

Instructor Presentation Plan

Course: Florida's Certified Pile Burn Manager Program

Unit Number: 4

Presentation Title: Pile Burning Legal Issues

Presentation Time: 90 min

Presentation Objectives:

Upon completion of this presentation, the participants will:

1. Understand the difference between Laws, Rules, and Procedures and who is responsible for each one's development.
2. Understand the applicable Laws, Rules and Procedures that pertain to pile burning in Florida

Handouts:

04-01-CPB-HO - CPBM_04_Legal_HO1_590.01-590.29.doc

04-02-CPB-HO - CPBM_04_Legal_HO2_F.A.C.5I-2.doc

Presentation Outline	Aids and Cues
Title Slide	04-01-CPB-PPT
Presentation Objectives Upon completion of this presentation, the participants will: 1. Understand the difference between Laws, Rules, and Procedures and who is responsible for each one's development. 2. Understand the applicable Laws, Rules and Procedures that pertain to pile burning in Florida	04-02-CPB-PPT

Presentation Outline	Aids and Cues
Introduction Conducting pile burns in Florida involves considerably more legal risk today than it did even ten years ago. Many of these types of burns are conducted in what we call the Wildland Urban Interface, or the area where the wildlands meet developed or developing areas. Simply stated, the fact that more people live, work and drive in Florida increases the risk of bodily injury to persons as well as increases the potential risk of damages to property. A pile burn may cause personal injury or property damage in several different ways. In the event of an escape there can be damage to adjoining property or injuries to persons on that property. In urban areas, there is a much greater risk of damage to residential structures as well as commercial structures. Additionally, there are now many more facilities whose occupants are sensitive to smoke from a pile burn including hospitals, schools and day care centers, airports, and nursing homes. Finally, conducting a pile burn in the urban interface can cause impaired visibility on major highways and other roads. Urban areas are more likely to already be impacted by air pollutants, and smoke from a pile burn can increase air pollution problems in those areas. Florida Pile Burning Setting Fire is Considered Inherently dangerous. Madison vs Mydette decision by Florida Supreme Court. The Property Owner and their Agent are Considered Liable for Damages. This Liability is <u>NOT</u> delegable to an independent contractor actually accomplishing the burning. A landowner wishing to accomplish pile burning in Florida MUST know what the “accepted burn standards” are and be certain they are applied. Monitoring Air Quality is the Responsibility of the DEP Florida Statute 590 Laws - Developed by the Legislature FS 590 Covers Agriculture, Silviculture and Landclearing 590.125(2) - General - applies to all.	04-03-CPB-PPT 04-04-CPB-PPT 04-05-CPB-PPT 04-06-CPB-PPT 04-07-CPB-PPT 04-08-CPB-PPT 04-09-CPB-PPT 04-01-CPB-HO 04-02-CPB-HO

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Laws Rules and Procedures (Rules here) Where Do you Learn about proposed changes in FAC? Florida Administrative Register. Show several Web Pages where the information can be found. Admin Weekly is the official way the public learns about changes in the FAC. Not the best because few people pay attention. Procedures Procedures are developed by Divisions and Bureaus Florida Statute 590.125(2) 590.125(2) There is specific consent of the landowner or his or her designee. 590.125(2) Must have an Authorization from the Florida Forest Service or Designated Agent 590.125(2) Adequate Firebreaks at the Burn Site and Sufficient Personnel and Firefighting Equipment for Containment of the fire. 590.125(2) The Fire Remains within the Boundary of the Authorized Piles 590.125(2) Someone is Present at the Burn Site Until the Fire is Completed Florida Administrative Code 5I-2 The moisture content and composition of the materials to be burned shall be favorable to good burning which will minimize emissions. The amount of dirt in the piles or rows shall be minimized to enhance combustion and reduce emissions, and The pile or windrow burning must be set back one hundred (100) feet from any paved public roadway and the prevailing winds will direct the smoke away from any occupied buildings (other than the landowners) or roads. Pile burning for paved public road maintenance and widening is exempt from the 100 foot set back as long as the visibility on the roadway is not reduced to less than 1,000 feet, and	04-10-CPB-PPT 04-11-CPB-PPT 04-12-CPB-PPT 04-13-CPB-PPT 04-14-CPB-PPT 04-15-CPB-PPT 04-16-CPB-PPT 04-17-CPB-PPT 04-18-CPB-PPT 04-19-CPB-PPT 04-20-CPB-PPT 04-21-CPB-PPT

