



**The Business Court of Texas,
Third Division**

FSTI, Inc.,
Plaintiff,

v.

PVS Minibulk, Inc., et al.,
Defendants.

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Cause No. 26-BC03A-0010

Syllabus*

The Court holds that the parties’ output contract requiring the buyer to purchase “100% of Seller’s production from its Greenville TX facility” obligated the buyer to purchase the seller’s actual production, not what the seller hypothetically had the capacity to produce. The good-faith requirement under Section 2.306(a) of the Uniform Commercial Code did not convert the contract’s “production” obligation into a “capacity” obligation. *See* Tex. Bus. & Com. Code § 2.306(a). The Court further declined to construe the “reasonable time” for performance to be whatever unspecified timing was necessary to ensure the seller could produce at capacity in light of the seller’s own storage limitations. The Court found no basis for concluding that was the parties’ expectation at the time of contracting, noting that production history shared between the seller and the buyer at time of contracting reflected that the seller’s production rate during performance of the contract consistently exceeded its production rate in past years.

* The syllabus was created by court staff and is provided for the convenience of the reader. It is not part of the Court’s opinion, does not constitute the Court’s official description or statement, and should not be relied upon as legal authority.



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Opinion & Order on Defendants' Bulk Contract MSJ

¶1 On September 25, 2026, the Court issued an order that **GRANTED** Defendants' Motion for Summary Judgment on FSTI's Claim that DPC Breached its Obligation to Buy Bleach (Defendants' MSJ), among other things.¹ The Court now issues this related opinion.

¹ The parties have filed two other summary-judgment motions relating to a counterclaim for breach of the same contract and a defense to that counterclaim: Plaintiff's Tradition Motion for Summary Judgment on DPC's Claims (FSTI MSJ) and Defendants' Amended Motion for Summary Judgment on FSTI's Termination Defense (Def. Termination MSJ). They are addressed in a separate opinion. Also cited are FSTI's Response to Def. MSJ (FSTI Resp.), Defendants' Response to FSTI's MSJ (Def. Resp.), Defendants' Reply in support of Defendants' MSJ (Def. Reply), and FSTI's Reply in support of FSTI's MSJ (FSTI Reply).

Background

¶2 **The Bulk Contract.** In October 2021, Plaintiff FSTI, Inc. (FSTI) and Defendant PVS DX, Inc., as successor in interest to DPC Industries, Inc. (DPC), entered into a ten-year supply agreement (the Bulk Contract) under which DPC agreed to buy 100% of the bleach FSTI produced at its Greenville facility, excluding amounts used for retail and mini-bulk sales—i.e., 100% of the “bulk” bleach.² Specifically, the Bulk Contract’s quantity term states:

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Quantity: 100% of Seller’s production from its Greenville TX facility, but excluding Seller’s production for retail and mini-bulk sales. For purposes of this Agreement, mini-bulk means customer accounts to which Seller’s customer sells bleach in quantities of less than 2,850 gallons in a truckload per delivery.

The parties agree that the Bulk Contract is an “output contract” governed by Chapter 2 of the Texas Business & Commerce Code (the UCC).⁴

¶3 The parties operated under the Bulk Contract for over two years, with DPC purchasing millions of gallons of bleach from FSTI.⁵ At the outset of the

² Def. MSJ Exh. A, Greenville Supply Agreement (Bulk Contract) at 1. The term “bulk bleach,” as used in this opinion, refers to the bleach that qualifies for sale under the terms of the Bulk Contract.

³ Bulk Contract at 1.

⁴ Def. MSJ Exh. H, Plf. First Am. Pet., Orig. Answer to Counterclaims, and Affirmative Defenses (First Am. Pet.) at ¶¶ 18, 39; Def. MSJ at 5; *see also* TEX. BUS. & COM. CODE § 2.306(a); *Lenape Res. Corp. v. Tenn. Gas Pipeline Co.*, 925 S.W.2d 565, 569 (Tex. 1996) (“An output contract is one in which the buyer agrees to buy the seller’s entire output of production.”).

⁵ *See* Def. MSJ Exh. F; Def. Resp. Exh. 24.

contract, FSTI sent DPC an email stating, “we need to have communication daily that tells you [DPC] what we [FSTI] have so it can be moved and the plant can maintain its operating rate.”⁶ The parties agree that, while performing under the Bulk Contract, DPC and FSTI communicated about bulk bleach orders on a day-to-day basis,⁷ and witnesses from both sides testified that DPC purchased all of the bulk bleach FSTI actually produced at the Greenville facility.⁸

¶4 **The HASA sale.** In February 2024, FSTI sold the Greenville facility to a third party, HASA, Inc., but excluded from the sale the Bulk Contract and another contract also at issue in this lawsuit.⁹ Effectively, FSTI retained the Bulk Contract but not the sole means for producing bleach under the contract. According to Defendants, the exclusion of these contracts enabled FSTI to inflate the sale price by at least \$15 million.¹⁰ The HASA agreement is dated February 15, 2024.¹¹ The parties disagree about whether the sale closed on the same day or the next day, February 16.

⁶ Def. Resp. Exh. 7.

⁷ *See, e.g.*, FSTI MSJ at 16; Def. Resp. at 4.

⁸ Def. Resp. Exh. 8, Nicole Chambers Deposition (Chambers Depo.), at 61; Def. Resp. Exh. 9, DPC Corporate Representative Deposition (DPC Corp. Rep. Depo), at 222–23; FSTI MSJ Exh. 1, Kurt Filer Deposition (Filer Depo.), at 77–78, 102.

⁹ Def. Termination MSJ Exh. 11, Amended & Restated Bleach Sales Agreement (HASA Agmt.) at 1, Exh. 12, Schedule 2.02(c).

¹⁰ Defendants’ Second Amended Answer and Counterclaims (Second Am. Counterclaims) at ¶ 44.

¹¹ HASA Agmt. At 1.

¶5 FSTI’s principals decided not to inform Defendants about the HASA sale beforehand.¹² On February 16, representatives of HASA and FSTI called John Cannon, the president of Defendant PVS Minibulk, Inc. (PVS), an affiliate of DPC that was a party to the other contract at issue in this case, the Minibulk Contract.¹³ Cannon testified that in this call he was informed of the HASA sale and reassured that “everything was going to stay the same,” “nothing was going to change, and it was going to be business as usual.”¹⁴ HASA and FSTI did not contact anyone from DPC directly.¹⁵ But after they called Cannon, Cannon called Kurt Filer, the president of DPC, and informed him of the HASA sale.¹⁶ At that time, no one informed DPC that its Bulk Contract had been excluded from the sale.¹⁷

¶6 For the first month after the HASA sale, DPC continued to make arrangements for bleach purchases through FSTI at the contract price—i.e., “business as usual.”¹⁸ Then on March 15, DPC received a response to an order email stating that “HASA, Inc. is your vendor for this delivery” and instructing that

¹² Def. Termination MSJ Exh. 18, Stormey Barton Deposition (Stormey Depo.), at 150.

