Memorandum

Toxic tort law has long recognized that statutes of limitations should be modified to accommodate injuries caused by toxic chemicals like PFAS, including property damages. States have adopted "discovery" rules that permit civil remedies when individuals or property owners were unaware of their exposure to a toxic pollutant like PFAS.

Other New England states also have legislative or judicial "discovery" rules to accommodate toxic injuries to people and property.

In particular, Connecticut has adopted exceptions for the state's statute of limitation that apply to risks similar to those being considered by Maine's legislature, including property damages caused by hazardous chemicals substances or pollutants

In Connecticut, "no action to recover damages for personal injury, death or property damage caused by exposure to a hazardous chemical substance or mixture or hazardous pollutant released into the environment shall be brought but within two years from the date when the injury or damage complained of is discovered or in the exercise of reasonable care should have been discovered."[1]

Other examples from New England:

Rhode Island: the statute of limitations begins to run when the "person discovers, or with reasonable diligence should have discovered, the wrongful conduct of the manufacturer."[2]

Massachusetts: "Actions by persons other than the commonwealth to recover for damage to real or personal property shall be commenced within three years after the date that the person seeking recovery first suffers the damage or within three years after the date the person seeking recovery of such damage discovers or reasonably should have discovered that the person against whom the action is being brought is a person liable pursuant to this chapter for the release or threat of release that caused the damage, whichever is later."[3]

New Hampshire: Actions shall be brought within 3 years of the date when the plaintiff "possessed actual knowledge of the act, omission, or violation complained of, unless the state demonstrates that the delay was not unreasonable or prejudicial to the defendant, or that the detriment to the public caused by the delay outweighs the detriment to defendant."[4]

Vermont: "The discovery rule provides that the limitations clock does not begin running until the plaintiff knows or should know of the injury and cause."[5]

Examples from other states:

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[1] https://www.cga.ct.gov/current/pub/chap_926.htm#sec_52-577c
[2] *See DiPetrillo v. Dow Chem. Co.*, 729 A.2d 677 (R.I. 1999
[3] https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21e/Section11a
[4] H. Rev. Stat. Ann. § 508:4
[5] *See e.g. State v. Atlantic Richfield Company*, 2016 VT 61

Other states with similar "discovery" rules include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Texas, Tennessee, Washington, Wisconsin and Wyoming.[6]

The State of Ohio has adopted exceptions to the state's statute of limitations that address risks similar to those being consider by Maine's legislature.

In particular, Ohio's exceptions address the risks posed by exposure to hazardous or toxic chemicals, including chromium, chemical defoliants, certain estrogens, and asbestos.

In each of these cases, the statute of limitation in Ohio "accrues upon the date on which the plaintiff is informed by competent medical authority that the plaintiff has an injury that is related to the exposure, or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the plaintiff has an injury that is related to the exposure, whichever date occurs first."

In Alabama, where thousands of acres of Alabama farmland have been damaged by biosolids contaminated with PFAS,[7] state law also exempts property owners damaged by toxic substances from the state's statute of limitations.[8]

Specifically, the state law says:

> *"Where the personal injury, including personal injury resulting in death, or property damage (i) either is latent or by its nature is not discoverable in the exercise of reasonable diligence at the time of its occurrence, and (ii) is the result of ingestion of or exposure* ***to some toxic or harmful or injury-producing substance****, element or particle, including radiation, over a period of time as opposed to resulting from a sudden and*

