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(Amended October 2, 1987)(Amended December 21, 2001)
(Amended November 7, 2008)(Amended May 3, 2013)
(Amended July 12, 2013)

RULE 444. OPEN BURNING

(a) Purpose

The purpose of this rule is to ensure open burning in the District is conducted in a manner that minimizes emissions and impacts, and that smoke is managed consistent with state and federal law in order to protect public health and safety.

(b) Applicability

The provisions of this rule shall apply to any person conducting or allowing any open burning including, but not limited to:

- (1) Agricultural burning
- (2) Disposal of Russian thistle (*Salsola kali* or “tumbleweed”)
- (3) Prescribed burning
- (4) Fire prevention/suppression training
- (5) Open detonation or use of pyrotechnics
- (6) Fire hazard removal
- (7) Disposal of infectious waste, other than hospital waste
- (8) Research of testing materials, equipment or techniques
- (9) Disposal of contraband
- (10) Residential burning
- (11) Beach burning

(c) Definitions

- (1) AGRICULTURAL BURNING means open burning of vegetative materials produced wholly from the growing and harvesting of crops in agricultural operations, including the burning of grass and weeds in fence rows, ditch banks and berms in non-tillage orchard operations, fields being prepared for cultivation, agricultural wastes, and the operation or maintenance of a system for the delivery of water for agricultural operations.

- (2) AGRICULTURAL OPERATIONS means any business occurring on a ranch or farm directly related to:
- (A) Growing of crops
 - (B) Raising of fowl or other animals for the primary purpose of making a profit or for a livelihood
 - (C) Conducting agricultural research or instruction by an educational institution
- (3) AGRICULTURAL WASTES means unwanted or unsalable materials produced wholly from agricultural operations directly related to the growing of crops or raising of animals for the primary purpose of making a profit or for a livelihood. Agricultural wastes do not include items such as plastic, rubber, ornamental or landscape vegetation, chemically treated wood, shop wastes, construction and demolition material, material containing asbestos, garbage, oil filters, tires, tar paper, pesticide and fertilizer containers, broken boxes, pallets, sweat boxes, packaging material, packing boxes or any other material produced in the packaging or processing of agricultural products. Orchard or vineyard waste or any other material, generated as a result of land use conversion to nonagricultural purposes is not agricultural waste.
- (4) AIR QUALITY INDEX (AQI) is a value established by the federal Environmental Protection Agency (EPA) to measure the level of the major air pollutants regulated by the Clean Air Act. The values range from 0 to 500 and are divided into six categories; higher values indicate greater levels of pollution and greater associated health concerns. The following summarizes the AQI:
- (A) 50 or below is Good
 - (B) 51 through 100 is Moderate
 - (C) 101 through 150 is Unhealthy for Sensitive Groups
 - (D) 151 through 200 is Unhealthy
 - (E) 201 through 300 is Very Unhealthy
 - (F) Over 300 is Hazardous
- (5) APPROVED IGNITION DEVICES means those instruments or materials that will ignite agricultural waste without the production of black smoke. This would include such devices using liquid petroleum gas, butane, propane, or diesel oil burners and flares where the device produces a flame and the flame is then used for ignition.

- (6) APPROVED IGNITION FUELS means pipeline quality natural gas, liquefied petroleum gas, or a petroleum liquid having an API gravity of at least 30.
- (7) BEACH BURNING means any recreational, ceremonial or open burning conducted in any public coastal area marked by an accumulation of sand. For the purposes of this rule, beach burning does not include the use of charcoal or gaseous or liquid fuel.
- (8) BURN AUTHORIZATION NUMBER is the number that is assigned to a burn project upon being granted approval by the Executive Officer.
- (9) BURN MANAGEMENT PLAN means a document prepared by an agricultural operator for a project which provides a description of the project, and other information as required under subparagraph (d)(8)(D).
- (10) BURN PROJECT means an active or planned prescribed burn, agricultural burn, fire prevention/suppression training, a naturally ignited wildland fire managed for resource benefits, or any other burn approved by the Executive Officer.
- (11) EMERGENCY BURN PLAN means a document prepared by an agricultural operator for open burning as an emergency measure to protect crops from freezing which provides a description of the project, and other information as required under subparagraph (h)(4)(C).
- (12) FIELD CROP means crop, other than fruit or vegetable, which is grown for agricultural purposes.
- (13) FIRE HAZARD means a hazardous condition involving combustible, flammable, or explosive material that could present a substantial threat to life or property, as declared by a fire protection agency.
- (14) FIRE PREVENTION/SUPPRESSION TRAINING means the instruction of employees in the methods of preventing or suppressing fires.
- (15) FIRE PROTECTION AGENCY means any public agency with the responsibility and authority to protect people, property, and the environment from fire, within its respective area of jurisdiction.
- (16) HEAVY FUELS means materials that burn slowly, sustain heat, and are difficult to extinguish. Heavy fuels include large downed woody materials such as logs and branches.
- (17) IMMINENT FIRE HAZARD means a fire hazard that presents an immediate danger to property or the health and/or safety of a person or persons and for which direct abatement by fire is necessary as directed by

