



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

MEMORANDUM

November 27, 2001

TO: Blair G. Ewing, President
Montgomery County Council

FROM: Douglas M. Duncan  County Executive

SUBJECT: Bill 17-01, *Air Quality Control – Amendments*

You have delivered Bill 17-01 to me for approval or disapproval under Section 208 of the County Charter. I have decided to disapprove the bill.

This past January, I submitted to the Council legislation to update and revise the County's air quality ordinance, a law that was originally passed in 1974 and not changed since. The primary focus of the current law is ambient outdoor air quality. That law, however, needed to be changed to update the concerns over indoor air pollution that have been raised in recent years by the United States Environmental Protection Agency; studies of human exposure to air pollutants indicate that indoor levels of many pollutants may be more than 25 times, and occasionally more than 100 times, higher than outdoor levels. My proposed legislation was carefully crafted to address the nearly 250 complaints that we receive each year relating to indoor air pollutants. It also recognized the significant changes in the regulatory, technical, administrative, and health facts regarding indoor air quality, and sought to keep Montgomery County in a leadership role in managing environmental risks to public health.

In passing Bill 17-01, however, the Council amended the original legislation to include tobacco smoke. This action opens the door to formal complaints, citations, penalties, and enforcement action in an area in which we previously have been receiving a mere handful of informal complaints per year. This is a major change in the focus of the legislation, and was adopted without full public debate. I note that the Energy and Air Quality Advisory Committee opposed the amendment and urged the Council not to make the change.



Blair G. Ewing, President
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Based on initial discussions with my staff, I believed that this bill could become law and that we could manage the tobacco smoke issues through a combination of education and prudent use of enforcement resources. Upon further consideration, however, it has become clear that the tobacco smoke provisions will be nothing more than a tool to be used in squabbles between neighbors, and that significant resources will be required to address these complaints.

I have long taken the lead in efforts to curtail the use of tobacco products and to protect people from the effects of second-hand smoke. My administration proposed, and the Council adopted, the first local tax on tobacco products in the State of Maryland; we have dramatically increased our enforcement efforts to prevent the sale of tobacco to minors; I signed into law a bill requiring retailers to keep cigarettes and other tobacco products behind the counter and beyond the reach of minors; and I support legislation that bans smoking in restaurants except for areas that are separately ventilated.

For the foregoing reasons, I have decided to disapprove Bill 17-01; however, I urge the Council to act quickly to enact a bill identical to this one but without the tobacco smoke provisions, and, upon delivery to me of such a bill, I will sign it into law.

DMD:jp

Bill No. 17-01
Concerning: Air Quality Control -
Amendments
Revised: Nov. 20, 2001 Draft No. 7
Introduced: May 15, 2001
Enacted: November 20, 2001
Executive: November 27, 2001 (vetoed)
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- (1) authorize the Department of Environmental Protection to take action to protect the air quality of County businesses;
- (2) delete references to open burning of residential trash and vegetation wastes during land clearing and certain other obsolete or applicable practices;
- (3) conform limits on visible emissions and open burning requirements to state law;
- (4) facilitate County enforcement actions against air pollution;
- (5) make definitions of certain technical terms more consistent with current air quality control practices;
- (6) allow certain final decisions of the Department of Environmental Protection to be appealed directly to Circuit Court, and repeal the authority of the County Board of Appeals to hear appeals regarding air quality control violations; and
- (7) generally revise County law regarding air quality control.

By amending

Montgomery County Code
Chapter 3, Air Quality Control

Chapter 2, Administration
Section 2-112

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

26 improvement of the indoor air quality experienced by businesses and
 27 occupants of multi-tenant buildings.

28 (c) The Department must apply principles of sound environmental health
 29 management and use reasonably available air quality control technology
 30 to implement this Chapter.

31 **3-2. Definitions.**

32 [For the purposes of] In this [c]Chapter, the following words and phrases
 33 [shall] have the following meanings [respectively ascribed to them by this section]:

34 **Air pollutant:** Any substance [the emission of which] whose release into the
 35 atmosphere causes air pollution. [It] An air pollutant may be in the form of a
 36 smoke, gas, dust, **odor, particulate matter** or combinations of [these] smoke, gas,
 37 dust, odor, or particulate matter], but is not limited to this enumeration].

38 **Air pollution:** The presence in the [outdoor] atmosphere of [one or more] any
 39 substances or combinations [thereof] of substances [such] whose character, [in such]
 40 quantities [and of such] or duration [as are or may tend] make those substances likely
 41 to [be injurious] pose a health hazard to humans, plants, or animals [life, or property],
 42 or [which] unreasonably interfere[s] with the [comfortable] use and enjoyment of
 43 [life or] property[, or with the conduct of business,]. The substances may be emitted
 44 as odors, solids, vapors, liquids, or gases from any single source or in combination
 45 with other sources.

46 **Air pollution episode:** A[n] recognized occurrence designated [recognized by
 47 a determination] by the [g]Governor of Maryland or the [s]Secretary of the state
 48 [department of health and mental hygiene] Department of the Environment [that the]
 49 as an accumulation of ambient air pollutants [may attain, is attaining or has attained
 50 a level or] at levels [considered injurious] harmful to human health.

51 **Control equipment:** Any [equipment which has the function of controlling
 52 the emissions from any process, fuel-burning or refuse-burning equipment and thus

53 reduces the creation of or the emission of or the emission of air pollutants into the
 54 atmosphere] device or equipment that prevents or reduces emissions.

55 **Department:** The [d]Department of [e]Environmental [p]Protection.

56 **Director:** The Director of the Department of Environmental Protection or
 57 [his designated agent] the Director's designee.