¹³ Def. Termination MSJ Exh. 13, John Cannon Deposition (Cannon Depo.), at 110–11.

¹⁴ *Id.* at 111, 112.

¹⁵ Def. Termination MSJ Exh. 7, Scott Trussell Deposition (Trussell Depo.), at 203.

¹⁶ Filer Depo. at 175.

¹⁷ Cannon Depo. at 110–13; Filer Depo. at 175.

¹⁸ Trussell Depo. at 200; *see also* Def. Termination MSJ Exh. 16, Staci Barton Deposition (Staci Depo.), at 200–201; Cannon Depo. at 113.

further orders be sent to a new contact at HASA.¹⁹ DPC then began placing its Greenville facility bulk bleach orders with HASA instead of FSTI, and for several more months, HASA supplied that bleach at the Bulk Contract price.²⁰ But HASA eventually refused to honor the contract price, informing DPC that the Bulk Contract had been excluded from FSTI’s sale of the Greenville facility to HASA.²¹

¶7 **This Lawsuit.** On March 11, 2024—a few days before FSTI stopped handling DPC’s Bulk Contract orders—FSTI initiated this suit seeking a declaratory judgment that (among other things) its sale of the Greenville facility to HASA did not result in a breach of the Bulk Contract because it “sold the plant in good faith and thus no longer has any output at the Greenville Facility to sell under the [Bulk Contract].”²² FSTI alleged that the Bulk Contract was “an output contract under Texas Business & Commerce Code section 2.306(a),” such that FSTI was not obligated to sell any bleach to DPC if it did not actually produce any bleach, so long as FSTI acted in good faith.²³

¹⁹ Def. Termination MSJ Exh. 17; Cannon Depo. at 113; Trussell Depo. at 202–04.

²⁰ Trussell Depo. at 200–01; Stormey Depo. at 151; Def. Resp. Exh. 15, April 20, 2026 Temporary Injunction Hearing Transcript (4.20.26 TI Trans.), at 200–02.

²¹ Second Am. Counterclaims at ¶ 43; 4.20.26 TI Trans. at 235.

²² Def. MSJ Exh. G, Plaintiff’s Original Petition (Orig. Pet.) at ¶ 36; First Am. Pet. at ¶ 41. Suit was originally filed in the 98th District Court; the parties later agreed to transfer the action to this Court on March 25, 2026.

²³ Orig. Pet. at ¶¶ 34–37; First Am. Pet. at ¶ 39.

¶8 In April 2024, DPC brought counterclaims alleging FSTI repudiated and breached the Bulk Contract by selling the Greenville facility to HASA while excluding the Bulk Contract from the sale, among other claims.²⁴ According to DPC, the Bulk Contract pricing was so favorable to DPC that FSTI was able to inflate the purchase price of the Greenville facility by more than \$15 million by excluding the Bulk Contract and Minibulk Contract from the sale—even though FSTI knew it would be unable to perform under the contracts once it sold the Greenville facility to HASA.²⁵ DPC alleged that FSTI’s conduct was not in good faith or in accordance with commercial standards of fair dealing.²⁶

¶9 In May 2024, FSTI amended its pleadings. In its original petition, FSTI admitted that DPC purchased 100% of the Greenville facility’s bulk bleach:

At all times during the term of the [Bulk Contract], FSTI sold the entire bulk bleach output of the specified types of bleach from the Greenville Facility to DPC at the specified prices.²⁷

But FSTI’s first amended petition asserted the opposite: that DPC “failed to purchase the total bulk bleach output of the Greenville Facility” and “purchased only a portion of the Greenville Facility’s total bulk bleach output, refusing to

²⁴ Second Am. Counterclaims at ¶¶ 61–70.

²⁵ Defendants’ First Amended Answer and Counterclaims (First Am. Counterclaims) at ¶¶ 17, 44, 69; Second Am. Counterclaims at ¶¶ 17, 44, 69.

²⁶ First Am. Counterclaims at ¶ 69; Second Am. Counterclaims at ¶ 69.

²⁷ Orig. Pet. at ¶ 20.

purchase hundreds of thousands of gallons of the Greenville Facility’s total bulk bleach output each month,” in breach of the Bulk Contract.²⁸ This opinion addresses Defendants’ motion for summary judgment on that claim.

Legal Standards

¶10 Defendants’ MSJ is a motion for traditional summary judgment on which Defendants bear the burden of showing that “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law on the issues expressly set out in the motion.”²⁹ If they satisfy this burden, the burden shifts to FSTI to present evidence that creates a genuine issue of material fact in order to defeat the motion.³⁰

¶11 The motion requires the Court to construe the Bulk Contract. The meaning of an unambiguous contract is a question of law for the courts.³¹ The Court has laid out Texas’s general rules of contract construction in its prior opinions.³² In short, the Court holds parties to what they said in the contract and interprets what

²⁸ First. Am. Pet. at ¶¶ 21–25, 43–48.

²⁹ TEX. R. CIV. P. 166a(h)(2).

³⁰ *E.g.*, *Mosaic Baybrook One, L.P. v. Simien*, 674 S.W.3d 234, 252 (Tex. 2023); *Amedisys, Inc. v. Kingwood Home Health Care, LLC*, 437 S.W.3d 507, 511 (Tex. 2014); *Tex. Dep’t of Pub. Safety v. Tex. Tribune*, 731 S.W.3d 772, 783 (Tex. App. [15th Dist.] 2026); *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex. 1996) (citing “*Moore*” *Burger, Inc. v. Phillips Petroleum Co.*, 492 S.W.2d 934, 936 (Tex. 1972)).

³¹ *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 763 (Tex. 2018). The parties did not argue ambiguity here.

