August 2, 2022

Sent via mail to Mr. Vander Ark and Ms. Ellingsen
Sent via email to all cc'd addressees

Jon Vander Ark
President and Chief Executive Officer
Republic Services, Inc.
18500 N. Allied Way
Phoenix, AZ 85054

RE: Potential Violations of Toxics Release Inventory Reporting Requirements for Per- and Polyfluoroalkyl Substances

Dear Mr. Vander Ark,

The undersigned organizations have identified information through public data from the Environmental Protection Agency ("EPA") that leads us to believe the following listed facilities operated by U.S. Ecology during calendar year 2020, and purchased by Republic Services earlier this year, may be in violation of reporting requirements to the Toxics Release Inventory ("TRI") for certain listed per- and polyfluoroalkyl substances ("PFAS")[1] for 2020.[2]

US Ecology Nevada Inc.[3]
TRI ID: 89003SCLGYHWY95
12 Miles S of Beatty on Hwy 95
Beatty, NV 89003

US Ecology Texas Inc.[4]
TRI ID: 78380TXSCLPETRO
3277 County Rd 69
Robstown, TX 78380

US Ecology Idaho Inc.[5]
TRI ID: 83624NVRSF1012M
20400 Lemley Rd
Grand View, ID 83624

---

[1] EPA, *Chemicals Added to the Toxics Release Inventory Pursuant to Section 7321 of the National Defense Authorization Act* (2022), https://www.epa.gov/system/files/documents/2022-03/tri_non-cbi_pfas_list_3_08_2022_final.pdf.
[2] Names and addresses reflect what is reported through EPA's TRI Facility Report.
[3] TRI Facility Report for U.S. Ecology Nevada, EPA https://enviro.epa.gov/facts/tri/ef-facilities/#/Facility/89003SCLGYHWY95 (last updated May 24, 2022).
[4] TRI Facility Report for U.S. Ecology Texas, EPA https://enviro.epa.gov/facts/tri/ef-facilities/#/Facility/78380TXSCLPETRO (last updated May 24, 2022).
[5] TRI Facility Report for U.S. Ecology Idaho, EPA https://enviro.epa.gov/facts/tri/ef-facilities/#/Facility/83624NVRSF1012M (last updated May 24, 2022).

ED_014358_00001351-00001

The undersigned represent members of communities in Texas, Nevada, and broadly across the United States. We are deeply concerned about PFAS contamination in the air we breathe, the water we drink, and the land we live on. We have undertaken multiple initiatives to advocate for our communities and hold industrial polluters accountable.

Under the Emergency Planning and Community Right-to-Know Act ("EPCRA"), facilities are required to report to the TRI if they "manufactured, processed, or otherwise used" a listed toxic chemical above an established threshold in a calendar year and if they fall within the Standard Industrial Classification Codes set forth in EPCRA. 42 U.S.C. § 11023(b)(1)(A). The facilities identified above are "covered" facilities subject to the TRI's requirements. Republic Services as the current owner of these facilities is responsible for their past violations of EPCRA. *See* 40 C.F.R. § 22.3 (defining "person" to include any corporation, and any trustee, assignee, receiver or legal successor thereof).

This year, EPA released its National PFAS Datasets as part of its PFAS Strategic Plan, in order to "evaluate . . . [PFAS] reporting, testing, and occurrences in communities."[6] The datasets can be viewed at this link: https://echo.epa.gov/tools/data-downloads/national-pfas-datasets. EPA's PFAS Transfers dataset, listed under the subsection titled "Transfers" and provided as an Excel spreadsheet,[7] derives its data on PFAS-containing hazardous waste from shipment manifests mandated by the Resource Conservation and Recovery Act.

According to this dataset, and as explained in more detail below, in 2020:

(1) The Republic Services/U.S. Ecology Beatty facility received 92,384 pounds of waste containing perfluorooctanesulfonic acid ("PFOS");
(2) The Republic Services/U.S. Ecology Beatty facility received 11,638,732 pounds of waste containing aqueous film forming foam ("AFFF"), which is known to contain PFOS, perfluorooctanoic acid ("PFOA"), and/or perfluorohexanesulfonic acid ("PFHxS")
(3) The Republic Services/U.S. Ecology Robstown facility received 243,322 pounds of waste containing PFOS and/or PFOA;
(4) The Republic Services/U.S. Ecology Robstown facility received 56,950 pounds of waste containing AFFF, which is known to contain PFOS, PFOA, and/or PFHxS; and
(5) The Republic Services/U.S. Ecology Grand View facility received 25,231 pounds of waste containing AFFF, which is known to contain PFOS, PFOA, and/or PFHxS.