58 **Emission:** Any substance, other than water in an uncombined form,
 59 discharged [directly or indirectly] into the atmosphere, including [but not limited to]
 60 odors, particulate matter, vapors,[or] gases, or any combination [thereof and odors
 61 associated with them by means of stationary sources, equipment, materials handling,
 62 construction and other acts or processes] of these substances.

63 **Excessive lodging:** A condition of farmland where embedding of the previous
 64 crop causes the normal use of harvesting, tillage, or planting equipment to be
 65 impossible or impracticable.

66 **[Fuel-burning equipment:** Any equipment, device or contrivance and all
 67 appurtenances thereto, including ducts, breeching, fuel-feeding equipment, ash
 68 removal equipment, combustion controls, stacks and chimneys, used in the process of
 69 burning fuel or other combustible materials for the primary purpose of producing
 70 heat or power by indirect heat transfer.]

71 **Incinerator:** Any equipment [,] or device [or contrivance] used [for the
 72 destruction of] to destroy garbage, rubbish or other wastes by burning [and all
 73 appurtenances thereof].

74 **[Indirect sources of pollution:** The category of sources of pollution, also
 75 described under state and federal laws and regulations as "complex sources," which
 76 includes any facility, building, structure, highway, institution or combination thereof,
 77 the construction, modification or use of which results or may result in the emission
 78 from mobile source activities associated with it of air pollutants for which there is a
 79 national standard.]

80 **Indoor air pollutant:** Any substance whose indoor presence causes indoor
 81 **air pollution. An indoor air pollutant may consist of particles such as dust, fibers,**
 82 **asbestos, radon progeny, or animal dander; gases such as formaldehyde, carbon**
 83 **monoxide, mists, or bioaerosols; biological substances such as viruses, bacteria, fungi**
 84 **or molds; [[and complex mixtures of particles, gases, and biological]] or combination**
 85 **of substances.**

86 **Indoor air pollution:** The indoor presence of any airborne substance, such as
 87 **particles, fumes, mists, gases, tobacco smoke, or vapors or combination of substances**
 88 **[[whose character, quantities or duration make those substances]] likely to pose a**
 89 **health hazard to humans, plants, or animals or unreasonably interfere with the use**
 90 **and enjoyment of residential or non-residential property, including the ordinary**
 91 **conduct of business.**

92 **Installation:** Any article, machine, or equipment[, or other contrivance],
 93 including [but not limited to] **emission control equipment**, processing equipment,
 94 manufacturing equipment, fuel burning equipment, incinerators or any equipment or
 95 construction capable of generating, causing or reducing **emissions**.

96 **[Nuisance:** Environmental condition, intermittent or continuous, produced or
 97 correctable by human agency, prejudicial to reasonable enjoyment of health, comfort
 98 or safety of any individual or causing injury to damage to persons, property or the
 99 **conduct of business.]**

100 **Odor:** The property of an emission that stimulates a person's sense of smell.

101 **Official fire:** A fire authorized by a government officer for the purposes listed
 102 **in this Chapter.**

103 **Opacity:** [The state of a substance which renders it partially or wholly
 104 impervious to rays of light so that the substance partially or wholly obscures an
 105 observer's view.] **The degree to which emissions reduce the transmission of light and**
 106 **obscure the view of an object in the background.**

107 **Open fire:** A fire in which any material is burned in the open or in a receptacle
108 other than a furnace, incinerator or other equipment [connected to a stack, which
109 equipment is constructed in accordance with and meets the] not in conformance with
110 the design requirements of the applicable building code of the [c]County [and] or the
111 air quality control regulations of the state.

112 **Particulate matter:** Material other than water in uncombined form which is or
113 has been airborne and exists as a liquid or solid at standard conditions of temperature
114 [70EF] 25 degrees Celsius (77 degrees Fahrenheit) and pressure of [(] 29.92 inches
115 (760 mm) [Hg]] mercury.

116 **Permit:** An air pollution control permit issued by the Department or the
117 [state department of health and mental hygiene] Maryland Department of the
118 Environment covering open burning, [and certain] **installation** [and equipment and
119 other sources which may cause emissions], or operation of equipment with the
120 potential to emit air pollution.

121 **Person:** An[y] individual, group of individuals, partnership, firm, voluntary
122 association, public or private corporation, or an [association, governmental] agency
123 [or any other legal entity], or department of the County or of any federal, state, or
124 municipal government to the extent allowed under federal, state, or municipal law.

125 **Plan for compliance:** A schedule of actions designed to achieve compliance
126 with this [c]Chapter after a specified period of time submitted by a violator and
127 approved by the [d]Director.

128 **[Ringlemann chart:** A chart for grading the appearance, density or shade of
129 smoke as published with instructions for use by the United States Bureau of Mines,
130 in Information Circular 7718, dated August 1955. Any other method for grading
131 smoke which is approved by the state department of health and mental hygiene as the
132 equivalent of the Ringlemann Chart may be substituted therefor.]

133 **[Smoke:** Small gas-borne particles, other than water, in sufficient number to
134 be observable by sight.]

135 **Source:** [Any physical arrangement or structure which may emit or cause to be
136 emitted air pollutants. It includes, but is not limited to, stacks, chimneys, building
137 openings, open fires, vehicles, processes, equipment, structures and premises.] A
138 **person or property that is contributing to air pollution.**

139 **Unconfined source:** An installation that causes emissions that are not
140 enclosed in a stack, duct, hood, flue, or other conduit, but that escape into the
141 atmosphere through openings such as windows, vents, or doors, ill fitting closures, or
142 poorly maintained equipment.