³² *See, e.g.*, *Marathon Oil Co. v. Mercuria Energy Am., LLC*, 2025 Tex. Bus. 36, ¶ 6, 722 S.W.3d at 729–730 (3rd Div.).

the contract says to mean what an ordinary reader would think it means under the circumstances, based on the contract's plain language.³³ What an ordinary reader understands words to mean can be influenced by the context in which the words are written, so courts read the contract as a whole and consider things like the contract's structure, the text surrounding the disputed language, the nature of the contract, the purpose reflected in the contract, word usage, grammar, and punctuation.³⁴

The Parties' Arguments

¶12 DPC argues that FSTI's claim fails as a matter of law because DPC undisputedly purchased 100% of the bulk bleach actually produced at the Greenville facility. DPC rejects FSTI's theory that DPC breached the Bulk Contract by failing to purchase 100% of the Greenville facility's *capacity*,³⁵ because the Bulk Contract required DPC to purchase the amount *produced*, not the amount that could have been (but was not) produced.³⁶

¶13 DPC further argues that FSTI's breach-of-contract theory is one manufactured by lawyers for this lawsuit, asserting that: while FSTI now alleges that DPC breached the Bulk Contract every single month since its inception, no

³³ *Id.* And, of course, if the contract defines terms or otherwise shows that its words are intended to mean something different than usual, a reasonable reader would accept that. *Id.* at ¶ 8, 731.

³⁴ *Id.* at ¶ 6, 729–730 (citing authority addressing each such consideration).

³⁵ Def. MSJ at 1, 6–8.

³⁶ *Id.*; Bulk Contract at 1.

party ever asserted that DPC was in breach during the years the parties performed under the Bulk Contract; and it was not until months into this lawsuit that FSTI changed its pleadings from alleging that DPC purchased “the entire bulk bleach output ... from the Greenville Facility” to instead allege that DPC “failed to purchase the total bulk bleach output of the Greenville Facility.”³⁷ DPC also disputes FSTI’s theory that it could have and would have produced more bleach if DPC had ordered and picked up more, pointing out that FSTI’s production from the Greenville facility during the Bulk Contract was higher than the Greenville facility’s historical production rates.³⁸

¶14 In response, FSTI does not argue that DPC failed to purchase any bulk bleach produced by the Greenville facility during the term of the Bulk Contract. Instead, FSTI argues that DPC’s obligation under the Bulk Contract was not to buy what DPC actually produced but rather “what FSTI *could* produce in good faith[.]”³⁹ FSTI says that it had the capacity to produce more bleach but was unable to do so unless DPC ordered and picked up more bleach.⁴⁰ Specifically, FSTI asserts that it had limited storage capacity and bleach has a limited shelf-life, such that its

³⁷ See Background, *supra*.

³⁸ Def. MSJ at 2–4.

³⁹ FSTI Resp. at 9 (emphasis added). FSTI notes that this obligation extends only “up to [PVS DX’s] monthly sales.” *Id.* Both parties agree that DPC’s monthly sales were a cap on its purchase obligations under the Bulk Contract and that this cap was never reached.

⁴⁰ *Id.*

production was functionally limited by how much DPC ordered and took.⁴¹ FSTI argues that “the practical reality that FSTI could not actually produce bleach if DPC would not commit to purchase and take it” makes the Bulk Contract not merely an output agreement, but a “hybrid” agreement that also has “elements” of a requirements agreement.⁴²

¶15 FSTI also argues that, because the Bulk Contract does not specify *when* DPC must purchase the Greenville facility’s production, DPC was obligated to do so within a reasonable time.⁴³ Without specifying a reasonable length of time or how it should be calculated, FSTI argues that a reasonable time is one that “did not constrain FSTI’s ability to produce in good faith,”⁴⁴ which it contends was not satisfied here.⁴⁵ DPC replies that, like its quantity-breach theory, this argument is entirely hypothetical—FSTI’s production was never actually constrained and no breach ever occurred. DPC also points out that FSTI’s proposed production rates of 30,000 or 22,500 gallons per day on average are inconsistent with FSTI’s historical production data, which FSTI provided to DPC at the time of contracting.⁴⁶

⁴¹ FSTI MSJ at 9–10.

⁴² *Id.* at 8–9.

⁴³ *Id.* at 20.

⁴⁴ *Id.* at 21.

⁴⁵ *Id.* at 23–27.

⁴⁶ In the parties’ recent Joint Pretrial Report and Proposed Pretrial Order, FSTI describes its claim under the Bulk Contract as including that DPC “improperly invok[ed] the Bulk Agreement’s maximum by asserting that it lacked sufficient bleach sales.” FSTI does not argue this in its MSJ

Analysis

¶16 The Court holds that FSTI’s breach-of-contract claim fails as a matter of law. The Bulk Contract unambiguously requires DPC to purchase “100% of [FSTI’s] production from its Greenville TX facility,” excluding retail and mini-bulk sales—i.e., 100% of the bulk bleach.⁴⁷ The uncontroverted summary-judgment evidence shows that DPC purchased 100% of the bulk-bleach production from the Greenville facility,⁴⁸ and FSTI does not dispute this. DPC has thus satisfied its purchase obligation under the Bulk Contract.⁴⁹ FSTI’s interpretation of the Bulk Contract as requiring DPC to purchase bulk bleach FSTI never actually produced is contrary to the plain contract language.

A. The Bulk Contract obligated DPC to purchase 100% of the Greenville facility’s “production,” and DPC conclusively proved that it did so.

¶17 As discussed above, the Bulk Contract required DPC to purchase “100% of Seller’s *production* from its Greenville TX facility” of bulk bleach, not

or MSJ Response. The factual-background section of FSTI’s MSJ contains an implication that DPC misrepresented to FSTI that it “had no more bleach orders from customers.” FSTI MSJ at 12. But the evidence cited (perhaps in support of other parts of that sentence) is in an internal email among two people at DPC, not a representation from DPC to FSTI. FSTI MSJ Exh. 14. Moreover, as discussed below, the evidence shows that this email relates to an instance in which FSTI requested more orders from DPC and DPC complied—not an instance in which DPC refused to purchase bleach based on the contract maximum. *See* n. 93, *infra*.

⁴⁷ Bulk Contract at 1.

⁴⁸ Def. MSJ Exh. Q; *see also* Chambers Depo. at 61.

⁴⁹ Def. MSJ Exh. Q; Chambers Depo. at 61.