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The pile burning is attended at all times, and The pile burning must meet one of the following setback requirements: 1. Residential, and Agricultural/Silvicultural pile burning must be set back three hundred (300) feet or more away from any occupied building other than that of the landowner and 50 feet from any wildlands, brush or combustible structure. 2. Non-Residential pile burning without an Air Curtain Incinerator must be setback one thousand (1000) feet or more away from any occupied building and 100 feet from any wildlands, brush or combustible structure. Exception to Setbacks – An exception to the setbacks in sub-subparagraph 5I-2.006(3)(d)1. and 2., F.A.C., will be granted if all of the affected parties agree in writing to allow the burn to take place. The burning will not exceed 6 months on the same site from the date of the initial authorization from the Florida Forest Service, unless the Florida Forest Service is notified of an exemption by DEP, or unless the authorization is for agricultural citrus spot burning. Tree Cutting Debris Burning. Open burning to dispose of tree cutting debris shall be conducted using a DEP permitted air curtain incinerator. Open burning to dispose of tree cutting debris without use of a permitted air curtain incinerator is allowed provided: (a) The tree cutting debris was generated on residential premises of not more than two family units and; (b) The open burning is restricted to the site where the tree cutting debris was generated and; (c) The open burning is conducted in accordance with all provisions applicable to pile burning as set forth by the Florida Forest Service at Chapter 5I-2.006(3)(a)(b)(c)(d)1. and (e), F.A.C.; and (d) The open burning is not prohibited by any local, county, or municipal rule or ordinance, or the open burning is conducted in accordance with any such rule or ordinance to the extent that such rule or ordinance is stricter than the provisions of this subsection.	04-22-CPB-PPT 04-23-CPB-PPT 04-24-CPB-PPT 04-25-CPB-PPT

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Air Curtain Incinerator Burning. The use of an Air Curtain Incinerator is allowed for the combustion of land clearing debris, provided the incinerator has a DEP air permit or has been specifically exempted from air permitting by the DEP. If an air curtain incinerator has been exempted from air permitting by the DEP, prior authorization to use the incinerator must be obtained from the Florida Forest Service. Operation of an exempt air curtain incinerators shall be authorized provided that open burning would otherwise be allowed under this chapter and the following conditions are met: (a) Only kerosene, diesel fuel, drip torch fuel, clean dry wood or lightered pine, virgin oil, natural gas or liquefied petroleum gas may be used to start the fire in the incinerator. The use of used oil, chemicals, gasoline, or tires to start the fire is prohibited. (b) An air curtain incinerator must be located at least 300 feet from any occupied building and 50 feet from any wildlands, brush, combustible structure, or paved public roadway. (c) Incinerators equipped with refractory-lined walls, shall begin charging no earlier than sunrise and must end no later than one hour after sunset. (d) Incinerators not equipped with refractory lined walls shall begin charging no earlier than 8:00 a.m. CT or 9:00 a.m. E.T. and must end no later than one hour after sunset. (e) Regardless of the air curtain incinerator type, after charging ceases, air flow shall be maintained until all material within the air curtain incinerator has been reduced to coals, and flames are no longer visible. A log shall be maintained on site, and available upon request, that documents daily beginning and ending times of charging. (f) If the air curtain incinerator employs an earthen trench, the pit walls (width and length), shall be vertical, and maintained so that the combustion of the waste within the pit will be maintained at an adequate temperature and with sufficient air re-circulation to provide enough residence time and mixing for proper combustion and control of emissions. Pit width shall not exceed twelve (12) feet. (g) The waste material shall not be loaded into the air curtain incinerator such that it protrudes above the level of the air curtain in the pit. (h) Ash shall not be allowed to build up in the pit of the air curtain incinerator to higher than 1/3 the pit depth or to the point where the ash begins to impede combustion, whichever occurs first.	04-26-CPB-PPT 04-27-CPB-PPT 04-28-CPB-PPT 04-29-CPB-PPT 04-30-CPB-PPT

