

Supplemental Testimony

National Association of Forest Service Retirees

H.B. 1586, Forest Protection and Wildland Firefighter Safety Act of 2023

March 23, 2023

- All long-term Retardants used in airtankers are evaluated through the US Forest Service National Technology and Development Center, Wildland Fire Chemical Systems (WFCS). Evaluations are based on a number of factors including fire-retarding effectiveness, physical parameters, aquatic toxicity and human health and ecological assessments. WFCS must first evaluate and approve long-term fire retardants before their use on Federal lands. Only those fire chemicals that have been evaluated and tested by WFCS are allowed to be used in wildland firefighting.
- Long-term retardants contain retardant salts - typically agricultural fertilizers – that alter the way the fire burns, decreases the fire intensity, and slows the advance of the fire, even after the water they originally contained has evaporated. Studies conducted by the U.S. Forest Service Wildland Fire Chemical Systems Program, located at the National Technology and Development Center in Montana, show that long-term retardants retain much of their effectiveness in reducing fire intensity and spread after the water they contain has evaporated. The amount of time that long-term retardants are effective in reducing fire intensity and spread after the water they contain has evaporated varies from several days to up to one week or more depending on vegetation type, coverage levels, precipitation, and other factors.
- In 2011 the US Forest Service completed the Aerial Application of Fire Retardant Environmental Impact Statement (EIS) which delineated more than 30% of USFS administered as retardant avoidance areas and developed a tracking process to monitor inadvertent drops into water. The 2011 decision prohibits delivery of fire retardant directly into waterbodies, or into buffers surrounding waterbodies, with an allowed exception to protect life and safety.
- In researching aerial operation records for the draft 2022 Aerial Fire Retardant SEIS, the Forest Service found that 376 out of 56,868 total airtanker drops (less than one percent) made between 2012 and 2019 were directly into water, because of intrusions or the exception allowed to protect life and safety.
- The Clean Water Act (CWA) requires National Pollution Discharge Elimination System (NPDES) permits for any addition of a pollutant from a point source to navigable waters/waters of the United States. The Forest Service has been operating under the assumption that a NPDES permit was not required because the regulations for

administering the NPDES system (40 CFR 122) specifically state that fire control is a "non-point source silvicultural activity"(40 CFR 122.27) and communications from EPA dating back to 1993 indicated a permit was not required.

- There is no NPDES permit established for aerial application of fire retardant. A rulemaking to establish a general permit will take 2-3 years for a General Permit with an additional 1+ years to obtain 47 individual state permits. Because the EPA has already delegated permitting authority to most States, the EPA's general permit is geographically very limited. Each of the upwards of 40 individual regulatory agencies that have NPDES authority would need to go through a rulemaking to establish their own general permit using EPA's general permit as a model. Each regulatory agency would have the opportunity to apply their own specific conditions, making the use of airtankers across the nation very difficult.
- There are many technical reasons that a new permit would be burdensome. The bottom line is that the Forest Service has been diligent in efforts to use retardant wisely to minimize negative environmental effects and statistics show those efforts have been effective. Further restrictions on the use of retardants are not only unnecessary but would likely increase the negative environmental effects that occur from wildfire, including negative effects on streams, watersheds and other important resources.
- Should the Forest Service not be able to defend liability in case brought by FSEEE, this could result in fire retardant not being available for use in the 2023 fire year and would put billions of dollars of infrastructure/assets and millions of people at risk. More importantly, it would remove a key tool used to safely fight wildfires and put at risk local, county, state and federal firefighters at a time where wildfire is increasing in scale and scope across the western United States. Any court ruling has the potential to be nationwide and affect the Department of the Interior (DOI), state fire agencies, and the Department of Defense (DOD).
- The Forest Service has been using fire retardants for over 70 years. There are many examples of the effectiveness of fire retardant in stopping wildfire spread. One example was the 2020 Grizzly Creek Fire that started in Glenwood Canyon, CO and rapidly spread west out of the I-70 canyon corridor and into the eastern edge of Glenwood Springs, CO. The fire was caught by airtankers on the very northeast corner where the White River National Forest and City of Glenwood Springs lands meet. The Incident Management Team in charge then placed a portable retardant plant on the west bound lanes of I-70 for use by Type 1 helicopters doing bucket support with retardant for ground crews working their way up the canyon. An effective use of aviation assets and retardant in firefighting.