“100% of Seller’s [*capacity*] from its Greenville TX facility.”⁵⁰ Similarly, FSTI’s breach-of-contract claim, as pleaded, is based on output, not capacity: FSTI pleads that DPC breached the Bulk Contract “by failing to purchase and pay for the total *output* of the Greenville Facility in each month” of the Bulk Contract.⁵¹ In its summary-judgment briefing, however, FSTI argues that DPC was obligated to buy “what FSTI *could* produce in good faith”⁵² from the Greenville facility, which FSTI identifies as the facility’s “capacity,” subject to a maximum not triggered here.⁵³ FSTI’s damages models are likewise premised on the difference between its revenue on the sale of the Greenville facility’s actual bulk-bleach production and what its revenue would have been if it had produced and sold the amount of bulk-bleach it alleges to be the facility’s good faith capacity.⁵⁴

¶18 Giving these terms their ordinary meanings, the Greenville facility’s bleach “production” or “output” is the bleach the facility actually made, whereas its bleach “capacity” is the amount of bleach the facility was capable of making.⁵⁵

⁵⁰ Bulk Contract at 1 (emphasis added).

⁵¹ First. Am. Pet. at ¶ 47 (emphasis added). FSTI’s pleadings make no reference to capacity, limitations on storage, or bleach that was not actually produced. *See generally, id.*

⁵² FSTI Resp. at 9, 25-26 (emphasis added).

⁵³ *See, e.g.,* FSTI Resp. at 9, 22; FSTI’s Motion for Partial Summary Judgment on DPC Claims, filed in District Court on April 23, 2025. Both parties agree that DPC’s purchase obligation was capped by its monthly sales and that this maximum was never reached.

⁵⁴ *See* Def. MSJ Exh. L, October 27, 2025 Expert Report of Ben Edmiston.

⁵⁵ *See, e.g., Capacity*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“[t]he amount of something that a factory, company, machine, etc. can produce or deal with”); *Capacity*, THE COMPACT OXFORD ENGLISH DICTIONARY (2nd Ed. 1989) (“[i]n industry, the ability to produce; equivalent to ‘full

The Court agrees with DPC that, under the plain language of the Bulk Contract, DPC’s quantity obligation is measured by the Greenville facility’s “production,” not its capacity. In other words, DPC was obligated to buy what FSTI actually made, not what FSTI hypothetically could have made.

¶19 None of FSTI’s authorities rewrite the Bulk Contract’s quantity obligation from “production” to “capacity.” FSTI’s capacity theory is premised on the Texas Supreme Court’s opinion in *Lenape Resources Corp. v. Tennessee Gas Pipeline Co.* and Section 2.306(a) of the UCC. Section 2.306(a) provides:

A term which measures the quantity by the output of the seller ... means such actual output ... as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.⁵⁶

Under *Lenape*, Section 2.306(a) reads into the Bulk Contract’s quantity term: “a quantity that is the actual good faith output.”⁵⁷ Thus, FSTI argues that the quantity obligation “is not actual production but actual *good faith* production.”⁵⁸

capacity’”); *Output*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“[t]he quantity of goods ... produced by a person, machine, factor, business, etc.”); *Output*, THE COMPACT OXFORD ENGLISH DICTIONARY (2nd Ed. 1989) (“the act or fact of putting or turning out; production; the quantity or amount produced”); *Production*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“[t]he amount of goods that are made”); *Production*, THE COMPACT OXFORD ENGLISH DICTIONARY (2nd Ed. 1989) (“the fact or condition of being produced” “[t]hat which is produced”); *see also Lenape Res. Corp. v. Tenn. Gas Pipeline Co.*, 925 S.W.2d 565, 569 (Tex. 1996)(“An output contract is one in which the buyer agrees to buy the seller’s entire output of production.”).

⁵⁶ TEX. BUS. & COM. CODE § 2.306(a).

⁵⁷ *See Lenape*, 925 S.W.2d at 570.

⁵⁸ FSTI Resp. at 10 (emphasis added by FSTI, internal quotation marks omitted).

¶20 Whether the phrase is “actual production/output” or “actual good faith production/output” does not change the outcome here. Each of the phrases is limited to *actual* production/output. The latter phrases simply add an additional limitation: *actual* production/output that was made in good faith. There is no allegation here that FSTI produced any bulk bleach in bad faith, and DPC did not refuse to purchase any bulk bleach on the ground that it was not produced in good faith (or any other ground). The UCC’s “good faith” requirement does not rewrite the parties’ contract to change the word “production” to “capacity.”

¶21 *Lenape* is materially distinguishable from this case. It involved an oil-and-gas “take or pay” contract between Tennessee Gas Pipeline and Lenape Resources.⁵⁹ Tennessee sought a declaration that it was not obligated to take or pay for production from Lenape’s newly drilled wells, which would vastly increase its quantity obligations under the contract.⁶⁰ Tennessee argued (among other things) that the contract was governed by Section 2.306 and the added production from the new wells was in bad faith and unreasonably disproportionate to prior production.⁶¹ The Court held that (a) Section 2.306 did not apply; (b) the contract obligated Tennessee to take or pay for 85% of Lenape’s delivery capacity—a calculable amount

⁵⁹ *Lenape*, 925 S.W.2d at 568.

⁶⁰ *Id.*

⁶¹ *Id.*

the parties determined through testing; and (c) Tennessee’s contractual obligation extended to good faith increases in delivery capacity, even significant increases.⁶²

¶22 *Lenape* does not support FSTI’s position here for several reasons. First and foremost, the quantity term in the *Lenape* contract was expressly based on the seller’s “capacity” rather than its “production.” The opposite is true here; the Bulk Contract bases the quantity on “production” instead of “capacity.”⁶³ Second, the Supreme Court held that Section 2.306 did not apply to the take-or-pay gas contract at issue in that case.⁶⁴ Again, the opposite is true here. Both parties agree that Section 2.306 *does* apply. Third, no party argued in *Lenape* that Tennessee had any contractual obligation to take or pay for gas that was never produced; the dispute was over whether some of *Lenape*’s actual production was in bad faith.⁶⁵ Again, the

⁶² *Id.* at 572–73.

⁶³ Bulk Contract at 1.

⁶⁴ *Lenape*, 925 S.W.2d at 570. The *Lenape* Court questioned whether the parties’ take-or-pay contract was, in fact, an output contract. The Court observed that the ‘pay’ option under the parties’ take-or-pay contract was “not a payment for the sale of gas” but rather “a payment for the exclusive dedication of reserves for a fixed period” that allowed the buyer to elect not to take any gas, in which case the gas would remain in the well unproduced. *Id.* Because the quantity to be sold under the take-or-pay contract depended on the buyer’s option to ‘pay’ rather than ‘take’ and a variety of other constraints, the Court observed that quantity was not determined solely by the sellers’ output or delivery capacity. FSTI could rely on this portion of *Lenape* to argue that the Bulk Contract is not an output contract because FSTI’s circumstances are such that PVS’s purchases limit FSTI’s circumstances. But FSTI does not argue that the Bulk Contract is not an output contract and expressly relies on Section 2.306, which only applies if the Bulk Contract is an output contract.