a fire protection agency. An imminent fire hazard is distinguished from a prescribed burn by the immediate or urgent action needed to alleviate a threat.

- (18) LAND MANAGER means any federal, state, local, or private entity that administers, directs, oversees, or controls the use of public or private land, including the application of fire to the land.
- (19) LIGHT FUELS means materials that burn quickly with a short period of intense heat such as grass and field crops.
- (20) MANDATORY WINTER BURNING CURTAILMENT means a period of time during the consecutive months of November through February where the burning of solid fuels is restricted for portions of the South Coast Air Basin at elevations below 3,000 feet above Mean Sea Level (MSL) based on the air quality criteria contained in AQMD Rule 445 (Wood-Burning Devices).
- (21) MARGINAL BURN DAY means a day in an air basin when open burning for individual projects is restricted to designated source/receptor areas and is not otherwise prohibited by the California Air Resources Board (CARB) or the Executive Officer of the District. A marginal burn day is declared when:
 - (A) At least one of the meteorological criteria for an air basin is predicted to be met;
 - (B) The AQI throughout the basin is predicted to be 150 or less;
 - (C) The AQI in the designated source/receptor area(s) is predicted to be 100 or less; and
 - (D) The designated source/receptor area(s) is not further restricted by a mandatory winter burning curtailment pursuant to AQMD Rule 445 (Wood-Burning Devices).
- (22) METEOROLOGICAL CRITERIA defines the daily predicted meteorological conditions that need to be satisfied to permit open burning for an air basin. The criteria are as follows:
 - (A) Burn Area 40: South Coast Air Basin (at least one criterion must be satisfied):
 - (i) Near 6:00 a.m., the expected height of the inversion base, if any, at Los Angeles International Airport is 1,500 feet above mean sea level or higher.

- (ii) The expected maximum mixing height during the day is 3,500 feet above the surface.
 - (iii) The expected mean surface wind between 6:00 a.m. and noon is greater than five miles per hour.
 - (B) Burn Area 53: Mojave Desert Air Basin (all criteria must be satisfied):
 - (i) Near the time of day when the surface temperature is at a minimum, the temperature at 3,000 feet above the surface is not warmer than the surface temperature by more than 13 degrees Fahrenheit.
 - (ii) The expected temperature at 3,000 feet above the surface is colder than the expected surface temperature by at least 11 degrees Fahrenheit for 4 hours.
 - (iii) The expected daytime wind speed at 3,000 feet above the surface is at least 5 miles per hour.
 - (C) Burn Area 55: Salton Sea Air Basin (at least three criteria must be satisfied):
 - (i) Near the time of day when the surface temperature is at a minimum, the temperature at 3,000 feet above the surface is not warmer than the surface temperature by more than 13 degrees Fahrenheit.
 - (ii) The expected temperature at 3,000 feet above the surface is colder than the expected surface temperature by at least 11 degrees Fahrenheit for 4 hours.
 - (iii) The expected daytime wind speed at 3,000 feet above the surface is at least 5 miles per hour.
 - (iv) The expected daytime wind direction in the mixing layer is not southeasterly.
- (23) NO BURN DAY means a day in an air basin during which open burning is prohibited by the CARB or Executive Officer of the District. A no burn day is declared when:
 - (A) None of the meteorological criteria for an air basin are met, or
 - (B) The AQI in any area of the basin is predicted to be greater than 150.
- (24) OPEN BURNING COMBUSTION/OPEN DETONATION means the ignition and subsequent burning, or ignition, rapid decomposition and

subsequent burning of solid, liquid, or gaseous materials, outside of a combustion chamber with or without a visible flame and not directed through a chimney or flue.

