American Petroleum Institute
Northeast Region

May 21, 2026

Senate Committee on Finance
State House, Room 211
82 Smith Street
Providence, Rhode Island 02903

IN RE: Recommendation to Take No Further Action on S.2024 "Rhode Island Climate Superfund Act of 2026"

Dear Chair DiPalma, First Vice-Chair Ciccone, Second Vice-Chair Felag, 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 S.2024**. 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, API and the U.S. Chamber of Commerce have filed complaints in federal court challenging the legality of similar legislation passed in Vermont and New York.[2] API strongly encourages Rhode Island 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. Moreover, **API respectfully suggests and recommends lawmakers refrain from committing resources to legislation that is effectively already being litigated**.[3] For the reasons articulated below, API respectfully requests that **the committee take no further action on the bill.**

Retroactive Law Making

Generally speaking, legislation should apply prospectively to ensure notice to the regulated community and protect due process rights and interests. The bill imposes strict liability on actions that occurred over a quarter century 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 2000) is inappropriate, and furthermore, the yet to be determined amount of potential liability could make the law

[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").

"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.

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 extraction and refining industries 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

The bill incorrectly suggests that emissions by companies over an extended number of years can be retroactively determined with great accuracy. At best the state can only estimate emissions; and these estimates may be 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 decades and will continue to be relied upon for decades to come. Not only were these fuels a necessity for individuals and businesses (including the Rhode Island airport), but also for federal, state and local governments as well. If S.2024 were to pass, it would impose a fee on the very goods the state deemed as critical and necessary for public safety reasons. In fact the state has approved the siting and operation of six marine import terminals in East Providence, Providence, and Tiverton with a total refined products storage capacity of more than 210 million gallons,[5] as well as three liquefied natural gas facilities with a total storage capacity of 27.5 million gallons;[6] nine natural gas- and one petroleum-fired power plant; over 3,200 miles of natural gas pipeline; 312 retail gasoline stations;[7] and nearly 13,600 lane miles of public roads using thousands of tons of asphalt made from processed crude oil.[8] [9]

This Bill Runs Contrary to Prior Positions Taken By Other Legislatures

S.2024 contradicts and runs afoul to previous laws and policies supported by the General Assembly. Rhode Island's legislature is being asked to support this bill despite previously declaring that a shortage of refined petroleum products "will create severe economic hardship and emergencies" and will "constitute a threat to the public health, safety and welfare."[10] In fact, the state has identified gas and related support facilities that service multiple customers as critical infrastructure.[11] Unfortunately, the state is now seeking to retroactively impose fees on fuels and related infrastructure the state has valued.

---

[5] *See* http://www.planning.ri.gov/documents/LU/energy/energy15.pdf
[6] *See* https://www.energy.gov/sites/default/files/2021-09/Rhode%20Island%20Energy%20Sector%20Risk%20Profile.pdf.
[7] *See* *https://www.eia.gov/state/analysis.php?sid=RI*.
[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] Additionally, Rhode Islanders consumed nearly 35 billion gallons of petroleum products, more than 3 trillion cubic feet of natural gas, and 54 thousand tons of coal from 1990 to 2022. *See* www.eia.gov/state/seds/data.php?incfile=/state/seds/sep_use/total/use_tot_RIa.html&sid=RI.
[10] See *Petroleum Allocation Act* at 42 R.I. Gen. Laws Ann. § 42-81-2 (West).
[11] 5 R.I. Gen. Laws Ann. § 5-94-2 (West).

No Nexus Between Fine and Actual Responsibility

The 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 bill 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 simply extracted or refined them in order to meet the needs and demands of the people. Furthermore, the 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

The bill potentially places an unfair burden on domestic companies. The bill envisions the liability will be proportionately divided by so-called "responsible parties." As written, "responsible party" excludes "any person who 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 Rhode Island, which would mean that domestic companies may shoulder even greater financial responsibility, despite the global nature of greenhouse gas emissions.

Preemption

The payments required by the bill are preempted by federal law. Greenhouse gas emissions are global in nature and subject to numerous federal statutory regimes. 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 no further action** be taken by the committee. Thank you for your time, effort and consideration.

Michael S. Giaimo,
American Petroleum Institute, Northeast Region Director
Phone: 603.777.0467 and email: giaimom@api.org.

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