143 **3-3. Administration.**

144 [It shall be the duty of the director of the department of environmental
145 protection to:]

- 146 [(a) Supervise the execution of all laws, rules and regulations pertaining to
147 air pollution as provided in this chapter;]
- 148 [(b) Conduct studies, investigations and research relating to air pollution and
149 its prevention, abatement and control;]
- 150 [(c) Issue such orders as may be necessary to effectuate the purposes of this
151 chapter and enforce the same by all appropriate administrative and
152 judicial proceedings;]
- 153 [(d) Make inspections and tests of existing and newly installed equipment
154 subject to this chapter to determine whether such equipment complies
155 with the standards set forth in the regulations adopted pursuant to this
156 Code;]
- 157 [(e) Investigate complaints of violations of the provisions of this chapter,
158 make inspections and observations of air pollution conditions and

- 159 maintain records of all such investigations, complaints, inspections and
- 160 observations;]
- 161 [(f) Approve or reject applications for permits, plans of compliance and
- 162 other documents required under provisions of this Code;]
- 163 [(g) Secure necessary scientific, technical, administrative and operational
- 164 services, including laboratory facilities, by contract or otherwise;]
- 165 [(h) Prepare and develop a comprehensive plan or plans in the county for the
- 166 prevention, abatement and control of air pollution;]
- 167 [(i) Advise, consult and cooperate with other local governmental units,
- 168 agencies of the state, industries, interstate or interlocal agencies and the
- 169 federal government and with interested persons and groups;]
- 170 [(j) Collect and disseminate information and conduct educational and
- 171 training programs relating to air pollution;]
- 172 [(k) Encourage voluntary cooperation by persons or affected groups to
- 173 achieve the purpose of this chapter;]
- 174 [(l) Receive and administer grants or other funds or gifts from public and
- 175 private agencies, including the state and federal governments, for the
- 176 purpose of carrying out any of the functions of this chapter;]
- 177 [(m) Do any and all acts which may be necessary for the successful
- 178 prosecution of the policy of this chapter and such other acts as may be
- 179 specifically enumerated herein;]
- 180 [(n) Promulgate rules and regulations subject to provisions in section 3-4
- 181 under which this law will be administered.]
- 182 (a) The Director must enforce this Chapter. The Director must advise,
- 183 consult and cooperate with other local government units, state agencies,
- 184 interstate agencies, the federal government, private industries and

185 businesses, homeowners associations, and other interested persons
 186 about air quality problems that affect human health.

187 (b) This Chapter does not waive any requirement under state or federal law.

188 **3-4. Regulations.**

189 [(a)] The [c]County [e]Executive may adopt regulations under method (2)
 190 [of section 2A-15 of this Code, for] to implement this [c]Chapter. [Such]
 191 [r]Regulations [shall] adopted under this Chapter must not conflict with, [nor] waive
 192 any provisions of [this Code nor], or be less restrictive than [regulations currently
 193 established and in effect as] any requirement[s] [of the state department of health and
 194 mental hygiene] of state or federal law.

195 [(b)] Regulations adopted pursuant to provisions of this section shall provide
 196 for but not be limited to the following:

- 197 (1) Control of particulate matter emissions from fuel burning
 198 installations, grain drying installations, materials handling and
 199 construction and other acts and installations;
 200 (2) Control of gas, vapor, odor and volatile organic compound
 201 emissions from fuel burning and other installations;
 202 (3) Prohibition of certain incinerators and new fuel-burning
 203 installations;
 204 (4) Application fees at a rate not to exceed the cost of administering
 205 the program.]

206 [(c)] Notwithstanding any other provisions of this section, the county
 207 executive may adopt regulations, under method (2) of section 2A-15 of
 208 this Code, regarding procedures for the issuance of permits for indirect
 209 sources of pollution in accordance with applicable state and federal
 210 regulations.]

211 **3-5. [Visible] Ambient air quality requirements for visible emissions.**

- 212 (a) **Generally.** [No person shall] A person must not cause [, suffer, allow]
 213 or **permit** the discharge of any visible emission[s] from any
 214 **installation** or building, other than water in an uncombined form, into
 215 the atmosphere [which are visible to human observers].
- 216 (b) **Exceptions.** [(1)] Subsection (a) [shall] does not apply to any: [emissions
 217 during the building of a new fire, cleaning of fires, soot blowing, start-
 218 up, any process modification or adjustment or occasional cleaning of
 219 control equipment, the shade or appearance of which is not darker than
 220 No. 1 on the Ringelmann Smoke Chart or of such opacity as to obscure
 221 an observer's view to a degree not greater than does smoke designated
 222 as No. 1 on the Ringelmann Smoke Chart, for a period or periods
 223 aggregating no more than four (4) minutes in any sixty (60) minutes.]
- 224 [(2) Subsection (a) shall not apply to emissions of the following:
- 225 a. From those incinerators that are to be phased out under
 226 provisions of this chapter;]
- 227 (1) Emission during start-up and process modifications or
 228 adjustments, or occasional cleaning of control equipment, which
 229 is not greater than 40 percent opacity for a period of not more
 230 than 6 consecutive minutes in any 60-minute period.
- 231 (2) Emission from a food preparation installation, such as a char-
 232 broiler or pit barbeque, which operates at one location less than
 233 15 days in any 365-day period, or which is not greater than 10
 234 percent opacity.
- 235 (3) [b. From the burning of wood in fireplaces or used as residential]
 236 Emission caused by wood burning in a residential fireplace or
 237 wood stove, or emission for recreational purposes such as a
 238 campfire.

239 (4) [c.] **Emission** [F]from an open fire[s] (except a salamander[s])
 240 permitted under [provisions of] this [c]Chapter.

241 **[3-6. Control and prohibition of open fires.]**

242 [(a) **Official fires.** Open fires may be set with due notice to, but without
 243 prior approval from the department in performance of an official duty of
 244 any public officer if the fire is necessary for one or more of the
 245 following reasons or purposes:

246 (1) For the prevention of a fire hazard which cannot be abated by
 247 other means.

248 (2) Except during the existence of an air pollution episode, for the
 249 instruction of public fire fighters or industrial employees under
 250 supervision of the director, department of fire and rescue
 251 services.

