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.
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
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

* * *

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Section 2-112 and Chapter 3 are amended as follows:

2-112. Duties and powers.

(a) The County Board of Appeals has the following duties and powers:

[(21) Appeals concerning air quality control. The Board hears and decides all appeals taken under Section 3-16.] Reserved.

Chapter 3.

AIR QUALITY CONTROL.

3-1. Purpose of Chapter.

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

(1) [Protection of] protect the [public] health, safety, comfort and well-being of [its citizens] the County’s residents and businesses;

(2) [Prevention of] prevent injury to plant and animal life and to property; and

(3) [Protection of] protect the [comfort and convenience of the public and the protection of the] recreational resources of the [c]County.

(b) [In determining the ways and means to be required for reducing pollutant concentrations, matters of economics and private interests and other factors shall be subordinate considerations, in general, to the necessity of achieving the standards for the protection of the public health.] It is the County's goal to protect and facilitate the
The Department must apply principles of sound environmental health management and use reasonably available air quality control technology to implement this Chapter.

3-2. Definitions.

For the purposes of this Chapter, the following words and phrases shall have the following meanings respectively ascribed to them by this section:

Air pollutant: Any substance whose release into the atmosphere causes air pollution. An air pollutant may be in the form of a smoke, gas, dust, odor, particulate matter or combinations of these smoke, gas, dust, odor, or particulate matter, but is not limited to this enumeration.

Air pollution: The presence in the atmosphere of one or more substances or combinations thereof of substances such whose character, in such quantities and of such duration as are or may tend to be injurious to humans, plants, or animals life, or property, or which unreasonably interfere with the comfortable use and enjoyment of life or property, or with the conduct of business. The substances may be emitted as odors, solids, vapors, liquids, or gases from any single source or in combination with other sources.

Air pollution episode: A recognized occurrence designated by the Governor of Maryland or the Secretary of the state (department of health and mental hygiene) Department of the Environment that as an accumulation of ambient air pollutants may attain, is attaining or has attained a level or at levels considered injurious harmful to human health.

Control equipment: Any equipment which has the function of controlling the emissions from any process, fuel-burning or refuse-burning equipment and thus
reduces the creation of or the emission of or the emission of air pollutants into the atmosphere device or equipment that prevents or reduces emissions.

**Department:** The Department of Environmental Protection.

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

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

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

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

**Incinerator:** Any equipment device or contrivance used for the destruction of garbage, rubbish or other wastes by burning and all appurtenances thereof.

**Indirect sources of pollution:** The category of sources of pollution, also described under state and federal laws and regulations as "complex sources," which includes any facility, building, structure, highway, institution or combination thereof, the construction, modification or use of which results or may result in the emission from mobile source activities associated with it of air pollutants for which there is a national standard.
Indoor air pollutant: Any substance whose indoor presence causes indoor air pollution. An indoor air pollutant may consist of particles such as dust, fibers, asbestos, radon progeny, or animal dander; gases such as formaldehyde, carbon monoxide, mists, or bioaerosols; biological substances such as viruses, bacteria, fungi or molds; [and complex mixtures of particles, gases, and biological] or combination of substances.

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

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

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

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

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

Opacity: [The state of a substance which renders it partially or wholly impervious to rays of light so that the substance partially or wholly obscures an observer's view.] The degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
Open fire: A fire in which any material is burned in the open or in a receptacle other than a furnace, incinerator or other equipment [connected to a stack, which equipment is constructed in accordance with and meets the] not in conformance with the design requirements of the applicable building code of the [County [and] or the air quality control regulations of the state.

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

Permit: An air pollution control permit issued by the Department or the [State Department of Health and Mental Hygiene] Maryland Department of the Environment covering open burning, [and certain] installation [and equipment and other sources which may cause emissions], or operation of equipment with the potential to emit air pollution.

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

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

[Ringlemann chart: A chart for grading the appearance, density or shade of smoke as published with instructions for use by the United States Bureau of Mines, in Information Circular 7718, dated August 1955. Any other method for grading smoke which is approved by the State Department of Health and Mental Hygiene as the equivalent of the Ringlemann Chart may be substituted therefor.]
[Smoke: Small gas-borne particles, other than water, in sufficient number to be observable by sight.]

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

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

3-3. Administration.

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

[(a) Supervise the execution of all laws, rules and regulations pertaining to air pollution as provided in this chapter;]

[(b) Conduct studies, investigations and research relating to air pollution and its prevention, abatement and control;]

[(c) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;]

[(d) Make inspections and tests of existing and newly installed equipment subject to this chapter to determine whether such equipment complies with the standards set forth in the regulations adopted pursuant to this Code;]

[(e) Investigate complaints of violations of the provisions of this chapter, make inspections and observations of air pollution conditions and]
maintain records of all such investigations, complaints, inspections and observations;]

[(f) Approve or reject applications for permits, plans of compliance and other documents required under provisions of this Code;]

[(g) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;]

[(h) Prepare and develop a comprehensive plan or plans in the county for the prevention, abatement and control of air pollution;]

[(i) Advise, consult and cooperate with other local governmental units, agencies of the state, industries, interstate or interlocal agencies and the federal government and with interested persons and groups;]

[(j) Collect and disseminate information and conduct educational and training programs relating to air pollution;]

[(k) Encourage voluntary cooperation by persons or affected groups to achieve the purpose of this chapter;]

[(l) Receive and administer grants or other funds or gifts from public and private agencies, including the state and federal governments, for the purpose of carrying out any of the functions of this chapter;]

[(m) Do any and all acts which may be necessary for the successful prosecution of the policy of this chapter and such other acts as may be specifically enumerated herein;]

[(n) Promulgate rules and regulations subject to provisions in section 3-4 under which this law will be administered.]

