



EPPBA News

Edwards Plateau Prescribed Burning Association, Inc.
A 501 C3 non-profit corporation restoring Edwards Plateau rangelands

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Highlights:

EPPBA Insurance

Remember to keep your powder dry, drip torch full and that "happiness is smoke on the horizon".

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A Non-Profit Corporation Restoring Edwards Plateau Rangeland one burn at a time

For 15-years, the Edwards Plateau Prescribed Burn Association, Inc., has worked closely with private land-owners, government agencies, and county officials. Our efforts have been effective and honorable (i.e., improved wildlife habitat, increased carrying capacity for livestock, reduction and management of excessive fuels, increased water availability as well as other benefits to the resource as well as society as a whole. We can be proud of our accomplishments but our past success cannot allow us to become complacent.

Although EPPBA takes a "cautious" approach to lighting prescribed fires, our past safety record is not enough to protect ourselves if we have the misfortune of our actions resulting in a catastrophic wildfire. Unfortunately, the state of Texas has a long history of over-effective fire-suppression practices, which has resulted in a build up of highly combustible fuels. This situation is not unique to Texas. Case in point is the current fire in Colorado which started from a prescribed burn. Hopefully this will never happen to us, but even something of much less magnitude, could be extremely costly.

As a land-owner who uses prescribed fire, you need to understand your legal liabilities with respect to prescribed fire. For example, EPPBA members who have volunteered in prescribed burns for other members of EPPBA may not be insured. If a claim is filed because of a fire escape, the volunteer could be named as a co-defendant in a law suit. It appears that most Farm and Ranch liability policies do not cover volunteers and do not cover the landowner if he/she participates on someone else's burn as a volunteer.

A goal of EPPBA has been to educate the membership on the safe and effective application of prescribed fire to the landscape. Part of this goal was also to protect the membership from liability through education, information, and training. Initially EPPBA encouraged land owners to carry farm and ranch liability insurance for their burning activities. However, most members did not understand the insurance policies very well and seldom were members asked for proof of insurance before the burn was conducted.

Today, compared to when EPPBA was started, there is a better understanding of liability and insurance; however, there is still some confusion among EPPBA membership regarding insurance and the need for it. One goal of this newsletter is to illuminate the contents of current EPPBA insurance policy and how the membership can benefit from its use. I hope this information is beneficial. Please contact Charles "Butch" Taylor, Allen Ersch or your Chapter President if you have questions.

How good is your Farm and Ranch Insurance Policy? Does it cover volunteers and smoke? What is the total coverage? Because of these concerns EPPBA purchased a supplemental insurance policy. The first and second year's premiums were paid with money from a US Fish & Wildlife Service Grant. For a description of the policy and discussion see below.

Prescribed Burn Liability Insurance – Some important questions:

Q. What are the different types of coverage available under the Edwards Plateau Prescribed Burn insurance policy?

- A.** Basically, there are different level of coverage based on position, experience, and training.
1. **Level I**, provides coverage for the Entity (Prescribed Burn Association) itself and its Officers and directors; the group at highest risk. This includes \$1 million per occurrence; \$2 million aggregate (total of all claims in given calendar year); \$1 million personal injury; and \$1 million for products/comprehensive operations.
 2. **Level II**, applies to the Burn Boss; the 2nd highest level of risk Eligibility criteria includes the following:
 - a) Must have either completed The Academy for Ranch Management, Basic Prescribed Burn Course prior to December 31, 2010 or completed a state qualified Certified Prescribed Burn Manager (CPBM) course.
 - b) Must have actively participated in at least ten prescribed burns.
 - c) Must be approved by a majority vote of EPPBA directors.
 - d) Each chapter will determine the length of time the person needs to have been a member of EPPBA.
 - e) Additional requirements **may** be set by the local chapter.
 - f) Coverage includes \$500,000 per person; \$1 million per occurrence; & \$2 million aggregate. \$500,000 personal injury; \$500,000 products/comprehensive operations.
 3. **Level III.** Any members that are certified by the Texas Department of Agriculture to conduct prescribed burns (example; Private Certified Insured Prescribed Burn Manager) acting as a volunteer on another member's property. This includes \$1 million per occurrence; \$2 million aggregate (total of all claims in given calendar year); \$1 million personal injury; and \$1 million for products/comprehensive operations.
 4. All other members and volunteers (including the landowner/member), coverage includes \$500,000 per person; \$1 million per occurrence; & \$2 million aggregate. \$500,000 personal injury; \$500,000 products/comprehensive operations.

