

## Recently Issued Report Emphasizes Importance of Accurate PFAS Reporting Under the Toxic Release Inventory Program

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Last week, the Environmental Working Group (EWG), an environmental watchdog group, published a list of over 2,500 facilities that it claims are “likely” releasing per- and polyfluoroalkyl substances (PFAS) into the environment. A review of the information used to populate the list, however, reveals that the hyperbolic headline is not based on verifiable data. Over 97% of the facilities identified on the list were included not because of a documented release or reported use of PFAS, but rather because the facility’s industrial classification is simply perceived by EWG to be a potential user of PFAS. While the methodology underlying the list released by EWG is dubious, EWG’s report highlights the heightened public scrutiny of PFAS. For businesses that may use or generate PFAS, such scrutiny heightens the need to accurately evaluate and quantify releases of PFAS under the Toxic Release Inventory (TRI) requirements imposed this calendar year.

Publically referred to as the “forever chemicals” due to their durable and long-lasting nature, PFAS are a class of over 5,000 chemicals used in a wide variety of commercial and industrial applications, including water-proofing, stain-proofing, fire resistance, and corrosion inhibition. PFAS have been associated with alleged adverse health effects including cancer, immune system dysfunction, liver damage, developmental and reproductive harm, and hormone disruption. PFAS have received substantial public and legislative attention as recent sampling brought to light their prevalence in the environment and drinking water sources nationwide. While federal regulation is sparse, with only a PFAS drinking water health advisory established, several states have adopted enforceable and stringent regulatory standards.

### Overview and Explanation of EWG’s Questionable Methodology

EWG included in its list both facilities that “are known to produce or use PFAS, *or that are suspected of using PFAS.*” Accordingly, EWG’s analysis should be measured against the fact that neither the use nor release of PFAS has been verified or documented by EWG at the vast majority of facilities included in the list. Information was derived from four sources, including two U.S. Environmental Protection Agency (EPA) online databases, a 2017 EPA memo, and a survey conducted by New York state. EWG identified only 28 facilities known to produce or use PFAS that were registered through EPA’s Chemical Data Reporting rule, and 28 through the New York Survey. Over 97% of the listed facilities were included based on their category of industrial operations referenced on EPA’s Enforcement and Compliance History Online (ECHO) database. From this generic description, which corresponds to an industry

classification code, EWG concluded that these facilities “could be using PFAS in their production processes.” ECHO is an online catalog of facilities subject to some form of regulatory oversight by EPA, such as a wastewater permit or air emissions report. Listing of a facility in ECHO is not indicative of a violation or enforcement action, and certainly does not document the confirmed use or release of PFAS.

## PFAS reporting under the Toxic Release Inventory

Setting aside the issues with the EWG list, including the prematurity of the list given the new TRI reporting requirements, it is reflective of increasing regulatory and public scrutiny regarding PFAS. The TRI is an annual reporting program under the federal Emergency Planning and Community Right-to-Know Act (EPCRA) that requires certain industries to report annually the quantity of chemicals released to the environment and/or managed through waste. Under the TRI rules, a “release” of a chemical means that it is emitted to the air or water, or placed in some type of land disposal. While EPA has not previously conducted a formal survey or required reporting of all U.S. facilities using PFAS, the National Defense Authorization Act signed into law on December 20, 2019 added 172 PFAS to the TRI chemical list. Under the new TRI reporting requirements, a business that manufactures, processes, or uses 100 pounds or more per year of any one of the 172 listed PFAS chemicals must include those chemicals in its annual TRI report due by July 1, 2021, for the 2020 calendar reporting year. That list is expected to grow as EPA evaluates other types of PFAS for possible inclusion in the TRI.

Accordingly, facilities that use PFAS or which suspect that PFAS are used in the production process should be aware of the increasing vigilance by both regulatory authorities and public interest groups. Having a comprehensive understanding of PFAS usage in a facility’s operations can help prepare for possible regulatory, citizen, and governmental inquiries and determine whether mitigating measures are necessary, such as transitioning to non-PFAS-containing chemicals if feasible. Furthermore, facilities seeking to comply with the new TRI reporting requirements may find measuring PFAS use and releases presents technical challenges, as reliable testing methodologies continue to lag behind the regulatory mandates and public pressure. Stakeholders should continue to follow regulatory developments and look out for supplemental guidance from EPA and state environmental agencies.

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