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January 21, 2022

VIA ECF

Patricia S. Connor  
Clerk of Court  
U.S. Court of Appeals for the Fourth Circuit  
1100 East Main Street, Suite 501  
Richmond, VA 21319

Re: *Mayor and City Council of Baltimore v. BP P.L.C.*, No. 19-1644  
Defendants-Appellants' Response to Plaintiff-Appellee's Citation of Supplemental  
Authorities

Dear Ms. Connor:

Contrary to Plaintiff's assertion, this Court's decision in *West Virginia State University Board of Governors v. Dow Chemical Company*, — F.4th —, 2022 WL 90242 (4th Cir. 2022), is inapposite and has no relevance here.

In *Dow Chemical*, Dow was sued in state court by an adjacent landowner asserting state claims related to historic contamination on its property. Dow was already undertaking investigation and remediation required under permits issued pursuant to the Resource Conservation and Recovery Act ("RCRA"). *See id.* at \*2. Dow removed the case to federal court, asserting federal jurisdiction under the *Grable* doctrine. This Court affirmed that removal was improper under *Grable*, rejecting characterization of the suit as a collateral attack on an EPA cleanup order, as no such order had issued. *See id.* at \*14-16. Crucially, the Court explained that, whereas challenges to actions under EPA-directed cleanup orders *do* raise substantial federal questions, *see id.* at \*14, RCRA remedial actions do not entail the same federal involvement, and challenges to actions taken under RCRA permits do not raise sufficiently substantial federal questions to meet *Grable* jurisdiction, *see id.* at \*16.

That analysis, focused as it is on the difference between the RCRA and CERCLA, has no application here because Plaintiff's claims implicate substantial federal questions far beyond remedial activities at a single in-state location. In fact, unlike here, the RCRA program in *Dow Chemical* was "implemented and overseen by a state agency." *Id.* at \*11. Rather, as Defendants have explained, Plaintiff's claims necessarily raise multiple substantial, disputed federal questions, including the propriety of the federal government's analysis of the costs and benefits of fossil fuels and myriad agency decisions in regulations, land management, leasing

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and otherwise to promote and encourage development, production and sale of fossil fuels (AOB.33-37), Defendants' alleged liability for statements made to *federal* officials affecting the substance of *federal* policy (*id.* at 37-38), and the United States' foreign-policy determinations regarding energy production and climate change (*id.* at 38-39). These important regulatory and executive determinations are more than sufficient to support *Grable* jurisdiction. *See Dow Chemical*, 2022 WL 90242, at \*14-16.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous, Jr.  
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*Chevron Corporation and Chevron U.S.A.*

cc: All counsel of record (via ECF)