⁶⁵ *Id.* at 568.

opposite is true here: FSTI seeks to expand DPC’s quantity obligation to unproduced bleach, and no party argues that any of FSTI’s actual production was in bad faith.

¶23 FSTI also relies on an Idaho case, *Griffith v. Clear Lakes Trout Co.* [*Griffith II*],⁶⁶ which involved a trout-supply contract between Clear Lakes, a fish hatchery, and the Griffiths, trout growers.⁶⁷ The contract in that case called for two sales between the parties, one in each direction. First, Clear Lakes agreed to sell the Griffiths sufficient quantities of small trout to enable the Griffiths to grow up to two million pounds of market-size trout per year. Second, Clear Lakes was obligated to buy back from the Griffiths any such trout that grew to market size.⁶⁸ The court concluded the contract was both an output contract and a requirements contract, and both parties had a good-faith duty: “the Griffiths’ good-faith output of market-

⁶⁶ *Griffith II*, 200 P.3d 1162, 1168 (Ida. 2009). *Griffith II* was the second appeal in the case; the first appeal was *Griffith v. Clear Lakes Trout Co., Inc.* [*Griffith I*], 152 P.3d 604, 610 (Ida. 2007). In *Griffith I*, the appellate court upheld the trial court’s damages award for years four and five of the contract, which included increased costs and higher mortality losses caused by Clear Lake’s refusal to purchase market-sized trout and failure to adhere to the contemplated delivery schedule, but it excluded damages for trout not actually produced by the Griffiths on grounds not challenged on appeal. *Id.* at 610–13. The trial court declined to award lost-profit damages for years six and seven—the two years after the contract was prematurely terminated—on the ground that such damages were too speculative. *Id.* at 613. The *Griffith I* court reversed and remanded for a determination of lost profits for years six and seven. *Id.* at 613–14. In *Griffith II*, the parties challenged the amount of the lost profits and attorney’s fees awarded on remand.

⁶⁷ *Id.* at 1166.

⁶⁸ *Id.* at 1169.

size trout, up to the stated maximum of two million pounds” and “Clear Lakes’s good faith requirements for trout in its resale market.”⁶⁹

¶24 *Griffith II* does not support FSTI’s position for several reasons. First, the Bulk Contract does not involve the kind of dual sale involved in the *Griffith II* contract and is not a requirements contract. While it is true that DPC’s obligation to purchase FSTI’s production was capped by DPC’s total sales, that is a maximum, not a promise to fulfill the sales exclusively with bleach from FSTI.⁷⁰ In a requirements contract, the seller is obligated to satisfy the buyer’s supply needs (subject to any contractual minimums or maximums) and the buyer is obligated to buy its requirements *exclusively* from the seller—seller exclusivity is essential to a

⁶⁹ *Id.* Notably, the *Griffith II* court relied on a 1996 opinion from the Texas Supreme Court that dealt with a natural gas transportation and processing agreement between Northern, an interstate natural gas pipeline, and Conoco, a natural gas processor. *See id.* at 1170 (quoting *N. Nat. Gas Co. v. Conoco, Inc.*, 986 S.W.2d 603, 608 (Tex.1998)). When Northern and Conoco entered their contract, the natural gas industry was heavily regulated: gas producers sold their gas to pipelines at regulated prices, and the pipeline processed the gas and transported it to customers for resale at equally regulated prices. *N. Nat. Gas*, 986 S.W.2d at 605. The Northern-Conoco contract required Northern to deliver to Conoco all of the gas it received under its gas-purchase contracts with producers and required Conoco to gather, compress, and process all of Northern’s gas. *Id.*; *see also N. Nat. Gas Co. v. Conoco, Inc.*, 939 S.W.2d 676, 678 (Tex. App.—El Paso 1996), *aff’d*, 986 S.W.2d 603. But after substantial deregulation of the natural gas industry, Northern stopped buying gas from producers and thus stopped having gas for Conoco to process. Conoco asserted that Northern breached the contract by not maintaining its gas-purchase contracts or by reducing its gas processing needs to zero in bad faith. The Texas Supreme Court held that: (a) Northern had no obligation under the contract to maintain purchase contracts with producers; (b) because it was not a contract for the sale of goods, UCC Section 2.306 did not apply; and (c) Conoco’s bad faith claim survived because “a party who seeks to avoid performance of an output contract by having no output—or of a requirements contract by having no requirements—may not do so in bad faith.” *Id.* at 608–09.

⁷⁰ Bulk Contract at § 4 (“Buyer shall not be required to take any quantity in excess of it’s [*sic*] monthly sales.”).

requirements contract.⁷¹ In contrast, the Bulk Contract does not obligate FSTI to fulfill all of DPC’s requirements, nor does it prohibit DPC from purchasing bulk bleach from other sellers.⁷² During the Bulk Contract’s term, DPC’s sales always exceeded FSTI’s actual production—and even its asserted *capacity*—such that DPC necessarily did purchase bleach from other sellers.⁷³

¶25 Second, the *Griffith II* court did not hold that Clear Lakes’s control over the Griffiths’ output quantity (through the initial sale) obligated Clear Lakes to buy trout that the Griffiths did not actually produce at market size or to ensure that the Griffiths were able to produce at full capacity. To the contrary, the court held that the Griffiths undertook the risk that Clear Lakes could, in good faith, sell the Griffiths less small trout, thus necessarily limiting the Griffith’s output of market-size trout Clear Lakes would have to buy back.⁷⁴ In other words, Clear Lakes was

⁷¹ See, e.g., *Baylor Cnty. Special Util. Dist. v. City of Seymour*, 709 S.W.3d 5, 12–13 (Tex. App.—Eastland 2025, pet. denied) (“A ‘requirements contract’ is a contract wherein the buyer agrees to purchase all the specified goods it requires from the seller to the exclusion of third parties. ‘The essential element [of a requirements contract] is the promise of the buyer to purchase exclusively from the seller either the buyer’s entire requirements or up to a specified amount.’”) (quoting *Merritt-Campbell, Inc. v. RxP Prods., Inc.*, 164 F.3d 957, 963 (5th Cir. 1999)); *Wesdem, L.L.C. v. Ill. Tool Works, Inc.*, 70 F.4th 285, 295 (5th Cir. 2023) (“Under a requirements contract, a buyer promises to purchase all of its required goods exclusively from the seller.”).