Q. How will EPPBA members be impacted by this new prescribed burn insurance?

- A.** The following changes apply.
- a) Membership dues have increased from \$25/yr to \$35/yr. Ten dollars goes to help pay insurance premiums, five dollars goes to EPPBA for administration costs, and twenty dollars stays with the chapter.
 - b) Members registering burn plans with EPPBA will pay a fee of \$150.00 per "prescribed burn day" for the first day of burning and \$50/day for the following days.
 - c) Members will now have the assurance that they have liability insurance coverage when helping other members on their burns.

d) This coverage applies to all volunteers (i.e., covers state and federal employees who take leave-time to participate on a burn outside of their regular job).

A. Here are a few of the most important things you need to know if you want your burn insured (remember you do not have to insure your burn with EPPBA insurance).

- a) You **must** be a member in good standing of EPPBA and have a burn plan and it **must** be submitted to the designated chapter official at least **10-days PRIOR** to the burn. **NOTE** that Individual prescribed burn chapters may extend that time requirement beyond 10-days.
- b) As of now, the burn plan must be on one of three templates; the Texas Department of Agriculture, Natural Resource Conservation Service (NRCS) or use the EPPBA burn template. The Prescribed Burn Alliance of Texas has recently developed a new template that may be adopted by EPPBA as its official template to be used in the future.
- c) The GPS coordinates **MUST** be included in the burn plan (on at least 4-corners, preferably in decimal degrees) to define the burn unit.
- d) Planned number of days in which you plan to apply active fire. This includes burning of brush piles, blackout areas, black lines, main burn, etc.
- e) The minimum number of persons required to be on the burn for each burn day.
- f) Posted on the website will be the landowner or lease name, plan number, date registered, chapter and or county name, number of acres to burn and date of completion.
- g) There will be persons designated by EPPBA that will “review” the burn plan to confirm that the required information is on the burn plan. An EPPBA official or designee will post the information on the EPPBA website.
- h) The “reviewed” burn plan **must** also be posted on the **EPPBA website AT LEAST 24 HOURS PRIOR** to the burn.
- i) The landowner or the “legal lessee” of the area to be burned must be a current member of EPPBA.
- j) Once registered, the **burn plan is valid for six months**. The plan must be re-registered or withdrawn if not completed in six months. Completed burns must be reported to a designated chapter official. If the burn is not completed and withdrawn there will be a refund for the unused burn days.
- k) Each EPPBA sanctioned burn must have the official EPPBA checklist on site with the burn plan with none of the items checked **NO**. Each burn day requires a new checklist (see attached). **If during a County burn ban a copy of the supporting documents which allow you to burn or the burn plan must be signed by the County Judge.**
- l) All laws pertaining to “prescribed burning” in the State of Texas must be adhered to.

Q. Could an individual burn their own black lines without the EPPBA and then just pay \$150 a day for the actual burn?

A. Yes. If the landowner/lessee does not want to pay for and have coverage from EPPBA they should not register and insure the burn until they have burned the brush piles, black lines, etc. The landowner/lessee would have coverage from whatever policy they may have on their farm.

When the plan is registered the volunteers have the coverage to the limits in the group they belong and the landowner/lessee will have the additional coverage on themselves.