252 (3) For the protection of the public health, safety or welfare.]

253 [(b) **Open fires.** Except during the existence of an air pollution episode, the
 254 following open fires are allowed within the county without prior
 255 approval from the department; provided, that they otherwise conform
 256 with other fire control laws and regulations; and provided, that no
 257 nuisance is created:

258 (1) **Leaves.** In those areas where no provision is made for public
 259 collection of leaves, the open burning of leaves originating on the
 260 premises by householders is permitted.

261 (2) **Household Trash.** In those areas where no provision is made for
 262 public collection of refuse, burning of ordinary household trash
 263 (Incinerator Institute of America waste types 0 and 1 only)
 264 originating on the premises, excluding commercial
 265 establishments, by householders is permitted; provided, that:

- 266 a. The fires are located no closer than three hundred (300)
267 feet from any neighboring habitable dwelling or place
268 where people work or congregate;
- 269 b. Materials are not burned which create dense smoke (emissions of
270 an opacity or darkness greater than No. 1 on the Ringelmann
271 Smoke Chart.)
- 272 (3) **Cooking.** Fires may be used for the cooking of food; provided,
273 that visible emissions are not greater than No. 1 on the
274 Ringelmann Smoke Chart and no nuisance is created.
- 275 (4) **Salamanders.** Salamanders or other devices fired with propane
276 gas or No. 2 fuel oil may be used for heating by construction or
277 other workers; provided, that no visible emissions are created.
- 278 (5) **Agricultural Operations.** Fires may be set in the course of
279 agricultural operations; provided, that visible emissions are not
280 greater than No. 1 on the Ringelmann Smoke Chart and no
281 nuisance is created and prior notice is given to the department.
- 282 (6) **Recreational Purposes.** Open fires may be set for recreational
283 purposes such as campfires; provided, that visible emissions are
284 not greater than No. 1 on the Ringelmann Smoke Chart and no
285 nuisance is created.
- 286 (7) **Explosive Containers.** Empty boxes and fiber packing materials
287 which have previously contained high explosives may be burned
288 at an isolated location more than one hundred (100) feet from any
289 occupied building or structure or public street or road and no
290 person shall be closer than one hundred (100) feet of the fire once
291 burning has begun.]

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[(c) **Outside of buildings.** Except as provided by paragraphs (a) and (b) of this section, no person shall in the county burn any refuse or plant life, in any public or private place outside of any building unless he shall have first obtained a permit from the department for such activity. The duration of such permits shall be established by the director. The department shall issue such permits only when:

- (1) There is no practical alternate method to dispose of the material to be burned or to conduct the desired activity.
- (2) No hazardous condition or nuisance will be created.
- (3) No burning will be done within five hundred (500) yards of one (1) or more occupied buildings or a heavily traveled public roadway.
- (4) Fire control laws or regulations of other governmental agencies will not be violated.
- (5) No materials which provide smoke, in excess of No. 1 on the Ringelmann Smoke Chart, when burned, including but not limited to tires and roofing material, will be burned.
- (6) Such other conditions as the director may impose to minimize creation of smoke, to prevent nuisances and air pollution and to protect the health, safety, comfort and property of any persons shall be satisfied.
- (7) The material to be burned shall be waste matter of the premises on which it is to be burned.
- (8) Methods of disposal by burning acceptable to the director may be approved for use when distance limitations cannot be met.]

[(d) **Extinguishing fires in violation.** Fires started in violation of this section shall be promptly extinguished by the person responsible for the

319 same upon notice by a duly authorized agent of the department. This
 320 shall not be considered an exclusive remedy.]

321 **3-6. Ambient air quality requirements for particulate matter from**
 322 **unconfined sources.**

323 **A person must not cause or [[permit]] allow emissions from an unconfined**
 324 **source without taking reasonable precautions to prevent particulate matter from**
 325 **becoming airborne. When the Director orders, these precautions must include installing**
 326 **and using hoods, fans, and dust collectors to enclose, capture, and vent emissions.**

327 **[3-7. Permits for certain equipment.]**

328 [(a) **Required generally.** Subject to provisions found in section 3-9 of this
 329 chapter, it shall be unlawful within the county for any person to either
 330 build, erect, alter, replace, store, operate, sell, rent or use any source,
 331 article, machines, equipment, substance or other contrivance which is
 332 the subject of regulations promulgated in accordance with section 3-4(a)
 333 of this chapter or by the Maryland State Department of Health and
 334 Mental Hygiene, the use of which may directly or indirectly cause
 335 emissions into the air, without having first obtained the appropriate
 336 Montgomery County air pollution control permit to do so. This
 337 requirement shall be deemed satisfied when any one of the following is
 338 in effect:

- 339 (1) A currently valid permit to construct or operate has been issued
 340 by the state department of health and mental hygiene for the
 341 subject installation or equipment.
- 342 (2) A currently valid conditional permit has been issued by the state
 343 department of health and mental hygiene for the subject
 344 installation or equipment.]

345 [(b) **Exemptions.** No permit shall be required for installation of equipment
 346 specifically exempted under regulations issued by the state department
 347 of health and mental hygiene for the subject installation or equipment.]

348 [(c) **Compliance with regulations.** The mere existence of a valid permit
 349 does not relieve a person of his duty to comply with any conditions
 350 contained in such permit and other county, state and federal air pollution
 351 control or fire control regulations.]

352 [(d) **Change of ownership.** A change of ownership shall terminate all
 353 permits issued for a particular installation or equipment. The new owner
 354 shall make application for the appropriate permit within thirty (30) days
 355 of the change of ownership.]