[6] *National PFAS Datasets*, EPA, https://echo.epa.gov/tools/data-downloads/national-pfas-datasets (last updated Mar. 22, 2022).
[7] The downloaded file name is "PFAS_Transfers_E-manifest_01-03-2022.xlsx".

Beatty, Nevada Facility

(a) PFOS

The entries in EPA's PFAS Transfers spreadsheet that support our assertions for this facility and chemical are attached as **Exhibit A**.[8] The manifest entries state under Column A ("DATE_RECEIVED") that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B ("MANAGEMENT_METHOD_DESCRIPTION") that the PFOS-containing waste was landfilled, which qualifies as "otherwise us[ing]" a TRI-listed chemical. The manifest entries state under Column X ("NON_HAZ_WASTE_DESCRIPTION") that the waste received by this facility contained PFOS. Lastly, the quantities for this facility under Column AC ("QUANTITY_KG"), when converted to pounds, totaled 92,384 pounds for PFOS-containing waste.

Based on this manifest data, we believe that this facility may have "otherwise used" a listed PFAS above the 100-pound threshold. As of today, this facility did not submit a report to the TRI for PFOS for reporting year 2020, which it would have been legally obligated to do if it met the threshold.

(b) AFFF

We are concerned that this facility may have "otherwise used" PFAS present in AFFF that this facility received in its waste. The entries in EPA's PFAS Transfers spreadsheet that support our assertions for this facility and its mixtures are attached as **Exhibit B**. The manifest entries state under Column A ("DATE_RECEIVED") that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B ("MANAGEMENT_METHOD_DESCRIPTION") that the AFFF-containing waste was either landfilled, which qualifies as "otherwise us[ing]" a TRI-listed chemical, or recovered/reclaimed for reuse, which would require reporting if it were repackaged or disposed of at this facility. The manifest entries state under Column X ("NON_HAZ_WASTE_DESCRIPTION") that the waste received by this facility contained AFFF. It is well-known that AFFF contains PFOS, PFOA, and/or PFHxS.[9] Lastly, the quantities for this facility under Column AC ("QUANTITY_KG"), when converted to pounds, totaled 11,638,732 pounds for AFFF-containing waste.

We request that you provide us with the information detailed below pertaining to the 11.6 million pounds of AFFF-containing waste that the Republic Services/U.S. Ecology facility received.

---

[8] Attached Exhibits A through E display supporting manifest excerpts. Cells shaded in gray, in addition to their corresponding column and row headers, are duplicated from EPA's PFAS Transfers Excel spreadsheet. Conversions to pounds and total in pounds are our own calculations.

[9] *Firefighting Foams*, Interstate Tech. Regul. Council, https://pfas-1.itrcweb.org/3-firefighting-foams/ (last updated Dec. 2021).

(1) With respect to the volume of AFFF listed under management method "Other Recovery and Reclamation for Reuse", see Exhibit B, what volume of AFFF was repackaged or disposed of at the Beatty facility?
(2) With respect to the volume of AFFF that was landfilled, repackaged, or disposed of at the Beatty facility, we request the calculations (e.g., reasonable volume and concentration estimates of PFAS in this waste) in determining whether the landfilling, repackaging, or disposal of that AFFF triggered the 100-pound threshold for reporting. If the Republic Services/U.S. Ecology facility "otherwise used" this waste above this threshold, you are obligated to report this to the TRI.
(3) If any of the 11.6 million pounds of AFFF-containing waste was transferred off-site, we request information on where this waste was transferred to and what management method it underwent at the off-site facility.

Robstown, Texas Facility

(a) PFOS/PFOA

The entries in EPA's PFAS Transfers spreadsheet that support our assertions for this facility and its chemicals are attached as **Exhibit C**. The manifest entries state under Column A ("DATE_RECEIVED") that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B ("MANAGEMENT_METHOD_DESCRIPTION") that the PFAS-containing waste was landfilled, which qualifies as "otherwise us[ing]" a TRI-listed chemical. The manifest entries state under Column X ("NON_HAZ_WASTE_DESCRIPTION") that the waste received by this facility contained PFOS and/or PFOA. Lastly, the quantities for this facility under Column AC ("QUANTITY_KG"), when converted to pounds, totaled 243,322 pounds for PFOS- and/or PFOA-containing waste.

Based on this manifest data, we believe that this facility may have "otherwise used" a listed PFAS above the 100-pound threshold. As of today, this facility did not submit a report to the TRI for PFOS or PFOA for reporting year 2020, which it would have been legally obligated to do if it met the threshold.