- (25) PERMISSIVE BURN DAY means a day in an air basin during which open burning is not prohibited by the CARB or Executive Officer of the District. A permissive burn day is declared when:
- (A) At least one of the meteorological criteria for an air basin is predicted to be met,
 - (B) The AQI throughout the basin is predicted to be 100 or less, and
 - (C) The designated source/receptor area(s) is not further restricted by a mandatory winter burning curtailment pursuant to AQMD Rule 445 (Wood-Burning Devices).
- (26) PRESCRIBED BURNING means planned open burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency, identified on lands selected in advance for removal of:
- (A) Vegetation from land predominantly covered with chaparral, trees, grass, or standing brush.
 - (B) Forest vegetation or debris for the purposes of forest protection.
 - (C) Brush, weeds, arundo, or other plant matter to promote a healthier environment for plant or animal species or to re-establish native plant species.
 - (D) Disease and pest prevention.
 - (E) Fire prevention/suppression training consuming greater than 10 acres.
- (27) PRODUCT TESTING means the evaluation of commercial products designed to detect the presence of flame or smoke or intended to prevent equipment damage due to flame.
- (28) RESIDENTIAL BURNING means open burning for the purposes of disposing of combustible or flammable solid waste, excluding Russian thistle, from a specific residence on its premises.
- (29) SENSITIVE RECEPTOR LOCATIONS include schools, daycare centers, hospitals, and convalescent homes, and other locations where children, chronically ill individuals, or other sensitive persons could be exposed.
- (30) SMOKE MANAGEMENT PLAN means a document prepared for each open burning event or project by land managers that provides information and procedures to minimize smoke impacts.

- (31) SOURCE/RECEPTOR AREAS. A source area is that area in which contaminants are discharged and a receptor area is that area in which the contaminants accumulate and are measured. Any area can be a source area, a receptor area, or both a source and receptor area. The source/receptor areas are delineated on the attached map (Attachment 1).
- (32) WILDLAND means:
 - (A) “Wildland” means an area where development is generally limited to roads, railroads, power lines, and widely scattered structures. Such land is not cultivated (i.e., the soil is disturbed less frequently than once in 10 years), is not fallow, and is not in the United States Department of Agriculture (USDA) Conservation Reserve Program. The land may be neglected altogether or managed for such purposes as wood or forage production, wildlife, recreation, wetlands, or protective plant cover.
 - (B) For the California Department of Forestry and Fire Protection only, “Wildland” as specified in California Public Resources Code (PRC) section 4464(a) means any land that is classified as a state responsibility area pursuant to article 3 (commencing with section 4125) of chapter 1, part 2 of division 4 and includes any such land having a plant cover consisting principally of grasses, forbs, or shrubs that are valuable for forage. “Wildland” also means any lands that are contiguous to lands classified as a state responsibility area if wildland fuel accumulation is such that a wildland fire occurring on these lands would pose a threat to the adjacent state responsibility area.
- (d) Requirements and Prohibitions
 - (1) A person shall not conduct or allow open burning unless all of the following are met:
 - (A) The Executive Officer has declared the day a permissive burn day or a marginal burn day on which burning is permitted in the applicable source/receptor area and such burning is not prohibited by the applicable public fire protection agency.
 - (B) The Executive Officer or the applicable fire protection agency has issued a written permit for the burn. For disposal of Russian thistle, subject to paragraph (d)(2)(C), a permit may also be issued by the Director of Forestry and Fire Protection or a County

Agricultural Commissioner, pursuant to California Health and Safety Code Section 41809.

- (C) The Executive Officer has authorized the burn by issuing a Burn Authorization Number for each day for each open burning event.
 - (i) The Executive Officer has received the Burn Authorization Number request by 4:00 p.m. on the day prior to the burn.
 - (ii) The Executive Officer may delay issuing a Burn Authorization Number until such time that an inspection of the proposed Burn Project can be conducted, in order to determine whether the open burning event complies with the provisions of the rule.
- (D) All site-specific permit conditions are met, pursuant to Rule 208 – Permit and Burn Authorization for Open Burning.
- (2) The Executive Officer may authorize open burning for:
 - (A) Agricultural burning
 - (B) Prescribed burning
 - (C) Disposal of Russian thistle
 - (D) Abatement of a fire hazard that a fire protection agency determines cannot be abated by an economically, ecologically and logistically viable option
 - (E) Disposal of waste infected with an agricultural pest or disease hazardous to nearby agricultural operations and upon the order of the County Agricultural Commissioner
 - (F) Disposal of infectious waste, other than hospital waste, upon the order of the County Health Officer to abate a public health hazard
 - (G) Use of pyrotechnics for the creation of special effects during filming of motion pictures, videotaping of television programs or other commercial filming or video production activities provided untreated wood, charcoal or Approved Ignition Fuels are used
 - (H) Disposal of contraband in the possession of public law enforcement personnel provided they demonstrate that open burning is the only reasonably available method for safely disposing of the material
 - (I) Fire prevention/suppression training exercises, provided notifications and compliance with all requirements of Rule 1403 –

