

Fire Retardant, Section 408 of the Energy Permitting Reform Act, and the Clean Water Act

PURPOSE: This briefing debunks misinformation regarding Section 408 of the Energy Permitting Reform Act of 2024 (S.4753).

BACKGROUND: The Energy Permitting Reform Act of 2024 promotes resource exploitation and corporate profit over meaningful oversight, public health, and the environment. Section 408 of the legislation is a prime example: it exempts aerial fire retardant from the Clean Water Act (CWA). Section 408 is being promoted ahead of a May 26, 2026, federal court deadline for the U.S. Forest Service to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the CWA.

Forest Service Employees for Environmental Ethics (FSEEE) URGES:

We urge the Senate to remove Section 408 from – and to vote against – the Energy Permitting Reform Act of 2024.

The American people deserve clean water and responsible public lands management.

99% of U.S. citizens rely on municipal water systems that receive water from forested lands (which are subject to contamination by aerial fire retardant), according to a [2022 Forest Service analysis](#).

1. THE “GROUNDING THE FLEET” FALLACY

Fiction: Forest Service Chief Tom Schultz and industry advocates claim that if Section 408 is not passed, the Forest Service will be forced to ground its aerial firefighting fleet on May 26, 2026, to avoid CWA violations.

Fact: An NPDES permit authorizes operations in a manner that maintains water quality.

The court has not issued a “stop work” order; it has ordered the Forest Service to obtain a permit that legalizes their discharges.

- The CWA regulates water quality; it does not regulate flight schedules.
- Any claim that an NPDES permit would “ground” the fleet is a strategic falsehood.
- An NPDES permit requires the Forest Service to follow the same rules as every other industrial entity in the U.S.
- The law provides for emergency use; it simply demands that after the fire is out, the agency reports the toxic load they left behind.
- If the planes are grounded, it will be because the Forest Service chose to ground them rather than be transparent about their heavy-metal discharges.

2. DISCLOSURE IS NOT DISRUPTION

Fiction: The Forest Service argues that the administrative burden of a permit is too high and will interfere with emergency response.

Fact: The Forest Service already has the data – they just refuse to share it.

- The agency currently maintains a digital dashboard to track retardant drops, including intrusions into waterways.
 - An NPDES permit simply requires that this existing data be shared with the EPA and the public via Discharge Monitoring Reports (DMRs).
 - Moving from an internal spreadsheet to a public-facing EPA report is a matter of administrative transparency – not operational capability.
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3. THE TOXICITY GAP: WHY A PERMIT IS MANDATORY

Fiction: Agency testimony suggests fire retardant is “practically non-toxic” and consists of “common fertilizer.”

Fact: Retardant contains undisclosed, persistent, and toxic heavy metals at high concentrations.

- [Recent ICP Mass Spectrometry analysis \(USC 2024\)](#) confirms that modern retardant contains numerous heavy metals [that exceed the EPA Maximum Contaminant Load for Drinking Water and the EPA Freshwater Aquatic Life Limit](#).
 - These heavy metals include carcinogens, neurotoxins, and pneumotoxins.
 - These are not ephemeral fertilizers; they are persistent elemental toxins that bioaccumulate in the environment and in endangered species like Steelhead and Salmon.
 - In approving fire retardant, the Forest Service used 50-year-old tests that are scientifically incapable of detecting these metals.
 - The NPDES permit is the *only* mechanism that will force the agency to acknowledge and monitor this toxic loading – and help keep waterbodies within safe and legal limits.
 - Alternatively, if the Forest Service is correct and fire retardant is “practically non-toxic,” then there should be nothing to report and complying with the permit will be a breeze.
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CONCLUSION

The Energy Permitting Reform Act of 2024 (S.4753) must be rejected. It elevates resource exploitation and corporate profit at the expense of meaningful oversight, public health, and the environment. The law’s Section 408 provision typifies the damage S.4753 will wreak.

Section 408 exempting fire retardant from the CWA is not about public safety – it is about **avoiding public disclosure.**

Adhering to the CWA does not stop a single aircraft from flying. It ensures (a) the Forest Service is held to the same scientific and legal standards as any other U.S. industry and (b) the agency fulfills its foundational mandate to preserve watershed integrity.

Americans deserve clean water and a healthy environment:

Strip Section 408 from – and vote against – the Energy Permitting Reform Act of 2024.