

Appendix A. Pacific Northwest Laws Pertaining to Forest Fire Protection

Overview

Family forest owners in Oregon, Washington, and Idaho are subject to a variety of state and local laws related to forest fire protection. Any forest operation that involves burning, such as igniting slash piles or using prescribed fire, has inherent risks for creating uncontrolled wildfire, particularly during the closed fire season. Fire conditions vary from year to year and from place to place, depending on specific weather patterns such as how much rain or snow an area receives and when.

Fighting fire is expensive and no landowner would want to be found liable for the costs of suppressing a fire, even a relatively small one. Most states hold landowners and people who start fires liable for the costs of fighting those fires if they do not follow the state's regulations. Therefore, anytime landowners conduct management activities on their property, such as thinning, harvesting, burning, and so on, they should include an effective plan for preventing an uncontrolled forest fire. By doing so, landowners reduce their own risks and help keep fire budgets and fees low.

The financial stakes are very high, so landowners should protect themselves by obtaining adequate insurance, regardless of whatever insurance their contractor may have. When hiring a contractor, it may also be advisable to require proof of insurance up to a coverage level the landowner feels is adequate. Often \$1 million in coverage is used as a standard. Private insurance companies also offer coverage, so check with your insurance carrier. Note that insurance is generally not available for the value of the timber itself.

Burning associated with forest management activities (burning slash) can introduce significant amounts of smoke into the atmosphere which, depending on weather conditions, the amount of fuel being burned, and proximity to population centers, can present serious air pollution problems. By coordinating who is burning how much fuel and when, these kinds of problems can be minimized.

Wildfire in the wildland-urban interface is becoming an increasing problem in the Pacific Northwest as more and more people choose to live in rural forested neighborhoods outside of urban areas. Due to excessive amounts of fuel in the form of wooden houses and the vegetation surrounding them, fire suppression organizations are challenged to provide adequate protection. Local municipalities have zoning regulations related to such regions. If your forestland is within city limits, there may be city regulations that affect how you manage fire risk. For example, some cities require logging slash to be chipped or hauled away rather than burned. Check with the appropriate authorities for regulations that may apply in your area. Local forestry

agency officials who oversee fire regulations are usually aware of these regulations or guidelines.

Fuel reduction activities often create bare mineral soil, particularly if there is burning involved. This can provide a very favorable environment for invasion by non-native weeds. All three states have laws designed to reduce the spread of these weeds. For more information on these laws, consult your state or county's noxious weed office.

Oregon laws summary

Notifications and Permits

Most commercial forest operations require notification to the Oregon Department of Forestry. The purpose of this "Notification of Operation" is to ensure that forest operations comply with forest practices laws and rules. All burning of slash requires this notification.

Additionally, most forest operations also require a "Permit to Use Fire or Power-Driven Machinery." This requirement originated in the 1930s following the Tillamook Burn, which was caused by a timber harvest operation. Its purpose is to reduce fire risk by allowing Oregon Department of Forestry personnel the opportunity to inspect forest operations for compliance with fire laws. These laws mandate specific requirements for fire prevention and fire suppression equipment and tools.

The Notification of Operation and the Permit to Use Fire or Power-Driven Machinery are combined on one form and available at local Department of Forestry and Forest Protection Association offices.

Burn permit

Oregon prohibits prescribed fires during the burning season and requires permits for forestry burning whatever time of year it is done.

Oregon smoke management plan

To provide effective coordination, Oregon requires smoke management plans to be filed in conjunction with burn plans. Smoke management plans require information such as estimated fuel quantities and acreage to be burned; this information is evaluated against the forecasted daily weather and specific smoke sanction guidelines to determine whether burning is permissible.

Fire season and regulated closure

When forest fuels become dry and local climatic conditions create fire hazard conditions, Oregon Department of Forestry may declare a fire season and/or regulated closures to minimize the risks of someone accidentally igniting a wildfire.

The declaration of fire season initiates special requirements for commercial operation including fire tools, water supply, and fire watch services. For operations west of the summit of the Cascade Mountains, Industrial fire precaution levels further regulate the use of power-driven equipment. The declaration of regulated closures influences nonindustrial activities of public and private landowners. These requirements vary by locality but typical restrictions ban open fires except in approved areas, restrict nonindustrial chainsaw use, and confine motorized vehicles to improved roads. Should fire conditions continue to deteriorate into an extremely hazardous situation, the restrictions can be elevated to require entry permits or complete closure of certain forest areas.

Landowner liability

Landowners incur an increased responsibility for fire suppression costs and actions when conducting or allowing forest operations on their property. This includes operations such as timber harvests or burning activities. Fires that result from negligent activities, such as not complying with fire rules and laws, subject the landowner to paying the total cost of fire suppression. Operation fires that do not result from negligent acts still subject the landowner to liability for a maximum of \$300,000 of suppression costs. Fires started as a result of forest operations are statutorily assumed to be caused by the operation, if no other cause can be established by the state's investigation of the fire.

