

**PRESCRIBED BURNING BOARD MEETING**  
**June 13, 2013, 1:00 p.m.**  
**Stephen F. Austin Bldg, 11<sup>th</sup> Floor**  
**1700 N. Congress, Executive Conference Room**  
**Austin, Texas**

**Board Members in attendance:**

Dr. Butch Taylor  
Dr. Lynn Drawe  
Linda Campbell  
Rusty Ray  
Rich Gray  
Dr. Robin Verble  
Brian Hays  
Randy Rivera  
Justin Penick  
Rooter Brite  
Ronnie Kramer  
Butch Thompson

**TDA Staff in attendance:**

Stephen Dillon  
Lance Williams  
Jessica Escobar  
Alyssa Looney

**Guests:**

Scott Trevey  
Steven Schrom  
Justin Dueibelhis  
Willy Conrad  
Mark Stinson  
Roxanne Hernandez  
Ray Hinnant  
Larry Joe Doherty  
Jose Villarreal  
Charlie Gaines  
Wayne Pflugger  
Jason Raines  
Lucien Ball  
Glen Gillman  
Allen Ersch

The first item of business was the calling of the meeting to order at approximately 1:00 p.m. by Chairman, Dr. Lynn Drawe. A quorum of members was found to be present.

The second item of business was approval of the minutes of the previous Board meeting held in Austin, Texas on January 15, 2013. A motion was made and seconded; the board unanimously approved the minutes as amended.

The third item of business was an update by Stephen Dillon, with the Texas Department of Agriculture (TDA), on the Office of the Attorney General (OAG) Opinion request and legislation passed by the Legislature in the 2013 regular session that pertained to prescribed burning in Texas. Mr. Dillon reported that because of legislation, SB 764, which passed requiring the Prescribed Burning Board (PBB) to approve an application from a government entity with self-insurance if all other PBB requirements are satisfied, TDA withdrew the OAG opinion request. Mr. Dillon further explained that the legislation did not address sovereign immunity and its application to a claim against a government entity arising out of prescribed burning activities. Additionally, Mr. Dillon also updated the Board on SB 702 which was a clean-up bill to make the prescribed burning statute more consistent, such as clarifying that all burn managers are referred to as “Certified and Insured” no matter what classification they are, i.e. private, commercial or not-for-profit. One other bill, SB 531, states that if a governmental entity applies for a license, it may use its self-insurance program to qualify for a license.

The fourth item of business was taking up the City of Austin burn manager application as a government entity with a self-insurance program. Mr. Dillon informed the Board that the self-insurance program has been reviewed by TDA Legal and has the amount of coverage required by statute and rule. After discussion, the Board expressed concern about the possibility of the doctrine of sovereign immunity being invoked by a governmental entity for claims arising out prescribed burning activities. Further discussion indicated the Board understood it must now approve applications by governmental entities supported by an appropriate self-insurance certification or program if all other requirements are met. A motion was made and seconded to approve the application of Lucien Ball with the City of Austin, motion passed. In addition, the Board also reviewed the Lead Burn Instructor application of Mark Stinson. A motion was made a seconded to approve Mr. Stinson’s application, motion passed.

The fifth item of business was discussion of Not-For-Profit (NFP) insurance criteria addressed by Mr. Dillon which referred to the rule that states a NFP burn manager must be covered by the insurance policy of the burn association to be certified. Due to the fact that there seems to be no insurers willing to cover burn associations, Mr. Dillon presented the idea of amending the rule so that a NFP application could qualify under the burn association member’s general liability policy. Mr. Dillon further presented for review an insurance policy by the Texas Farm Bureau that might be considered for use with a Not-For-Profit burn manager application. Mr. Dillon explained that this policy allows for a private burn manager to burn on property outside of his/her property line up to 5 burns. Thus, the idea is that this type of policy might be considered for a Not-For-Profit application as long as the burn manager is only burning on property of land owners that are members of the same burn association as the burn manger. After discussion by the Board, a motion was made and seconded to remove “prescribed burning association” from TAC 227.6, motion passed. A follow up motion was suggested by Mr. Dillon that TDA be allowed to approve the TFB insurance policy for the Not-For-Profit category, motion was made and seconded, motion passed.

The sixth item addressed by the Board was the rule changes to 4 TAC chapters 225-229 as presented by Jessica Escobar, TDA, who explained that the rules were substantively the same. The rules were reordered and reorganized to make them easier to read and understand. The substantive changes included: 1) adding wildland firefighting as a qualified continuing fire training activity; 2) government sponsored burn manager was added as a category of certification; 3) a section was added to provide restrictions on not-for-profit and governmental unit sponsored Certified and Insured Prescribed Burn Managers (CIPBM) to prevent them from burning at any time other than as prescribed in their categorical description. A motion was made and seconded to approve the rule changes, motion passed. A second motion was made and seconded to allow Chairman Drawe to approve adoption of the rules if no comments are received that require substantial changes to the rules as presented, motion passed.

The next item presented was an update on the PBB website by Ms. Escobar explaining the revamping that has taken place. Ms. Escobar went over the various changes and aspects of the new website which the Board found favorable.

The seventh item addressed was the Advisory Board (AB) appointments. Chairman Drawe presented the proposed appointments to the Board stating he had contacted the individuals listed and all had agreed to serve on the AB. There was some discussion regarding a couple name corrections. A motion was made and seconded to approve the amended proposed AB listing and give Chairman Drawe authority to appoint the AB, motion passed.

Next Chairman Drawe called on Lance Williams, TDA, to give an update on the Texas Commission on Environmental Quality (TCEQ) rule change. Before doing so, Mr. Williams reported the latest CIPBM totals which stood at 73 total CIPBM's; 29 commercial burn managers and 44 private burn managers. Mr. Williams then updated the Board on the TCEQ rule change explaining this change involves adding "hazard mitigation" as an exception for prescribed burning. On February 27, 2013 the TCEQ Commission ruled in favor of the rule change and the rules were expected to be posted by August 16, 2013 starting the 30 day comment period. Mr. Williams further explained that assuming no comments requiring substantial changes to be made are received, then the rule change is expected to officially be adopted sometime in January, 2014.

Chairman Drawe next opened up the meeting for discussion of other business by the Board. Justin Penick raised the question of regulations regarding signage for alerting oncoming traffic of a prescribed burn taking place along the highways. After some discussion, Rich Gray reported there is a process to obtain temporary permits for signage from the regional office of the Texas Department of Transportation agency where the burn is taking place. Chairman Drawe expressed desire to make sure that information is put into the training sessions regarding smoke management.

The meeting was then opened up for public comment. Willy Conrad with the City of Austin expressed concern over the proposed rule that a governmental entity burn manager would be allowed to only burn only on property controlled by the governmental entity.

Mr. Conrad explained that the burn manger might be required to burn on other property pursuant to agreements between the governmental entity and third parties. The Board agreed the proposed rule should be amended. Chairman Drawe went back to item seven where a motion was made and seconded to strike “on property controlled, leased or owned by the governmental unit” from proposed rule TAC 225.3(4), motion passed. Chairman Drawe then went back to public comment, but there was no public comment on other matters.

The Board discussed potential meeting dates and settled on October 9, 2013, subject to confirmation of Board member schedules. The Board directed TDA to set up the next meeting. Upon motion and second, the meeting was adjourned.