

Texas Prescribed Burning Board Minutes

TPWD

Austin, Texas

Wednesday, November 10, 2021

CALL TO ORDER

Pursuant to a notice posted on November 01, 2021, the Prescribed Burning Board (Board) meeting was called to order at 1:00 P.M. by Chairman Justin Penick. The roll was answered as follows:

Present: Rich Gray, Dr. Nathan Gill, Justin Penick, Wayne Pfluger, Dr. Morgan Treadwell, Charles Tatton, Chris Schenck, Dale Smith, John Foster. Online: Keith Sheedy, Dr. Bill Rogers

Absent: James “Rooter” Brite, Perry Cervantes

With nine members in attendance, two members in attendance online and two members absent, a quorum was present.

Guests: Patrick Dudley (TDA), Danielle Mitchell (TDA), Skyler Shafer (TDA), William Andy McCrady (TFS), Heath Starns (TAMU AgriLife), Blake Walsh (Independent Insurance Center, Inc.), Joe Pfluger (CIPBM), Ray Hinnant (Lead Burn Instructor), Jonathon Mathers (Senator Drew Springer’s Office).

The Chair opened with welcoming everyone to the meeting and thanked Chris Schenck for setting up the meeting location. The Chair then had the attendees introduce themselves. The Chair called on Patrick Dudley to swear in newly appointed Board member John Foster, representing Texas State Soil and Water Conservation Board. Foster will be taking the place of former board member Rusty Ray, who retired earlier this year. Foster was sworn in and welcomed to the Board.

APPROVAL OF MINUTES

The Chair laid out the minutes from the previous Board meeting (June 24, 2021) for review. Dr. Morgan Treadwell made a motion to approve the minutes as corrected, Charles Tatton seconded the motion; the motion prevailed unanimously.

INSURANCE UPDATE

The Chair recognized Blake Walsh of Independent Insurance Center Inc. for an update regarding his investigation in uncovering new insurance policies for Certified and Insured Prescribed Burn Managers. Blake teamed up with a colleague that recently created a forestry policy in the Northeast. Blake and his colleague set up personal appointments with several insurance carriers directly. Six carriers are interested in providing a policy for prescribed burning. The policy should be ready in three to six months assuming one of these companies acquires the program. Blake is confident that a carrier will be interested in the policy. Once a carrier picks up the policy, insurance policies for prescribed burn managers can begin being written. It will be a program that can be written to fit the needs of Texas or other state prescribed burning requirements.

POLICY AND LEGAL UPDATE

The chair called on Patrick Dudley to update the Board on Policy and Legal updates. Dudley briefly reviewed the bills that were passed during the 87th legislative session. HB 2004 issues change with liability on Certified and Insured Prescribed Burn Managers. HB 222 creates a limited liability cap for burn bosses. Under SB 703, the Board is given rule making authority and establish reciprocal agreements with other states, waiving necessary prerequisites of those applicants that are in good standing in a particular state. SB 703 also requires a criminal background check must be performed for new applicants.

Dudley also informed the Board that the rule revisions for Chapter 226 and Chapter 228.4 are moving forward for publication. Dudley advised the Board that in the upcoming months there will be a rule review to encompass all rules governing prescribed burning. Dudley will bring recommendations to the Board at the next meeting.

LEAD BURN INSTRUCTOR MEETING UPDATE AND RECOMMENDATIONS

The chair called on Dr. Nathan Gill to give an update on the Lead Burn Instructor meeting held prior to the Board meeting. The Lead Burn Instructors requested to remove confidential personal identification information such as Social Security Numbers from certain PBB training forms. The information is initially on the PBB

application form. Removing confidential personal identification information from certain PBB training forms will mitigate the risk of information being released or inadvertently shared. Removing this information will reduce the risk of identity theft and will also reduce the pressure on the Lead Burn Instructors by removing the responsibility of keeping confidential personal identification information on file. John Foster made a motion to remove confidential personal identification information from certain PBB training forms. Wayne Pfluger seconded the motion. The motion was passed unanimously.

Dr. Treadwell brought up a concern she had with regards to the PBB training verification forms with the passing of HB 222. Treadwell asked the question, “Is the Board responsible for members of the public that take the training course and receive a training verification form, or should there be another training form available for members of the public that take training, but are not certified? After a brief discussion, Danielle Mitchell with TDA legal assured the Board that the Board is not responsible for members of the public that receive training but are not certified. All the form indicates is that a member of the public has taken the class and that an additional training form would be unnecessary. Only when a member of the public becomes a Certified and Insured Manager does the Board become liable.

There was also a request from the Lead Burn Instructors to receive board minutes after the board meeting once they have been certified. Once an email list has been created, Dudley will be able to send minutes to Lead Burn Instructors and others.

TCEQ UPDATE

Keith Sheedy gave an update from TCEQ. Sheedy informed the Board that the rule including volunteer firemen had passed and was on its way to EPA for approval. He also asked the Board if there was a preference regarding a change to rule or to the TCEQ training guidance document in conjunction with the requirements set by HB 2004. The Board’s consensus was to change the training guidance document for TCEQ investigators and not through rule changes.

