

# History, Law and a Fire Culture



01/12/2007

# Objectives

- Give an overview of the laws and regulations for landowners and PBB certified prescribed burn managers.
- Learn the requirements to become a CIPBM.

# History

“Somewhere in the past of our ancestors picked up a flaming brand, held it and eventually set the grass on fire for his purpose. He had long recognized the fact that animals congregated on such burns, for he was a hunter and gatherer. No other creature will hold a flaming brand but man.....Ed Komarek.”

# Early Laws

- A law passed by the legislature in 1848 made it illegal to fire the prairies between July 1 and February 15<sup>th</sup>, except on land belonging to the person doing the firing, and the law remained in effect a decade later.
- In 1884 Texas passed a law making the burning of grass a felony.

# Failed to Operate as Reasonable Prudent Person

- Causes of Action
  - Negligence.
  - Negligent Trespass.
  - Nuisance.
  - Trespass to Real Property

# Reducing Liability

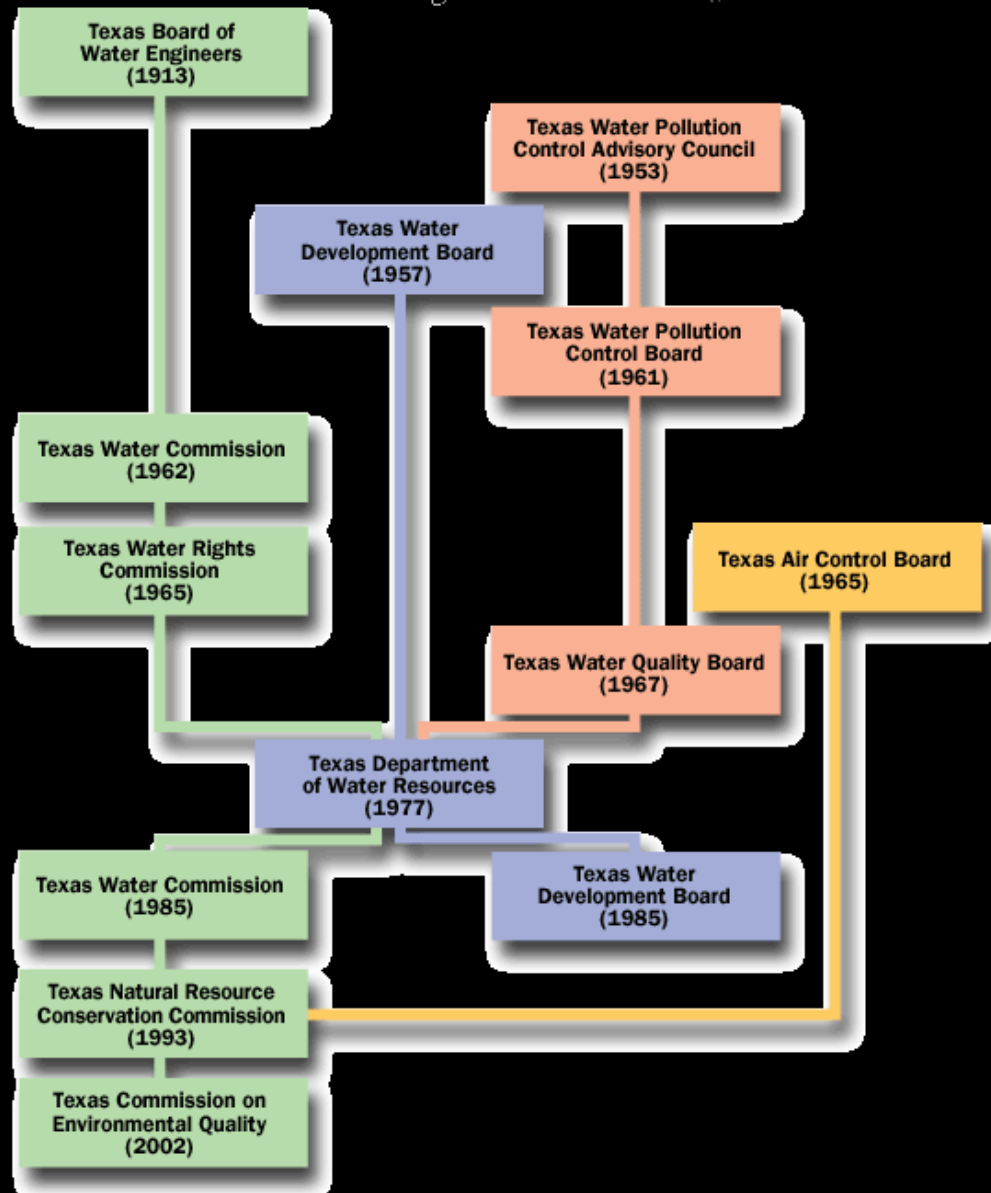
- Hire a commercial certified prescribed burn manager.
- Join prescribed burn association.
- Develop and follow a prescribed burn plan.
- Meet “reasonable prudent person” standard.
- Attend certified prescribed burn school.

# Outdoor Burning in Texas

- Regulated by the Texas Commission on Environmental Quality (TCEQ).
- Created by legislation in 1993.
- Adopted outdoor burning rules in 1996.

# Evolution of TCEQ

## History of the TCEQ





# Current TCEQ Laws

- House Bill 39, Senate Bill 1710: Outdoor Burning
  - Amendments to: '111.203, '111.209
  - Date Adopted: June 28, 2006
- No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission.

