



February 21, 2025

Environment Committee
Legislative Office Building
Room 3200
Hartford, Connecticut 06106

IN RE: Opposition to HB 5156 “An Act Concerning A Climate Change Superfund

Dear Senator Lopes, Chair; Representative Parker, Chair, Senator Hochadel, Vice Chair; Representative Bumgardner, Vice Chair; Senator Harding, Ranking Member; Representative Callahan, Ranking Member; and Members of the Committee:

Thank you for this opportunity to provide comments related to the above-referenced legislation. The American Petroleum Institute (API)¹ **opposes HB 5156**. While API appreciates the goal of funding environmental programs, this legislation is not the way to effectuate this objective. API believes it is bad public policy and may be unconstitutional.

API is extremely concerned that this **bill retroactively imposes costs and liability on prior activities that were legal, violates equal protection and due process rights** by holding companies responsible for the actions of society at large, and is **preempted by federal law**. In fact, last year, API and the U.S. Chamber of Commerce filed complaints in federal court challenging the legality of similar legislation passed in Vermont and New York.² API strongly encourages Connecticut lawmakers to exercise prudence and refrain from passing this proposal given there is pending litigation on this issue which is rife with uncertainty and legal questions. **API respectfully suggests and recommends lawmakers refrain from committing resources into bills that are effectively already being litigated.**³

For the reasons articulated below, API requests that the committee views the bill unfavorably and does not advance it out of committee.

Retroactive Law Making

Generally speaking, legislation should apply prospectively to ensure notice to the regulated community and protect due process rights and interests. This bill imposes strict liability on actions that occurred over thirty years ago. While retroactive *ex post facto* laws may be justifiable under certain circumstances, there is reason to believe that a court would view this legislation as unconstitutional given the potentially harsh and oppressive nature of the bill.⁴ Stated another way, there is a persuasive argument that the bill’s extreme retroactivity (reaching back to activities starting in 1995 is inappropriate, and furthermore, the yet to be determined amount of potential liability could make the law “harsh and oppressive” considering that the targeted companies’ actions were lawful during the relevant period and the emissions were actually produced by others farther down the supply chain.

¹ API represents all segments of America’s natural gas and oil industry, which supports nearly eleven million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. Our 600 members produce, process and distribute the majority of the nation’s energy, and participate in “[API Energy Excellence](#),” which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability.

² These complaints are available through the U.S. Chamber of Commerce website:

New York: <https://www.uschamber.com/assets/documents/Complaint-Chamber-v.-James-S.D.N.Y.pdf>; and

Vermont: <https://www.uschamber.com/assets/documents/Complaint-Chamber-v.-Moore-D.-Vt.pdf>.

³ It is worth noting that in 2025 there were almost a dozen similar bills introduced and considered by state legislators throughout the country, and every state opted to **not** pass legislation creating a climate superfund program. Among other things, lawmakers in other states expressed apprehension with respect to potential costs to the consumer and were reluctant to pass a bill that could subject the state to costly and unnecessary litigation.

⁴ *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 41 n.23 (1990) (internal quotation marks omitted); see, e.g., *E. Enters. v. Apfel*, 524 U.S. 498, 549-550 (Kennedy, J., concurring in the judgment) (opining that a law that “create[ed] liability for events which occurred 35 years ago” violated due process); *James Square Assocs. LP v. Mullen*, 21 N.Y.3d 233, 249 (N.Y. 2013) (holding that a tax law with a 16-month retroactivity period was unconstitutional because the sole state purpose offered—“raising money for the state budget”—was “insufficient to warrant [such] retroactivity”).



Law May Be Contrary to Excessive Fines and Takings Clauses

The legislation at issue may effectively result in a taking, as it will impose a considerable financial burden for conduct that legally occurred decades earlier in a way that singles out the refining industry for others' use of fossil fuels. Singling out energy production for potentially exorbitant and disproportionate penalties while ignoring the economy-sustaining use of that energy is misguided.

Arbitrary Penalties and Estimated Fines Create Due Process and Fairness Issues

This bill incorrectly suggests that emissions by companies over an extended number of years can be determined with great accuracy. That is simply not true. At best the state can only estimate emissions; and these estimates are imprecise and not accurate enough to base a prorated share of what could be billions upon billions of dollars in penalties.

State Played a Role in Products Being Demanded and Delivered

It is patently unfair to retroactively punish companies with punitive fees for producing fuels that were and remain legal. These fuels were used to heat and cool our homes and get us to work for and will continue to be relied upon in the coming decades. Not only were these fuels a necessity for individuals and businesses, but for federal, state and local governments as well.