Additionally, to avoid full liability, Oregon law requires every landowner and their forestry contractor to make "every reasonable effort" to control a fire that starts on their woodland property, from either burning or operation activities. This means that all available resources of the landowner must be used to fight the fire. Again, failure to perform "every reasonable effort" voids the \$300,000 maximum liability and opens the door to full liability for fire suppression costs. See the publication Landowner Fire Liability at: http://egov.oregon.gov/ODF/PUBS/docs/Landowner_Fire_Liability_reduced.pdf

The Oregon Small Woodlands Association (www.oswa.org) offers discounted firefighting expense liability insurance to its members.

The subject of fire liability is complex and each fire situation is unique. If you have questions regarding potential liability, contact your local Oregon Department of Forestry or Forest Protection Association office. For more details on the laws regarding fire suppression costs liabilities, refer to Chapter 477 in the Oregon Revised Statutes (ORS).

Senate Bill 360 (SB 360)

If you have a home on your woodland property this act may apply to you, so it is important that you be aware of it and understand its provisions.

In 1997, to help ameliorate the danger of wildfire, the Oregon legislature passed the Oregon Forestland Urban Interface Fire Protection Act, which recognizes that homeowners also have a responsibility to protect their homes. In addition to establishing legislative policy on fire protection, the act defines specific fire safety standards so homeowners can manage fire hazards and risks by reducing fuel availability on and around their homes.

The Oregon Department of Forestry was directed by the legislature to implement the act, and a more complete and thorough explanation of the regulations can be found at its website: http://www.odf.state.or.us/divisions/protection/fire_protection/prev/sb360/default.asp.

Idaho laws summary

Landowner liability

All forest owners in Idaho are responsible to provide protection against forest fires. They can provide their own protection (currently only USFS, BLM, and Tribes do this), join an association of landowners that provides protection (currently there are two Timber Protective Associations in Idaho with more than 60 members that do this), or rely on the Idaho Department of Lands (IDL) to provide the protection, for which landowners are charged a fee that is paid along with their property tax bill.

Fire hazard from logging

Laws governing fire hazard created in forestry activities are administered by the IDL and are structured differently for fire hazards associated with logging and for fires resulting from other forest management activities. Fire hazards associated with logging are administered under the Idaho Forestry Act and Fire Hazard Reduction Laws (Idaho Code Title 38, Chapters 1 and 4).

Anytime someone harvests timber and sells it, the person who is responsible for treating the slash must obtain a one-page "Certificate of Compliance—Fire Hazard Management Agreement—Notification of Forest Practice" (sometimes referred to by loggers as a "brush permit"). The completed form must be provided to the purchaser of the logs and to the local IDL office. The person who signs the agreement (usually the logger) is legally liable to reduce slash from cutting forest products to an acceptable level to release the landowner or operator from liability for any forest fires that start on or move through the property.

The agreement has five possible options to reduce the fire hazard. The most commonly used option requires the contractor to post a cash bond (a holdback) to assure that the slash will be treated. The bond is usually paid to the state from log delivery payments made by the mill that purchases the logs. The money goes back to the contractor after they have reduced the slash to an acceptable level,

though a small portion is permanently withheld for fire suppression and forest practice act administration. Generally, the slash must be treated within two years but this can vary for different types of jobs, depending on negotiation with the local IDL fire warden.

If the slash is not treated by the agreed-upon expiration date, the contractor is liable for the costs of any wildfires started on or passing through the slash area for five years after the agreement expiration. The contractor can pay an additional fee, however, for the state to assume the remaining fire suppression liability.

Fire hazard from forest management practices other than logging

Fire hazards for practices other than timber harvest (for example, pre-commercial thinning and prescribed burning) are regulated under the Idaho Forest Practices Act (Title 38, Chapter 1). Anytime a forest owner harvests timber, constructs or maintains forest roads, plants trees, uses chemicals, thins, prunes, or uses prescribed fire, they should check with the local IDL office to see whether they need to file a Certificate of Compliance—Fire Hazard Management Agreement—Notification of Forest Practice. If they do need a notification, the local IDL forest practice advisor will determine the activity's potential fire hazard and the hazard reduction plan needed, if any.

Landowners generally have 12 months or less to reduce the fire hazard. The landowner is released from liability when they have met all the requirements set in the agreement. Forest owners can sometimes negotiate with the fire warden for an extension of the time to finish the treatments.

Open and closed burning seasons, burn permits

Idaho has a closed burning season from May 10 to October 20. During periods of very high fire risk, closed burning seasons can be extended, so it is a good idea to check with the local fire warden before you burn.

