

Making Liability Insurance Available to Qualified Prescribed Burners

Executive Summary:

General Discussion

Carissa Wonkka, in her February presentation to the NE-MW Regional Prescribed Fire Council Coordinating Group, provided an outstanding overview of the barriers to increasing prescribed fire in the eastern two-thirds of the U.S. Those barriers include: lakestatesfiresci.net/NE_MW_Regional_Fire_Council/NE_MW_RX_Fire_Council_Legislating_the_Right_to_Burn_Forum_Feb_16_2022_Recording.mp4

- Lack of Right To Burn authority
- Lack of Burn Boss certification
- Lack of liability Insurance
- Unreasonable degree of legal liability
- Inadequate training opportunities
- Dysfunctional permitting processes

The degree to which any or all these barriers interfere with putting *good fire* on the ground varies among states. Just as important, each state has its own legislative bodies and administrative agencies that create statutes and rules.

Therefore, removing the barriers that limit prescribed fire must, of necessity, be accomplished within each state. Regional and national groups can play the following roles in support of state efforts to remove the some or most of the outstanding barriers:

- Track and share the current status of each state in removing each barrier
- Share available sources of training and insurance
- Provide a basic set of legally defensible prescribed burn guidelines/standards upon which states can base their burn boss certification process
- Compile prescribed fire information (e.g., acres burned and incident reports which include origin of the fire)
- Provide public education on why prescribed burns are necessary and can be completed safely as well as effectively.

The list above is not exhaustive but illustrates how cooperation among state councils can help. Our objectives here are to provide information on prescribed burn insurance, how affordable insurance is becoming available to prescribed burners working outside of western states and what we can do to make this opportunity economically sustainable.

Liability Insurance Availability

The lack of liability insurance is cited frequently as a major barrier to the increased use of prescribed fire. In truth, barriers listed above are linked directly to the dearth of liability insurance availability today. This is evident when insurance providers are queried about why access to liability insurance for the individuals and organizations involved with prescribed fire is so limited or non-existent today.

Expensive insurance claims from western wildfires have caused an over-reaction among many insurance providers, even in regions unaffected by the increasing incidence of claims due to wildfire. Insurance companies have taken an approach of simply avoiding coverage for anything having to do with fire. For the very few insurance companies that continue to offer prescribed fire insurance, a primary concern expressed by insurers focuses on the need to apply risk evaluation standards for determining which burners are qualified to engage safely in conducting effective prescribed burns. In states where the certification process or description of standards are clear, insurers can offer liability insurance policies for qualified burners. A shortage of training may limit the number of qualified burners, but the choke point is then training rather than insurance.

Progress is being made by two insurance industry pioneers to create informed insurance capacity for potential liability arising from prescribed burn activity.

American Risk Management Resources Network, LLC (ARMR is a program administrator and wholesaler who is licensed nationally) based in Middleton, Wisconsin is working in cooperation with C.D. Rigdon (a specialized retail insurance agency) to create affordable customized liability insurance packages for organizations in the conservation services business and in the prescribed burn business.

For readers that need to access these innovative insurance policies please see the information on the ARMOR website www.ARMOR.net/Conservation or call David Dybdahl, CPCU at 608-513-6101 or Chris Rigdon at 630-696-4043. These policies are currently available through local insurance agents nationwide, with some exceptions for a few western states with exceptionally high wildfire risks.

Currently, each Application for insurance must include documentation of the applicant's qualifications. Because there is no regionally or nationally recognized industry standard to establish who is qualified to perform prescribed burns, each applicant for insurance must be evaluated on a case by case basis by the insurance underwriters reviewing that application. Thus, the determination on which firms are qualified and therefore insurable is made by the insurance underwriters using their own judgement, rather than being based upon an easily verified and legally defensible standard of care for firms performing prescribed burns.

The lack of uniform standards for prescribed burn bosses or organizations creates a situation of subjective evaluation of qualifications that both slows down application processing and may result in some applicants, who might otherwise be deemed insurable, being denied coverage.

An important way to increase insurance availability is to establish an industry standard for

certifying prescribed burn bosses. This standard does not need to be detailed, neither does it need to have a singular path (e.g., National Wildfire Coordinating Group; NWCG); but it must be clear and objective. From a liability insurance company's perspective, qualified burners following the protocols for safe prescribed burns should create a legally defensible position against claims based on negligence for the contractors following those protocols. Current standards that prescribed burners can adhere to exist within NWCG or within many state or regional prescribed fire councils. NWCG, and some states, currently use utilize prescribed burn boss certification programs. Of the state certification programs, qualifications may, or may not, be based on NWCG. Other state fire councils post recommended standards without providing certification. Any single, nation-wide, or multi-state standard, that is specifically designed for prescribed burning, does not yet exist. It may be several years before broader standards exist so state-wide approaches will have to suffice for supporting insurance companies' evaluation of various applicants until a better system becomes available.

Without economic viability (estimated at approximately 150 policies), this insurance opportunity, the only one that currently exists, will be lost. The insurance brokers making this offer have been pioneering the development of a viable insurance solution for firms performing prescribed burns for many years and now need the support of practitioners to generate enough premium to justify offering, what is to them, a niche product.

Prescribed Burners:

In evaluating this opportunity, it is important to define the universe of organizations that require liability insurance coverage. At least two classes of professionals need liability insurance to operate. The type of insurance each class requires differs based upon the type of service being provided.

Professional services liability insurance, a form of errors and omissions insurance, is required for consultants whose expertise is used to evaluate the efficacy and sufficiency of the plan used to conduct a prescribed fire. These reviews are typically only performed for prescribed fire plans conducted on federally owned or controlled lands. The qualifications for these professionals are elucidated by the NWCG. Proof of completion of NWCG training is sufficient to ensure acceptance of an application for professional services insurance that covers those review activities.

Liability insurance is necessary to provide protection for those who plan, direct or perform the act of prescribed burning on non-federal lands. This is because their actions cause ignition, management and extinguishment of prescribed fire.

Organizations that typically require liability insurance include: for-profit contractors and consultants that prepare burn plans and conduct prescribed burns as well as non-profit organizations that own or manage land where prescribed fire is used, as well as non-profit organizations that plan or conduct prescribed burns for others.

Liability insurance for private landowners planning and conducting prescribed burns on their own property is typically covered under their homeowner's insurance policy. As burn units on private lands grow in scale and frequency, this assumption may need to be revisited in the future to make sure it is still accurate. Land steward services companies will need their own business insurance packages which are available through ARMR.

Conclusion:

No single silver bullet will bring five or ten times the present number of acres under prescribed fire management (i.e. the goal of many state fire assessment studies), however, the recommendations outlined above may provide guidance for significantly reducing the liability insurance barrier and therefore increase the use of prescribed burning as an effective and safe management tool.