



YOU, WILDFIRES AND THE LAW



WHAT YOU NEED TO KNOW ABOUT THE PREVENTION AND SUPPRESSION OF WILDFIRES ON LAND UNDER YOUR CONTROL

Wildfires are a regular occurrence in South Africa. Every year during the fire season the news contains stories of wildfires sweeping through the country.

The impacts of wildfires are extensive:

- Wildfires destroy croplands, grazing, forests and homes and can also affect natural vegetation. This leads to great financial losses, especially for people who do not have insurance.
- Wildfires cause hardship. This can vary from the death and displacement of people to the loss of personal possessions that cannot be replaced and also the loss of jobs.
- Although fires are a necessary part of the natural cycle of life, if they are uncontrolled or occur too frequently, they damage biological diversity.
- Wildfires lead to the faster run-off of water. This increases the intensity of floods and also causes soil erosion.
- Wildfires cause air pollution.

HOW DOES THE LAW DEAL WITH WILDFIRES?

- In order to limit the damage caused by fire, the law sets out a number of prevention measures that people must adopt to avoid a wildfire. The main aspects of these measures include the following:
 - The law provides for the establishment of fire protection associations.
 - The law provides for the establishment of a system of rating and warning people of the risk of wildfires.
 - The law stipulates that landowners have to suppress a wildfire once it is already burning (see page 13).
 - The law provides for fines or imprisonment of landowners who do not adequately prevent or suppress wildfires.
 - The law also provides for landowners to pay for the damages that result from a wildfire, if they have not taken adequate steps to prevent or suppress a wildfire.
- Insurance companies may start to reject claims from landowners who have suffered damages from a wildfire, if they did not take adequate steps to prevent or suppress the fire.

WHAT ARE THE LEGAL DUTIES REGARDING WILDFIRE PREVENTION?

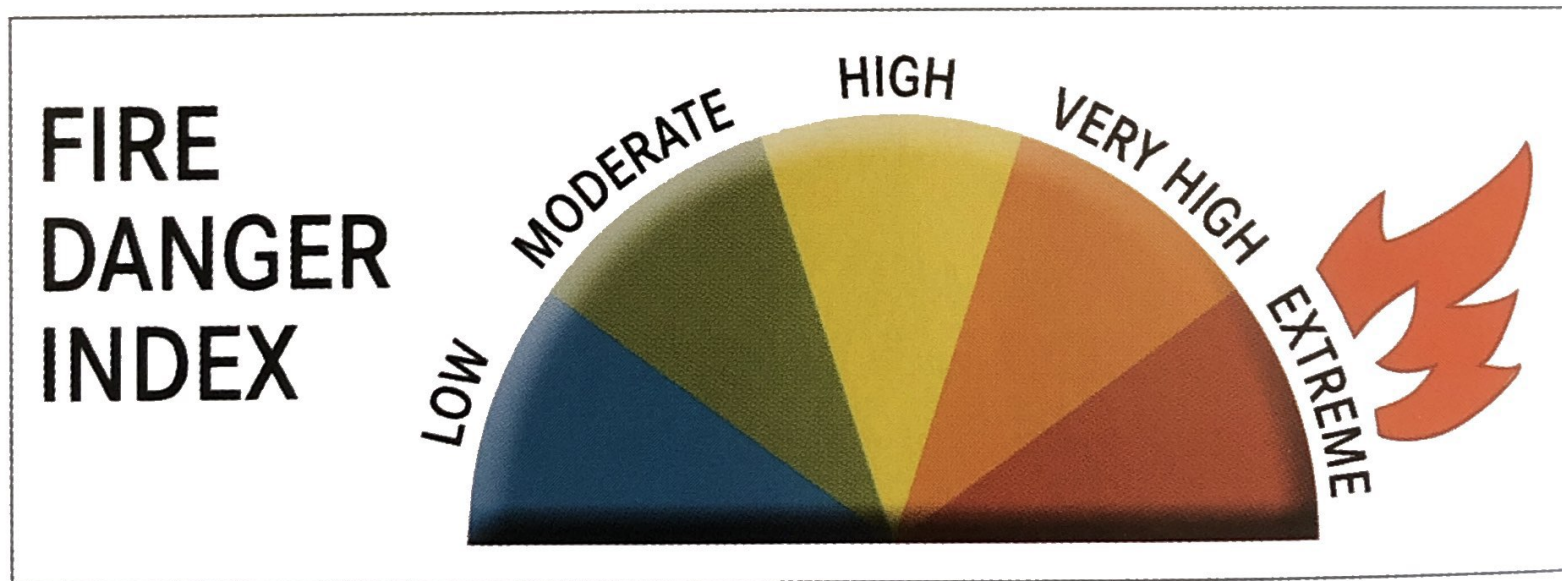
- You may not start a wildfire.
- You may only start a fire, including cooking or braai fire, in a designated area.
- Every landowner must have equipment available to fight wildfires.
- Every landowner must have personnel available to fight wildfires.
- Every landowner must have a person on their property that keeps a lookout for fires.
- Every landowner must establish a system of firebreaks.
- A landowner may not burn firebreaks or carry out prescribed burns when the Fire Danger Index is high.
- Land users must manage the fuel load on land under their control. They must remove invasive alien vegetation from the land.