356 **3-7. Ambient air quality requirements for particulate matter from**
 357 **materials handling and construction.**

358 (a) A person must not cause or permit any material to be handled, transported,
 359 or stored, or any building or road to be constructed, altered, repaired, or
 360 demolished, without taking reasonable precautions to prevent particulate
 361 matter from becoming airborne.

362 (b) Unless the Director finds otherwise in a particular situation, reasonable
 363 precautions include:

364 (1) Using water or chemicals to control dust when demolishing a
 365 building or structure, undertaking construction operations, grading a
 366 road, or clearing land;

367 (2) Applying asphalt, water, or suitable chemicals on a dirt road,
 368 materials stockpile, or other surface that can create airborne dust;

369 (3) Installing and using hoods, fans, and dust collectors to enclose and
 370 vent the handling of dusty materials, and employing reasonable

- 371 containment methods to prevent the release of **particulate matter**
 372 during sandblasting or similar operations;
 373 (4) Covering each open-bodied vehicle used to transport any material
 374 likely to create **air pollution** at all times when the vehicle is moving;
 375 (5) Paving a roadway and maintaining it in clean condition; and
 376 (6) Promptly removing earth or other dust-producing material from any
 377 paved street that was transported there by truck, earth moving
 378 equipment, or water erosion.

379 **[3-8. Applications for permits.]**

380 [(a) **Generally.** Applications for the air pollution control permits described
 381 in section 3-7 shall be made to the department on forms provided by the
 382 department. The department shall require such information and details
 383 regarding the installation as it considers necessary to determine whether
 384 the installation to operate is in compliance with county, state and federal
 385 air pollution control regulations and that the installation incorporates
 386 advances in the technology of air pollution control developed for the
 387 kind and amount of emissions of the applicant's installation.]

388 [(b) **Denial of application.** Whenever it shall appear to the department that
 389 the operation or construction of an installation for which a permit is
 390 applied will result in a violation of any county, state or federal air
 391 pollution control regulations or contravention of applicable ambient air
 392 quality standards, an order shall be entered denying the permit and
 393 setting forth the reasons thereof. The department shall not accept a
 394 further application unless the applicant has complied with the objections
 395 specified by the department as its reasons for denial of the permit or
 396 submitted satisfactory evidence demonstrating that a particular

397 requirement cannot be met immediately and submitted to the
398 department an acceptable plan of compliance.]

399 **3-8. Control and prohibition of open fires.**

400 (a) **Official fires.** A public officer may set an **open fire** with due notice to,
401 but without prior approval from, the **Director** if the public officer is
402 performing an official duty and the fire is necessary to:

- 403 (1) prevent a fire hazard which cannot be abated by other means;
404 (2) instruct public fire fighters or industrial employees under
405 supervision of the Fire Administrator if the instruction does not
406 occur during an **air pollution episode** and the fires do not contain
407 asphaltic or asbestos materials; or
408 (3) protect the public health, safety or welfare.

409 (b) **Open fires.** Except during an **air pollution episode**, the following **open**
410 **fires** are allowed without prior approval of the **Director** if the fire does
411 not otherwise violate any other fire control law or regulation:

- 412 (1) **Cooking.** A **person** may use a fire to cook food if the **person**
413 uses an outdoor cooking apparatus approved for use by a
414 nationally recognized standards organization, such as
415 Underwriters Laboratory, and the **person** does not create a
416 nuisance.
417 (2) **Salamanders.** Construction workers and other outdoor workers
418 may use a salamander or other device fired with propane gas or
419 No. 2 fuel oil for heating if the device does not create visible
420 **emissions.**
421 (3) **Recreational purposes.** A **person** may set an **open fire**, such as
422 a campfire, for recreational purposes if visible **emissions** do not
423 exceed 20 percent **opacity** for more than 3 minutes total in any

424 consecutive 60 minute period. The fire must not be larger than 3
 425 feet in diameter.

426 (c) Permitted fires. Except as provided in subsections (a) and (b), a
 427 person must not burn any refuse or plant life outside of a building
 428 unless the person has obtained a permit from the Director. The
 429 Director must limit the duration of the permit. The Director may
 430 issue the permit for any of the following reasons or purposes:

431 (1) Agricultural open burning. A person may set a fire during
 432 agricultural operations if the fire complies with subsection (d)
 433 and the person obtains an agricultural burning permit before
 434 setting the fire. The Department may grant a permit to burn
 435 excessive lodging or destroy diseased crops and other vegetation
 436 originating on the applicant's property only:

437 (A) on a property that is agriculturally assessed for property tax
 438 purposes; and

439 (B) if the burning is necessary to maintain agricultural land in
 440 production.

441 (2) Ceremonial burning. A person may set fires for a ceremonial
 442 purpose.

443 (3) Disaster rubbish. A person may burn rubbish, including
 444 landscape waste, during a community disaster if the County
 445 Executive has officially declared a state of emergency.

446 (4) No alternative. A person may burn any material if the Director
 447 finds that there is no practical alternative way to dispose of or
 448 store the material [[or conduct the desired activity]] more safely.

449 (d) Conditions. The Director may impose any condition on an open
 450 burning permit to prevent air pollution or protect the health, safety,

451 comfort and property of persons. An open fire must at all times be
 452 attended by a permittee or the permittee's agent. The permittee or the
 453 permittee's agent must have the burning permit in possession during the
 454 burning. The Director must not grant a permit if the intended activity
 455 would:

- 456 (1) Create a hazardous condition;
- 457 (2) Be conducted during an air pollution episode or other burning
 458 prohibition period declared by the Governor or the Secretary of
 459 the Department of the Environment;
- 460 (3) Be conducted within 500 yards of any occupied building or a
 461 heavily traveled public road, walkway, path, or other facility used
 462 by the public;
- 463 (4) Violate any fire control law or regulation enforced by another
 464 government agency;
- 465 (5) Create visible emissions whose opacity exceeds 20 percent for
 466 more than a total of 3 minutes in any consecutive 60-minute
 467 period; or
- 468 (6) Include the burning of leaves, brush, other vegetation, or
 469 household trash.

