E-Filed 5/16/25

IN THE COURT OF COMMON PLEAS, BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

BUCKS COUNTY	:	No.: 2024-01836
	:	
v.	:	
	:	
BP P.L.C.;	:	
BP AMERICA INC.;	:	
BP PRODUCTS NORTH AMERICA INC.;	:	
CHEVRON CORPORATION;	:	
CHEVRON U.S.A. INC.;	:	
CONOCOPHILLIPS COMPANY;	:	
CONOCOPHILLIPS;	:	
PHILLIPS 66 COMPANY;	:	
PHILLIPS 66;	:	
EXXON MOBIL CORPORATION;	:	
EXXONMOBIL OIL CORPORATION;	:	
SHELL OIL PRODUCTS COMPANY LLC	:	
SHELL PLC;	:	
SHELL USA, INC.; and	:	
AMERICAN PETROLEUM INSTITUTE	:	

DECISION AND ORDER

Pending before the Court are: 1) Defendants' Preliminary Objections to Personal Jurisdiction (Docket seq. 130 and 131), together with Plaintiff's response in opposition (Docket seq. 169 and 173); 2) Defendants' Joint Preliminary Objections to the Complaint on the Merits (Docket seq. 132 and 133), together with Plaintiff's response in opposition (Docket seq. 172, 174, and 175) ; 3) Shell plc, Shell USA, Inc., and Shell Oil Products Company LLC's Preliminary Objections to the Complaint on the Merits (Docket seq. 136 and 137), together with Plaintiff's response in opposition (Docket seq. 167 and 168); 4) American Petroleum Institute's Preliminary Objections to Complaint (Docket seq. 138 and 139), together with Plaintiff's

response in opposition (Docket seq. 165 and 166); and, 5) Defendants' Joint Motion for Hearing to Determine Immunity Pursuant to the Participation in Environmental Law of Regulation Act, 27 Pa.C.S. §§8301-8305, and to Dismiss Plaintiff's Complaint with Prejudice (Docket seq. 134 and 135), together with Plaintiff's response in opposition (Docket seq. 170 and 171). Upon review and consideration of all the pleadings, memoranda of law, supplemental memoranda of law, and after a full day of oral argument, we enter this Decision and Order and dismiss Plaintiff's Complaint with prejudice for the reasons set forth herein.

FACTUAL AND PROCEDURAL HISTORY

On January 17, 2024, the Bucks County Commissioners held a public meeting to conduct county business. The published "Meeting Agenda" for the meeting was broken into nine separate sections. A copy of the Meeting Agenda is attached to Defendants' Joint Preliminary Objections to the Complaint on the Merits, Exhibit 11. Section IV of the Agenda was titled "Consent Agenda," and section V of the Agenda was titled "Regular Agenda." Id. The Meeting Agenda includes the following footnote to explain the difference in the two Agenda sections:

> Consent and Regular Agenda
> Items listed on the Consent Agenda are considered by the Board of Commissioners to be routine or non-controversial, whereas items on the Regular Agenda are expected to require more discussion or explanation. On the day before each public meeting, the Consent and Regular Agendas, including a proposed list of Personnel Actions, are posted on the County's website. The Board of Commissioners votes on Personnel Actions listed on the "Commissioners List," but not on those listed under the Court of Row Officers lists.

Id. The Consent Agenda is separated into three sections: Section A to approve meeting minutes from January 2, 2024; Section B to approve meeting minutes from January 3, 2024; and Section

C to approve Resolutions. Section C is further separated into seventeen separate Items, some with several sub-items. Id. Item IV.C.10 of the Consent Agenda appears as follows:

10. Law Department
    a. With: DiCello Levitt, LLP
       Amount: 25% contingent fee on gross recovery + expenses**
       Purpose: Authorize County Solicitor to enter into Legal Services Agreement to evaluate and litigate potential environmental claims on behalf of the County on a contingent basis.

Id. A note at the end of the Consent Agenda indicates "** Unit Cost/Not to Exceed." There is no further explanation of this Agenda item, and there were no documents attached to the Agenda for the public to read. At the meeting, the Commissioners voted 3-0 to approve all items on the Consent Agenda in a single motion. See Bucks County Commissioners Public Meeting Minutes attached to Defendants' Joint Preliminary Objections to the Complaint on the Merits, Exhibit 12. None of the three County Commissioners mentioned Item IV.C.10, and there was no public explanation of the Item, nor was there discussion about the Item or its importance to the citizens of Bucks County.