⁷² See Bulk Contract; FSTI MSJ at 10; FSTI Resp. at 14. FSTI argues that *its own* sales obligation to DPC is exclusive, but that kind of exclusivity indicates an output contract rather than a requirements contract. When a buyer purchases 100% of the seller’s output, it is necessarily the exclusive buyer for that output. In a requirements contract, on the other hand, the seller, rather than the buyer, has exclusivity. See, e.g., *Merritt-Campbell*, 164 F.3d at 963.

⁷³ DPC Corp. Rep. Depo at 222–23.

⁷⁴ *Griffith II*, 200 P.3d at 1170. The *Griffith II* court expressly rejected the Griffiths’ argument that Clear Lake’s diminished market demand should not have been determined in calculating their lost

explicitly permitted to use its control to limit the Griffiths’ output, subject to any good-faith duty.⁷⁵ Notably, Clear Lakes’ good-faith duty applied to its original sales of small trout to the Griffiths—an aspect of the contract not present here; the Bulk Contract does not require DPC to make any sales to FSTI.

¶26 Additionally, the buyer’s “control” over production in *Lenape* and *Griffith II* arose from the contract terms: in *Lenape*, the buyer could exercise its “pay” option so that the gas in question would remain in the ground and not be produced,⁷⁶ and in *Griffith II* the buyer could elect to sell the Griffiths fewer small trout, thus necessarily reducing the number of large trout the Griffiths could produce for Clear Lakes to buy back.⁷⁷ Contractual rights of control may be distinguished from a situation like this one, where FSTI argues that DPC had “control” of its production because of the realities of its own business: the shelf-life of its product and how much storage it maintained at its facility. If the realities of the seller’s business—especially circumstances over which the seller has control like available storage space—could convert a “production” quantity term into a

profits after the contract was prematurely terminated. *Id.* The court observed that if the contract were only an output contract, that would be true; but because the contract was also a requirements contract, “the Griffiths undertook the risk that Clear Lakes could reduce the quantity of trout it sold to the Griffiths based on its good faith requirements for trout in the resale market.” *Id.*

⁷⁵ *See id.*

⁷⁶ *See* n. 64, *infra*.

⁷⁷ *Griffith II*, 200 P.3d at 1169.

“capacity quantity term or an output contract into a requirements contract, it would expose buyers to risks they may not even be aware of at the time of contracting and likely would not be in as good a position to assess or protect against as the seller.

¶27 FSTI was aware of the factual circumstances it complains of at the time of contracting and was free to negotiate contract terms that protected against them. Instead, FSTI negotiated a contract that obligated DPC to purchase 100% of the bulk-bleach production from the Greenville facility, and FSTI does not dispute that DPC purchased 100% of the bulk bleach the Greenville facility actually produced. In other words, FSTI got what it bargained for.

¶28 Finally, FSTI’s “control” theory requires the Court to presuppose a hypothetical breach. FSTI argues that DPC effectively controlled how much it produced at the Greenville facility because FSTI had limited storage capacity and could only store bleach for a number of days before it would degrade and become unsellable. While the summary-judgment evidence supports FSTI’s contention that bleach has a short shelf life,⁷⁸ it demonstrates that FSTI had available storage space at all times during the contract term. Specifically, DPC provided evidence that the Greenville facility had four bleach storage tanks with a combined capacity around

⁷⁸ The parties rely on deposition testimony from Kurt Filer, who testified that bleach degrades to the point that it’s unsellable within a few days. Filer Depo. at 124, 135; *see also id.* at 124.

80,000 gallons and never came near that limit during the Bulk Contract's term.⁷⁹ FSTI also confirms that it had trailers that could be loaded with at least 24,000 additional gallons.⁸⁰ According to the summary-judgment evidence, the Greenville facility's average daily inventory was less than 30,000 gallons throughout the term of the Bulk Contract and the inventory was always below 60,000 gallons.⁸¹ Thus, FSTI had storage space for tens of thousands of additional gallons of bleach at all times during the contract term.

¶29 Instead of disputing the availability of storage space, FSTI argues that *if* it had produced more bulk bleach, and *if* DPC had refused to purchase that bleach, *then* the tanks would have filled up and the bleach would have become unsellable after a few days. FSTI's theory requires the Court to assume that if FSTI had produced more bulk bleach at the Greenville facility, then DPC would have breached its obligation to purchase 100% of that bleach, even though there is no evidence that DPC ever actually did so. The Court will not assume a hypothetical breach and rely on it as a substitute for evidence of a breach.

⁷⁹ Def. Resp. Exh. 5, FSTI Corporate Representative Deposition, Stormey Barton (FSTI Corp. Rep. Depo.), at 47-48; Def. Resp. Exh. 28. Exhibit 28 shows the exact per-tank and total volume capacity, but the Court does not repeat those numbers here because that exhibit is sealed. The total is consistent with the "around 80,000 gallons" number available in the public record.

⁸⁰ FSTI Reply at n.3.

⁸¹ Def. Resp. Exhs. 25-26; FSTI Corp. Rep. Depo. at 48.

B. FSTI’s “reasonable time for performance” theory also fails as a matter of law.

¶30 In its summary-judgment briefing, FSTI also argues that DPC breached the Bulk Contract by failing to purchase the bleach within a reasonable time.⁸² FSTI correctly points out that, when a contract for sale does not specify the time of performance, a reasonable time is implied.⁸³ Based on this, FSTI argues that, because the Bulk Contract does not specify the time for performance, DPC was required to purchase the bulk bleach “within a reasonable time such that it did not constrain FSTI’s ability to produce in good faith” and must have failed to do so because there is evidence that FSTI’s production was at times constrained.⁸⁴ FSTI also points out that, while what constitutes a “reasonable time” is often a fact

⁸² FSTI’s pleaded breach-of-contract claim asserts that DPC failed to purchase the requisite quantity of bleach; it does not mention the timing of performance or failure to act in a reasonable time. *See generally* First Am. Pet. This theory appears to be somewhat new and was not asserted in FSTI’s Rule 194 Initial Disclosures. *See* Def. MSJ Exh. I. Typically, a party cannot avoid summary judgment based on a theory of liability not timely pleaded. *See, e.g., MedStar Funding, LC v. Willumsen*, 650 S.W.3d 809, 813 (Tex. App.—Houston [14th Dist.] 2022); *Garrett v. Wal-Mart Stores Tex., LLC*, 733 S.W.3d 101, 116 (Tex. App.—Eastland 2026, pet. filed). But DPC did not object on this basis. If DPC had objected, FSTI would have had an opportunity to seek leave to amend its pleadings, which the Court might have granted.

