

Emergency Bill No. 42-01
Concerning: Air Quality Control -
Revision
Revised: Apr. 2, 2002 Draft No. 6
Introduced: December 4, 2001
Enacted: April 2, 2002
Executive: April 11, 2002
Effective: April 11, 2002
Sunset Date: None
Ch. 6, Laws of Mont. Co. 2002

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin, Silverman, Praisner, Leggett, Dacek,
and Denis, and at the request of the County Executive.

AN EMERGENCY ACT to:

- (1) authorize the Department of Environmental Protection to protect ambient (outdoor) air quality and the indoor air quality in residential and non-residential properties;
- (2) repeal or modify certain air quality requirements to conform with State law and modern air quality control practices;
- (3) facilitate enforcement of County air quality control laws;
- (4) repeal the authority of the Board of Appeals to consider an appeal of an air quality control violation and allow direct appeal of certain agency decisions to a court; and
- (5) generally amend County law regarding air quality control.

By amending

Montgomery County Code
Chapter 2, Administration
Section 2-112

Chapter 3, Air Quality Control

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec. 1. Section 2-112, as amended by Chapter 30 of the Laws of**
2 **Montgomery County 2001, and Chapter 3 are amended as follows:**

3 **2-112. Jurisdiction.**

4 * * *

5 (c) The Board has the following appellate jurisdiction:

The board must hear and decide each appeal taken under:	Those appeals involve:
* * *	* * *
[[Section 3-16]]	[[Air quality control]]
* * *	* * *

6
7 * * *

8 **Chapter 3.**

9 **AIR QUALITY CONTROL.**

10 **3-1. Purpose of Chapter.**

11 (a) It is [hereby declared to be] the policy of the County to protect the
12 **County's ambient air [resources of the county to the degree] quality as**
13 **necessary [for the] to:**

- 14 (1) [Protection of] protect the [public] health, safety, comfort and
15 well-being of [its citizens] the County's residents and businesses;
- 16 (2) [Prevention of] prevent injury to plant and animal life and to
17 property; and
- 18 (3) [Protection of] protect the [comfort and convenience of the
19 public and the protection of the] recreational resources of the
20 [c]County.

21 (b) [In determining the ways and means to be required for reducing
22 **pollutant concentrations, matters of economics and private interests and**

23 other factors shall be subordinate considerations, in general, to the
 24 necessity of achieving the standards for the protection of the public
 25 health.] It is the **Countv's** goal to protect and facilitate the
 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, or 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; or combination of substances.

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

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

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

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

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

101 **Opacity:** [The state of a substance which renders it partially or wholly
 102 impervious to rays of light so that the substance partially or wholly obscures an

103 observer's view.] The degree to which **emissions** reduce the transmission of light and
 104 obscure the view of an object in the background.

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

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

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

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

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

126 **[Ringlemann chart:** A chart for grading the appearance, density or shade of
 127 smoke as published with instructions for use by the United States Bureau of Mines,
 128 in Information Circular 7718, dated August 1955. Any other method for grading

129 smoke which is approved by the state department of health and mental hygiene as the
130 equivalent of the Ringlemann Chart may be substituted therefor.]

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

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

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

141 3-3. Administration.

142 [It shall be the duty of the director of the department of environmental
143 protection to:]

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

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

182 agencies. interstate agencies. the federal government. private industries
 183 and businesses. homeowners associations. and other interested persons
 184 about air quality problems that affect human health.

185 (b) This Charter does not waive any requirement of State or federal law.

