



States Looking for Free Lunch with Climate Superfund Laws

by Dr. Jonathan Klick

Climate change activists are sweet-talking state legislatures into passing laws that effectively impose retroactive fines on oil companies and other energy producers for having provided a completely legal and highly demanded set of products. In selling these laws to the public, political supporters insist they will not cost voters a thing.

Advocates present the laws as a righteous way to claw back abatement costs from the dastardly oil companies without any adverse economic consequences to the public, but sound economics tells us that free lunches are always costly.

At least eleven States are looking to join Vermont and New York by passing these so-called "climate superfund" or polluter pays laws. In New York's case, oil companies that are responsible for over one billion metric tons of greenhouse gases (GHG) over the period 2000-2024 will be collectively charged \$75 billion across 25 years, provided the company has "sufficient connection with the state to satisfy the nexus requirements of the United States Constitution."

These policies have been dubbed "climate superfund" statutes to draw parallels with the federal Comprehensive Environmental Response, Compensation, and Liability Act's (CERCLA) designation of liability for release of hazardous substances which also created a "superfund" to finance site cleanup operations.

Notably, CERCLA does not cover GHGs. One strong reason for this is the highly non-local effects of these gases. That is, while virtually all the harms addressed by CERCLA are the result of actions undertaken within the jurisdiction of the US, climate change effects arise from the global aggregate of GHGs, which primarily originate well outside the States passing their own laws. Many, if not most, originating parties sit safely beyond the reach of the state legislature. The operative distinction between those fined and not fined is not whether a company played a part in creating GHG emissions, but, rather, whether they were unlucky enough to have served customers in New York or Vermont.

In a classic instance of wanting their cake and eating it too, state officials feared these fines would raise prices for New York consumers (who apparently played no role in creating GHGs through their use of petroleum products). Right on cue, Nobel Prize winning economist Joseph Stiglitz assured everyone that "the assessment generated by the Climate Superfund is based on past pollution and therefore does not affect today's marginal cost of production, there

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should be no shifting of costs to consumers” in a letter to NY Governor Kathy Hochul.

Given his [history](#) of cheerleading for Venezuela (one of OPEC’s founding nations) under its now deceased dictator Hugo Chavez, Stiglitz perhaps knows a thing or two about oil and gas markets. The econ-101 rationale he provides is that firms maximize profits by setting prices as a function of marginal, not fixed, costs and, since the state fines would be fixed in that they’re based on a company’s past production, there will be no pass-through to consumers. Further, he notes that if firms attempt to make up the fines through higher prices, competition from other producers will foreclose that option. Essentially, he claims that fat-cat shareholders of ExxonMobil, Chevron, and the other oil companies will be the only ones stuck with the bill. In his letter, Stiglitz implies there’s no harm here, as these companies make billions in annual profits.

Even taking this claim at face value, there are surely many oil company shareholders among New York’s hoi polloi. For example, as of March 2024, the New York State and Local Retirement system held almost 5 million shares of ExxonMobil, along with 2.5 million shares of Chevron, to say nothing of indirect holdings through index funds and the like or the substantial debt holdings they have in the industry as well. The story is similar for the New York State Teachers’ Retirement System with almost 4 million shares of ExxonMobil and about 1.5 million shares of Chevron as of March 2025. The teacher’s fund too carries additional exposure to the industry through indirect holdings and debt. This is in addition to the millions of New York residents who hold these companies in their retirement accounts.

That said, Stiglitz’s application of the microeconomics textbook model works better on a blackboard than it does in the real world. Even putting aside the long-run pricing effects that can arise when fixed costs go up, it is foolhardy to think marginal costs are not affected. These laws put oil producers on notice that states will be charging fines on production going forward. Although the current New York law covers production from 2000-2024, the blindingly obvious expectation is that this period will be expanded. Higher expected marginal costs mean higher prices for consumers today. Despite Stiglitz’s claims to the contrary, climate superfund laws will not be cost-free to consumers.

Additionally, the state laws will chill competition by driving out existing companies. These laws will discourage new firms from doing business in these States; otherwise, they will be subject to these burdensome liability regimes. Consumers will have fewer energy options at higher costs.

Politicians excel in promising free lunches. The introductory economics lesson that has never been falsified is that those free lunches always come with a cost.