Asbestos Emissions from Demolition/Renovation Activities shall be required when applicable

- (J) Researching or testing fire retardant properties of materials (or enclosures) or the efficacy of fire suppression techniques or devices
- (3) A person is prohibited from open burning for:
 - (A) Residential burning
 - (B) Disposal of waste, except as specified in (d)(2) above, including hospital waste
 - (C) Disposal of materials generated as a result of land use conversion for non-agricultural purposes
 - (D) Disposal of materials from the production or storage of military ordnance, propellants, or pyrotechnics unless a fire protection agency, law enforcement agency or governmental agency having jurisdiction determines that onsite burning or detonation in place is the only reasonably available method for safely disposing of the material
 - (E) Suppression of wildland fires, except those set by fire protection agencies, for the purpose of saving life or property
 - (F) Complete burning of existing structures for fire prevention/suppression training exercises
 - (G) Effective March 1, 2014, beach burning, unless:
 - (i) PM2.5 AQI of 100 or less has been forecast for the coastal source receptor area; and
 - (ii) beach burning occurs in devices that are:
 - (I) at least 700 feet from the nearest residence; or
 - (II) at least 100 feet apart from one another; or
 - (III) at least 50 feet apart from one another, if there are no more than 15 devices per contiguous beach area within the city's boundaries.
- (4) Notwithstanding the provisions of subparagraph (d)(3)(G), if a city or county has declared, pursuant to Public Resources Code section 30005(b) or Health and Safety Code section 41509(a), that designated beach burning devices within its boundaries cause a nuisance, as defined in Civil Code section 3479 or Health and Safety Code section 41700(a), due to

wood smoke exposure, then those devices may not be made available by a state or local authority.

- (5) A person shall not commence:
 - (A) Open burning for agricultural field crops before 10:00 a.m. or later than 5:00 p.m.
 - (B) Open burning, other than for agricultural field crops, except as authorized in an approved Smoke Management Plan:
 - (i) Earlier than one hour after sunrise
 - (ii) Later than two hours before sunset, with no new ignition, or fuels added to an existing fire
- (6) A person shall use only approved ignition devices to ignite open burning.
- (7) A person shall not transport vegetative waste for the purpose of open burning from one property to another, unless it is necessary to avoid burning within 1,000 feet of a sensitive receptor.
- (8) Additional requirements for agricultural burning:
 - (A) A person shall not conduct or allow the open burning of agricultural waste unless it has been allowed to dry for the following minimum times:
 - (i) Trees and large branches (3 in. or greater): 6 weeks
 - (ii) Prunings and small branches (1 in. to less than 3 in. diameter): 4 weeks
 - (iii) Wastes from field crops that are cut in a green condition: 4 weeks
 - (iv) Fine fuels (0.25 in. to less than 1 in. diameter): 3 weeks
 - (v) Very fine fuels (less than 0.25 in.): 10 days
 - (B) A person shall not conduct or allow the open burning of agricultural waste unless it is free of dirt, soil, and visible moisture.
 - (C) A person shall ignite rice, barley, oat and wheat straw only by strip-firing or by backfiring into the wind unless a fire protection agency declares such actions would constitute a fire hazard.
 - (D) A person shall not conduct or allow the open burning of agricultural waste unless a Burn Management Plan is approved in writing by the Executive Officer for any project greater than 10 acres or a project that produces more than one ton of particulate matter emissions, as determined using EPA AP-42 or equivalent emissions factors approved by the Executive Officer, CARB, and