On March 25, 2024, the County, through the County Solicitor, filed its Complaint in this case. That same day, the County Commissioners along with the County Solicitor called a press conference to discuss the lawsuit. See Defendants' Joint Preliminary Objections to the Complaint, ¶70, fn. 11, and https://www.buckscounty.gov/CivicAlerts.aspx?AID=1005. During the press conference, Commissioner Chair Diane Ellis-Marseglia referred to the lawsuit as a "momentous and important step" in the fight against climate change. Id. Commissioner Bob Harvie referred to the filing of the lawsuit as "an historic event precipitated by historic challenges." Id. Commissioner Gene DiGirolomo, while speaking of climate change in the

context of this lawsuit stated, "it's our children and grandchildren who will be affected by this in the coming years." Id.

Understandably, the Bucks County Commissioners are concerned about climate change in general, and the negative effects climate change is having, and will have in the future, on Bucks County and its citizens, both physically and financially. To address those concerns, Bucks County filed the instant lawsuit against fourteen fossil fuel companies together with their largest trade association (hereinafter referred to collectively as "Defendants") seeking to recover money damages for the harm allegedly caused by climate change. See, generally, Bucks County's *Complaint*. Bucks County's Complaint asserts seven causes of action[1]: Count I Strict Products Liability – Failure to Warn; Count II Negligent Products Liability – Failure to Warn; Count III Negligence; Count IV Public Nuisance; Count V Private Nuisance; Count VII Trespass; and Count VIII Civil Conspiracy. Id. Bucks County alleges that Defendants engaged in a decades-long disinformation campaign which was designed to discredit the scientific consensus on climate change, create doubt in the minds of consumers about the climate change impact of burning fossil fuels, and delay the energy economy's transition to a lower-carbon future. Id. at ¶1. According to Bucks County, Defendants' successful disinformation campaign "drove up greenhouse gas emissions, accelerated global warming, and brought about devastating climate change impacts to Bucks County." Id.

Pursuant to Pa.R.Civ.P. 1028, Defendants have filed various preliminary objections to the Complaint. Specifically, Defendants' preliminary objections raise issues of capacity to sue, personal jurisdiction, subject matter jurisdiction, federal preemption, failure to state a cognizable cause of action, as well as the statute of limitations and laches.

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[1] The Complaint asserts seven causes of action. Counts VII and VIII are misnumbered because there is no Count VI in the Complaint.

ANALYSIS

In their preliminary objections, Defendants raise two threshold issues that must be decided before we can address the merits of their preliminary objections. First, Defendants argue that Bucks County does not have the capacity to sue because the County Commissioners violated Pennsylvania's Sunshine Act, 65 Pa.C.S.A. §§701, *et seq.* If they are correct, the filing of the Complaint would be a nullity and must be dismissed. Second, if Defendants are incorrect, and Bucks County does have the capacity to sue, Defendants argue this court lacks personal jurisdiction over many of the Defendants. As set forth in more detail below, we find Bucks County does have the capacity to sue, and this court does have personal jurisdiction over each of the Defendants. However, we agree with Defendants that Bucks County fails to state a claim upon which relief can be granted because Pennsylvania cannot apply its own law to claims dealing with air in its ambient or interstate aspects, and, therefore, we are compelled to dismiss this lawsuit for lack of subject matter jurisdiction.

BUCKS COUNTY'S CAPACITY TO SUE

Defendants first seek dismissal of this case arguing that Bucks County lacks the capacity to file this suit. In support of that argument, Defendants rely upon Pennsylvania's Second Class County Code, 16 P.S. §§3101-6302, together with the Pennsylvania Sunshine Act, 65 Pa.C.S.A. §§701, *et seq.* (hereinafter "Sunshine Act"). We agree with Bucks County that Defendants' reliance upon Pennsylvania's Second Class County Code, 16 P.S. §§3101-6302, is misplaced as that version of the County Code did not apply to Bucks County when this lawsuit was filed. Regardless of what version of the County Code applied, the crux of the argument made by

Defendants is that Bucks County did not approve the filing of this lawsuit at an open public meeting as required by the Sunshine Act.