186 **3-4. Regulations.**

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

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

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

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

- 209 **3-5. [Visible] Ambient air quality requirements for visible emissions.**
- 210 (a) **Generally.** [No person shall] A person must not cause [, suffer, allow]
- 211 or [permit] allow the discharge of any visible **emission[s]** from any
- 212 **installation** or building, other than water in an uncombined form, into
- 213 the atmosphere [which are visible to human observers].
- 214 (b) **Exceptions.** [(1)] Subsection (a) [shall] does not apply to any: [emissions
- 215 during the building of a new fire, cleaning of fires, soot blowing, start-
- 216 up, any process modification or adjustment or occasional cleaning of
- 217 control equipment, the shade or appearance of which is not darker than
- 218 No. 1 on the Ringelmann Smoke Chart or of such opacity as to obscure
- 219 an observer's view to a degree not greater than does smoke designated
- 220 as No. 1 on the Ringelmann Smoke Chart, for a period or periods
- 221 aggregating no more than four (4) minutes in any sixty (60) minutes.]
- 222 [(2) Subsection (a) shall not apply to emissions of the following:
- 223 a. From those incinerators that are to be phased out under
- 224 provisions of this chapter;]
- 225 (1) **Emission** during start-up and process modifications or
- 226 adjustments, or occasional cleaning of **control equipment**, that is
- 227 not greater than 40 percent **opacity** for a period of not more than
- 228 6 consecutive minutes in any 60-minute period.
- 229 (2) **Emission** from a food preparation **installation**, such as a char-
- 230 broiler or pit barbecue, that operates at one location less than 15
- 231 days in any 365-day period, or that is not greater than 10 percent
- 232 **opacity**.
- 233 (3) [b. From the burning of wood in fireplaces or used as residential]
- 234 **Emission** caused by wood burning in a residential fireplace or

235 wood stove. or **emission** for recreational purposes such as a
 236 campfire.

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

240 **[3-6. Control and prohibition of open fires.]**

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

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

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

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

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

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

260 **(2) Household Trash.** In those areas where no provision is made for
 261 public collection of refuse, burning of ordinary household trash

- 262 (Incinerator Institute of America waste types 0 and 1 only)
 263 originating on the premises, excluding commercial
 264 establishments, by householders is permitted; provided, that:
- 265 a. The fires are located no closer than three hundred (300)
 266 feet from any neighboring habitable dwelling or place
 267 where people work or congregate;
 - 268 b. Materials are not burned which create dense smoke (emissions of
 269 an opacity or darkness greater than No. 1 on the Ringelmann
 270 Smoke Chart.)
- 271 (3) **Cooking.** Fires may be used for the cooking of food; provided,
 272 that visible emissions are not greater than No. 1 on the
 273 Ringelmann Smoke Chart and no nuisance is created.
 - 274 (4) **Salamanders.** Salamanders or other devices fired with propane
 275 gas or No. 2 fuel oil may be used for heating by construction or
 276 other workers; provided, that no visible emissions are created.
 - 277 (5) **Agricultural Operations.** Fires may be set in the course of
 278 agricultural operations; provided, that visible emissions are not
 279 greater than No. 1 on the Ringelmann Smoke Chart and no
 280 nuisance is created and prior notice is given to the department.
 - 281 (6) **Recreational Purposes.** Open fires may be set for recreational
 282 purposes such as campfires; provided, that visible emissions are
 283 not greater than No. 1 on the Ringelmann Smoke Chart and no
 284 nuisance is created.
 - 285 (7) **Explosive Containers.** Empty boxes and fiber packing materials
 286 which have previously contained high explosives may be burned
 287 at an isolated location more than one hundred (100) feet from any
 288 occupied building or structure or public street or road and no

289 person shall be closer than one hundred (100) feet of the fire once
290 burning has begun.]

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

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

316 [(d) **Extinguishing fires in violation.** Fires started in violation of this
317 section shall be promptly extinguished by the person responsible for the
318 same upon notice by a duly authorized agent of the department. This
319 shall not be considered an exclusive remedy.]

320 **3-6. Ambient air quality requirements for particulate matter from**
321 **unconfined sources.**

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

326 **[3-7. Permits for certain equipment.]**

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

338 (1) A currently valid permit to construct or operate has been issued
339 by the state department of health and mental hygiene for the
340 subject installation or equipment.

341 (2) A currently valid conditional permit has been issued by the state
 342 department of health and mental hygiene for the subject
 343 installation or equipment.]

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

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

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

355 3-7. **Ambient air quality requirements for particulate matter from**
 356 **materials handling and construction.**

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

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

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

366 (2) applying asphalt, water, or suitable chemicals on a dirt road,
 367 materials stockpile, or other surface that can create airborne dust:

- 368 (3) installing and using hoods, fans, and dust collectors to enclose and
 369 vent the handling of dusty materials, and employing reasonable
 370 containment methods to prevent the release of **particulate matter**
 371 during sandblasting or similar operations:
- 372 (4) covering each open-bodied vehicle used to transport any material
 373 likely to create **air pollution** at all times when the vehicle is moving:
- 374 (5) paving a roadway and maintaining it in clean condition; and
- 375 (6) promptly removing earth or other dust-producing material from a
 376 paved street to which the material was transported by truck, earth
 377 moving equipment, or water erosion.

