

# MASSIVE QUANTITIES OF PFAS WASTE GO UNREPORTED TO EPA

US Ecology failed to report more than 11 million pounds of PFAS-contaminated waste at its facility in Beatty, Nevada.



[Sharon Lerner](#)

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**A WASTE MANAGEMENT** company received millions of pounds of waste containing [toxic firefighting foam](#) and other materials contaminated with the [industrial chemicals](#) known as PFAS in 2020 yet did not report it to the Environmental Protection Agency, according to public records.

US Ecology, a hazardous waste company with dozens of sites around the U.S., received 11,638,732 pounds of waste containing the firefighting foam known as aqueous film-forming foam, or AFFF, at its facility in Beatty, Nevada, in 2020, according to public reports filed under the Resource Conservation and Recovery Act. The company has also received, and did not report, waste containing AFFF at its facilities in Robstown, Texas, and Grand View, Idaho. It is unclear whether the company's failure to disclose the waste violated the law or whether it was legal under a loophole in the reporting requirement.

US Ecology referred questions for this story to Republic Services, a waste management company that acquired US Ecology in May. Republic Services did not respond to multiple requests for comment.

AFFF — which has been used for decades by firefighters in the [military](#), airports, and other settings to put out jet fuel fires — contains PFAS chemicals that have been detected in drinking water across the country, as The Intercept was the first to [report](#) in 2015. (At the time, PFAS chemicals were known as “PFCs.”) PFAS have also been used to make [Teflon](#) and [hundreds](#) of other products, and some of the compounds have been shown to [cause health problems](#), including immune deficiency, cancer, liver damage, thyroid disease, decreased fertility, obesity, hormonal irregularities, and high cholesterol.

In 2019, as the public became increasingly aware of the health risks from widespread water and soil contamination from PFAS, Congress passed the National Defense Authorization Act, which required the EPA to add certain PFAS compounds to the Toxics Release Inventory, or TRI, a public EPA database to which companies must legally report if they have “manufactured, processed, or otherwise used” certain chemicals. There are now 180 [PFAS compounds](#) on the list.



The Environmental Protection Agency (EPA) building in Washington, D.C., U.S., April 27, 2021.

Photo: Stefani Reynolds/Bloomberg via Getty Images

# EPA Loopholes Violate Law

But there are critical gaps in the requirements for reporting PFAS-containing waste, as the massive amount of unreported waste at the Nevada facility suggests. There is a 100-pound reporting threshold for PFAS chemicals — a huge amount considering that even extremely low levels can cause health problems. The agency recently acknowledged the threat when it set [dramatically lower safety thresholds](#) for levels of PFOA, PFOS, and two other PFAS compounds in drinking water in June.

The EPA allows companies to avoid reporting PFAS to the TRI, through a loophole known as the “de minimis exemption,” if the individual PFAS compound makes up less than 1 percent of the total volume of the waste — or .1 percent, in the case of PFOA. But AFFF often contains multiple PFAS chemicals, and even low concentrations of a single compound can add up to extremely dangerous amounts — especially when large quantities are involved, as is the case with the 11 million pounds of AFFF-related waste at the US Ecology facility in Beatty, a small town northwest of Las Vegas.

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The loopholes undermine the intent of the Emergency Planning and Community Right-to-Know Act, according to advocates. The law, which was passed after a [leak of poisonous gas killed thousands](#) in Bhopal, India, enabled community members and environmental agencies to learn about chemical releases and pollution control measures reported by local companies. “Without it, it’s impossible for

regulators to have any idea where they might have hot spots of pollution, where they might have industries where they should be looking into wastewater permitting, where these chemicals are being burned, where you might need to put a fish advisory in place,” said Sonya Lunder, the senior toxics policy adviser at the Sierra Club.

According to Eve Gartner, the managing attorney for the Toxic Exposure and Health Program at Earthjustice, the exemptions violate the letter and spirit of the 1986 law. “The fact that EPA made PFAS subject to these exemptions was an illegal move that was first adopted during the Trump administration and has now unfortunately been replicated two times in the Biden administration,” said Gartner, who [sued the EPA](#) in January on behalf of the Sierra Club, the Union of Concerned Scientists, and the National PFAS Contamination Coalition over the issue. “This is not at all what Congress intended.”

In an emailed response to questions from The Intercept, EPA spokesperson Timothy Carroll wrote that the agency plans to address the problem soon. “This fall EPA plans to propose a rulemaking that would classify certain PFAS as ‘chemicals of special concern,’” Carroll wrote. “Such a rule, if finalized, would increase PFAS reporting under TRI by, among other changes, removing the eligibility of the de minimis exemption for PFAS for reporting and supplier notification purposes — reversing the approach set forth by the previous Administration. Until such a rule is finalized, EPA must continue to allow the de minimis exemption.”





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Over the past year, Gartner and her staff have compared filings under the Resource Conservation and Recovery Act, which requires reporting of hazardous waste, with records from the TRI. The results showed that several companies that reported receiving hazardous PFAS waste under the law did not report the waste to the TRI. US Ecology had the largest amount of unreported material, according to Earthjustice research, but other companies also reported significant amounts of the compounds under the RCRA and failed to disclose them to the TRI, which requires more detailed and in-depth information.

On August 3, the Sierra Club sent a [letter](#) to Republic Services inquiring about the unreported waste and providing records that it says suggest the company violated the TRI's reporting requirements.

Advocates fear that many other companies may be failing to report PFAS to the TRI. "These chemicals are circulating in products and in ways throughout the United States with almost no tracking and ability to know where they're going and where their final destination might be," said Lunder.