Burn permits are not required during the open burning season. During the closed season, landowners must get a permit to light any fires, except for campfires in designated areas. Burn permits are available through local fire protection districts, are typically good for up to 10 days, and spell out the conditions under which burning is permitted.

Forest owners who are doing some type of prescribed burning (e.g., a broadcast burn or an underburn) must file and follow a prescribed burn plan which must be approved by the local fire warden.

Fire tools

Everyone working in Idaho forests must have one basic, functional, accessible firefighting cache for each 10 persons working, consisting of two axes, five shovels, three

pulaskis, and two water buckets. The fire cache tools must be in a closed box marked "For Fire Use Only."

Each piece of power equipment used in Idaho forests must have one chemical fire extinguisher rated by the Underwriters Laboratory as not less than 4-BC. Anyone using a chainsaw must have immediately available (1) a fully charged operable fire extinguisher of at least eight-ounce capacity, and (2) a functional round-pointed size zero or larger shovel.

Spark arrestors

Chainsaws, skidders, or any other machine with an internal combustion engine being used in Idaho forests must have a properly functioning spark arrester. Your local fire warden can assess whether what you have is adequate. Passenger vehicles and light trucks with a well-functioning muffler and tailpipe are usually exempt from this.

Air quality

Private forest landowners and a variety of state and federal agencies have created the North Idaho and South Idaho Airshed Groups to voluntarily manage smoke from their burning activities. Each spring and fall, weather and proposed burn data is gathered daily to help fire weather forecasters determine if burning could impact major population centers in eastern Washington, northern Idaho, and western Montana. Forest owners can get this information by visiting the Montana/Idaho Airshed Group website (<http://www.smokemu.org>). In northern Idaho, air quality and burning information may also be obtained from the Department of Environmental Quality's hotline, 1-800-633-6247, or the DEQ's web site at www.deq.idaho.gov.

For more details on laws to protect Idaho forests from wildfire, refer to the Idaho Forestry Act (Title 38, Chapter 1) and the Rules Pertaining to Forest Fire Protection (IDAPA 20.04), accessible through the Idaho Department of Lands website section on fire at <http://www.idl.idaho.gov/bureau/firemgt.htm>.

Washington laws summary

Washington has numerous agencies that regulate the use of fire. Agency jurisdiction is determined by location and the type of material being burned. Homeowners can technically fall under three different agency jurisdictions when planning to burn on their property.

Agricultural burning, such as field burning and row burning, is regulated by the Department of Ecology. Yard and garden burning is regulated by the Department of Ecology or, in some areas, by county government or a local air pollution agency. Yard and garden burning is typically the burning of material that is generated from the maintained portion of your property such as gardens, corrals,

and your yard. To learn more about agricultural and yard and garden burning contact the Department of Ecology.

Silvicultural (forest land) burning

Silvicultural burning is the burning of forest debris on forested land. Outdoor debris burning is subject to state and local fire safety and air quality regulations. The Washington Department of Natural Resources (DNR) is the authority responsible for the control of silvicultural debris burning in order to reduce the risk of fire spreading from an area and to determine when lives or buildings may be in danger (Revised Code of Washington 76.04.015). This section provides an introduction to rules and regulations for the use and control of fire on private forestland in Washington State, but it does not include all relevant laws and is limited to silvicultural burning and operations. Forest owners are advised to contact the DNR for complete information and direction to other potential authorities for the use and control of fire. For information and assistance, contact the Resource Protection Division, Washington State Department of Natural Resources, 360-902-1300, RPD@dnr.wa.gov, or one of the regional offices listed below .

Debris burning is the leading cause of wildfire on state and private lands. The DNR regulates silvicultural burning. The DNR may suspend all outdoor burning during times of high fire danger due to weather conditions, wildfire conditions, lack of firefighting personnel, or to protect air quality.

Silvicultural burning can be done with or without a permit depending on how much is being burned. Before doing any silviculture burning call 1-800-323-BURN. A written burn permit is not required by the DNR if the following conditions are met:

- Follow the notification instructions specific to your county as given on the 1-800-323-BURN message or shown on the website at <http://fortress.wa.gov/dnr/firedanger> each day you plan to burn.
- Burn no more than one pile at any time; each pile must be completely extinguished before lighting another.
- Create a firebreak around the pile by constructing a barrier to bare mineral soil with no flammable material.
- Keep a shovel and connected water hose or at least five gallons of water nearby.
- A person capable of extinguishing the fire must be in attendance at all times while burning.
- Burn only in calm or light winds.
- A fire that does not require a written permit has established size limitations based on time of year and the county within which the burning occurs:
 - From July 1 to October 15, individual pile size in all counties shall be limited to no larger than four feet, except pile size in Clallam and Jefferson counties is limited to ten feet.

- From October 16 through June 30 individual pile size in all counties is limited to ten feet; except pile size is limited to four feet in Island, King, Kitsap, Mason, Pierce, San Juan, and Spokane counties.

