



Industry likely shirking EPA reporting requirements on ‘forever chemicals’

WASHINGTON – Today, the Environmental Protection Agency [released preliminary results](#) from its industrial toxics release reporting program that shockingly find just 38 facilities reported PFAS discharges, despite the existence of almost [30,000 potential dischargers](#).

Congress in the [National Defense Authorization Act for FY 2020](#) mandated that industrial dischargers for the first time report their annual releases of [172 of the toxic “forever chemicals” known as PFAS](#) to EPA’s Toxics Release Inventory, or TRI, which tracks annual industrial releases of chemicals.

A reporting loophole for de minimis concentrations of PFAS that the [Trump EPA wrote into the final rule](#) adding PFAS to the TRI is likely responsible for the discrepancy between reporting facilities and likely dischargers. A de minimis concentration is defined as less than 1 percent of a total mixture.

“The rampant, widespread pollution from forever chemicals is an urgent threat to public health and the environment,” said [Melanie Benesh](#), legislative attorney at EWG. “Knowing where facilities are releasing PFAS, and how much, will help the EPA take much-needed action to limit industrial discharges of PFAS.

“It’s shameful that so many facilities are hiding behind a reporting loophole to deprive the EPA and the public of critical information and shameful that the Trump EPA made it possible. The EPA must update its regulations immediately to close this loophole,” she added.

Industry can exploit the de minimis reporting loophole because of how the Trump EPA codified the new PFAS reporting requirements. Chemicals subject to TRI reporting are codified in two places in the Code of Federal Regulations. Most TRI chemicals have a default reporting threshold of 10,000 pounds and are listed at [40 CFR § 372.65](#). That means a facility must report if it releases more than 10,000 pounds of a TRI chemical into the environment over the course of year.

The EPA lists TRI chemicals that are of special concern at a separate place in the Code, [40 CFR § 372.28](#). These chemicals all have much lower reporting thresholds, ranging from 0.1 grams to 100 lbs.

Even though Congress gave PFAS a low reporting threshold of only 100 pounds, the EPA listed them in the Code with the chemicals that have higher default reporting thresholds of 10,000 pounds or more. The de minimis [exemption](#) is available only for releases of chemicals with the higher reporting thresholds codified at 40 CFR § 372.65, not the chemicals of special concern. Facilities using chemicals of special concern with lower thresholds must report all releases above the reporting threshold, regardless of concentration.

The de minimis exemption makes it possible to avoid TRI reporting by formulating mixtures so that the concentration of any single PFAS remains below 1 percent. Facilities can avoid reporting, even if they release one or a combination of PFAS chemicals in quantities significantly exceeding the 100 pound threshold, so long as each PFAS chemical makes up less than 1 percent of the total mixture.

PFAS are the only chemicals with a 100 pound reporting threshold subject to this reporting exemption. Because Congress clearly set this low reporting threshold for PFAS in the FY 2020 NDAA, and no other chemical with such a low reporting threshold can use the de minimis exemption, the EPA’s implementation is clearly at odds with Congress’s intent.

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