(b) AFFF

We are concerned that this facility may have "otherwise used" PFAS present in AFFF that this facility received in its waste. The entries in EPA's PFAS Transfers spreadsheet that support our assertions for this facility and its mixtures are attached as **Exhibit D**. The manifest entries state under Column A ("DATE_RECEIVED") that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B ("MANAGEMENT_METHOD_DESCRIPTION") that the AFFF-containing waste was landfilled, which qualifies as "otherwise us[ing]" a TRI-listed chemical. The manifest entries state under Column X ("NON_HAZ_WASTE_DESCRIPTION") that the waste received by this facility contained AFFF. It is well-known that AFFF contains PFOS, PFOA, and/or PFHxS.

Lastly, the quantities for this facility under Column AC ("QUANTITY_KG"), when converted to pounds, totaled 56,950 pounds for AFFF-containing waste.[10]

We request your calculations (e.g., reasonable volume and concentration estimates of PFAS in this waste) in determining whether the 56.9 thousand pounds of waste this facility received triggered the 100-pound threshold for reporting. If the Republic Services/U.S. Ecology facility "otherwise used" this waste above this threshold, you are obligated to report this to the TRI.

Grand View, Idaho Facility

(a) AFFF

We are concerned that this facility may have "otherwise used" PFAS present in AFFF that this facility received in its waste. The entries in EPA's PFAS Transfers spreadsheet that support our assertions for this facility and its mixtures are attached as **Exhibit E**. The manifest entries state under Column A ("DATE_RECEIVED") that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B ("MANAGEMENT_METHOD_DESCRIPTION") that the PFAS-containing waste was landfilled, which qualifies as "otherwise us[ing]" a TRI-listed chemical. The manifest entries state under Column W ("DOT_PRINTED_INFORMATION") or Column X ("NON_HAZ_WASTE_DESCRIPTION") that the waste received by this facility contained AFFF. It is well-known that AFFF contains PFOS, PFOA, and/or PFHxS. Lastly, the quantities for this facility under Column AC ("QUANTITY_KG"), when converted to pounds, totaled 25,231 pounds for AFFF-containing waste.

We request your calculations (e.g., reasonable volume and concentration estimates of PFAS in this waste) in determining whether the 25.2 thousand pounds of waste received triggered the 100-pound threshold for reporting. If the Republic Services/U.S. Ecology facility "otherwise used" this waste above this threshold, you are obligated to report this to the TRI.

Duty to Report

EPA acknowledges that it and the public cannot determine the "amount or concentration of PFAS being transferred . . . from the manifest information,"[11] but the TRI requires covered facilities to rely on reasonable estimates where data are not available,[12] and EPA's reporting guidance states that a facility can "estimate" releases using "hazardous waste manifests."[13] At a minimum, as manifest records reflected the Republic Services/U.S. Ecology facilities' receipt of PFAS-containing waste, these facilities had a duty to determine whether or not that waste

---

[10] A handful of entries indicate that the waste was AFFF foam itself—not rinsate or wastewater.
[11] *National PFAS Datasets*, EPA, https://echo.epa.gov/tools/data-downloads/national-pfas-datasets (last updated Mar. 22, 2022).
[12] 42 U.S.C. § 11023(g)(2).
[13] *Question #609*, *GuideME*, EPA, https://ordspub.epa.gov/ords/guideme_ext/f?p=guideme:qa:::::qa:19-609 (last updated Apr. 25, 2022).

triggered reporting. If you have a basis for concluding that these facilities did not meet the required reporting threshold, we ask that you share this information with us.

As a result of the purchase of U.S. Ecology, Republic Services has at least ten facilities under your operation that handle waste disposal and report to the TRI. Going forward, we strongly urge you to ensure that all ten facilities under your operation that "manufactured, processed, or otherwise used" a TRI-listed PFAS are complying with their statutory obligations to: (1) determine whether they trigger a reporting threshold; and (2) submit reports to the TRI, if that threshold was met.

Obtaining accurate quantities of PFAS releases from nearby facilities is imperative to protecting the health of our communities. Not only are PFAS toxic at very low levels of exposure, but they are also extremely difficult to break down in the environment and more likely to accumulate in our bodies. Congress recognized the harms that PFAS pose at low levels by adding 175 in the National Defense Authorization Act for Fiscal Year 2020, and by lowering the default reporting threshold of these chemicals to 100 pounds. By not accurately reporting their releases to the TRI, your facilities are depriving our communities of information that we are not only obligated to have by law, but that we also depend on to safeguard our community members' health and safety.

