these obligations in numerous ways, including by failing to: implement measures to manage runoff; identify and minimize sources of pollution; and prepare the Terminal for rising sea levels and other weather events associated with climate change, among other violations. *Id.* ¶¶ 343–409. Pike argues that these allegations are deficient for two reasons. First, Pike contends that—contrary to Plaintiff's allegations—the Permit does *not* impose a requirement to consider climate change and, as such, Pike could not have violated the regulation on that basis. Second, Pike argues that even if the Permit could be construed to include the requirement of climate change considerations based on the subject provision identified in Plaintiff's SAC, that construction would render the Permit impermissibly vague.

As to Pike's first argument, the Court assumes—without deciding—that the Permit in effect at the time that the SAC was filed did not impose an *express* requirement of climate change considerations; but it declines to address whether the Permit's use of the phrase "best management practices" could be construed to require climate change considerations because this issue is better suited for summary judgment.

In advancing its argument, Pike urges the Court to review Connecticut's 2024 Draft NPDES General Permit for the Discharge of Stormwater Associated with Industrial Activities, for the Terminal, and the finalized version of that New Permit, issued in October of 2025. Both the draft and final versions of the New Permit include additional standards requiring permittees to implement certain measures seemingly related to climate change and other weather events, described as "resilience measures." *See* Def.'s Ex. 3 (Draft New Permit), ECF No. 231-5 at 3, 10–11; *see also* Def.'s Ex. A (Final New Permit), ECF No. 300-1 at 35. Pike also proffers DEEP's public guidance on these provisions, which describes the "resilience measures" as "new" elements "added in response to Connecticut's commitment to prepare for ongoing climate changes," including increasing temperatures, changes in precipitation matters and drought frequency. *See* Def.'s Ex. 2 (Fact Sheet), ECF No. 231-4 at 4. The SAC does not rely upon or otherwise incorporate these documents, even though the draft version of the new Permit existed at the time the SAC was filed. Thus, these documents ordinarily would not be considered by the Court on a motion to dismiss. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152–53 (2d Cir. 2002). While Pike is correct that the Court generally can take judicial notice of documents published on governmental websites to the extent their accuracy is not in question, it may do so only to determine what the statements contained, but not for the truth of the matters asserted therein. *See Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007). Thus, although the Court may properly take judicial notice of the fact that the draft and final versions of the new Permit contain certain language—and that DEEP apparently characterizes the resilience measures as "new"—whether they in fact *are* new goes to the truth of the matter asserted in the DEEP guidance, and thus stretches the judicial notice concept beyond its intended limits. Nor does DEEP's characterization

of the resilience measures necessarily mean that considering the effects of climate change was *not* a "best management practice" as contemplated by the operative Permit.

At bottom, the scope of the operative Permit cited in Plaintiff's SAC is best determined on a fuller factual record, as the documents provided by Pike are, presumably, not the only pieces of evidence developed in discovery on this topic. *See* Order, *Conservation Law Foundation, Inc. v. Shell Oil Company et al.*, No. 3:21-CV-933 (D. Conn. Oct. 19, 2023), ECF No. 302 (declining to adjudicate whether a permit's best industry practice provision included climate change factors, deeming it a factual question). And the Court declines to convert Defendant's motion to dismiss into a motion for summary judgment at this juncture, given that discovery remains ongoing. *See* Fed. R. Civ. P. 12(d).

Even if the Court assumes *arguendo* that the "best management practices" provision of the Permit imposes climate-change-related considerations, as Plaintiff alleges in its SAC, the Court rejects Pike's alternative argument that such a requirement renders the Permit impermissibly vague. In *City & Cnty. of San Francisco v. Env't Prot. Agency*, 604 U.S. 334 (2025), the Supreme Court evaluated whether the Environmental Protection Agency ("EPA") and authorized state agencies may issue permits containing "end-result requirements"—that is, permit "provisions that do not spell out what a permittee must do or refrain from doing," but instead "make a permittee responsible for the quality of the water in the body of water into which the permittee discharges pollutants." 604 U.S. at 338. The Supreme Court held that these types of permit provisions are improper and exceed the EPA's authority. *Id.* at 355. But the Supreme Court explained that common narrative provisions requiring permittees to adhere to certain "best practices" or "best-management practices"—such as the provision at issue here—*are* permissible. *Id.* at 341, 355. Thus, the Court concludes that the Permit's "best management practices" provision is not

impermissibly vague and Plaintiff's claims concerning Pike's alleged violation of the Permit may proceed.[8]

3. State Standards Exceeding Federal Standards

Finally, the Court declines to address Pike's arguments that Plaintiff's SAC seeks to enforce state regulations that exceed standards imposed by federal regulations at this juncture. To be sure, the Second Circuit has held that private citizens lack standing to enforce "state regulations, including the provisions of [] permits, which mandate a greater scope of coverage than that required by the federal CWA and its implementing regulations" in citizen suits brought under 33 U.S.C. § 1365. *Atl. States Legal Found, Inc. v. Eastman Kodak Co.*, 12 F.3d 353, 359 (2d Cir. 1993), *as amended* (Feb. 3, 1994). Nonetheless, the Court concludes that the record here is not sufficiently developed to resolve this issue, which is more appropriate for the summary judgment stage.

VI. CONCLUSION

For the reasons described in this ruling, Defendant's motion to dismiss Plaintiff's Second Amended Complaint is DENIED in full.

SO ORDERED at Hartford, Connecticut, this 21st day of November, 2025.

/s/ Sarala V. Nagala
SARALA V. NAGALA
UNITED STATES DISTRICT JUDGE

[8] To the extent that Pike argues that Plaintiff has not plausibly alleged that Pike violated the "best management practices" provision of the Permit, the Court finds that Plaintiff's allegations in Counts One through Nine—detailing the various ways in which Pike failed to implement measures to address various weather events—are sufficient to proceed at this stage. *See* SAC ¶¶ 343–409.