

March 6, 2023

Transmitted via electronic submission

Re: OPEI Comments on RI HB 5549 – Relating to the “Zero-Emissions Lawn Care Devices Act” – Ban on the Sale and Use of Gas-Powered Lawn Care Equipment

The Outdoor Power Equipment Institute (“OPEI”) opposes RI HB 5549 which would require that all powered lawn and garden equipment sold in the state be electric by January 1, 2025 and that all in-use equipment have zero-emissions by January 1, 2028. RI HB 5549 will negatively impact OPEI members and hardworking professionals throughout Rhode Island.

The Outdoor Power Equipment Institute (“OPEI”) is an international trade association representing more than 100 manufacturers and their suppliers of outdoor power equipment. OPEI member products are ubiquitous in American households and businesses. Outdoor power equipment such as lawnmowers, trimmers, chain saws, and leaf blowers are the lifeblood of millions of hardworking landscape and construction professions, many of whom are sole proprietors, and emergency responders. See Annex A – Outdoor Power Equipment Facts.

The outdoor power equipment industry is a leader in the deployment of electric equipment, with electric products dating back more than 70 years. Recent advancements in battery technology have accelerated electric product growth for many categories. In fact, the majority of “handheld” products shipped *are already* electric powered. Electric “handheld” leaf blowers and electric hedge trimmers represented 80% of all product shipments in 2022. Residential electric walk-behind mower shipments have ballooned from just 5% of total walk-behind lawnmowers in 2014 to 40% in 2022. These trends will continue without legislative action. RI HB 5549 is unnecessary.

However, due to the wide range of lawn and garden equipment types and use cases, *there is currently no one-size-fits-all power-source approach.* Codes and bills that propose gas-powered equipment bans and dictate equipment purchase choices ignore technical feasibility challenges, particularly for landscape and construction professionals, emergency response workers, and rural small engine powered equipment users. Supply chain, electrical grid infrastructure, and product transportation also present significant concerns.

Zero Emissions Equipment Technology Feasibility Challenges

Today’s battery technology is not without limitations. In its recent Small Off-Road Engine rulemaking the California Air Resources Board (CARB) compared on-line (marketing) performance of a gas-powered and electric-powered blower. However,

industry testing shows that the battery-powered unit's performance¹ dropped more than 40% as the battery discharged. In "turbo" mode the battery lasted just 18 minutes. On the other hand, the gas-powered equipment maintained full performance for over an hour, on a single tank of gas.

Performance and run time differences raise significant concerns for landscape and construction professionals, emergency respondents and rural large property owners who demand steady, reliable and continuous performance.

Consideration must also be given to the availability of power in many instances when / where outdoor power equipment is used. For example, chain saws are often used off-the-grid and in emergency response situations which require continuous power.

Zero Emissions Equipment Cost Challenges

The number and cost of batteries needed for high-use applications such as professional landscaping and construction are additional concerns. CARB's survey and modeling data estimates that the average landscaper professional that own walk-behind mowers, string trimmers, leaf blowers and chain saws require on average 13170 W of power per day. The average landscape professional would require dozens of high-power batteries every day to achieve California's average landscaper modeled power demand, resulting in thousands of dollars in upfront battery cost. Additionally, based on CARB performance modeling, batteries would need to be replaced approximately every 3 years for these applications, resulting in thousands of dollars in on-going battery "maintenance" costs.

Additionally, many businesses would also incur upfront costs to safely charge and transport the number of high-powered batteries required to operate daily. In fact, some landscape and construction professionals don't even have access to power to safely and securely recharge equipment in storage yards where equipment is kept overnight.

Small businesses, many of which are low income and minority owned, would be hit hardest by the unaccounted for and/or unanticipated costs of RI HB 5549.

Emissions Are Already Federally Regulated

Emissions are a common discussion point surrounding lawn and garden equipment. "Facts" comparing outdoor power equipment emissions to automobiles are not rooted in sound data and are untrue or misleading.

Many believe outdoor power equipment are unregulated, high-emitting sources of exhaust gas emissions. This is not true. The OPE industry has a long history of working cooperatively with the U.S. Environmental Protection Agency to develop a regulatory framework which has driven low and zero-emissions technology solutions in outdoor power equipment for over three decades. Today, the EPA is on its third phase of pollutant controls for small engine-powered equipment, resulting in up to 90%

¹ Measured as air volume (cfm) and blower force (N) in accordance to ANSI/OPEI B175.2 standard.

reductions in exhaust gas and evaporative emissions from previously unregulated machines.

Industry is committed to advancing emission reduction technologies. In fact, many popular lawnmower and leaf blower options are certified well below federal standards – and well below “fact sheet” comparisons. Lawnmowers and many leaf blowers are now powered by efficient four-stroke engines. As a result of federal small spark-ignited engine regulations the EPA estimated the US “lawn and garden equipment” fleet smog forming emissions would be reduced by 20 to 30 percent from 2011 to 2018 – And agencies have yet to accurately account for recent and projected electric product market growth when estimating sector emissions. Electric product growth will continue to drive additional reductions well beyond agency estimates.

The U.S. EPA Has Sole Jurisdiction for Small Engine Emission Regulations

Manufacturers of outdoor power equipment cannot build, and dealers and retailers cannot stock and sell specialized, niche products for each individual city or state. Consequently, Federal law requires that states comply with one set of emission standards. In doing so, the federal Clean Air Act (CAA) Section 209(e) (42 U.S.C. Section 7401), the U.S. Environmental Protection Agency’s (EPA’s) implementing regulations, and 40 C.F.R. Part 1074, prohibit states or any political subdivisions from adopting or attempting to enforce any standard or other requirement applicable to spark ignition engines smaller than 50 horsepower – Including adoption of California small off-road engine emission regulations for which EPA has authorized a waiver of preemption. In short, EPA could not approve the waiver of preemption required under Section 209(e) to allow Rhode Island to set unique or separate emission standards or requirements for small-engine powered lawn and garden equipment.