WHAT ARE THE REQUIREMENTS FOR FIREBREAKS?

- Every property must have a system of firebreaks in place.
- The firebreaks must be on the boundary of the property, unless there is an exemption granted by the Minister of Agriculture, Forestry and Fisheries, or an agreement with an adjoining landowner that the firebreaks be located elsewhere.
- The firebreaks must be “sufficient to control the spread of wildfires”.
- Firebreaks may not be burnt during times when there is a high fire risk.

WHAT IS THE FIRE DANGER INDEX SYSTEM?

- The Minister has prepared a system for determining the risk of fire and the weather conditions that increase the danger of fire in different parts of the country.
- The National Fire Danger Index identifies conditions when the risk of wildfires is low; moderate; high; very high; and extreme.



- When the Fire Danger Index in a region is extreme or very high, South African Weather Services (SAWS) must publish a notice in the media.
- If SAWS publishes a notice warning of an extreme or very high fire danger in a region, no person may light, use or maintain a fire in the open air in that region.

WHAT ARE THE REQUIREMENTS FOR ESTABLISHING AND JOINING A FIRE PROTECTION ASSOCIATION?

- The law provides for landowners to establish a fire protection association in an area where there are regular wildfires, fairly uniform vegetation, climate or risk of wildfires.
- The purpose of a fire protection association is predicting, preventing, managing and extinguishing wildfires. It seeks to achieve this through cooperation between landowners, the coordination of fire prevention efforts and the sharing of fire fighting resources.
- To establish a fire protection association, the following steps must be followed:
 - A founding meeting must be convened;
 - Notice of the meeting must be given to all landowners and to the Chief Fire Officer of the local authority;
 - Those present must decide to establish a fire protection association;
 - The fire protection association must adopt a constitution;
 - An application must then be submitted to the Department of Agriculture, Forestry and Fisheries for registration of the fire protection association.

- Once registered, a fire protection association acquires legal powers to make rules that bind its members, and to exercise any powers delegated to it by the Minister. The Fire Protection Officer of a registered fire protection association is empowered to enforce the fire protection association's rules and to inspect members' properties.
- Membership of a fire protection association is voluntary for private landowners and compulsory for organs of state.
- However, there are good reasons for landowners to become members of a fire protection association - the Presumption of Negligence does not apply to a member of a fire protection association.

PRESUMPTION OF NEGLIGENCE

If a person brings civil proceedings and proves that:

- (a) he or she suffered loss;
- (b) the loss was caused by a wildfire; and
- (c) the wildfire started on, or spread from land owned by the defendant, the defendant is presumed to have acted negligently in relation to the wildfire unless:
 - (i) the defendant proves that he or she was not negligent; or
 - (ii) the defendant is a member of a fire protection association in the area where the fire occurred, in which case the person bringing the claim must prove that he or she was negligent.