⁸³ FSTI cites *In re Gruss*, 693 S.W.3d 656, 675 (Tex. App.—Houston [14th Dist.] 2023, no pet.); *Pearcy v. Envtl. Conservancy of Austin & Cent. Tex., Inc.*, 814 S.W.2d 243, 245 (Tex. App.—Austin 1991, writ denied); and TEX. BUS. & COMM. CODE § 1.205. The same rule applies to contracts for the sale of goods under the UCC. *See* TEX. BUS. & COMM. CODE § 2.309(a) (“The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.”).

⁸⁴ FSTI MSJ at 19–27; FSTI Resp. at 9, 12–15.

question, the issue is a question of law for the court when the material facts are undisputed, which FSTI asserts is the case here.⁸⁵

¶31 The summary-judgment evidence shows that DPC purchased all of the bulk bleach produced at the Greenville facility during the term of the Bulk Contract, and by FSTI’s own admissions, DPC had to have done so within a few days of production or else the bleach would have degraded to the point it was “unsellable.”⁸⁶ The parties agree that bleach pickups were scheduled on a daily basis, and FSTI did not allege or offer evidence that any Greenville facility bleach ever became “unsellable” because DPC failed to purchase it within days of production. To the contrary, FSTI undisputedly did sell all of the bleach the Greenville facility produced. Additionally, the summary-judgment evidence shows that the Greenville facility’s bleach storage tanks never reached full capacity during the term of the Bulk Contract.⁸⁷ The Court concludes that this is evidence that DPC purchased the Greenville facility’s bulk bleach within a reasonable time after it was produced.⁸⁸

¶32 FSTI does not assert or attempt to prove the time that passed between the production of any bleach at the Greenville facility and when DPC purchased it.

⁸⁵ FSTI MSJ at 20.

⁸⁶ FSTI MSJ at 9–10, 21; FSTI Resp. at 8, 12.

⁸⁷ Def. Resp. Exhs. 25–26, 28; *see also* FSTI Corp. Rep. Depo. at 47–48.

⁸⁸ As discussed above, DPC had no duty to purchase bleach that was not produced—even if it could have been produced—and thus could not have failed to do so within a reasonable time.

Nor does FSTI identify any specific amount of time as reasonable or unreasonable.⁸⁹ Instead, FSTI's position is that DPC must not have purchased the bleach "within a reasonable time such that it did not constrain FSTI's ability to produce in good faith" because there is evidence that FSTI's production was at times constrained.⁹⁰

¶33 Under the undisputed material facts, the Court cannot reasonably imply into the Bulk Contract the amorphous standard for time of performance advanced by FSTI.⁹¹ FSTI concedes that "[w]hat constitutes a reasonable time depends on 'the circumstances surrounding the adoption of the agreement, the situation of the parties, and the subject matter of the contract' *at the time the parties entered into the contract.*"⁹² There is no basis in the Bulk Contract or the summary-judgment evidence from which the Court can conclude that, at the time of contracting, the parties expected DPC to be bound to pick up bleach in whatever time period was necessary to ensure that FSTI could produce at the 30,000 gallons-

⁸⁹ FSTI does, at one point, imply that the reasonable time for performance is 20 days in advance of the beginning of the month in which the bleach will be produced. *See* FSTI MSJ at 23. That would require DPC to buy bleach at least 20 days before it is produced; as addressed above, DPC has no contractual duty to buy bleach that has not yet been produced. That would also require DPC, rather than FSTI, to determine how much bleach FSTI produces in the next month—a right FSTI repeatedly asserts the Bulk Contract reserved to FSTI.

⁹⁰ FSTI MSJ at 19–27; FSTI Resp. at 9, 12–15.

⁹¹ As noted above, FSTI concedes that the material facts are not disputed such that a "reasonable time" can be resolved as a matter of law by the Court.

⁹² FSTI MSJ at 20 (emphasis added, quoting *In re Gruss*, 693 S.W.3d at 675).

per-day average FSTI’s expert says is FSTI’s capacity—even the 22,500 gallons-per-day average FSTI advances in its summary-judgment briefing.⁹³

¶34 To the contrary, at the time of contracting, both parties were aware of the Greenville facility’s production history, which reflects that the facility’s average historical production was “around 7 million gallons” per year, for an average of 19,178 gallons per day.⁹⁴ The summary-judgment evidence shows, and FSTI does not dispute, that FSTI’s production during the years the parties performed under the Bulk Contract was consistently higher than its historical average.⁹⁵ For example, the Greenville facility produced more bleach in the first full year under the Bulk Contract than it ever had in any prior year.⁹⁶

¶35 Moreover, the UCC generally requires “reasonable notification before a contract may be treated as breached because a reasonable time for delivery or

⁹³ See FSTI MSJ at 13, 24, 27; FSTI Resp. at 8, 14–15, 20; FSTI Reply at 8, 10, 11 (asserting 22,500 gallons per day). The 22,500 gallons-per-day number comes from a March 22, 2022 email between Kurt Filer of DPC and others at DPC and its subsidiary, Petrochem. FSTI MSJ Exh. 14; *see also* Filer Depo. at 189 (converting loads to gallons). In his email, Filer says that DPC should “take at least 35 loads out of [Greenville] every week” and that “[i]t is not optional.” FSTI MSJ Exh. 14. The email is in response to an email from Chambers requesting that DPC schedule more bleach pickups in the coming days, threatening that otherwise FSTI might have to “shut down.” *Id.* Contrary to FSTI’s contention that DPC refused to purchase bleach in response to its requests for more orders, Filer’s email indicates that DPC did so. *See id.* As discussed below, the production reports also indicate that DPC responded by helping FSTI lower its inventory. *See* Def. Resp. Exh. 34 at March 23–25, 2022.

⁹⁴ Def. MSJ Exh. C. at 74; Def. MSJ Exhs. B & D.

⁹⁵ Compare Def. MSJ Exh. F at 2022–23, *with* Def. MSJ Exh. D; *see also* Def. Resp. Exh. 34.