Pursuant to the Sunshine Act:

> Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered).

65 Pa.C.S.A. §704. A public "agency"[2] may meet in executive session, not open to the public, "to consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed." 65 Pa.C.S.A. §708(a)(4). The purpose of the Sunshine Act is "to provide the Commonwealth's citizens with a right to be present at all meetings of public agencies and to witness deliberations, policy formulation and decision-making processes." Silver v. Borough of Wilkinsburg, 58 A.3d 125, 128 (Pa. Cmwlth. 2012). The Sunshine Act "is designed to enhance the proper functioning of the democratic process by curtailing secrecy in public affairs." Smith v. Township of Richmond, 82 A.3d 407, 416 (Pa. Super. 2013). In other words, the objective of the Sunshine Act is to bring transparency to our government and prevent our political leaders from conducting official business in secret. Simply put, the Sunshine Act is supposed to ensure that politicians keep their constituents well-informed.

Here, there is no question that the Public Meeting Agenda on January 17, 2024 included Item 10 authorizing the County Solicitor to "enter into Legal Services Agreement to evaluate and litigate potential environmental claims on behalf of the County on a contingent basis." See Defendants' Joint Preliminary Objections to the Complaint on the Merits, Exhibit 11. The Bucks County Commissioners were permitted to meet in executive sessions to consult with their

[2] The Bucks County Commissioners meet the definition of "agency" as set forth in 65 Pa.C.S.A. §703.

attorneys, negotiate the terms of the Legal Services Agreement, and strategize with respect to the filing of this lawsuit. 65 Pa.C.S.A. §708(a)(4). Therefore, we conclude that the Commissioners met the letter of the Sunshine Act and did not commit a direct violation of the Act.

However, as we expressed at oral argument, we are concerned about the manner in which the Commissioners went about hiring counsel and filing this lawsuit. We believe the conduct of the Commissioners violated the spirit of the Sunshine Act. While we have found no appellate authority prohibiting government bodies from employing a "Consent Agenda" at a public meeting, it appears to this Court that the use of a "Consent Agenda" has a chilling effect on the public discourse with respect to items contained in that portion of the Agenda. This particular Agenda item was buried among 17 other items, some with multiple sub-items. The cryptic summary of the "Purpose" of the Agenda item, i.e., "Authorize County Solicitor to enter into Legal Services Agreement to evaluate and litigate potential environmental claims on behalf of the County on a contingent basis," provides the public with such little information that the average citizen attending the meeting would be hard-pressed to formulate an intelligent question to ask. Indeed, at the meeting on January 17, 2024, no member of the public commented on any item within the "Consent Agenda." In fact, not one of the three Commissioners, nor the County Solicitor, mentioned the item at the meeting, and there was no indication that they intended to file a lawsuit within the next few weeks. That is troubling to this Court, as the Commissioners, and the County Solicitor, would, upon filing of the Complaint, call a press conference and refer to their actions as "historic" and "momentous."

At the first meeting following the filing of this lawsuit and the Commissioners' press conference at which they describe their actions in filing the lawsuit as "historic" and "momentous," three members of the public spoke out against the lawsuit, and one Commissioner

withdrew his support for the lawsuit after hearing from the public. In the endnote on their Public Meeting Agenda, the Commissioners differentiate the "Consent" and "Regular" Agenda as follows: "Items listed on the Consent Agenda are considered by the Board of Commissioners to be routine or non-controversial, whereas items on the Regular Agenda are expected to require more discussion or explanation." Id.

At oral argument, the County Solicitor admitted that climate change has been at the forefront of our local and national discourse for many years. This left the Court with several questions including: 1) How does the Board of Commissioners determine a matter is routine or non-controversial? 2) Do the Commissioners violate the Sunshine Act by deliberating privately with a quorum deciding that some Agenda items are routine or non-controversial? 3) If this lawsuit is "historic" and "momentous," why did the Board of Commissioners think this agenda item was routine or non-controversial? 4) Why did this "historic" and "momentous" decision not deserve "more discussion or explanation?" and 5) Did the Commissioners try to sneak this lawsuit by the public by burying it as item 10 on a Consent Agenda, with a cryptic description, that nobody would discuss in public? When pressed on these questions, the County Solicitor advised the Court that the Commissioners use the "Consent Agenda" to speed up their meetings. The citizens of Bucks County did not elect the Commissioners to conduct fast public meetings; rather, the citizens of Bucks County elected the Commissioners to hold transparent and informative public meetings.