Q. What about coverage for a specific Ranch and its associates?

A. At the present time a **Membership** is for an individual, be they ranch owner, manager, associate, etc. As mentioned earlier the landowner/lessee must be an EPPBA member to have a burn plan registered and insured by EPPBA insurance. In this case the landowner/lessee's farm & ranch policy should cover their immediate family and would probably cover their employees while burning on their own place.

If the landowner/lessee that is a member takes their family or employees to another member's burn, the EPPBA insurance covers all members and volunteers that are helping on that burn.

Q. What are the burn boss requirements to be a sanctioned EPPBA burn:

a) In the event a landowner or lessee is not the burn boss, the burn boss must meet at least one of the following requirements.

- The burn boss must be an approved EPPBA burn boss "level II".
- The burn boss must be a CICIPBM or PCIPBM by the State of Texas.
- Burns conducted with a person on site during the burn from one of these agencies; NRCS, Texas AgriLife Research, Texas AgriLife Extension, or the Texas Parks & Wildlife Dept. The person from one of these agencies must be in their capacity as a representative of that agency.
- An EPPBA member assuming the duty of burn boss provided one of the persons in the previous three statements is onsite as an assistant/mentor to the burn boss.

b) If the landowner or lessee is acting as a burn boss on their property and is not an EPPBA burn boss, he/she must meet one of the following requirements:

- Have actively participated in 3-prescribed burns within EPPBA.
- Have on site during active burning either an EPPBA burn boss, or a CICIPBM or PCIPBM certified by the State of Texas, or a person from one of the following agencies serving in their official capacity of that agency. NRCS, Texas AgriLife Research, Texas AgriLife Extension, or the Texas Parks & Wildlife Dept.

Level II Requirements for EPPBA Burn Boss

1. To carry Level II "Burn Boss" credentials with the insurance company you must have:

- a) Successfully completed before December 31, 2010 the basic 3-day Academy for Ranch Management Prescribed Burn Workshop. Or, have successfully completed a Texas State accredited CPBM course.
- b) Been an active participant in a minimum of 10-prescribed burn. (Brush pile burning does not count).
- c) Be approved by the EPPBA Board of Directors after submitting a copy of successful completion of burn school and a list of the ten required burns.

Miscellaneous Items:

- EPPBA equipment is to be used by EPPBA members only and on EPPBA member's places only.

- Present EPPBA policy specifies that EPPBA equipment can only be used on registered burns (There are liability issues if equipment is used for non-sanctioned burns).
- As a member of EPPBA you are not required to register your burn and pay the \$150 burn fee if you chose not to use EPPBA Insurance or equipment.

(See checklist below)

EPPBA “BURN / DO NOT BURN Checklist

Each EPPBA sanctioned burn must have this checklist on site with the burn plan. Each burn day requires a new checklist.

Any “NO” responses create a DO NOT BURN situation

1. Has the burn boss or landowner personally verified that this burn is listed on the EPPBA website? _____ Yes _____ No
2. Is the Burn Boss on site for the proposed burn? _____ Yes _____ No
3. Is an approved written prescribed burn plan established for the proposed plan? _____ Yes _____ No
4. Are safety requirements met for the proposed burn? _____ Yes _____ No
5. Are planned personnel and equipment on site? _____ Yes _____ No
6. Have all the entities in the county where the burn is to take place been notified?
 - a) County sheriff’s office _____ Yes _____ No
 - b) Local fire department(s) _____ Yes _____ No
 - c) _____ NA If you are burning during a county Burn Ban
 - o County judge _____ Yes _____ No
 - o County commissioners court _____ Yes _____ No
 - o Texas Forest Service regional fire coordinator _____ Yes _____ No
 - o Texas Commission on Environmental Quality (TCEQ) _____ Yes _____ No
7. _____ NA Is written authorization to burn during a burn ban attached to the burn plan or has the county judge signed the burn plan? _____ Yes _____ No
8. Have all necessary fire suppression units been briefed on the burn plan? _____ Yes _____ No
9. Has the Burn Boss determined risks are acceptable? _____ Yes _____ No
10. Has the Burn Boss obtained a current weather forecast? _____ Yes _____ No
11. Is the current weather within the burn plan parameters? _____ Yes _____ No
12. Is fire behavior projected to be within the burn parameters? _____ Yes _____ No
13. Are projected fire effects acceptable? _____ Yes _____ No
14. Does smoke management adhere to TCEQ guidelines? _____ Yes _____ No