# TCEQ Exceptions

- For Prescribed Burn
  - For forest, range and wildland/wildlife management purposes.
  - For coastal salt-marsh management burning...

# TCEQ Burning Rules

- Texas Forest Service must be notified if burning in forest areas.
- Burning must be outside city limits unless there are enacted ordinances.
- Burn when wind will not adversely affect roads, landing strips, navigable water or sensitive receptors.
- If smoke crosses highway you must post flaggers.
- You must obtain written permission if burning downwind of or 300 ft. from sensitive receptors.

# TCEQ Burning Rules - *continue*

- Burning only under these meteorological and timing considerations.
  - No earlier than 1 hour after sunrise and completed the same day not later than 1 hour before sunset.
  - Wind speed must be between 6 and 23 mph.
  - No burning during inversions.
- No hydrocarbons or explosive materials.
  - Criminal offense.

# TCEQ Fines

- Can cost \$2,000 ++.
- TCEQ will only investigate if there is a complaint.
- Biggest risks are roads, highways, and homes.
- Probably get a warning unless there are tires in the burn areas.



# Professionals Take Action

- Concern professionals who were involved and informed regarding prescribed burning met in Kerrville in 1998.
  - They identified the primary concerns and outlined a course of action.
  - They formed the **Prescribed Burning Coalition** and a legislative committee, which laid the ground work for legislative action.

# Recent Legislation

- Local Government Code 152.081 passed 8/1999.
  - Gave County Government power to stop outdoor burning.
  - Burn Bans.
- Except for burns conducted by Certified Prescribed Burn Managers.
  - Unless the President, Governor, or County Judge Issues a proclamation specifically saying that there will be no burning.

# Recent Legislation - *continue*

- HB 2599 passed 9/1999.
  - Gave landowners the right to burn.
  - Purpose:
    - Reduce hazardous fuel loads to reduce wildfires.
    - Uses as a land management tool.
- Set up the Certified Prescribed Burn Manager program.
  - Costly for small landowners.



# Burn Associations *-continue*

- Must work within TCEQ rules and regulations.
- Work closely with County Government to obtain permission to burn during a burn ban.
- Regulate themselves to provide a safe burn environment.

# Rules and Regulations of CIPBM

- Rules set by the Prescribed Burn Board.
- Regulated and licensed by Texas Department of Agriculture (TDA).
- Infractions Investigated by TDA.

# How to Become a CIPBM?

- Take a PBB approved course taught by a PBB Lead Instructor and pass the examination.
- Have 3 years experience in a region.
- Participate on 30 prescribed burns in any position.
- Must have 5 days that you are the responsible person.
- Carry or be covered by \$1 million (\$2 million aggregate) insurance policy.

# CIPBM Rules for Prescribed Burning

- Must follow all TCEQ rules and regulations.
- Can only burn in the regions specified in your license.
- Must complete a PBB-604 prescribed burn plan prior to the burn.
- You must be present during the burn.
- Must have an adequate crew and equipment.

# Notification Requirements

- Provide landowners with a copy of your insurance policy.
- Must have policy on site during the burn.
- Must have your license available on site.
- Other requirements may vary by county.
- Dispatch at the Sherriff's office should be contacted.
- Local VFDs should be contacted.

# Additional Requirements During a Burn Ban

- The County Commissioner's court, County Judge, or their designee must be notified in writing prior to the burn.
- Sheriff's office, TCEQ and TFS regional fire coordinators and all fire suppression units must be notified prior to the burn and when the burn is complete.
- You must fill out the Burn/Do not Burn checklist prior to the burn.

# Bookkeeping Rules

- You must respond to all requests for information from TDA inspectors.
- You must have the license and insurance Policy.
- You must keep documentation of training and experience.

# Bookkeeping Rules - *continue*

- You must keep and maintain a file for each burn conducted (CIPBM) to include:
  - The burn plan.
  - Documentation of all contacts.
  - Documentation of all notices if in a burn ban.
  - Complete burn/do not burn check list.
  - Documentation of notice to TECQ if in salt grass area.



# Bottom Line

- For infractions under TCEQ, County Government Code or TDA a CIPBM may be fined and/or have their license revoked.
- Visit the TDA website for more information on how to become a CIPBM and links to the laws and regulations.

(800)-Tell-TDA  
835-5832



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## Certified and Insured Prescribed Burn Program



The Prescribed Burning Board (PBB) regulates certified and insured prescribed burn managers who work to control vegetative fuels that can contribute to wildfires. The burn managers help to manage, maintain and restore valuable ecosystems in Texas.

The PBB certifies commercial and private prescribed burn managers to ensure that they have the proper training, experience and financial responsibility to protect themselves and those they serve.

### I Want To...

- [Become a Certified and Insured Prescribed Burn Manager](#)
- [Become a Prescribed Burn Lead Instructor](#)
- [Find a Certified and Insured Burn Manager or Instructor](#)
- [Find Burning Training](#)
- [View Helpful Links](#)

**Contacts**

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# Burn Associations

- Neighbor helping neighbor.
- Work with County Government.
  - Can change with election cycles..
- Transference of “liability” from the County to the Association.
- Working with members to have:
  - a workable plan.
  - enough help.
  - enough equipment.
  - dedicated members.
  - control.

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# Summary

- Legally landowners can burn their property.
- Simple negligence is the measure of liability.
- Prescribed Burner Certification gives legal protection.
- Prescribed Burn Associations reduce liability and decrease insurance premiums.