378 **[3-8. Applications for permits.]**

- 379 [(a) **Generally.** Applications for the air pollution control permits described
 380 in section 3-7 shall be made to the department on forms provided by the
 381 department. The department shall require such information and details
 382 regarding the installation as it considers necessary to determine whether
 383 the installation to operate is in compliance with county, state and federal
 384 air pollution control regulations and that the installation incorporates
 385 advances in the technology of air pollution control developed for the
 386 kind and amount of emissions of the applicant's installation.]
- 387 [(b) **Denial of application.** Whenever it shall appear to the department that
 388 the operation or construction of an installation for which a permit is
 389 applied will result in a violation of any county, state or federal air
 390 pollution control regulations or contravention of applicable ambient air
 391 quality standards, an order shall be entered denying the permit and
 392 setting forth the reasons thereof. The department shall not accept a
 393 further application unless the applicant has complied with the objections
 394 specified by the department as its reasons for denial of the permit or

395 submitted satisfactory evidence demonstrating that a particular
 396 requirement cannot be met immediately and submitted to the
 397 department an acceptable plan of compliance.]

398 **3-8. Control or prohibition of open fires.**

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

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

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

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

422 visible emissions that exceed 20 percent opacity for a total of
 423 more than 3 minutes in any 60-minute period and is not larger
 424 than 3 feet in diameter.

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

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

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

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

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

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

445 **(4) No alternative.** A person may burn any material if the Director
 446 finds that there is no practical alternative way to dispose of or
 447 store the material more safely.

- 448 **(d) Conditions.** The Director may impose any condition on an open
 449 burning permit to prevent **air pollution** or protect the health, safety,
 450 comfort and property of persons. An open fire must at all times be
 451 attended by the permittee or the permittee's agent who has the burning
 452 permit in possession during the burning. The Director must not grant a
 453 permit if the intended activity would:
- 454 **(1)** create a hazardous condition:
 - 455 **(2)** be conducted during an **air pollution episode** or other burning
 456 prohibition period declared by the Governor or the Secretary of
 457 the Maryland Department of the Environment;
 - 458 **(3)** be conducted within 500 yards of an occupied building or a
 459 heavily traveled public road, walkway, path, or other facility used
 460 by the public;
 - 461 **(4)** violate any other law or regulation;
 - 462 **(5)** create visible **emissions** whose **opacity** exceeds 20 percent for
 463 more than a total of 3 minutes in any consecutive 60-minute
 464 period; or
 - 465 **(6)** include the burning of leaves, brush, other vegetation, or
 466 household trash.
- 467 **(e) Permit denial.** The Director may deny a request for an open burning
 468 permit if:
- 469 **(1)** the applicant has not shown that the applicant can comply with
 470 this Chapter and any applicable State or federal **air pollution**
 471 control law; or
 - 472 **(2)** the Director finds, based on the applicant's history, that the
 473 applicant is not likely to comply with all applicable **County,**
 474 **State,** and federal **air pollution** control laws.

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

482 **(g) Extinguishing fires in violation.** A person responsible for starting a
 483 fire that violates this Section must promptly extinguish the fire after
 484 receiving notice from the **Department**. The notice to extinguish the fire
 485 is not an exclusive remedy.

486 **[3-9. Plan of compliance.]**

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

500 **3-9.** **Ambient air quality requirements for odors.**

501 **(a)** **A person must not cause or allow the emission into the atmosphere of**
 502 **any gas, vapor, or particulate matter beyond the person's property**
 503 **line or unit if a resulting odor creates air pollution.**

504 **(b)** **The Director may issue a citation for violating subsection (a) if the**
 505 **Director:**

506 **(1)** **~~[[W]]~~witnesses the violation: or**

507 **(2)** **receives complaints from at least 2 individuals who have personal**
 508 **knowledge of the air pollution odor.**

509 **[3-10. Abatement orders.]**

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

521 **[(b)** **When the director determines, either upon his own investigation or upon**
 522 **petition of those affected, that a nuisance as defined by this chapter**
 523 **exists and effects at least thirty (30) percent of a sample of people**
 524 **exposed to it in their usual places of occupancy, the sample size to be at**
 525 **least twenty (20) people or seventy-five (75) percent of those exposed if**
 526 **fewer than twenty (20) people are exposed, he shall immediately issue**

527 an abatement order to the person responsible for the condition in
 528 accordance with subsection (a) herein.]