The Commissioners are elected by their constituents and "hired" to be "public servants," i.e., they hold office for the sole purpose of serving the public who have entrusted them with that office. To properly serve the public, the Commissioners must be completely open and transparent, that is the point of the Sunshine Act. It seems obvious to this Court that while the

Board of Commissioners met the letter of the Sunshine Act, their use of the "Consent Agenda," particularly in this instance, violates the spirit of the Sunshine Act.

Even if the Commissioners committed a direct violation of the Sunshine Act, Defendants failed to raise this legal challenge in a timely manner. The Sunshine Act specifically provides:

> A legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting. The court may enjoin any challenged action until a judicial determination of the legality of the meeting at which the action was adopted is reached. Should the court determine that the meeting did not meet the requirements of this chapter, it may in its discretion find that any or all official action taken at the meeting shall be invalid. Should the court determine that the meeting met the requirements of this chapter, all official action taken at the meeting shall be fully effective.

65 Pa.C.S.A. §713. Defendants admitted they did not file a legal challenge to the alleged violation of the Sunshine Act until they filed their Preliminary Objections which was well beyond 30 days after they were served with the Complaint.

While we believe the Bucks County Commissioners violated the spirit of the Sunshine Act by burying the resolution to retain current counsel and pursue this lawsuit within the "Consent Agenda," we do not believe they committed a direct violation of the Sunshine Act. Even if we determined there was a violation of the Sunshine Act, Defendant's challenge to any violation is untimely. Therefore, we find Bucks County has the capacity to bring this lawsuit and the Defendants' Motion in that regard will be denied.

PERSONAL JURISDICTION

For purposes of personal jurisdiction, the Defendants self-identify in three separate categories: 1) those Defendants incorporated in Pennsylvania (Chevron USA, Inc.); 2) those

Defendants registered to do business in Pennsylvania (BP America Inc., BP Products North America Inc., ConocoPhillips Company, Phillips 66 Company, Exxon Mobil Corporation, Exxon Mobil Oil Corporation, Shell Oil Products Company LLC, Shell USA, Inc., and American Petroleum Institute) (hereinafter collectively "Registered Defendants"); and 3) those Defendants who are foreign corporations not registered in Pennsylvania (BP p.l.c., Chevron Corporation, ConocoPhillips, Phillips 66 Company, and Shell, p.l.c.) (hereinafter collectively "Unregistered Defendants"). See Joint Opening Brief in Support of Defendants' Preliminary Objections to Personal Jurisdiction Raised Jointly by Certain Defendants.

Chevron USA, Inc. is incorporated under the laws of Pennsylvania and does not join in this preliminary objection challenging personal jurisdiction. Therefore, there is no question this court may exercise personal jurisdiction over Chevron USA, Inc.

The Registered Defendants are registered to do business in the Commonwealth of Pennsylvania pursuant to 42 Pa.C.S.A. §5301(a)(2)(i) and join in this preliminary objection "only insofar as the statute is successfully challenged or otherwise repealed." Id. at p. 1, fn. 1. The Supreme Court of the United States has settled the issue of the constitutionality of Pennsylvania's registration statute. See Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co., 243 U.S. 93 (1917), and Mallory v. Norfolk Southern Railway Co., 600 U.S. 122 (2023). In Mallory, the Supreme Court has held that Pennsylvania's statutory scheme requiring foreign corporations to consent to general jurisdiction as a condition of doing business in the Commonwealth does not violate the United States Constitution, and therefore we are satisfied that we may exercise personal jurisdiction over all the Registered Defendants.

Finally, with respect to the Unregistered Defendants, we agree with Bucks County that the Defendants misunderstand, or incorrectly interpret, the allegations made in the Complaint.