Ironically, this proposal seeks to impose a fee on the very commodities the state has encouraged production and use of, as the state has approved the siting and operation of: 31 petroleum terminals,⁵ as well as four liquefied natural gas (LNG) facilities with a total storage capacity of more than 43.89 million gallons, nine natural gas and one petroleum fired power plant; over 3,200 miles of natural gas pipeline;⁶ 1,064 retail gasoline stations;⁷ and nearly 45,500 lane miles of public roads using thousands of tons of asphalt made from processed crude oil.⁸ To put things into perspective, Connecticut residents and businesses consumed nearly 80 billion gallons of petroleum products, almost 6 trillion cubic feet of natural gas, and just shy of 30 million tons of coal from 1995 to 2022.⁹ And the bill proposes to impose fees only on refiners and extractor of fuels disregarding the fact that large quantities of the fuels were demanded and purchased by local, state and federal government agencies.

This Bill Runs Contrary to Prior Positions Taken By Other Legislatures

This legislation contradicts and runs afoul to previous laws and policies supported by the General Assembly. The legislature is being asked to support this bill despite previously declaring by statute that the "distribution and sales of gasoline and petroleum products" in the state "vitally affects its general economy" and that such distribution and sales affects "the public interest and the public welfare"¹⁰ and despite the state recognizing oil and natural gas resources and assets as critical infrastructure necessary to ensure the overall health and wellness of the nation.¹¹ Through the years the state has continually identified and valued oil and gas related facilities, unfortunately, the legislature is now considering the imposition of retroactive fees on fuels and related infrastructure the state has valued and relied on for transportation, industrial processes, farming and agriculture, and heating.

⁵ See www.energy.gov/sites/prod/files/2015/06/f22/CT_Energy%20Sector%20Risk%20Profile.pdf.

⁶ See <https://www.energy.gov/sites/default/files/2021-09/Connecticut%20Energy%20Sector%20Risk%20Profile.pdf>.

⁷ See https://www.eia.gov/state/seds/data.php?incfile=/state/seds/sep_use/total/use_tot_CTA.html&sid=CT..

⁸ See <https://highways.dot.gov/public-roads/september-2017/whats-your-asphalt#:~:text=Asphalt%20is%20the%20sticky%20black,refiners%20would%20give%20it%20away>

⁹ See https://www.eia.gov/state/seds/data.php?incfile=/state/seds/sep_use/total/use_tot_CTA.html&sid=CT.

¹⁰ Conn. Gen. Stat. Ann. § 42-133j (West).

¹¹ See <https://portal.ct.gov/demhs/homeland-security/critical-infrastructure#:~:text=Critical%20Infrastructure%20is%20the%20body,public's%20health%20and%20For%20safety.>



No Nexus Between Fine and Actual Responsibility

This bill imposes liability without regard to the extent of a particular business's actual responsibility. Given the potential magnitude of the fines at play, API believes that the state must offer more than an asserted causal connection between a company's greenhouse gas emissions and negative impacts or injuries to the environment or public health and welfare. Liability should not attach simply because a company extracted or refined fossil fuels that were placed into commerce and used by a third party.

Improper Use of Strict Liability Standard

The goal of the bills is to effectively impose strict liability for purported damages caused by alleged past emissions from extracted or refined fuels no matter where in the world those emissions were released, or who released them. It is patently unfair to charge a group of large companies that did not combust fossil fuels but extracted or refined them in order to meet the needs and demands of the people. Furthermore, this bill is arguably discriminatory because it singles out certain companies. The legislation also neglects to even consider that companies responded with a supply of products to meet the demand for them in the marketplace. Through their use of the strict liability standard, proponents of this legislation concluded that only one segment of the economy should pay the state for excessive costs.

Disproportionate Penalties

HB 5156 potentially places an unfair burden on domestic companies. This bill envision liability being proportionately divided by so-called "responsible parties." As written, "responsible party" excludes "any person that lacks sufficient connection with the state to satisfy the nexus requirement of the United States Constitution." There will be situations where certain companies, including foreign companies, may suggest they have an insufficient connection with Connecticut, which would mean that domestic companies may shoulder even greater financial responsibility while potentially being competitively disadvantaged including companies with storage facilities in the state.

Preemption

The payments required by this bill may be preempted by federal law. Greenhouse gas emissions are global in nature and subject to numerous federal statutory regimes, including the Clean Air Act. They are also a matter of federal and international law, not state law. The U.S. Court of Appeals for the Second Circuit recently noted this fact in *City of New York v. Chevron Corp.*,¹² where the court rejected state-law nuisance claims based on global emissions because "a federal rule of decision is necessary to protect uniquely federal interests." As this bill seeks compensation for alleged harms to the environment based on global emissions, it is preempted by federal law.

Conclusion

For all the reasons articulated above, API strongly opposes this legislation and respectfully recommends the bill be voted unfavorably by the committee. Thank you for your time, effort and consideration

Respectfully submitted,

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¹² See 993 F.3d 81, 90 (2d Cir. 2021).