Regarding the past request to reduce wind speed, Sheedy informed the Board that the issue of changing wind speed has been indefinitely tabled and if the issue comes up again, he will let the Board know.

TFS UPDATE

Rich Gray was recognized to give a Texas Forest Service update. Gray yielded the floor to Andy McCrady. McCrady gave an update on TFS grant awards. Through TFS Prescribed Fire Mitigation grants, there were 77 projects completed, with 12,000 acres treated, and \$300,000 given to the private sector. All projects were completed by Certified and Insured Prescribed Burn Managers.

In the upcoming year there are \$500,000 available for private landowners to conduct 19,000 acres of prescribed fire. There are currently 250 applications totaling 40,000 acres that will be reviewed and awarded. TFS has also been working closely with other organizations to increase cost share opportunities for landowners. NRCS has a subcommittee dedicated to prescribed fire, anyone interested needs to contact their state level NRCS agent or Mr. McCrady.

TDA UPDATE

The Chair recognized Patrick Dudley to present the Board with the TDA update. Dudley presented the Board with the attendance report. There were only three absences for 2021. At the beginning of the 2022 year, absences will reset, and everyone will be in good standing. Dudley then reviewed the absence policy with the Board for the benefit of the oncoming Board member and review for the Board.

Dudley presented the new PBB-603 insurance verification form to the Board now in use. This insurance verification form will replace the out-of-date form and requires more information from CIPBMs than the previous form required.

Dudley also announced to the Board that after some work he was able to establish a budget for the Prescribed Burning Board. The budget is currently set at \$23,000 and will allow Dudley to establish a spring and summer internship program and will allow certain Board members to be reimbursed for attending Board meetings.

The Board stood at ease at 2:54 p.m. and reconvened at 3:06 p.m.; quorum was present upon reconvening.

MEETING DISCUSSION AND POSSIBLE ACTION

The Chair laid out possible changes to PBB-601. The Board discussed additional revisions to the PBB-601. The revisions included adding a date of birth section to the PBB-601 and language informing the applicant that a criminal history background evaluation will be completed. Another revision is to make sure the applicant is aware that the post burn evaluation should answer all the questions provided but is not limited

to the questions provided. The Board additionally decided to change the first question in the post burn evaluation to read, “How did the actual prescribed burn deviate from the prescribed burn that was planned?” A motion was made by Dr. Morgan Treadwell to accept the revisions to the PBB-601 as discussed. Wayne Pfluger seconded the motion; the motion passed unanimously.

Chris Schenck gave the Board revisions to the PBB-601 instructions. A motion was made by Rich Gray and seconded by Charles Tatton to accept the revisions with corrections. The motion passed unanimously.

The Board discussed the Criminal History Evaluation process and what would keep an applicant from being approved for becoming a CIPBM. After discussion a motion was made by Wayne Pfluger to deny any applicant with a convicted felony with the option for an appeal to the Board; upon appeal the Board will determine whether to accept the applicant upon recommendation from TDA legal. The motion was seconded by Chris Schenck and passed unanimously.

The Board reviewed the Schedule of Disciplinary Actions for Certified and Insured Prescribed Burn Managers. After discussion by the Board, Dr. Morgan Treadwell made a motion to accept the current Schedule of Disciplinary Actions as initially developed by TDA. The motion was seconded by Dale Smith and passed unanimously.

The Board was given authority to accept the Schedule of Disciplinary Actions in SB 703 (Sunset Bill) during the 87th Legislative Session and accepted the current Schedule of Disciplinary Actions in order meet the requirements of statute. The subcommittee to review the Schedule of Disciplinary Actions will continue to review the Schedule of Disciplinary Actions and bring recommendations to the Board at a future date. Justin Penick joined the subcommittee along with Dr. Nathan Gill, Rich Gray, and Charles Tatton.

The Board discussed other business raised during the meeting to be placed on the next agenda. Patrick Dudley will contact members of the Board prior to the next meeting to determine additional agenda items. The consensus of the Board was to hold the next meeting February 23, 2022, in Kingsville, Texas unless otherwise determined.

The Chair then opened the floor for public comment. Chris Schenck commented that a member of the public expressed concern regarding transparency of the Board. The Board is required to follow all Open Meetings Act Rules and does so. All minutes certified by the Board are available upon request and once contact lists are accessible to staff, CIPBMs will be able to receive more updates from the Board. Chairman Penick agreed that staff should get certified minutes and agendas out as soon as possible, but

also agreed the Board has made great strides in becoming more public and encourages the public to attend all meetings. Staff will continue to work diligently to make sure CIPBMs receive more notifications.

AJOURNMENT

With no additional business, Chairman Penick made a motion to adjourn; seeing no objection, the meeting was adjourned at 4:30 p.m.