"When considering preliminary objections, all material facts set forth in the challenged pleading are admitted as true, as well as all inference deducible therefrom." Khawaja v. RE/MAX Central, 151 A.3d 626, 630 (Pa. Super. 2016). Therefore, we accept as true all well-pled facts in Plaintiffs Complaint. Those well-pled facts include allegations that each of the Defendants, including the Unregistered Defendants, engaged in conduct within the Commonwealth of Pennsylvania and that conduct is the basis of Bucks County's lawsuit. See, e.g., Plaintiff's Complaint at ¶¶ 20 – 23, 25, and 29 – 34. It is clear from a fair reading of the Complaint that Bucks County relies upon each Defendant's conduct within Bucks County, in conjunction with a worldwide campaign, as the basis of its causes of action. Therefore, we find the allegations contained in the Complaint support our exercise of specific personal jurisdiction over all the Defendants named in the Complaint, including the Unregistered Defendants.

SUBJECT MATTER JURISDICTION

Having decided the two threshold issues, concluding that Bucks County has the capacity to sue and that we have personal jurisdiction over all the Defendants, today we join a growing chorus of state and federal courts across the United States, singing from the same hymnal, in concluding that the claims raised by Bucks County are not judiciable by any state court in Pennsylvania. See City of New York v. Chevron Corporation, et al., 993 F.3d 81 (2nd Cir. 2021); City of Oakland v. BP plc, et al., 325 F.Supp.3rd 1017 (N.D. Cal. 2018); State *ex rel.* Jennings v. BP Am. Inc. et al., 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024); Mayor and City Council of Baltimore v. BP plc, et al., No. 24-C-18-004219 (Md. Cir. Ct. July 10, 2024); City of Annapolis v. BP plc, et al., No. C-02-CV-000250 (Md. Cir. Ct. Jan. 23, 2025) (Opinion attached to Defendants' [First] Notice of Supplemental Authority) ; Anne Arundel County v. BP plc, et al.,

No. C-02-CV-21-000565 (Md. Cir. Ct. Jan. 23, 2025) (Opinion attached to Defendants' [First] Notice of Supplemental Authority); City of New York v. Exxon Mobil Corp., et al., No. 451071/2021, 2025 WL 209843 (N.Y. Sup. Ct. Jan. 14, 2025) (Opinion attached to Defendants' Notice (Second) of Supplemental Authority); State of New Jersey *ex rel.* Platkin v. Exxon Mobil Corp., No. MER-L-001797-22 (N.J. Super. Ct. Law Div. Feb. 5, 2025) (Opinion attached to Defendants' Notice (Third) of Supplemental Authority). Because this court lacks subject matter jurisdiction over the claims raised, Defendants' Preliminary Objections on the merits must be sustained, and the case must be dismissed.

"Subject matter jurisdiction is defined as "the power of the court to hear cases of the class to which the case before the court belongs, that is, to enter into inquiry, whether or not the court may ultimately grant the relief requested." Harley v. HealthSpark Foundation, 265 A.3d 674, 687 (Pa. Super. 2021), *quoting* Lowenschuss v. Lowenschuss, 579 A.2d 377, 380 n.2 (Pa. Super. 1990). "Because subject matter jurisdiction goes to the very essence of a court's authority to adjudicate a case, the issue of subject matter jurisdiction bears two exceptional features: no party may waive it, and the court may raise it *sua sponte*. Given the gravity of the consequences flowing from a determination a court lacks subject matter jurisdiction, courts must address the issue with special care." Empire Roofing & More, LLC v. Department of Labor & Industry, State Workers' Insurance Fund, 312 A.3d 400, 405 (Pa. Comwlth. 2024) (citation omitted).

In American Electric Power Co., Inc. v. Connecticut, 564 U.S. 410 (2011) ("AEP"), eight states, New York City, and three land trusts sued electric power corporations, which owned and operated fossil-fuel-fired power plants in twenty states, seeking abatement of defendants'

ongoing contributions to global warming. In writing for the Court, Justice Ginsburg began the Court's Opinion as follows:

> We address in this opinion the question whether the plaintiffs (several States, the city of New York, and three private land trusts) can maintain federal common-law public nuisance claims against carbon-dioxide emitters (four private power companies and the federal Tennessee Valley Authority). As relief, the plaintiffs ask for a decree setting carbon-dioxide emissions for each defendant at an initial cap, to be further reduced annually. The Clean Air Act and the Environmental Protection Agency action the Act authorizes, we hold, displace the claims the plaintiffs seek to pursue.
>
> In Massachusetts v. EPA, 549 U.S. 497, 127 S.Ct. 1438, 167 L.Ed.2d 248 (2007), this Court held that the Clean Air Act, 69 Stat. 322, as amended, 42 U.S.C. § 7401 et seq., authorizes federal regulation of emissions of carbon dioxide and other greenhouse gases. "[N]aturally present in the atmosphere and ... also emitted by human activities," greenhouse gases are so named because they "trap ... heat that would otherwise escape from the [Earth's] atmosphere, and thus form the greenhouse effect that helps keep the Earth warm enough for life." 74 Fed.Reg. 66499 (2009).