In response to proposed legislation to ban leaf blowers in Hawaii, the Hawaii Attorney General recognized the EPA’s authority under the CAA, submitting comments noting “prohibiting the sale, offer for sale, or operation of gasoline-powered leaf blowers may be subject to challenge as violating the Supremacy Clause of the U.S. Constitution. See Annex B – Hawaii AG Response to HI SB 54.

A Robust Enforcement Program is Necessary

A robust enforcement program for RI HB 5549 will be necessary to ensure fairness to compliant manufacturers, retailers, and end-users. Resources will be needed at state and local levels to assure compliance with and to enforce the proposed ban. Amid a patchwork quilt of state regulations, such an enforcement and compliance program will undoubtedly be cost and resource intensive, and in OPEI’s opinion unworkable.

For these reasons, OPEI opposes RI HB 5549.

Please do not hesitate to contact us directly if you have questions or require additional information regarding these concerns.

Respectfully submitted,

Greg Knott
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ANNEX A – Outdoor Power Equipment Facts

The Outdoor Power Equipment Industry is a Leader in Power Technology and Innovation:

- The outdoor power equipment (OPE) industry has been manufacturing electric-powered equipment for more than 70 years.
- Electric equipment is a top driver of OPE demand and future industry growth.
- In 2022 shipped products were predominantly battery-electric powered:
 - 60% of lawn and garden OPE shipped were electric;
 - 65% of handheld products shipped were electric;
 - 43% of walk-behind mowers shipped were electric – Up from 5% in 2014.
- OPEI members are focused on growing the electric market through innovation, especially for landscape, construction and emergency respondent needs.
- However, there is currently no “one-size-fits-all” option for the wide portfolio of OPE products and uses.
 - There is wide range OPE products – Electric power source options do not exist for all categories of equipment.
 - Electric equipment is widely accepted for residential lawn and garden applications, however, further advancements are necessary for electric equipment to deliver the performance needed and a cost competitive with gas-powered equipment in many commercial applications.

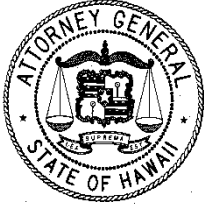
OPEI and Industry Overview:

- OPEI represents 110 industry manufacturers – Most original equipment manufacturers produce *both* gas and electric-powered equipment.
- OPEI members and their suppliers contribute \$16B to the U.S. GDP annually.
- OPE manufacturers employ 150,000 U.S. workers.
- The industry provides tools for a national network of nearly 8M landscape and construction professionals, many of which are sole proprietors.
- OPE is ubiquitous in American households and businesses, with an estimated 40M products sold annually and a total in-service fleet exceeding 250 million.
- OPEI members have a long history of consumer safety and environmental protection through standards development and government engagement.

OPE Industry Principles on ZEE Policymaking

- A patchwork quilt approach by state / municipality is unworkable for original equipment manufacturers and will result in market disruptions.
- The U.S. EPA retains sole jurisdiction over OPE emission regulations.
- Government should rely on sound, real-world data and science for equipment policy, with particular focus on:
 - The wide range of outdoor power equipment in the market
 - Various user types and respective performance needs
 - Product and infrastructure (both government and business) related costs
 - Supply chain challenges
 - Manufacturing, disposal and waste impacts of different technologies

ANNEX B – Hawaii AG Response to HI SB 54



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 54, RELATING TO GASOLINE-POWERED LEAF BLOWERS.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Thursday, February 9, 2023 **TIME:** 9:31 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lyle T. Leonard, Deputy Attorney General

Chair Keohokalole and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

The purpose of this bill is to prohibit the sale, offer for sale, or operation of gasoline-powered leaf blowers because of their exhaust and sound emissions.

Prohibiting the sale, offer for sale, or operation of gasoline-powered leaf blowers may be subject to challenge as violating the Supremacy Clause of the U.S. Constitution. Preemption exists when federal law so thoroughly occupies a legislative field "as to make reasonable the inference that Congress left no room for the States to supplement it." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (citing *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982)). "Field preemption" occurs when Congress indicates in some manner an intent to occupy a given field to the exclusion of state law. *Cipollone*, 505 U.S. at 516.

Regarding exhaust emissions from gasoline-powered leaf blowers, Congress has explicitly preempted regulation in this area through the federal Clean Air Act (CAA) which states:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles

42 U.S.C. § 7543(e)(1).

Nonroad engines are defined in part as an internal combustion engine that "is (or will be) used in or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers)." 40 CFR § 1068.30. Gasoline-powered leaf blowers may be deemed a nonroad engine. The bill's mandate to prohibit the sale, offer for sale, or operation of gasoline-powered leaf blowers could be deemed an emissions standard, which is preempted by the CAA. See *Am. Auto Mfrs. Ass'n v. Cahill*, 152 F.3d 196, 199-200 (2d. Cir. 1998).

The bill mentions California's standards, which are unique. Hawaii meets an air quality designation known as "attainment" and is not currently eligible to adopt California's standards. See 40 CFR § 1074.110 (requiring states to have a "Plan under Part D" or a "nonattainment" plan to adopt California standards).

Hawaii, however, is not precluded from regulating the use and operation of leaf blowers, including hours of operation, altogether. See Appendix A to Subpart A of Part 1074. If it is the intent of this measure to reduce usage of gasoline-powered leaf blowers due to noise concerns, it is possible to restrict the time and location of usage. The Department is happy to work with the Legislature to amend the bill to best effectuate its intent.

Thank you for the opportunity to provide comments.