If these conditions cannot be met, a DNR permit is required. Additionally, a permit is required for the following:

- Burning of any machine-piled material.
- Burning within 500 feet of forest slash piles or within 50 feet of structures.

To request a burn permit, contact the appropriate regional office.

Washington State has additional laws to protect lands from fire. Forest owners should also be aware of the Extreme Fire Hazard Law and Industrial Forest Precaution Level.

Extreme Fire Hazard Law (RCW 76.04.660)

It is against the law to create a condition that increases the hazard for wildfire on your forest and adjacent lands. This additional hazard is defined as “a condition existing on any land in the state covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property.” Both the landowner and the person creating the additional hazard are required to take reasonable measures to reduce the risk of fire spreading from this area.

The Extreme Fire Hazard Law applies to specifically defined additional fire hazards. Slash isolation, reduction, or abatement is required when the DNR determines there is an extreme fire hazard according to law. Examples include within 100 feet of a public roadway or railroad, within 500 feet of any building valued over \$1,000 on neighboring property, or within 500 feet of any area used by the public, such as a school, park, or campground. If the landowner and person creating the additional hazard do not abate the risk, the DNR has the authority to conduct mitigation measures and charge the landowner and operator for the service.

Landowners should contact the DNR prior to generating slash that may meet the definition of extreme hazard to discuss their options.

Washington State Precaution Levels

By law, the Washington Department of Natural Resources (DNR) uses two closure systems for reducing the risk of wildfires on 12 million acres of private and state forest land that receives fire protection from the department.

Activated when needed during the summer fire season, one closure system applies to woods workers and other forest industrial users. The other set of protections is aimed

at the general public, but also includes local residents, landowners, recreationists, and forest workers.

Woods workers are required to observe both sets of restrictions as fire danger dictates. Other land users only need to follow the public use restrictions.

Industrial Precautions

The DNR, U.S. Forest Service, Bureau of Land Management, and Bureau of Indian Affairs all use the same four-level industrial regulation system. This system, which helps prevent wildfires by regulating work in the woods, is known as the Industrial Fire Precaution Level (IFPL) system.

Below are the levels and what they mean (see Table 7):

Level I: Closed fire season: Fire equipment and fire watch service is required.

Level II: Partial hootowl: Limits certain activities to between the hours of 8 P.M. and 1 P.M.

Level III: Partial shutdown: Prohibits some activities altogether and limits other activities to between the hours of 8 P.M. and 1 P.M.

Level IV: General shutdown: All operations prohibited.

Public use restrictions

The DNR also administers public use restrictions, which limit activities on forest land during periods of high fire danger. Following are the restrictions and what they mean:

Summer Fire Rules. From April 15 through October 15, or longer if the fire danger warrants it, the following restrictions are in place:

- Cigarette smoking on forest land is only allowed within vehicles.
- Fireworks may not be lit on forest land.
- Nonindustrial use of chain saws must follow IFPL requirements.

Fire watch services

The purpose of the fire watch is to stay after the day's work is over and report any fire starts to the proper authorities. The fire watch is required to be on duty after the last power-driven equipment used by the operator has been shut down for the day. The fire watch must be on duty a minimum of one hour. During periods of high fire danger, DNR recommends the fire watch be on the operation site longer than the mandated one hour.

A fire watch must do the following:

- Visually observe all parts of the operation area on which industrial activity has been in progress.
- Be physically capable of fighting a fire and experienced in operating firefighting equipment.
- Have on-site communication (CB radio, cellular or radio phone) to summon help in the event a fire breaks out. Transportation is also required in case radio or phone communication doesn't work.

Closed Entry Areas. When high fire hazard conditions exist, the DNR may designate certain areas as regions of extra fire hazard and post them accordingly. Land designated as closed to entry is only open to local residents and woods workers carrying out industrial jobs. All other land uses, including recreation, are restricted. The DNR typically designates these areas in the spring, posts signs accordingly, and keeps them closed to entry during the entire fire season. Most closed entry designations occur by landowner request on private land west of the Cascades.

Forestland Closure. When very extreme fire weather conditions exist, the DNR may issue an order restricting all access by all people to all activities on certain private and public forest lands. These closures, which are very rare, may even restrict local residents from returning home if the fire danger warrants it.

Table 7. Operation rules for types of power saws during fire precaution periods.

Precaution level	Landing	Tractor/skidder	Other wood saws
I. Closed season	Fire watch	Fire watch	Fire watch
II. Partial hootowl	Fire watch	Hootowl ¹	Hootowl ¹
III. Partial shutdown	Hootowl ¹	Hootowl ¹	Prohibited
IV. General shutdown	Prohibited	Prohibited	Prohibited

¹ Operation can only take place from 8 p.m. to 1 p.m.