Id. at 415-416 (footnote omitted). The Court pointed out that traditionally, environmental protection cases fell within the federal common law ("When we deal with air and water in their ambient or interstate aspects, there is a federal common law." Id. at 421, quoting Illinois v. City of Milwaukee, Wisc., 406 U.S. 91, 103 (1972)). The Supreme Court went on to state: "We hold that the Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants." Id. at 424. While in its conclusion the Court noted "none of the parties have briefed preemption or otherwise addressed the availability of a claim under state nuisance law," (Id. at 429) we believe the holding of the Supreme Court in AEP applies equally to the case at bar, i.e., the Clean Air Act and the EPA actions it authorizes displaces any Pennsylvania common law right to seek abatement of greenhouse gas emissions from fossil fuel production companies. In other words,

the Clean Air Act and the EPA actions it authorizes preempts Pennsylvania State law in this case.

Bucks County argues that its case "does not seek to regulate or abate [greenhouse gas] emissions." *Plaintiff's Brief in response to Defendants' Joint Opening Brief in Support of Defendants' Preliminary Merits Objections Raised Jointly by All Defendants* at p. 1-2; 12-14. Rather, Bucks County argues that "the CAA [Clean Air Act] regulates subjects that are entirely distinct from Bucks' claims seeking damages from Defendants' deceptive marketing campaign and because the CAA preserves state law causes of action." Id. We agree with the Second Circuit Court of Appeals that "artful pleading cannot transform [Bucks County's] Complaint into anything other than a suit over global greenhouse gas emissions." City of New York, 993 F.3d at 91. A simple reading of the Complaint proves that Bucks County is truly seeking redress for harm caused by climate change, a global phenomenon caused by the emission of greenhouse gases in every nation in the world. In the "Introduction" section of the Compliant, Bucks County states: "This successful climate deception campaign had the purpose and effect of inflating and sustaining the market for fossil fuels, which – in turn – drove up greenhouse gas emissions, accelerated global warming, and brought about devastating climate change impacts to Bucks County." *Complaint* at ¶1. The word "emissions" is used more than 100 times in the Complaint while the words "deceptive" and "deception" are used 39 times combined. While not conclusive, that disparity informs the Court that the focus of the Complaint is more on emissions than on deception. At oral argument, counsel for Bucks County conceded that the advertising, production, transport, and sale of Defendants' fossil fuel products in Bucks County did not cause any harm to the County. The combustion of those fossil fuel products by the citizens of Bucks County, and the County itself, produced greenhouse gas emissions, which then combined with

other greenhouse gases present in the atmosphere for as many as 100 years. According to Counsel, it is that combination of current emissions and emissions from many years ago, that caused the damages alleged by Bucks County. While Bucks County does everything it can to avoid the issue of emissions, it cannot avoid the fact that if there were no emissions there would be no damages.

The reason Bucks County avoids the issue of emissions is obvious, there is no question that emissions are the sole province of the federal government through the CAA and EPA regulations that flow from it. Bucks County recognizes the inescapable fact that if this case is about emissions, Pennsylvania courts have no subject matter jurisdiction. Because we find the causes of action set forth in the Complaint are so intertwined with emissions, we conclude that we have no subject matter jurisdiction over the claims raised.