470 (e) Permit denial. The Director may deny a request for an open burning
 471 permit if:

- 472 (1) the applicant has not shown that the applicant can comply with
 473 this Chapter and any applicable state or federal air pollution
 474 control law; or
- 475 (2) the Director finds, based on the applicant's history, that the
 476 applicant is not likely to comply with all applicable requirements
 477 of County, state, or federal air pollution control laws.

478 (f) Permit revocation or suspension. The **Director** may revoke, suspend,
479 or modify a permit granted under this Section if the Director finds that
480 the permittee has violated any term or condition of the permit. Notice
481 of any proposed revocation, suspension, or modification must be in
482 writing, include the reason for the decision, and give the permittee an
483 opportunity for a hearing under Section 3-14. A request for a hearing
484 does not stay the Director's action.

485 (g) Extinguishing fires in violation. A person responsible for starting a
486 fire in violation of this Section must promptly extinguish the fire after
487 receiving notice from the Department. The notice to extinguish the fire
488 is not an exclusive remedy.

489 **[3-9. Plan of compliance.]**

490 [When an applicant has adequately demonstrated to the department that
491 compliance with this chapter and regulations adopted thereto cannot be effectively
492 and immediately made, the director shall have authority to grant permits for the
493 installation or operation of noncomplying equipment, but only in the event that all
494 necessary steps have been taken to secure compliance with this chapter. Such steps
495 shall include the requirement that the applicant file with the department a plan of
496 compliance which shall include a schedule of actions approved by the director for the
497 control of emissions. Permission for noncompliance shall be granted for a period of
498 no longer than two (2) years, during which time the applicant shall file periodic
499 progress reports as specified by the department. At the end of the period granted, the
500 applicant shall be deemed in violation of this chapter, unless this period is further
501 extended by the board of appeals upon proper showing of an attempt to comply and
502 its approval of a plan of compliance.]

503 **3-9. Ambient air quality requirements for odors.**

504 (a) A person must not cause or permit the emission into the atmosphere of
 505 any gas, vapor, or particulate matter beyond the person's property
 506 line or [leasehold] unit if a resulting odor creates air pollution.

507 (b) The Director may issue a citation for violating subsection (a) if the
 508 Director:

509 (1) [[W]]witnesses the violation; or

510 (2) [[Receives complaints from at least three individuals who have
 511 personal knowledge of an air pollution odor]] [[otherwise has
 512 reasonable cause to believe that a violation occurred]] receives
 513 complaints from at least two individuals who have personal
 514 knowledge of an air pollution odor.

515 **[3-10. Abatement orders.]**

516 [(a) Upon finding that a person is violating a provision of this chapter, the
 517 director or an authorized fire official may, at his discretion, issue an
 518 order directing such person to cease such violation. Such order shall be
 519 in writing and shall be served upon the person to whom it is directed,
 520 either by mail or by personal delivery. If such person cannot be located
 521 within the county after reasonable effort, service shall be made by
 522 certified mail at his last known address or by posting the order upon the
 523 premises. Nothing in this section shall be construed to prohibit the
 524 director or the fire marshal from dispensing with the provisions of this
 525 section and proceeding directly under sections 3-11 and 3-17 of this
 526 Code.]

527 [(b) When the director determines, either upon his own investigation or upon
 528 petition of those affected, that a nuisance as defined by this chapter
 529 exists and effects at least thirty (30) percent of a sample of people

530 exposed to it in their usual places of occupancy, the sample size to be at
 531 least twenty (20) people or seventy-five (75) percent of those exposed if
 532 fewer than twenty (20) people are exposed, he shall immediately issue
 533 an abatement order to the person responsible for the condition in
 534 accordance with subsection (a) herein.]

535 **3-10. Control and prohibition of indoor air pollution.**

536 (a) A person must not cause or [[permit]] allow the emission of indoor air
 537 pollutants beyond the person's property line [[or leasehold]] in a
 538 manner that creates indoor air pollution [[in an adjacent or connected
 539 property or leasehold]].

540 (b) Subsection (a) does not apply to [[odors created by any routine]]:

541 (1) the residential [[living activity such as cooking,]] use of personal

542 hygiene products[[,]];or [[smoking in non-restricted areas]]

543 (2) residential cooking odors [[in multi-family dwellings]].

544 (c) In this Section, "property line" means the boundary of a residential or
 545 non-residential area that a person legally uses or owns. For a property
 546 divided into more than one legal unit, such as multi-family housing or a
 547 multi-tenant commercial property, "property line" also includes a
 548 boundary between a unit and a common area or between units.

549 **3-11. Revocation of permit.]**

550 [The department shall issue an order suspending or revoking any permit for
 551 violations of this chapter and regulations adopted pursuant thereto, state or any
 552 federal air pollution control laws or regulations, state or county fire control laws or an
 553 approved plan of compliance. The department shall revoke any permit for violations
 554 or for any false statement in the application or because of conditions revealed by such
 555 application or any report, record or inspection or any other means which would
 556 warrant refusal of a permit on any original application. An order suspending or

557 revoking a permit shall be served in person or by certified mail upon the permit
 558 holder and shall be final unless the holder appeals such order as provided in section
 559 3-16.]

560 **3-11. Determining compliance.**

561 (a) **Compliance methods.** The **Director** may conduct testing or require a
 562 property owner to conduct testing to determine compliance with this
 563 Chapter in response to a complaint.

564 (b) **Manner of testing.** A property owner must conduct all tests in a
 565 manner, and before the deadline, set by the **Director** and submit a
 566 detailed report of all test results to the **Director** within 15 days after the
 567 testing is complete unless the **Director** grants an extension. Each test
 568 must be performed by a **person** qualified to conduct the test, as
 569 determined by the **Director**.