- EPA. At a minimum, the Burn Management Plan shall contain the following information:
- (i) Location, types, and amounts of material to be burned
 - (ii) Expected duration of the fire from ignition to extinction
 - (iii) Identification of responsible personnel, including telephone contacts
 - (iv) Identification and location of all smoke sensitive areas
 - (v) Calculation of the particulate emissions tonnage, when the particulate emissions tonnage is selected as the criteria for determining the project size
- (E) A person shall not conduct or allow the open burning of agricultural waste unless the burn is located farther than 1,000 feet from a sensitive receptor location.
- (9) Additional requirements for prescribed burning:
- (A) A person shall conduct or allow prescribed burning only when the fires are set by, under the jurisdiction of, or pursuant to the orders or requirements of a fire protection agency.
 - (B) A person shall not conduct or allow prescribed burning unless a Smoke Management Plan is approved in writing by the Executive Officer for any project greater than 10 acres or that produces more than one ton of particulate matter emissions, as determined using EPA AP-42 or equivalent emissions factors approved by the Executive Officer, CARB, and EPA. Smoke Management Plans shall be updated annually. At a minimum, the Smoke Management Plan shall contain the following information:
 - (i) Location, types, and amounts of material to be burned
 - (ii) Expected duration of the fire from ignition to extinction
 - (iii) Identification of responsible personnel, including telephone contacts
 - (iv) Identification and location of all smoke sensitive areas
 - (v) Calculation of the particulate emissions tonnage
 - (C) A person shall not conduct or allow prescribed burning unless a Smoke Management Plan is approved in writing by the Executive Officer for any project greater than 100 acres or that produces more than 10 tons of particulate matter emissions, as determined using EPA AP-42 or equivalent emissions factors approved by the

Executive Officer, CARB, and EPA. Smoke Management Plans shall be updated annually. At a minimum, the Smoke Management Plan shall contain the information required by subparagraph (d)(9)(B) and the following information:

- (i) Identification of meteorological conditions necessary for burning
- (ii) Smoke management criteria the land manager will use for making burn ignition decisions
- (iii) Projections, including a map, of where the smoke from burns is expected to travel both day and night
- (iv) Specific contingency actions (such as fire suppression or containment) that will be taken if smoke impacts occur or meteorological conditions deviate from those specified in the Smoke Management Plan
- (v) Evaluation of and consideration of emission reduction techniques including environmentally, economically, and logistically viable alternatives to burning
- (vi) Discussion of public notification procedures

(D) The Executive Officer shall prioritize burn authorization requests based upon:

- (i) The level of training of the person conducting the burn as identified in the Burn Management Plan and Smoke Management Plan.
- (ii) The measures identified in the Smoke Management Plan proposed to reduce emissions.

(E) Notwithstanding subparagraph (d)(1)(A), the Executive Officer may allow prescribed burning on marginal burn days, provided a Smoke Management Plan has been approved.

(e) The Executive Officer may allow the Maximum Daily Burn Acreage for Agricultural Burning and Prescribed Burning as follows:

- (1) For all areas within the District jurisdiction, excluding the Coachella Valley:
 - (A) 175 acres for prescribed wildland and range burning; and
 - (B) 175 acres for agricultural burning;
- (2) For the Coachella Valley:

- (A) 6 acres for prescribed wildland and range burning; and
 - (B) 41 acres for agricultural burning; and
 - (3) The provisions of this subdivision, limiting the maximum daily acreage, shall not apply to prescribed burning when a land manager has:
 - (A) Demonstrated that the prescribed burn is required to reduce a fire hazard that jeopardizes public health or safety; and
 - (B) Submitted a satisfactory Smoke Management Plan that has been approved by the Executive Officer.
- (f) **Administrative Requirements**
 - (1) An Annual Post Burn Evaluation Report shall be submitted on or before January 31st of each calendar year for any open burn projects that require a Smoke Management Plan or a Burn Management Plan. The Report shall include, but not be limited to, the following:
 - (A) The type of material burned
 - (B) The total acreage permitted to burn
 - (C) The total acreage burned
 - (D) The total tons of material burned
 - (E) The estimated fuel loading in tons per acre
 - (F) The total of the estimated PM emissions
 - (2) Fire Protection Agencies within the District must submit copies of written burn permits to the Executive Officer quarterly.
- (g) **Fees**