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(i) Excessive visible emissions are not allowed except for a period of up to 30 minutes during start ups. (j) The air curtain incinerator shall be attended at all times while materials are being burned or flames are visible within the incinerator. (k) The burning will not exceed 6 months on the same site from the date of the initial authorization from the Florida Forest Service , unless the FFS is notified of an exemption by DEP. (l) Exceptions to the setback requirements from occupied buildings shall be granted by the Florida Forest Service when the applicant obtains a signed written statement from every affected resident within the setback area that waives their objections to the open burning associated with the land clearing operation and presents the statement to the Florida Forest Service 48 hours in advance of the burning. (m) If the owner or operator of the air curtain incinerator, by lease or other means, grants authority to operate the incinerator to a person not in the employ of the owner, the owner shall provide such person with a copy of this rule section's requirements. Off Site Burning. Any open burning of land clearing debris that is allowed by this chapter is restricted to the site where the material was generated and such material shall not be transported to another property to be burned, unless the land clearing debris has been generated by the person, or their agent, who owns or leases the property where it was generated and to where it is transported, and operates an air curtain incinerator in compliance with all applicable paragraphs of subsection 5I-2.006(5), F.A.C. Open Burning Exceptions. The Director of the Florida Forest Service is authorized to grant exceptions in furtherance of public health, safety and welfare, to the open burning rules within Chapter 5I-2, F.A.C., in the event of an emergency that would require the destruction of vegetative debris or animal carcasses in the most expeditious means possible. Examples would include the burning of vegetative matter or animal carcasses resulting from an insect or disease infestation, or resulting from storm damage e.g., hurricanes or tornados. Rule 5I-2, Florida Administrative Code, a copy of which is attached as an appendix to this outline. In order to be protected from liability in Florida, one must burn in accordance with both the Florida Prescribed Burning Act as well as all applicable FFS rules relating to prescribed burning.	04-31-CPB-PPT 04-32-CPB-PPT

Presentation Outline	Aids and Cues
Certified Pile Burner Definition CPB must ensure that all piles are properly placed and that the content of the piles is conducive to efficient burning. This must be documented on the time log both in the morning and at shutdown. (signature of the CPB) A CPB must ensure that the piles are properly completed no later than 1 hour after sunset unless in a Smoke Sensitive Area, in that case 1 hour before in SSA. A burn plan must be completed before authorization is requested. The burn plan must be on site. Specific consent of the landowner must be obtained before authorization is requested Authorization from the FFS must be obtained before ignition. Adequate firebreaks & sufficient personnel & equipment to contain the fire to the piles authorized. If a burn is conducted in accord with this subsection the property owner and their agent are not liable under 590.13 for damage or injury caused by the fire or smoke and are not in violation of subsection 2 unless gross negligence is proven. A CPB who violates this subsection commits a misdemeanor of the second degree.	04-33-CPB-PPT 04-34-CPB-PPT 04-35-CPB-PPT 04-36-CPB-PPT
5I-2 FAC for Certified Pile Burners Definition: “Certified Pile Burner” is an individual who successfully completes the certification program of the Florida Forest Service as outlined in FAC 5I-2.006(7)(c)1. through 5., and possesses a valid certification number	04-37-CPB-PPT 04-38-CPB-PPT
Certified Pile Burner Requirements: Certified Pile Burning. Piles or windrows shall not be ignited before 8:00 a.m. CT or 9:00 a.m. ET and have no visible flame	04-39-CPB-PPT