Burn Boss

Date of fire _____/_____/20____

Printed Name

Signature

Laws and Regulations concerning burning

Prescribed burning laws and regulations are described in a publication that is accessible from www.ranchmanagement.org. Click on Prescribed Burning Laws for the complete publication.

In 1999, two important laws were passed which defined prescribed burning in Texas. Prior to this, it was a felony to burn a pasture.

House Bill 2599 amended the Natural Resources Code to add a new chapter on prescribed burning. The act creates the Prescribed Burning Board within the Texas Department of Agriculture and sets forth the board's composition and terms. The act requires the board to establish standards for prescribed burning, develop a comprehensive training curriculum and certification program for prescribed burn managers, set minimum education and professional requirements for instructors, and establish minimum insurance requirements for certified burn managers. Agriculture House Bill 2599 sets forth minimum standards for prescribed burning and for certification as a prescribed burn manager. The act also limits the liability of a landowner who uses a certified prescribed burn manager and provides that this legislation does not limit a landowner's right to burn and does not modify the landowner's liability for a burn not conducted according to the standards adopted by the Prescribed Burning Board.

Rep. McReynolds bill analysis stated that "Currently, a landowner in Texas has the right to use prescribed burning as a land management tool to reduce vegetative fuel that can flare up and cause wild fires. Wildfires pose a serious threat to the state, particularly to suburban areas, and prescribed burning can help to reduce this risk. property damage, personal injury, or death resulting from the burning of vegetative fuel."

House Bill 2620 amended the Local Government Code to authorize a county commissioners court to prohibit or restrict outdoor burning in general or outdoor burning of a particular substance in the unincorporated part of the county if drought conditions have been determined to exist and if the court finds that a public safety hazard would be exacerbated by outdoor burning. Upon request by the court, the Texas Forest Service is required to determine whether drought conditions exist using certain measurement index guidelines. The provisions of the act do not apply to outdoor burning activities related to public health and safety that are 1. authorized by the Texas Natural Resource Conservation Commission for firefighter training, for public utility, natural gas pipeline, or mining operations, or for the harvesting of agricultural crops. 2. That are conducted by a prescribed burn manager certified under Section 153.048, Natural Resources Code, and meet the standards of Sections 153.047 Natural Resources Code. The act entitles a person to injunctive relief to prevent a violation and makes violation of the act a Class C misdemeanor.

Burning Rules and Regulations.

There are many rules and regulations that apply to prescribed burning in Texas. Even though a landowner has the right to burn on his/her land, the laws, rules and regulations still apply. These

regulations are not listed in only one place. All prescribed burning must first comply with the regulations of the Texas Commission on Environmental Quality (TCEQ). This applies whether you are burning trash, brush piles, or applying prescribed burning to the landscape. If you are a Certified and Insured Prescribed Burn Manager, there are other rules and regulations that apply when burning outside of a burn ban and additional regulations that apply if the county is in a burn ban.

The rules and regulations from TCEQ are in place primarily for smoke pollution or other pollution sources of a prescribed burn. The County Government rules with the power of implementing a burn ban can be pro- or con-prescribed burn. Hopefully more and more counties will utilize the effectiveness of prescribed burning for public safety.