LEGAL DUTIES OF FIRE PROTECTION ASSOCIATIONS

A fire protection association has a number of legal duties:

- Develop and apply a wildfire management strategy for its area. The wildfire management strategy provides, among other things, for standards for firebreaks, exemptions from boundary breaks and the maintenance of communal and strategic breaks.
- Develop rules that will bind the members of the fire protection association.
- Through its Fire Protection Officer, regularly communicate the forecast Fire Danger Index to its members.
- Organise and train members in fighting, managing and preventing wildfires, and provide management services, training and support to communities.
- Coordinate the allocation of resources and fire prevention and suppression activities of members.
- Provide statistics about wildfires in its area to the Minister of the Department of Agriculture, Forestry and Fisheries, and furnish the information needed to prepare or maintain the Fire Danger Index system.
- Carry out the various powers and duties delegated to the fire protection association by the Minister.
- Issue permits that allow for firebreaks and other burns to be carried out in controlled circumstances.
- The operating strategies for fire protection associations must indicate what powers and duties the Minister should delegate to the fire protection association.

WHAT ARE THE LEGAL DUTIES REGARDING FIRE SUPPRESSION?

- You may not allow a wildfire to spread across your land.
- You must report a wildfire that is burning on your land to your neighbours and the fire protection association if there is one.
- If you are requested to help fight a wildfire, you may not refuse to do so.
- You cannot interfere with or obstruct someone who is fighting a wildfire.
- If you are a land user, you should develop a fire management plan.

WHAT SHOULD BE CONTAINED IN A FIRE MANAGEMENT PLAN?

A fire management plan for a property should identify:

- the fire hazards on different parts of a property;
- the best position for firebreaks;
- areas where controlled burns should be carried out; and
- a timetable for carrying out prescribed burns i.e firebreaks.

FREQUENTLY ASKED QUESTIONS

Do I have to do anything if I am only leasing the property?

The Act applies to lessees as much as it applies to the people who own properties.

Do I have to have a firebreak on my property?

Yes. The basic rule is that every property must have firebreaks along the boundary. This means that the roads authorities must also establish firebreaks along public roads. However, you can agree in writing with your neighbour, or within your fire protection association, that the firebreaks will be located elsewhere on one of your properties.

Who must pay for the costs of a firebreak?

The costs of a firebreak must be shared between the people who have to establish them.

What can I do if my neighbour does not remove a fire hazard from his property?

- Report the matter to the fire protection association in the area.
- Make a complaint to the police and ask that the neighbour be charged.
- Write a letter to the neighbour explaining that their actions are unlawful, requesting that they sort the problem out and point out to them that, if they fail to do so, your letter may be used against them if there is a court case later.

What can I do if there is no fire protection association in my area?

Read the section of this booklet about fire protection associations and take steps to form one.

Why should I join a fire protection association?

There are many practical advantages to joining a fire protection association. It allows you to coordinate your fire prevention and fire fighting efforts with other people from your area. There are also legal advantages to joining a fire protection association. One is that the Presumption of Negligence clause in the National Veld and Forest Fire Act will not apply against you. The other is that it is more difficult for someone who wants to make a claim against you for damages that result from a fire to show that you did not take reasonable measures to prevent the fire.

Who is responsible for damages that I suffered as a result of a fire?

A number of different people could be liable for these damages, including:

- The person who started the fire, or their employer, if it was started when they were at work;
- The owner or the person in control of the land where the fire started;
- The owner or the person in control of land over which the fire spread.

Who is responsible for the costs of fighting fires?

The costs of fighting a fire can be recovered from anyone who had a legal duty to prevent the fire from starting or spreading, or who had a legal duty to fight the fire.

WHAT CAN YOU DO?

- Practice Integrated Fire Management.
- Look after your own land by removing hazardous invasive alien vegetation.
- Establish firebreaks and ensure that you have sufficient equipment and trained personnel available during high fire danger weather.
- Co-operate with neighbours during your fire prevention and suppression efforts.
- Prepare a plan of action to address the following:
 - Prevention
 - The location of firebreaks
 - Controlled burning regime
 - Suppression
- If a fire protection association exists, become a member.
- If no fire protection association exists, approach your district municipality or farmers union to assist with establishing a fire protection association.
- Through the fire protection association, negotiate insurance rebates and rates rebates.

WHAT IS INTEGRATED FIRE MANAGEMENT?

Integrated Fire Management is a series of actions that includes fire awareness activities, fire prevention activities, prescribed burning, resource sharing and coordination, fire detection, fire suppression, fire damage rehabilitation and research at local, provincial and national levels in order to create a sustainable and well balanced environment, reduce unwanted wildfire damage and promote the beneficial use of fire.