570 **3-12. Testing and monitoring.**

571 [(a) **Methods.** Emission tests shall be conducted in accordance with
 572 recognized standards and methods of measurement. Methods found in
 573 the American Society of Mechanical Engineering (ASME) Power Test
 574 Code 27-1957, American Society for Testing Materials (ASTM)
 575 D2928-70 and the specifications of the U.S. Environmental Protection
 576 Agency shall be used, but these may be modified or adjusted by the
 577 department to suit specific sampling conditions or needs based upon
 578 good practice, judgment and experience. Measurements taken in stacks
 579 at point beyond the installed control equipment shall be deemed to be a
 580 measurement of emission.]

581 [(b) **Manner.** The department is hereby authorized to conduct or cause to be
 582 conducted any test or tests to determine compliance with this chapter or
 583 regulations adopted thereto. All tests shall be conducted in a manner

584 determined by the director and a complete, detailed test report of such
585 test or tests shall be submitted to him in timely fashion. When tests are
586 taken by the owner or the owner's independent testers, the director shall
587 require that such tests be conducted by reputable, qualified personnel, as
588 determined by the director or representatives of the department.]

589 [(c) **Facilities and access.** It shall be the responsibility of the owner or
590 operator of the equipment tested to provide, at the owner's expense,
591 utilities, facilities and reasonable and necessary openings in the system
592 or stack and safe and easy access thereto, to permit samples and
593 measurements to be taken. All new sources of air pollutants created
594 after the effective date of this law may be required by the director to
595 provide utilities, facilities and adequate openings in the system or stack,
596 and safe and easy access thereto, to permit measurements and samples
597 to be taken.]

598 [(d) **Cost.** If emission tests conducted as the result of the action of the
599 director substantiate that a violation exists, the person or persons
600 responsible for the violation shall be responsible for paying all attendant
601 costs for conducting such tests. If such tests do not show that a
602 violation exists, then the county shall be responsible for paying all costs
603 for conducting such tests. In no event shall the county assume costs of
604 providing facilities, utilities and access for such testing. The cost of
605 emission tests required by the director on newly installed equipment for
606 the issuance of the initial permit to install and operate shall be the
607 owner's regardless of the results. When the person responsible elects to
608 conduct his own tests, then the person so electing shall pay for the test
609 or tests notwithstanding other provisions of this section and irrespective
610 of the result.]

611 [(e) **Data.** Emission data secured as the result of this regulation or other
 612 provisions of law shall be correlated with applicable emission
 613 limitations or other control measures and shall be available for public
 614 inspection during regular business hours or by appointment during other
 615 hours at the offices of the department. Information other than emission
 616 data which relates to production, sales figures or processes of any owner
 617 or operator shall not be disclosed publicly upon finding by the director
 618 that to do so will result in a significant and adverse effect upon the
 619 competitive position of such owner or operator, except in or following
 620 public hearing or except as necessary to protect the public health, safety
 621 or well-being, unless such owner or operator shall expressly agree to
 622 their publication or availability to the general public.]

623 **3-12. Emergency provisions.**

- 624 (a) Notwithstanding this Chapter or any other law, if the **Director** finds
 625 that a **person** is causing or contributing to **air pollution** and that the
 626 pollution creates an emergency [[which]] that requires immediate
 627 action to protect the public health or safety, the **Director** must order
 628 the **person** to immediately reduce or stop the **air pollution**. That
 629 **person** must immediately comply with the **Director**'s order.
- 630 (b) If the Governor or the Secretary of the Department of the Environment
 631 declares an **air pollution episode**, the **Director** may take any action
 632 authorized under state law to protect the public health or safety.

633 **3-13. Circumvention and right of entry.**

- 634 [(a) No person shall build, erect, install or use any article, machine,
 635 equipment or other contrivance, the sole purpose of which is to dilute or
 636 conceal an emission without resulting in a reduction in the total
 637 emission of air pollutants nor shall a person do any noncorrective thing

638 nor commit any noncorrective act with the intent to distort test emission
639 results.]

640 [(b) Any person who in any manner hinders, obstructs, delays, resists,
641 prevents or in any manner interferes or attempts to interfere with the
642 department or its representatives in the performance of any duty or shall
643 refuse to permit the department or its representative to perform their
644 duty by refusing them entrance at reasonable hours to any premises in
645 which the provisions of the chapter are being violated or are suspected
646 by the director of being violated or refuse to permit testing or permit the
647 inspection or examination of such premises for the purpose of
648 enforcement of the provisions of this chapter and regulations adopted
649 thereto shall be subject to revocation by the director of all permits
650 issued pursuant to this chapter to him and such other action as may be
651 provided at law or by provisions of this Code.]

652 [(c) (1) For the purpose of developing or assisting in the development of
653 any implementation plan, standard of performance, emission
654 standard or the enforcement of any regulation contained herein,
655 each supplier of residual and distillate fuel oil in the county is
656 hereby required to file an annual report with the director, which
657 report is due on July 1 of each year, listing all customers of that
658 supplier and showing therewith the fuel types, grades and
659 quantities purchased or consumed by each customer thereof
660 during the twelve (12) months immediately preceding.

661 (2) The director is hereby authorized to waive the requirements of
662 the foregoing subsection as to any supplier or suppliers upon
663 written agreement by that supplier that it will, within ten (10)
664 days of receipt of a written request by the director, furnish such

665 information as set forth in the preceding section as he deems
 666 necessary. All information obtained under this or the preceding
 667 section shall be entitled to protection as trade secrets and the
 668 department shall keep such information confidential.]