529 **3-10. Control and prohibition of indoor air pollution.**

530 (a) A person must not cause or allow the emission of indoor air
 531 pollutants beyond the person's property line in a manner that creates
 532 indoor air pollution.

533 (b) Subsection (a) does not apply to:

534 (1) the residential use of personal hygiene products;

535 (2) smoking in [[non-restricted areas]] a private home; or

536 (3) residential cooking odors.

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

542 (d) The Director may issue a citation for violating this Section if the
 543 Director:

544 (1) witnesses the violation; or

545 (2) receives complaints from at least 2 individuals who have personal
 546 knowledge of the indoor air pollution.

547 **[3-11. Revocation of permit.]**

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

554 warrant refusal of a permit on any original application. An order suspending or
 555 revoking a permit shall be served in person or by certified mail upon the permit
 556 holder and shall be final unless the holder appeals such order as provided in section
 557 3-16.]

558 **3-11. Determining compliance.**

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

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

568 **[3-12. Testing and monitoring.]**

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

579 [(b) **Manner.** The department is hereby authorized to conduct or cause to be
 580 conducted any test or tests to determine compliance with this chapter or

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

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

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

607 or tests notwithstanding other provisions of this section and irrespective
 608 of the result.]

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

621 **3-12. Emergency provisions.**

622 (a) Notwithstanding this Chapter or any other law, if the **Director** finds
 623 that a **person** is causing or contributing to **air pollution** and that the
 624 pollution creates an emergency that requires immediate action to
 625 protect the public health or safety, the **Director** must order the **person**
 626 to immediately reduce or stop the **air pollution**. That **person** must
 627 immediately comply with the **Director's** order.

628 (b) If the Governor or the Secretary of the Maryland Department of the
 629 Environment declares an **air pollution episode**, the **Director** may take
 630 any action authorized under State law to protect the public health or
 631 safety.

632 **[3-13. Circumvention and right of entry.]**

633 [(a) No person shall build, erect, install or use any article, machine,
634 equipment or other contrivance, the sole purpose of which is to dilute or
635 conceal an emission without resulting in a reduction in the total
636 emission of air pollutants nor shall a person do any noncorrective thing
637 nor commit any noncorrective act with the intent to distort test emission
638 results.]

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

651 [(c) (1) For the purpose of developing or assisting in the development of
652 any implementation plan, standard of performance, emission
653 standard or the enforcement of any regulation contained herein,
654 each supplier of residual and distillate fuel oil in the county is
655 hereby required to file an annual report with the director, which
656 report is due on July 1 of each year, listing all customers of that
657 supplier and showing therewith the fuel types, grades and

658 quantities purchased or consumed by each customer thereof
 659 during the twelve (12) months immediately preceding.

660 (2) The director is hereby authorized to waive the requirements of
 661 the foregoing subsection as to any supplier or suppliers upon
 662 written agreement by that supplier that it will, within ten (10)
 663 days of receipt of a written request by the director, furnish such
 664 information as set forth in the preceding section as he deems
 665 necessary. All information obtained under this or the preceding
 666 section shall be entitled to protection as trade secrets and the
 667 department shall keep such information confidential.]

668 **3-13. Enforcement and Penalties.**

669 (a) The **Director** may enter a non-residential site during normal business
 670 hours or at any other reasonable time to inspect, investigate, or monitor
 671 activities subject to this Chapter. If the **person** in charge of the site does
 672 not consent to an entry by the **Director**, the **Director** must obtain an
 673 administrative search warrant from a court by satisfying reasonable
 674 statutory or administrative standards for conducting an inspection.