# Gentle Reminder

The EPA also may have noticed the discrepancy between the RCRA and TRI records, according to emails obtained through a public records request. In one sent to US Ecology in July 2021, a senior chemical engineer at the EPA named Velu Senthil wrote, “Your facility has not submitted any report for Hexafluoropropylene oxide dimer acid to TRI for reporting year 2020, but might have received Hexafluoropropylene oxide dimer acid in excess of processing / otherwise use reporting threshold amounts from one or more TRI facilities for waste management activities such as disposal and/or treatment. Please review and submit new report for Hexafluoropropylene oxide dimer acid for reporting year 2020, if required.”

The email referred to a PFAS compound that was added to the TRI’s list of reportable chemicals in 2020. According to the law, companies may be fined up to \$25,000 for each day they are in violation of the Emergency Planning and Community Right-to-Know Act. But Senthil was clear that he didn’t intend to punish them.

“This inquiry does not assume that there is a reporting error,” he wrote in the email. “Rather, EPA would like to provide you an opportunity to review and validate your submission(s) regarding the below observation(s) and make correction(s), if necessary.”



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The EPA has given companies the opportunity to review and change their TRI reporting before. As The Intercept [previously reported](#), under President Donald Trump the agency encouraged some facilities that emit ethylene oxide to lower the amounts of releases of the carcinogenic gas that were recorded in the TRI.

But according to Earthjustice's Gartner, the most alarming aspect of the EPA's communication with US Ecology about its TRI reporting

isn't the gentle tone or omission of any possible penalties but its failure to mention that the company had also apparently received and failed to report more than 11 million pounds of AFFF-containing waste in addition to the hexafluoropropylene oxide dimer acid.

"When you compare our letter to US Ecology with EPA's letter to US Ecology, they're night and day," said Gartner. "I'm glad they asked about that chemical if they thought maybe there was noncompliance for that chemical. But if EPA was looking at the same RCRA manifests that we were, why didn't they say anything to US Ecology about receiving 11.6 million pounds of PFAS-contaminated AFFF?"

Enforcement is key to making the TRI meaningful, according to Gartner. "Because if this law is just an empty promise to communities, it's really not going to do anything. The facilities have to know that if they don't comply, there will be enforcement," she said. "So they have to be honest about the level of PFAS they're manufacturing using and releasing."

The EPA's Carroll said the agency is doing all it can to address the PFAS problem."EPA is leveraging the full range of statutory authorities to confront the human health and ecological risks of PFAS," Carroll wrote. "These actions include a regulatory process to remove exemptions and exclusions that limit the quality of TRI data, expanded unregulated contaminant monitoring of 29 PFAS in more drinking water systems and at lower levels than ever before, and a commitment to use enforcement tools to better identify and address PFAS releases at facilities."



A sign warns visitors of the White Pine Trail of PFAS contamination in the Rogue River in Rockford, Michigan, U.S., Oct. 17, 2021.

Photo: Matthew Hatcher/Bloomberg via Getty Images

# Everyone Is Exposed

The discovery that huge amounts of PFAS-contaminated waste are escaping the EPA's chemical tracking system comes just as the agency has begun to acknowledge the extreme toxicity of these industrial chemicals. The drinking water advisories the agency set in June are just .004 parts per trillion for [PFOA](#) and .02 parts per trillion for PFOS — which are roughly 1,000 times lower than the previous standard and below the current limits of detection.

The updated advisories are likely to mean that everyone encounters chemicals at levels above what the EPA has deemed safe. “My guess is that there are no people on the planet who have that kind of low exposure,” said physician and environmental health researcher Philippe Grandjean.



Grandjean, who studies the immune effects of PFAS, has known for years that extremely low levels of the chemicals can be dangerous. In 2008, he noticed a study that showed that mice exposed to the chemicals had decreased immune function. And in 2012, he documented the same phenomenon in children living in the Faroe Islands.

By analyzing the blood of children before and after they were vaccinated for tetanus and diphtheria, he found that those with lower levels of PFAS had stronger responses to vaccinations. His findings, which were published in the peer-reviewed [Journal of the American Medical Association](#) in 2012, were striking: Among 7-year-olds who had been vaccinated against diphtheria, higher levels of PFAS were associated with lower levels of antibodies to those diseases. For each doubling of exposure to the chemicals, the risk that the vaccine didn't take increased two- to four-fold.

The following year, Grandjean [calculated](#) that the safety levels for both PFOS and PFOA should be less than 1 part per trillion. Yet until June — more than a decade after Grandjean's results were first published — the EPA's official safety threshold sat at 70 parts per trillion.

## Deadly Delay

A similar lag has plagued the EPA's handling of PFAS waste reporting, according to environmental advocates. The agency has taken more than a decade to begin tracking the chemicals around the country, even though it was clear [as far back as 1999](#) that some members of the class were toxic. By 2006, the EPA had helped craft a voluntary agreement with eight companies to phase out the use and production of PFOS and PFOA, two of the best-known PFAS compounds. At the time, the agency issued a [press release](#) stating that it was "initiating efforts to add PFOA and related chemicals to the Toxics Release Inventory." But PFOA and PFOS were first added to the list of reportable chemicals in [2020](#), more than a decade after the EPA said it had begun the process.

“The failure to list PFAS on the TRI as soon as EPA knew how toxic and persistent they were was a major failure that led to the loss of lives,” said Gartner, who pointed to the EPA’s 2006 announcement that it had begun the process of adding two PFAS compounds to the inventory. “That didn’t actually happen until 2020 — so 14 years of delay in giving communities information about releases of PFOA and PFOS into their drinking water. And that’s unacceptable.”