⁹⁶ *See* Def. MSJ Exh. F at 2022.

demand has expired.”⁹⁷ While there is evidence that FSTI sometimes asked DPC to place more orders (and DPC sometimes asked FSTI to produce more bleach), these communications often related to orders for future production and say nothing about breach, a reasonable time for performance, or to the extent any of these communications referred to existing inventory that was not covered by existing orders, when any such inventory had been produced.⁹⁸

¶36 In light of the holdings above, the Court need not reach FSTI’s evidence purporting to show that DPC’s timing constrained FSTI’s ability to produce bleach. But even if the Court were to reach such evidence, it does not support FSTI’s assertion that DPC refused to purchase bulk bleach that had been produced at the Greenville facility. FSTI points to several instances throughout the years the parties performed under the Bulk Contract in which Nichole Chambers of FSTI emailed DPC and its subsidiary, Petrochem, asking them to schedule more bleach load pickups in the coming days or weeks, threatening that otherwise FSTI’s tanks would

⁹⁷ TEX. BUS. & COM. CODE § 2.309, cmt. 5.

⁹⁸ See, e.g., FSTI MSJ Exhs. 4–8, 18–19. Moreover, as discussed below, there is no evidence that DPC failed to place additional orders in response to those emails. See n. 100 & accompanying text, *infra*. Even now it is not clear that FSTI’s own employees understood the Bulk Contract to require DPC to purchase more bleach or to purchase bleach at an earlier time than it did. FSTI’s co-owner, who negotiated the Bulk Contract on behalf of FSTI, testified that he believed DPC complied with its performance obligation, and FSTI’s CEO testified that the quantity purchased by DPC under the contract was consistent with his expectations, “nothing to complain about,” and a “nice improvement” over the Greenville facility’s production volume prior to the contract. Def. Reply Exh. 3. at 182–83; Trussell Depo. at 70–71, 91.

fill up and FSTI might have to shut down the Greenville facility.⁹⁹ As an initial matter, as discussed above, DPC had no duty to purchase bleach that had not been produced yet. With respect to the bleach already produced and in FSTI's inventory, there is no evidence of the timing between when such bleach was produced and when DPC picked it up—other than the evidence that DPC purchased all of it and would have had to do so within days to avoid it becoming “unsellable.” Regardless, there is no evidence demonstrating that DPC failed to place additional bleach orders in response to these requests. If anything, the evidence in the record indicates that DPC responded by to such requests by placing additional orders. Chambers testified that she would “send these emails ... and then more orders [would] come in.”¹⁰⁰ Consistently, FSTI's production reports show that, within days after the cited emails (and in most cases, by the next day), FSTI was loading more bleach than it produced and its production rates increased.¹⁰¹

⁹⁹ See FSTI MSJ at 23–24 (citing FSTI MSJ Exhs. 4–7, 18–19); *see also* FSTI MSJ Exhs. 8–11.

¹⁰⁰ Chambers Depo. at 124.

¹⁰¹ See Def. Resp. Exh. 34 at October 21–23, 2021, November 4–5, 2021, March 23–25, 2022, April 5–6, 2022, June 1–3, 2022, October 26–27, 2022, April 3–6, 2023, & January 4–5, 2024.

After emails from Chambers on March 21 and 22, 2022, DPC scheduled 9 more loads (40,500 gallons), and FSTI's inventory dropped daily, despite increased production rates, reaching around 18% capacity within three days. FSTI MSJ Exh. 18; Def. Reply Exh. T; Def. Resp. Exh. 34 at March 23–25. In just over a week, tank inventory was down to around 11% despite higher production. *Id.* at March 30, 2022.

The day after Chambers's April 4, 2022 email, DPC scheduled 12 additional loads (54,000 gallons), and FSTI's tank inventory dropped from around 41% capacity to about 26% within two days and about 10% within four days, even though production was higher. FSTI MSJ Exh. 6; Def. Resp. Exh. 47; Def. Resp. Exh. 34 at April 4–8, 2022.

Conclusion

¶37 For the reasons above, the Court **GRANTED** Defendants’ Motion for Summary Judgment on FSTI’s Claim that DPC Breached its Obligation to Buy Bleach, disposing of Count II of Plaintiff’s First Amended Petition.

Date signed: October 1, 2026



Hon. Melissa Andrews
Judge of the Texas Business Court,
Third Division

In her May 31, 2022 email, Chambers sought more orders for June 1–15, 2022 and said production would need to be ramped down without them. FSTI MSJ Exh. 5. David Byrd of Petrochem responded by advising ramping down, but Kurt Filer of DPC replied to both of them that ramping down would not be necessary and asked how many loads FSTI needed. *Id.* FSTI’s production reports show that its tanks were less than half full on the date of Chambers email, dropped to around 43% the next day and around 25% by June 3. Def. Resp. Exh. 34 at May 31 & June 1–3, 2022.

On the date of Chambers’s March 31, 2023 email, FSTI’s tank inventory levels were only about 31% of capacity. FSTI MSJ Exh. 7; Def. Resp. Exh. 34 at March 31, 2023. FSTI’s tank inventory was slightly higher the following two days (around 35%) but began dropping within three days and was down to about 22% in six days, despite FSTI ramping up production. *Id.* at April 4–6, 2023.

On the date of Chambers’s January 3, 2024 email, FSTI’s tanks were a little over half full; within two days, they dropped to just over a third full, despite slightly higher production rates. FSTI MSJ Exh. 4; Def. Resp. Exh. 34 at January 5, 2024. Within a week, the inventory level was down to around 17%, and White was thanking Chambers for “helping get the bleach tanks empty.” *Id.* at January 10, 2024; Def. Reply Exh. W.

In addition to Chambers’s emails to DPC and Petrochem, FSTI cites an internal email between Chambers and Susan White of FSTI. FSTI MSJ Exh. 19. In the email, White informs Chambers: “We have reduced bleach production rate to help with weekend inventory. ... Making about 18 kgal per day. We want to make more but have to move out what we have.” Chambers responds that White should not reduce the bleach production rate without giving her a heads up first, that they should not be trying to run the plant based on orders 3–4 days out because the DPC’s pickups were scheduled 1–2 days in advance, and that she would talk to DPC and “push[] them to take more loads.” She appears to have done so. FSTI’s tank inventory on the date of the email was less than a quarter of the tanks’ capacity. Def. Resp. Exh. 34 at November 4, 2021. By the next day, FSTI’s tank inventory level dropped to around 16%, and FSTI ramped up production to well over the 22,500 barrels per day FSTI advocates in its summary-judgment briefing. *Id.* at November 5, 2021.