TCEQ burning rules

1. Texas Forest Service must be notified prior to burning in a forest designated area.
2. Coastal salt-marsh burning in 14 counties also entails more specific notification requirements, which are stated in 30 TAC 111.211(2)(A) and (B).
3. Burn outside the corporate limits of a city or town unless the town has an ordinance allowing burning.
4. Only burn when wind is blowing such that smoke will not affect sensitive receptors and not closer than 300 feet unless you have written permission of occupant.
5. If smoke crosses a road or highway, you must post someone to hold a flag to warn traffic.
6. Begin burning no earlier than 1 hr after sunrise or later than 1 hr. prior to sunset. Residual fire must be extinguished if the smoke will cause a hazard.
7. Do not burn if an inversion is present that will not allow the smoke to dissipate.
8. Make sure that a responsible party is present while the burn is active and the fire is progressing.
9. Burn only with winds of at least 6 mph while still allowing the fire to be contained and controlled with winds no faster than 23 mph.
10. No hydrocarbon materials in the burn area. **NOTE: Police your burn unit. If TCEQ or County officials find a tire or similar material burning in your burn unit, you could be fined and/or be taken to jail.**
11. the burning must not cause a nuisance or traffic hazard

<http://www.tceq.texas.gov/publications/rg/rg-049.html>

Levels of Certification:

There are many levels of certification concerning prescribed burning. It is important that you understand these different levels of certification.

Texas Department of Agriculture licenses two levels of certification which were developed by the Prescribed Burning Board. The Commercial Insured Certified Prescribed Burn Manager (CICPBM) can burn on any property within their regions of expertise. The use of a CICPBM limits the liability of the landowner that hires the burn manager. Another level of certification within TDA is the Private Insured Certified Prescribed Burn Manager (PICPBM). The PICPBM can only burn on the land that is specific to their insurance policy. Liability is not limited by this level of certification.

The USFS, TFS, TP&W, and several other agencies are certified within their organization and NWCG (National Wildfire Coordinating Group) training is used in wildfire and prescribed burning.

The NRCS has several levels of responsibility through their in-house schools and training, based on experience and courses taken.

Some Texas' counties may have yet another level of certification that allows certain individuals or burn associations to burn in county wide burn bans. The requirements for this level of certification varies county by county.

The liability insurance policy for EPPBA sanctioned burns has a level of certification that allows them to be burn boss based on having taken a prescribed burn school.

Several surrounding states also have different levels of certification for conducting prescribed burns.

Please understand that there are many different levels of certification for prescribed burning within the state and it is important that you correctly communicate these differences.

Parting Comments

The recent wildfire in Colorado is an example of a prescribed burn that went terribly wrong. I have inside information that the fire boss was well trained and experienced and used a completed burn plan. Also, preparations prior to the burn were adequate and an experienced and well trained crew were present to conduct the burn. The burn boss and his crew monitored the burn unit for four days following the burn and were present at the burn unit when high winds blew a fire brand into dry fuel and the fire broke out. Regardless what happened prior to the wildfire, this is a black eye for prescribed burning and is an example of what can happen even when everyone involved has acted in a responsible manner.

This Colorado wildfire is a good example of why we need some level of liability protection. Are you willing to risk your land and money every time you **conduct** or **participate** on a prescribed burn because you don't have adequate liability coverage. I've heard some members say "if I don't have insurance they won't sue for damages". Are you willing to risk your inheritance and/or life-time investment due to a law suit? Sometimes the legal fees are greater than the actual damage claim. It would be nice not to have to worry about insurance, but Texas has Tort laws that address and provide remedies for civil wrongs. For example, a land owner who has fire damage can use tort law to receive compensation from someone who **started** the fire or **contributed** to the fire (i.e., injured persons or

their damaged property should be compensated by those responsible for their injuries or property damage). What if smoke from your fire causes an accident on the highway and someone is injured or worse, killed. What if smoke from your fire enters a residence where someone has problems with asthma and they have to be transported to the hospital for medical treatment. It will be obvious where the smoke came from and also I'm sure the people involved will want to be compensated. The goal of this newsletter is to provide pertinent information so that well-informed decisions can be made.