669 **3-13. Enforcement and Penalties.**

- 670 (a) The Director may enter a non-residential site during normal business
 671 hours or at any other reasonable time to inspect, investigate, or monitor
 672 activities subject to this Chapter. If the person in charge of the site does
 673 not consent to an entry by the Director, the Director must obtain an
 674 administrative search warrant from a court with jurisdiction by showing
 675 that reasonable legislative or administrative standards for conducting an
 676 inspection have been satisfied.
- 677 (b) The Director may, with the consent of the owner or occupant, enter a
 678 private dwelling at any reasonable time to inspect, investigate, or
 679 monitor activities subject to this Chapter. If the owner or occupant of
 680 the residence does not consent to an entry by the Director, the Director
 681 may obtain an administrative search warrant from a court [[with
 682 jurisdiction]] by showing that reasonable legislative or administrative
 683 standards for conducting an area inspection have been satisfied.
- 684 (c) A person must not hinder, prevent, or unreasonably refuse to permit a
 685 lawful inspection, investigation, or monitoring under this Chapter.
- 686 (d) [[Upon finding a violation of this Chapter, the]] The Director, the Fire
 687 Administrator, or the Administrator's designee may issue a notice of
 688 violation, corrective order, stop-work order, or civil citation to any
 689 person [[causing or permitting the violation]] who causes or allows a
 690 violation of this Chapter.

691 (e) A person [[that]] who causes or [[permits]] allows a violation of this
 692 Chapter must submit a plan for compliance if required under a notice
 693 of violation or corrective order. The plan [[of]] for compliance must
 694 include a schedule to correct the violation. The Director must approve
 695 any plan [[of]] for compliance and any [[later]] amendment to an
 696 approved plan.

697 (f) The Director may issue a stop-work order to any person [[that]] who
 698 violates this Chapter [[when performing any] in connection with an
 699 activity [[authorized by]] conducted under a building permit issued
 700 under Chapter 8 or a sediment control permit issued under Chapter 19.

701 (g) Any violation of this Chapter is a Class A violation. Each day a
 702 violation continues is a separate offense.

703 (h) In addition to any other remedy allowed by law, the Department may
 704 seek injunctive or other appropriate judicial relief to prevent or stop a
 705 violation of this Chapter.

706 **[3-14. Emergency provisions.]**

707 [(a) Notwithstanding the provisions of this chapter or any other provision of
 708 law, if the director finds that any person is causing or contributing to air
 709 pollution and that such pollution creates an emergency which requires
 710 immediate action to protect the public health or safety, he shall order
 711 such person to reduce or discontinue immediately the air pollution and
 712 such order shall be complied with immediately.]

713 [(b) Whenever an air pollution episode is declared by the secretary of the
 714 state department of health and mental hygiene or the governor, the
 715 director shall have the authority to take such action as prescribed under
 716 state regulations governing the control of air pollution or as necessary to
 717 protect the public health or safety.]

718 **3-14. Appeals.**

719 [[(a) Any] A person aggrieved by an action taken or an order issued under
 720 this Chapter may seek reconsideration [[within 10 days after the date of the action or
 721 order. A request for reconsideration must be filed in writing with the Director, and
 722 must specify the date and nature of the action or order, the remedy requested, and the
 723 basis for the remedy. If the Director finds that material facts are disputed, the
 724 Director may refer the matter to a hearing officer]] and appeal the action or order
 725 under the procedures in Article I of Chapter 2A. [[If the Director finds that no
 726 material facts are disputed, the Director must make a final decision on the request for
 727 reconsideration in writing within 10 days after receiving the request. An aggrieved
 728 person may appeal the Director's final decision within 30 days after the Director
 729 issues the decision, as provided in Section 2A-11.]] [(b)] A request for [[a]
 730 reconsideration does not stay the [[Director's]] action or order unless the Director or
 731 other decision maker grants a stay.

732 **[3-15. Prima facie evidence of unlawful emissions.]**

733 [In any hearing of the district court for the county or any court of competent
 734 jurisdiction, the fact of operation without a valid permit, together with testimony as to
 735 ownership or responsibility from the records of the department shall be prima facie
 736 evidence of unlawful emissions and that the equipment for which the permit is not in
 737 effect is being operated in violation of the provisions of this chapter and regulations
 738 enacted pursuant thereto.]

739 **[[3-15. Judicial review.]]**

740 [[A person aggrieved by a final decision of the Director may appeal the
 741 decision to the Circuit Court for Montgomery County under the provisions of the
 742 Maryland Rules governing judicial review of administrative decisions. Any party to
 743 the Circuit Court proceeding may appeal from the Circuit Court decision to the

744 appellate courts of Maryland under the applicable provisions of the Maryland
745 Rules.]]

746 **[3-16. Appeals.]**

747 [Any person aggrieved by an order issued under this Chapter may appeal
748 within 10 days from such order to the County Board of Appeals under Section 2-
749 112(a). Such appeal does not stay execution of the order more than 10 days, unless
750 the Board of Appeals grants a stay upon application of the person filing the appeal.]

751 **[3-17. Violations, penalties and liabilities.]**

752 [Failure to comply with any provision of this chapter shall constitute a class A
753 violation as set forth in section 1-19 of chapter 1 of the County Code.]

754 **Sec. 2. Transition.**

755 Until superseded, an Executive Regulation issued under Chapter 3 before the
756 effective date of this Act remains in effect to the extent the regulation is consistent
757 with this Act. This Act does not apply to a violation of Chapter 3 that occurred
758 before this Act took effect.

759 *Approved:*

760 Blair G. Ewing November 21, 2001
Blair G. Ewing, President, County Council Date

761 ~~Approved:~~ Disapproved:

762 Douglas M. Dunnean November 27, 2001
Douglas M. Dunnean, County Executive Date

763 *This is a correct copy of Council action.*

764 _____
Mary A. Edgar, CMC, Clerk of the Council Date