

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 3898
OFFERED BY MS. HOYLE OF OREGON**

Strike section 9 and insert the following:

1 SEC. 9. SAFE HARBOR FOR CERTAIN DISCHARGES OF
2 WILDLAND FIRE CHEMICALS.

3 (a) IN GENERAL.—Subject to subsection (b), no
4 court may enjoin under the Federal Water Pollution Con-
5 trol Act (33 U.S.C. 1251 et seq.) a covered entity from
6 conducting an aerial application of a covered fire retardant
7 and water enhancer for wildfire suppression, control, or
8 prevention activities that results in a discharge, if such
9 aerial application is conducted in accordance with the re-
10 quirements of the Federal Facility Compliance Agreement
11 between the Environmental Protection Agency and the
12 U.S. Forest Service, as agreed to on February 16, 2023.

13 (b) PERIOD OF APPLICATION.—Subsection (a) shall
14 apply to any aerial application described in such sub-
15 section that is conducted before the effective date of a per-
16 mit issued by the Administrator of the Environmental
17 Protection Agency or a State, as applicable, under section
18 402 of the Federal Water Pollution Control Act (33
19 U.S.C. 1342) that authorizes the discharge, from such

1 aerial application, of a covered fire retardant and water
2 enhancer for wildfire suppression, control, or prevention
3 activities.

4 (c) EFFECT.—Nothing in this section affects the au-
5 thority of any court under the Federal Water Pollution
6 Control Act with respect to any discharge resulting from
7 an aerial application not conducted in accordance with the
8 requirements described in subsection (a).

9 (d) DEFINITIONS.—In this section:

10 (1) COVERED ENTITY.—The term “covered en-
11 tity” means—

12 (A) any Federal agency, agency of a State
13 or political subdivision thereof, or Tribal agen-
14 cy, authorized by law to conduct an aerial appli-
15 cation of fire retardants and water enhancers
16 for wildfire suppression, control, or prevention
17 activities; and

18 (B) any contractor, subcontractor, or other
19 agent of an agency described in subparagraph
20 (A).

21 (2) COVERED FIRE RETARDANT AND WATER
22 ENHANCER.—The term “covered fire retardant and
23 water enhancer” means a fire retardant and water
24 enhancer that—

1 (A) has been evaluated, qualified, and ap-
2 proved by the Secretary of Agriculture; and

3 (B) appears on the most current Forest
4 Service Qualified Products List.

5 (3) DISCHARGE; STATE.—The terms “dis-
6 charge” and “State” have the meanings given those
7 terms in section 502 of the Federal Water Pollution
8 Control Act (33 U.S.C. 1362).

9 (e) SUNSET.—This section shall cease to be effective
10 on the date that is 5 years after the date of enactment
11 of this section.

