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December 5, 2019

**Re: Frederick Stone, Laura Stone and Stoneridge Farms, Inc. v. 3M
Company, et als.
Our File No.: 27926-01**

Dear Members of the PFAS Task Force:

We submit the following commentary to the current draft of “Managing PFAS in Maine: Final Report from the Maine PFAS Task Force.”

In November 2016, Fred and Laura Stone, owners of the Stoneridge Farm in Arundel, were notified by the Kennebunk, Kennebunkport, and Wells Water District (KKWD) that one of the wells located on the farm was contaminated with PFAS. Stoneridge Farm is a local dairy farm owned and operated by Fred Stone and his family for over 100 years. The discovery by KKWD led to a series of additional tests on the farm which revealed very high levels of PFOA and PFOS in the soil, water, and milk, which have been attributed to the land-spreading of industrial and municipal sludge at Stoneridge Farm from the early 1980s until the early 2000s. The Stones voluntarily reported their findings to their milk distributor, Oakhurst. As a result of PFAS contamination, the Stones have incurred thousands of dollars for testing, installation of a carbon filtration system, and other remediation efforts. The Stones continue to suffer as they are no longer able to continue their dairy business.

Under current Maine law, many individuals, business owners, and municipalities affected by PFAS contamination, including the Stone family, may be prevented from seeking a civil remedy. As you are aware, PFAS chemicals were widely produced and distributed for decades before their harmful effects became generally known. As a result, PFAS contamination due to land-spreading, landfill leachate, the use of fire-fighting foam, and other sources may have occurred decades before

any effected individuals became aware of the contamination or aware that contamination was harmful. However, Maine's current statute of limitations for personal injury and damage to real property is limited to six years. *14 MRSA § 752*. While there are some exceptions to this general rule, there is a risk that individuals who want to bring civil claims for PFAS contamination may encounter significant legal challenges from defendants claiming that the statute of limitations has expired.

We respectfully request that the Task Force include a recommendation in its final report that the Legislature pass legislation clarifying that the statute of limitations period for those who seek a civil remedy for harm or injury caused by PFAS contamination will not begin to run until the PFAS contamination has been discovered. This "discovery rule" will enable individuals, business owners, and municipalities to pursue civil remedies caused by contamination or exposure to PFAS chemicals that might otherwise have been barred, where such chemicals or their effects were unknown or undisclosed to the claimant for many years. (See proposed language, attached as Exhibit A).

Maine is currently in the substantial minority of states that do not have some type of "discovery rule" that applies in toxic tort cases. At least thirty-eight states recognize a discovery rule in cases where people or property are injured by substances with latent harmful effects, such as PFAS.¹

Other states have taken steps to combat PFAS contamination through legislation that modifies the statute of limitations for civil actions. New York recently passed legislation to address the well-publicized PFAS contamination in Hoosick Falls,

¹ The States which recognize a "discovery rule" for toxic torts include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

New York. That legislation allows individuals additional time to bring suit. (See *New York CPLR § 214-F*, attached as Exhibit B).²

The Task Force has already found that:

*The State of Maine is expending significant funds to investigate and control PFAS exposures for Maine citizens, and substantial additional funding will be needed to continue this work. **Municipalities, drinking water and wastewater utility districts, farmers, businesses, property owners and other Maine citizens are also bearing direct and indirect costs from PFAS contamination.*** “Managing PFAS in Maine: Final Report from the Maine PFAS Task Force-DRAFT” p. 15 (emphasis added).

We have already seen businesses and municipalities struggle with the difficulties of remediation and other costs as a result of the State-mandated testing of wastewater treatment plant sludge. If the additional testing proposed in this Task Force’s draft recommendations is enacted into law, many “municipalities, drinking water and wastewater utility districts, farmers, businesses, property owners and other Maine citizens” likely will discover that their land and businesses have been adversely impacted by PFAS contamination. Just as Fred and Laura Stone have experienced, these effected parties may incur substantial personal and financial hardships and losses.

A “discovery rule” will enable these effected parties the right to seek a private, civil remedy. Such a rule will provide no guaranty of success, as all claimants will still be required to prove the underlying case. That is, that some other party was responsible for the contamination; that the contamination caused harm or injury; and the extent of the damages. Should a claimant be able to satisfy the burden of proof on these issues, however, a private, civil remedy will, quite appropriately,

² The Hoosick Falls situation differs from the Stone property and other contamination cases in Maine in that it involves discharge from a single point-source, industrial textile plant, which directly impacted those in the immediate vicinity of the plant. Accordingly, the legislation adopted in New York which was well tailored to address that particular situation would not necessarily be appropriate to address issues in Maine which appear to be related to more diffuse areas of contamination from spreading of sludge.

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shift the costs of paying for at least some of the harm away from the effected individuals and Maine taxpayers, to the companies that manufactured, promoted, distributed and profited from the sale of PFAS chemicals.

Without a discovery rule, effected individuals, businesses and municipalities will be left, unfairly, to bear the potentially devastating losses to their property and businesses, costs of remediation and impact on their personal health. Those who reaped enormous benefits and profits from the production and sale of PFAS chemicals—all while concealing the known “forever” properties of these chemicals and their risks to human and animal health—will seek refuge behind Maine’s current six-year statute of limitations period in order to avoid taking any legal responsibility for the harm they have caused.

Very truly yours,

A handwritten signature in cursive script, appearing to read "S A Faunce".

Susan A. Faunce

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EXHIBIT A

A cause of action arising out of any harm or injury (to person, property or otherwise) caused by any per- or polyfluoroalkyl substance (PFAS) shall accrue when the plaintiff discovers such harm or injury.

Statement of Purpose:

Per- and polyfluoroalkyl substances (PFAS) are synthetic chemicals that have been manufactured, sold and used as additives in a wide range of industrial processes and consumer products. These chemicals have made their way through a number of channels into the environment, causing contamination of drinking water, land, livestock, other agricultural products and human blood and bodily organ tissues. Exposure to PFAS chemicals at certain levels has been found to be harmful to human health. PFAS chemicals have been called “forever” chemicals, because they persist in the environment and do not easily biodegrade. For many years, the properties and risks of PFAS chemicals were not known to the public. Extending the statute of limitations for actions arising out of PFAS contamination will provide appropriate access to civil claims for those who have been harmed or injured by these forever chemicals, but who only discovered the presence and/or risks of these forever chemicals after the expiration of other applicable limitations periods.

EXHIBIT B

New York CPLR § 214-F

Action to recover damages for personal injury caused by contact with or exposure to any substance or combination of substances found within an area designated as a superfund site. Notwithstanding any provision of law to the contrary, an action to recover personal damages for injury caused by contact with or exposure to any substance or combination of substances contained within an area designated as a superfund site pursuant to either Chapter 103 of Section 42 of the United States Code and/or section 27-1303 of the environmental conservation law, may be commenced by the plaintiff within the period allowed pursuant to section two hundred fourteen-c of this article or within three years of such designation of such an area as a superfund site, whichever is latest.