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[6] *See Pedersen v. Zielski*, 822 P.2d 903 (Alaska 1991); *Burns v. Jaquays Mining Corp.*, 156 Ariz. 375 (Ariz. Ct. App. 1987); *State v. Diamond Lakes Oil Co.*, 347 Ark. 618 (Ark. 2002); Cal. Civ. Proc. Code § 340.8; Colo. Rev. Stat. § 13-80-108; *Brown v. E.I. duPont de Nemours & Co.*, 820 A.2d 362 (Del. 2003); *King v. Seitzingers, Inc.*, 160 Ga. Ct. App. 318 (1981); *Hays v. City & County of Honolulu*, 81 Haw. 391 (1996); *Nolan v. Johns-Manville Asbestos*, 421 N.E. 2d 864 (Ill. 1981); *Wehling v. Citizens Nat'l Bank*, 586 N.E. 2d 840 (Ind. 1992); *Franzen v. Deere & Co.*, 377 N.W.2d 660 (Iowa 1985); Kan. Stat. Ann. § 60-513; *Louisville Trust Co. v. Johns-Manville Products Corp.*, 580 S.W. 2d 497 (Ky. 1979); *Duffy v. CBS Corp.*, 182 A.3d 166 (Md. 2018);); Mo. Rev. Stat. § 516.100; *Vispisiano v. Ashland Chemical Co*., 527 A.2d 66 (N.J. 1987); *Gerke v. Romero*, 237 P.3d 111 (N.M. 2010); New York, N.Y. C.P.L.R. 214-C; N.C. Gen. Stat. § 1-52 (16); *BASF Corp. v. Symington*, 512 N.W.2d 692 (N.D. 1994); Ohio Rev. Code. Ann. § 2305.10(B)(1); *Menkes v. 3M Co.*, 2018 U.S. Dist. LEXIS 84574 (E.D. Pa. May 21, 2018); S.C. Code Ann. § 15-3-535; *Wyatt v. ACandS, Inc.*, 910 S.W.2d 851 (Tenn. 1995); *Childs v. Haussecker*, 974 S.W.2d 31 (Tex. 1998); *Green v. A.P.C.*, 960 P.2d 912 (Wash. 1998); *Perrine v. E. I. du Pont de Nemours & Co.*, 694 S.E. 2d 815 (W. Va. 2010); *Stroh Die Casting Co. v. Monsanto Co.*, 502 N.W. 2d 132 (Wis. 1993); *Rawlinson v. Cheyenne Bd. of Pub. Utils*, 2001 WY 6, 17 P.3d 13 (Wyo. 2001).

[7] Application of WWTP Biosolids and Resulting Perfluorinated Compound Contamination of Surface and Well Water in Decatur, Alabama, in Environmental Science & Technology

[8] In Alabama, actions must commence within one year of the date the damage should have been discovered by property owner. *See* https://law.justia.com/codes/alabama/2014/title-6/chapter-5/section-6-5-502/

fortuitous trauma, then, in that event, the product liability action claiming damages for such personal injury, or property damage must be commenced within one year from the date such personal injury or property damage is or in the exercise of reasonable diligence should have been discovered by the plaintiff or the plaintiff's decedent, and in such cases each of the elements of the product liability action shall be deemed to accrue ***at the time the personal injury is or in the exercise of reasonable diligence should have been discovered*** *by the plaintiff or the plaintiff's decedent;"(emphasis added)*

Other examples:

Alaska: The discovery rule under which the statute does not begin to run until the claimant discovers, or reasonably should have discovered, the existence of the elements essential to his cause of action.[9]

Colorado: a cause of action for injury to person, property, reputation, possession, relationship, or status shall be considered to accrue on the date both the injury and its cause are known or should have been known by the exercise of reasonable diligence.[10]

Kansas: The statute of limitations "shall not commence until the fact of injury becomes reasonably ascertainable to the injured party.[11]"

Missouri: "The cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained and is capable of ascertainment, and, if more than one item of damage, then the last item, so that all resulting damage may be recovered, and full and complete relief obtained."[12]

Montana: the statute of limitations does not begin to run "until the facts constituting the claim have been discovered or, in the exercise of due diligence, should have been discovered."[13]

Mississippi: the "cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury."[14]

North Carolina: the "cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs.[15]"

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[9] See also *Mine Safety Appliances Co. v. Stiles,* 756 P.2d 288, 291 (Alaska 1988).
[10] Colo. Rev. Stat. § 13-80-108
[11] Kan. Stat. Ann. § 60-513
[12] Mo. Rev. Stat. § 516.100
[13] https://leg.mt.gov/bills/mca/27/2/27-2-102.htm#:~:text=(a)%20a%20claim%20or%20cause,when%20the%20complaint%20is%20filed.
[14] Miss. Code Ann. § 15-1-49(2)
[15] N.C. Gen. Stat. § 1-52 (16)

South Carolina: All actions "must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."[16]

Texas: The accrual of a cause of action to "be deferred if the nature of the injury incurred is inherently undiscoverable and the evidence of injury is objectively verifiable."[17]

Wisconsin: "the discovery rule dictates that a cause of action does not accrue until the nature of the injury and the cause or at least a relationship between the event and injury is or ought to have been known to the claimant."[18]

[16] S.C. Code Ann. § 15-3-535
[17] *See Childs v. Haussecker*, 974 S.W.2d 31 (Tex. 1998)
[18] *See Stroh Die Casting Co. v. Monsanto Co.*, 502 N.W. 2d 132 (Wis. 1993)