675 (b) The **Director** may, with the consent of the owner or occupant, enter a
 676 private dwelling at any reasonable time to inspect, investigate, or
 677 monitor activities subject to this Chapter. If the owner or occupant of
 678 the residence does not consent to an entry by the **Director**, the **Director**
 679 may obtain an administrative search warrant from a court by showing
 680 that reasonable legislative or administrative standards for conducting an
 681 area inspection have been satisfied.

682 (c) A **person** must not hinder, prevent, or unreasonably refuse to permit a
 683 lawful inspection, investigation, or monitoring under this Chapter.

- 684 **(d)** The **Director**, the Fire Administrator, or the Administrator's designee
685 may issue a notice of violation, corrective order, stop-work order, or
686 civil citation to any **person** who causes or allows a violation of this
687 Chapter.
- 688 **(e)** A **person** who causes or allows a violation of this Chapter must submit
689 a **plan for compliance** if required under a notice of violation or
690 corrective order. The **plan** **[[for compliance]]** must include a schedule
691 to correct the violation. The **Director** must approve **[[any]]** or
692 disapprove the **plan** **[[for compliance]]** and any amendment to an
693 approved **plan**.
- 694 **(f)** The **Director** may issue a stop-work order to any **person** who violates
695 this Chapter in connection with an activity conducted under a building
696 **permit** issued under Chapter 8 or a sediment control **permit** issued
697 under Chapter 19.
- 698 **(g)** Any violation of this Chapter is a Class A violation. Each day a
699 violation continues is a separate offense.
- 700 **(h)** In addition to any other remedy allowed by law, the **Department** may
701 seek injunctive or other appropriate judicial relief to prevent or stop a
702 violation of this Chapter.
- 703 **[3-14. Emergency provisions.]**
- 704 **[(a)** Notwithstanding the provisions of this chapter or any other provision of
705 law, if the director finds that any person is causing or contributing to air
706 pollution and that such pollution creates an emergency which requires
707 immediate action to protect the public health or safety, he shall order
708 such person to reduce or discontinue immediately the air pollution and
709 such order shall be complied with immediately.]

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

715 **3-14.** **Anneals.**

716 **(a) A person aggrieved by an action taken or an order issued under this**
 717 **Chapter may seek reconsideration by filing a written request with the**
 718 **Director within 10 days after the action or order. The request must state**
 719 **the date and nature of the action or order, the remedy requested, and**
 720 **why the Director should grant the request. Within 10 days after**
 721 **receiving the request, the Director must:**

722 **(1) issue a written decision on the request for reconsideration if the**
 723 **Director finds no material facts in dispute; or**

724 **(2) notify the person in writing of any material facts in dispute and:**
 725 **(A) establish a deadline of not more than 30 additional days for**
 726 **the Department to resolve the dispute and the Director to**
 727 **issue a written decision on the request for reconsideration:**

728 **or**

729 **(B) refer the matter to a hearing officer under Article I of**
 730 **Chapter 2A.**

731 **(b) A request for reconsideration does not stay the action or order unless the**
 732 **Director grants a stay. The Director's decision on a request for**
 733 **reconsideration is a final decision.**

734 **(c) A person aggrieved by a final decision of the Director under this**
 735 **Chapter may ~~[[and]]~~ appeal the action or order under ~~[[the procedures in~~**
 736 **Article I of Chapter 2A. A request for reconsideration does not stay the**

737 action or order unless the **Director** or other decision maker grants a
 738 stay.] Section 2A-11.

739 **[3-15. Prima facie evidence of unlawful emissions.]**

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

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.]

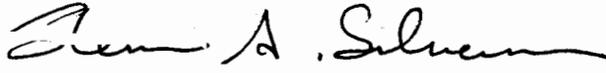
754 **Sec. 2. Transition.**

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 **Sec. 3. Emergency Effective Date**

760 The Council declares that an emergency exists and that this legislation is
 761 necessary for the immediate protection of the public health and safety. This Act
 762 takes effect on the date on which it becomes law.

763 *Approved:*

764 
Steven A. Silverman, President, County Council

4/02/02
Date

765 *Approved:*

766 
Douglas M. Duncan, County Executive

4/11/02
Date

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

768 
Mary A. Edgar, CMC, Clerk of the Council

4/15/02
Date