

Testimony of Scott Faber
In Support of LD 2160:

“An Act Relating to the Statute of Limitations for Injuries or Harm Resulting from Perfluoroalkyl and Polyfluoroalkyl Substances”

Thank you for the opportunity to testify in support of [LD2160](#). My name is Scott Faber, and I am an Adjunct Professor of Law at Georgetown University Law Center, where I teach food, farm and chemical safety law, and I am Senior Vice President of Government Affairs for the Environmental Working Group (EWG), which has sought to address the risks posed by PFAS contamination for two decades. Today, I am testifying on my own behalf and my views do not represent the views of Georgetown or EWG.

While the health risks of the toxic fluorinated chemicals known as PFAS are well understood, the sources and scope of PFAS contamination remain largely unknown. Manufacturers who produce or use PFAS do not yet have to report PFAS releases into the air and water.¹ What’s more, water utilities are not yet required to test for PFAS in finished tap water,² food companies are not yet required to test for the presence of PFAS in food, and most wastewater utilities are not yet required to test for the presence of PFAS in biosolids or to notify landowners that PFAS may be present.³

Until EWG first sought and published EPA and DOD records of PFAS in surface water and ground water in recent years, PFAS detections were largely unknown, even to state and federal regulators. As states increasingly conduct their own testing, the scope of PFAS contamination will become clearer. But while it’s likely that most of us are consuming food and water contaminated with PFAS, the true scope of the PFAS pollution crisis remains largely a mystery. As a result, few landowners are aware that their land or groundwater may be contaminated with PFAS.

Toxic tort law has long recognized that statutes of limitations should be modified to accommodate injuries caused by toxic chemicals like PFAS, including property

¹ Industrial discharges will soon be required to report releases of 172 PFAS. See <https://www.epa.gov/toxics-release-inventory-tri-program/list-pfas-added-tri-ndaa>

² Many water utilities were required to test for detectable PFAS under the third Unregulated Contaminant Monitoring Rule. See <https://www.epa.gov/dwucmr/third-unregulated-contaminant-monitoring-rule>

³ See 40 CFR 503. But see also <https://www1.maine.gov/dep/news/news.html?id=1186570>

damages. Unlike Maine, most jurisdictions have addressed the fact that injuries may not manifest for many years after exposure to a toxic substance.

In *Urie v. Thompson*,⁴ the Supreme Court in 1949 ruled it would be unfair to apply the statute of limitations to a silicosis compensation claim when the injured party had no reason to know of the illness. When Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA, in 1980, Congress created an exception to state statutes of limitation in the rare case when a CERCLA cause of action is available. In such cases, the state statute of limitations does not begin to run until the plaintiff knew or reasonably should have known that the toxic contaminant caused or contributed to the property damage.⁵

States have also adopted “discovery” rules that permit civil remedies when individuals or property owners were unaware of their exposure to a toxic pollutant like PFAS. For example, the state of Alabama, where thousands of acres of Alabama farmland have been damaged by biosolids contaminated with PFAS,⁶ state law exempts property owners damaged by toxic substances from the state’s statute of limitations.⁷ In 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.”⁸ In Mississippi, the “cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury.”⁹

Other New England states, including Rhode Island,¹⁰ New Hampshire,¹¹ Massachusetts,¹² Connecticut,¹³ and Vermont,¹⁴ also have legislative or judicial “discovery” rules to accommodate toxic injuries to people and property. Other states with similar “discovery” rules include Alaska, Arizona, Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas,

⁴ *Urie v. Thompson*, 337 U.S. 163

⁵ See 42 U.S.C. §§ 9658(a)(1), 9658(b)(4)(A).

⁶ Application of WWTP Biosolids and Resulting Perfluorinated Compound Contamination of Surface and Well Water in Decatur, Alabama, in [Environmental Science & Technology](#)

⁷ 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/>

⁸ [https://leg.mt.gov/bills/mca/27/2/27-2-102.htm#:~:text=\(a\)%20a%20claim%20or%20cause,when%20the%20complaint%20is%20filed.](https://leg.mt.gov/bills/mca/27/2/27-2-102.htm#:~:text=(a)%20a%20claim%20or%20cause,when%20the%20complaint%20is%20filed.)

⁹ Miss. Code Ann. § 15-1-49(2)

¹⁰ See *DiPetrillo v. Dow Chem. Co.*, 729 A.2d 677 (R.I. 1999);

¹¹ H. Rev. Stat. Ann. § 508:4

¹² See *Barnstable v. 3M Co.*, 2017 U.S. Dist. LEXIS 207414 (D. Mass. Dec. 18, 2017)

¹³ Connecticut, Conn. Gen. Stat. § 52-577c

¹⁴ *State v. Atlantic Richfield Company*, 2016 VT 61

Kentucky, Maryland, Missouri, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Texas, Tennessee, Washington, Wisconsin and Wyoming.¹⁵

PFAS contaminate the blood and organs of nearly every living being, and experts estimate that 25 percent of Americans have troubling levels of PFAS in our blood serum. PFAS are associated with serious health effects, even at very low amounts. In particular, PFAS exposure been linked to kidney and testicular cancer, preeclampsia, ulcerative colitis, thyroid disease, high cholesterol, reproductive and developmental harm, and damage to the immune system.¹⁶

PFAS contamination can also cause devastating economic injuries to property owners. In many cases, the sources of PFAS contamination remain unknown. As such, equity demands that traditional statutes of limitations should not apply to the sorts of economic injuries caused by PFAS contamination.

I urge you to vote “ought to pass” on LD 2160. Thank you for the opportunity to testify.

¹⁵ 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; *Vispiano 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).

¹⁶ See Testimony of Scott Faber before the House Committee on Appropriations, March 11, 2020, available at <https://docs.house.gov/meetings/AP/AP18/20200311/110704/HHRG-116-AP18-Wstate-FaberS-20200311.pdf>