Landfilling

All three of the Republic Services/U.S. Ecology facilities discussed in this letter reported that they landfilled large quantities of PFAS. With respect to the volumes of PFAS landfilled, we request information on the steps your facilities are taking to ensure that no PFAS leach into ground water, including whether/how these facilities are lining their landfills.[14] PFAS-contaminated drinking water is a significant source of exposure,[15] and EPA explains how "once in the landfill, chemicals can leach into the ground water by means of precipitation and surface runoff," which is why liners are necessary to prevent ground water contamination.

Conclusion

We respectfully request that the Republic Services/U.S. Ecology Beatty facility, which received AFFF for "Other Recovery and Reclamation for Reuse," provide information on whether the AFFF-containing waste was:

(a) disposed of on-site (which would qualify as "otherwise used");
(b) repackaged on-site (which would qualify as "otherwise used");
(c) transferred off-site;
(d) if landfilled on-site, whether your facility took steps to prevent leaching, such as lining the landfills; and

---

[14] EPA, *Ground Water Contamination* (2015) https://www.epa.gov/sites/default/files/2015-08/documents/mgwc-gwc1.pdf.

[15] David Q. Andrews & Olga V. Naidenko, *Population-Wide Exposure to Per- and Polyfluoroalkyl Substances from Drinking Water in the United States*, 7 Env't Sci. & Tech. Letters 931 (2020), https://doi.org/10.1021/acs.estlett.0c00713.

ED_014358_00001351-00006

(e) if transferred off-site, where it was transferred to and what management method it underwent at the off-site facility.

We respectfully request that the Republic Services/U.S. Ecology Beatty, Robstown, and Grand View facilities provide their calculations (e.g., reasonable volume and concentration estimates of PFAS in this waste) in determining whether the waste they received triggered the 100-pound threshold for reporting.

If needed to comply with the TRI reporting requirements, the Republic Services/U.S. Ecology facilities should amend their 2020 TRI reports to accurately reflect the amount of PFAS they released that calendar year. If your facilities determined that they were not required to report for the year 2020, we ask that you provide in a written response:

(a) the reasonable estimates that support their determination not to report, including reasonable concentration and volume estimates of certain listed PFAS in their waste;
(b) any applicable statutory exemptions that your facilities may have invoked; and/or
(c) an explanation that otherwise addresses the information identified in the referenced manifest data.

We ask that you provide a response and, if applicable, amend your 2020 TRI reports by Tuesday, September 6th, 2022. In the event that you have any questions, please reach out to Eve Gartner at egartner@earthjustice.org and Isabel An at ian@earthjustice.org.

Sincerely,

Sonya Lunder, MPH
Senior Toxics Policy Advisor
Sierra Club

Tina Davis
Executive Committee Chair
Sierra Club, Toiyabe Chapter
PO Box 8096
Reno, NV 89507

Neil Carman, PhD
Clean Air Program Director
Sierra Club, Lone Star Chapter
6406 N IH-35, Suite 1806
Austin, TX 78765

ED_014358_00001351-00007

Cc:

Catharine Ellingsen
Executive Vice President, Chief Legal Officer,
Chief Ethics and Compliance Officer, and
Corporate Secretary
Republic Services, Inc.
18500 N. Allied Way
Phoenix, AZ 85054
cellingsen@republicservices.com

Celina Camarena
General Manager
U.S. Ecology Texas Inc.
PO BOX 307
Robstown, TX 78380
celina.camarena@usecology.com

Daniel Church
TRI Public Contact
U.S. Ecology Nevada Inc.
PO BOX 578
Beatty, NV 89003
daniel.church@usecology.com

Erica Bartlett
TRI Public Contact
U.S. Ecology Idaho Inc.
PO Box 400
Grand View, ID 83624
erica.bartlett@usecology.com

David Turk
Chief, Data Collection Branch,
Data Gathering and Analysis Division,
Office of Pollution Prevention and Toxics, EPA
turk.david@epa.gov

David Widawsky
Director
Data Gathering and Analysis Division,
Office of Pollution Prevention and
Toxics, EPA
widawsky.david@epa.gov

Lawrence Starfield
Acting Assistant Administrator
Office of Enforcement and Compliance
Assurance, EPA
starfield.lawrence@epa.gov

Earthea Nance
Regional Administrator
EPA Region 6
nance.earthea@epa.gov

Martha Guzman
Regional Administrator
EPA Region 9
guzman.martha@epa.gov

Casey Sixkiller
Regional Administrator
EPA Region 10
sixkiller.casey@epa.gov

ED_014358_00001351-00008