Presentation Outline	Aids and Cues
one hour before sunset or anytime thereafter, except in smoke sensitive areas where the piles must be completely extinguished. The Florida Forest Service will issue multiple day authorizations up to three days when the fire readiness level has been set to 1 or 2. CPB's must comply with the hours of operation listed in FAC 5I-2.006(7)(b) Authorizations for this type of burn require that the CPB present their certification number at the time the authorization is issued. Certified Pile Burner Plan: Certified Pile Burner Plan: Must be on site available for inspection and prepared prior to the burn. Plan must contain: - Burn Location - Soil type and moisture (KBDI or ERC) - Number of personnel and equipment types to be used on the burn - Desired Weather - Surface winds - Min RH - Drought Index - Days since rain - Max Temp - Dispersion Index Burn Plan Continued: - Fuel type and condition (how long drying) - Time and date Plan was prepared - Authorization date and time period for the authorization - Smoke Screening - Adjacent Landowners to notify - Special Precautions - Signature of the CPB	04-40-CPB-PPT 04-41-CPB-PPT

Presentation Outline	Aids and Cues
fire response agency is required to take suppression action. (2) points Failure to pay suppression charges on escaped burn within 15 days following receipt of second notice. (3) points Failure to pay an Administrative Fine within 21 days of receipt of notice of action or request an Administrative Hearing. (1) point per infraction Improper smoke screening [Does not identify or mitigate for smoke sensitive areas. (2) points Certified Pile Burner burns without authorization. (15) points Failure to attempt to shut down burn after notification from FFS. (5) points	
5I-2 Open Burning Not Allowed	04-44-CPB-PPT
5I-2.004 Prohibitions Open burning during a National Weather Service air stagnation advisory or Department of Environmental Protection air pollution episode is Prohibited Reducing Visibility at Airports (unless the local authority agrees to control air traffic) Reducing Visibility on Public Roadways to less than 1000 ft. (unless the local authority agrees to control traffic or has delegated this authority). Burning Within Smoke Sensitive Areas Between sunset and 9:00 am. Authorization will be denied to any burner who repeatedly violates Florida law or agency rules. Remains in effect until concern is mitigated.	04-45-CPB-PPT

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5I-2.004 Penalties Willful Violation: Guilty of a felony of the third degree, punishable as provided in FS 775.082 Careless Violation: Guilty of a misdemeanor of the second degree, punishable as provided in F.S. 775.082 The penalties extend to both the violator and the person/s or corporations causing, directing, or permitting such violation.	04-46-CPB-PPT
5I-2.004 Liability for Costs Whoever is responsible for an unauthorized fire in Florida's wildlands will be responsible for payment of all reasonable costs and expenses in suppressing that fire, (minimum of \$150.00). These costs will be payable to the Florida Forest Service. Of course there are other possible losses due to accidents on roadways.	04-47-CPB-PPT
Closed Category No Authorizations issued under ANY circumstances. For example: Non-Attainment Areas (none in Florida at this time (1997), or local ordinances may require no burning.	04-48-CPB-PPT 04-49-CPB-PPT
WebOBA Enhancements Certified Burners are able to place open burn authorization requests online ■ Morning of or night before Requires log-in and password Once approved, burner will be able to check the site for approval status and retrieve authorization number Provide the same information ■ Multiple STRs ■ Nearest Intersection Must indicate certified burn	04-50-CPB-PPT 04-51-CPB-PPT 04-52-CPB-PPT

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Accurate Mapping Request should be processed within an hour 3 Steps to get started Read Quick Start Guide Activate Account Submit Request Check restrictions for that day – by County Update your mailing information Receive email notification Review Presentation Objectives Upon completion of this presentation, the participants will: Understand the difference between Laws, Rules, and Procedures and who is responsible for each one's development. Understand the applicable Laws, Rules and Procedures that pertain to pile burning in Florida Questions	04-53-CPB-PPT 04-54-CPB-PPT 04-55-CPB-PPT 04-56-CPB-PPT 04-57-CPB-PPT 04-58-CPB-PPT 04-59-CPB-PPT 04-60-CPB-PPT