As mentioned above, we join many other state and federal courts in finding that claims raised by Bucks County are solely within the province of federal law. See City of New York v. Chevron Corporation, et al., 993 F.3d 81, 95 (2nd Cir. 2021) ("Having concluded that the City's claims must be brought under federal common law, we see that those federal claims immediately run headlong into a problem of their own. For many of the same reasons that federal common law preempts state law, the Clean Air Act displaces federal common law claims concerned with domestic greenhouse gases."); City of Oakland v. BP plc, et al., 325 F.Supp.3rd 1017 (N.D. Cal. 2018) ("While it remains true that our federal courts have authority to fashion common law remedies for claims based on global warming, courts must also respect and defer to the other co-equal branches of government when the problem at hand clearly deserves a solution best addressed by those branches."); State *ex rel.* Jennings v. BP Am. Inc. et al., 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024) ("This Court finds that claims in this case seeking damages for

injuries resulting from out-of-state or global greenhouse emissions and interstate pollution, are preempted by the CAA. Thus, these claims are beyond the limits of Delaware common law."); Mayor and City Council of Baltimore v. BP plc, et al., No. 24-C-18-004219 (Md. Cir. Ct. July 10, 2024) ("regardless of whether Baltimore seeks injunctive relief or damages, Baltimore's claims are barred by the CAA."); City of Annapolis v. BP plc, et al., No. C-02-CV-000250 (Md. Cir. Ct. Jan. 23, 2025) (Opinion attached to Defendants' [First] Notice of Supplemental Authority) ("the U.S. Constitution's federal structure does not allow the application of State Court claims like those presented in the instant cases."); Anne Arundel County v. BP plc, et al., No. C-02-CV-21-000565 (Md. Cir. Ct. Jan. 23, 2025) (Opinion attached to Defendants' [First] Notice of Supplemental Authority); City of New York v. Exxon Mobil Corp., et al., No. 451071/2021, 2025 WL 209843 (N.Y. Sup. Ct. Jan. 14, 2025) (Opinion attached to Defendants' Notice (Second) of Supplemental Authority); State of New Jersey *ex rel.* Platkin v. Exxon Mobil Corp., No. MER-L-001797-22 (N.J. Super. Ct. Law Div. Feb. 5, 2025) (Opinion attached to Defendants' Notice (Third) of Supplemental Authority). We agree with, and adopt, the logic and reasoning in each of those decisions.

CONCLUSION

We conclude that our federal structure does not allow Pennsylvania law, or any State's law, to address the claims raised in Bucks County's Complaint. Rather, "federal common law addresses "subjects within national legislative power where Congress has so directed" or where the basic scheme of the Constitution so demands." AEP at 421. Thus, this court lacks subject matter jurisdiction because the claims raised by Bucks County are preempted by federal law.

Therefore, Defendants' preliminary objections in the nature of a demurrer must be sustained, and Plaintiff's Complaint must be dismissed with prejudice.

ORDER

AND NOW, this 16th day of May, 2025, upon consideration of 1) Defendants' Preliminary Objections to Personal Jurisdiction (Docket seq. 130 and 131), together with Plaintiff's response in opposition (Docket seq. 169 and 173); 2) Defendants' Joint Preliminary Objections to the Complaint on the Merits (Docket seq. 132 and 133), together with Plaintiff's response in opposition (Docket seq. 172, 174, and 175) ; 3) Shell plc, Shell USA, Inc., and Shell Oil Products Company LLC's Preliminary Objections to the Complaint on the Merits (Docket seq. 136 and 137), together with Plaintiff's response in opposition (Docket seq. 167 and 168); 4) American Petroleum Institute's Preliminary Objections to Complaint (Docket seq. 138 and 139), together with Plaintiff's response in opposition (Docket seq. 165 and 166); and, 5) Defendants' Joint Motion for Hearing to Determine Immunity Pursuant to the Participation in Environmental Law of Regulation Act, 27 Pa.C.S. §§8301-8305, and to Dismiss Plaintiff's Complaint with Prejudice (Docket seq. 134 and 135), together with Plaintiff's response in opposition (Docket seq. 170 and 171), and after argument on March 24, 2025, for the reasons set forth above, it is hereby **ORDERED and DECREED** as follows:

1. Defendants' Joint Preliminary Objection for Lack of Capacity to Sue is **OVERRULED**.

2. Defendants' Joint Preliminary Objection to Personal Jurisdiction is **OVERRULED**.

3. Defendants' Joint Preliminary Objections in the nature of a demurrer are **SUSTAINED.**

4. Plaintiff's **COMPLAINT** is **DISMISSED WITH PREJUDICE**.

BY THE COURT:

STEPHEN A. CORR, J.

N.B. It is your responsibility to notify all interested parties of the above action.