If required by District Rule 306, any person conducting or allowing any open burning shall accompany the submittals required by subparagraphs (d)(8)(D), (d)(9)(B), (d)(9)(C), (h)(4)(C), and paragraph (f)(1) with applicable filing and evaluation fees pursuant to District Rule 306.
- (h) **Exemptions**
 - (1) The provisions of paragraphs (d)(1) and (d)(5) of this rule shall not apply in the case of an imminent fire hazard, as defined in this Rule.
 - (2) The provisions of subparagraphs (d)(1)(A), (d)(1)(B), (d)(1)(D) and clause (d)(1)(C)(ii) shall not apply to fire prevention/suppression training exercises or research, conducted by fire protection agencies, provided that:
 - (A) For training exercises not conducted within existing structures:

- (i) Each training fire is limited to no more than 30 minutes duration,
 - (ii) The total cumulative burn time in a 24-hour period does not exceed:
 - (a) Four (4) hours for Light Fuel
 - (b) Six (6) hours for Heavy Fuels or a mixture of Light and Heavy Fuels
 - (iii) Only Authorized Ignition Fuels are used.
 - (B) For training exercises conducted within existing structures, each training fire is limited to no more than 30 minutes in duration.
- (3) The provisions of subparagraphs (d)(1)(A), (d)(1)(B), (d)(1)(D) and clause (d)(1)(C)(ii) shall not apply to fire prevention/suppression training exercises or to product testing conducted by non-fire protection agencies provided that:
- (A) Each fire is limited to no more than 30 minutes in duration,
 - (B) The total burn time does not exceed four (4) hours in a 24-hour period, and
 - (C) Only Authorized Ignition Fuels are used.
- (4) The provisions of subparagraphs (d)(1)(A) and (d)(8)(E) of this rule shall not apply to open burning as an emergency measure to protect crops from freezing provided that:
- (A) Open burning is the most immediate or only option available;
 - (B) The temperature at the time of the requested open burning is reasonably anticipated to be below 40° Fahrenheit;
 - (C) An Emergency Burn Plan submitted by the person seeking to conduct open burning is approved by the Executive Office prior to conducting the burn. The Plan shall include, but not be limited to, the following:
 - (i) Location, types, and amounts of material to be burned
 - (ii) Type of crop being protected
 - (iii) Estimate of potential economic loss
 - (iv) Expected dates, time, and duration of the fire from ignition to extinction
 - (v) Identification of responsible personnel, including telephone contacts

- (vi) Identification and location of all smoke sensitive areas
 - (D) All site-specific conditions imposed by the Executive Officer as part of the approved Emergency Burn Plan are met; and
 - (E) The person conducting the open burn shall notify the Executive Officer no more than 24 hours following the authorized burn to report the total amount of agricultural material burned.
- (5) The provisions of this rule shall not apply to:
- (A) Open burning located on islands 15 miles or more from the mainland coast.
 - (B) Fireworks displays.
 - (C) Pyrotechnics used for creation of special effects at theme parks.
 - (D) Detonation of explosives during:
 - (i) Quarry or mining operations
 - (ii) Bomb disposal by a law enforcement agency
 - (iii) Demolition of buildings or structures
 - (E) The use of pyrotechnics, detonation of explosives, or fire effects for creation of special effects during theatrical productions, filming of motion pictures, videotaping of television programs or other commercial filming or video production activities provided that:
 - (i) Each fire effect is limited to no more than 30 minutes in duration, and
 - (ii) The fuel is untreated wood, charcoal, or Authorized Ignition Fuels.
- (6) Except for the requirements of subparagraph (d)(3) and (d)(4), the provisions of this rule shall not apply to:
- (A) Recreational fires or ceremonial fires, including fires conducted pursuant to United States Code, Title 4, Chapter 1, Section 8.
 - (B) Open burning of natural gas, propane, untreated wood, or charcoal for the purpose of:
 - (i) Preparation or warming of food for human consumption; or
 - (ii) Generating warmth at a social gathering.
- (7) The distance and spacing provisions of clause (d)(3)(G)(ii) shall not apply to beach burning devices that are made available to comply with the Americans with Disabilities Act by making the beach burning device accessible via a continuous unobstructed concrete, asphalt or other

permanent pathway that crosses the surface of the beach. This paragraph does not exempt the beach burning devices that are made available for the Americans with Disabilities Act compliance from the total device count specified in sub-clause (d)(3)(G)(ii)(III).

(i) Severability

If any provision of this rule is held by judicial order to be invalid, or invalid or inapplicable to any person or circumstance, such order shall not affect the validity of the remainder of this rule, or the validity or applicability of such provision to other persons or circumstances.

ATTACHMENT 1