(a) The Director must enforce this Chapter. The Director must advise, consult and cooperate with other local government units, state agencies, interstate agencies, the federal government, private industries and
businesses, homeowners associations, and other interested persons about air quality problems that affect human health.

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

3-4. Regulations.

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

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

(1) Control of particulate matter emissions from fuel burning installations, grain drying installations, materials handling and construction and other acts and installations;

(2) Control of gas, vapor, odor and volatile organic compound emissions from fuel burning and other installations;

(3) Prohibition of certain incinerators and new fuel-burning installations;

(4) Application fees at a rate not to exceed the cost of administering the program.]

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

3-5. [Visible] Ambient air quality requirements for visible emissions.
(a) **Generally.** [No person shall] **A person must not cause**, suffer, allow or permit the discharge of **any visible emission[s]** from any **installation** or building, other than water in an uncombined form, into the atmosphere [which are visible to human observers].

(b) **Exceptions.** [(1)] Subsection (a) [shall] does not apply to any: [emissions during the building of a new fire, cleaning of fires, soot blowing, start-up, any process modification or adjustment or occasional cleaning of control equipment, the shade or appearance of which is not darker than No. 1 on the Ringelmann Smoke Chart or of such opacity as to obscure an observer's view to a degree not greater than does smoke designated as No. 1 on the Ringelmann Smoke Chart, for a period or periods aggregating no more than four (4) minutes in any sixty (60) minutes.]

[(2) Subsection (a) shall not apply to emissions of the following:

a. From those incinerators that are to be phased out under provisions of this chapter;]

(1) **Emission during start-up and process modifications or adjustments, or occasional cleaning of control equipment**, which is not greater than 40 percent opacity for a period of not more than 6 consecutive minutes in any 60-minute period.

(2) **Emission from a food preparation installation**, such as a charbroiler or pit barbeque, which operates at one location less than 15 days in any 365-day period, or which is not greater than 10 percent opacity.

(3) [b. From the burning of wood in fireplaces or used as residential] **Emission caused by wood burning in a residential fireplace or wood stove**, or emission for recreational purposes such as a campfire.
(4) Emission from an open fire(s) (except a salamander[s]) permitted under provisions of this chapter.

3-6. Control and prohibition of open fires.

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

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

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

3. For the protection of the public health, safety or welfare.

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

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

2. Household Trash. In those areas where no provision is made for public collection of refuse, burning of ordinary household trash (Incinerator Institute of America waste types 0 and 1 only) originating on the premises, excluding commercial establishments, by householders is permitted; provided, that:
a. The fires are located no closer than three hundred (300) feet from any neighboring habitable dwelling or place where people work or congregate;

b. Materials are not burned which create dense smoke (emissions of an opacity or darkness greater than No. 1 on the Ringelmann Smoke Chart.)

(3) **Cooking.** Fires may be used for the cooking of food; provided, that visible emissions are not greater than No. 1 on the Ringelmann Smoke Chart and no nuisance is created.

(4) **Salamanders.** Salamanders or other devices fired with propane gas or No. 2 fuel oil may be used for heating by construction or other workers; provided, that no visible emissions are created.

(5) **Agricultural Operations.** Fires may be set in the course of agricultural operations; provided, that visible emissions are not greater than No. 1 on the Ringelmann Smoke Chart and no nuisance is created and prior notice is given to the department.

(6) **Recreational Purposes.** Open fires may be set for recreational purposes such as campfires; provided, that visible emissions are not greater than No. 1 on the Ringelmann Smoke Chart and no nuisance is created.

(7) **Explosive Containers.** Empty boxes and fiber packing materials which have previously contained high explosives may be burned at an isolated location more than one hundred (100) feet from any occupied building or structure or public street or road and no person shall be closer than one hundred (100) feet of the fire once burning has begun.]
[(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]
same upon notice by a duly authorized agent of the department. This shall not be considered an exclusive remedy.]

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

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

3-7. Permits for certain equipment.]

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

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

(2) A currently valid conditional permit has been issued by the state department of health and mental hygiene for the subject installation or equipment.]
[b] Exemptions. No permit shall be required for installation of equipment specifically exempted under regulations issued by the state department of health and mental hygiene for the subject installation or equipment.

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

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

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

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

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

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

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

(3) Installing and using hoods, fans, and dust collectors to enclose and vent the handling of dusty materials, and employing reasonable
containment methods to prevent the release of particulate matter
during sandblasting or similar operations;

(4) Covering each open-bodied vehicle used to transport any material
likely to create air pollution at all times when the vehicle is moving;

(5) Paving a roadway and maintaining it in clean condition; and

(6) Promptly removing earth or other dust-producing material from any
paved street that was transported there by truck, earth moving
equipment, or water erosion.

379 [3-8. Applications for permits.]

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

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

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

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

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

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

1. **Cooking.** A person may use a fire to cook food if the person
   uses an outdoor cooking apparatus approved for use by a
   nationally recognized standards organization, such as
   Underwriters Laboratory, and the person does not create a
   nuisance.

2. **Salamanders.** Construction workers and other outdoor workers
   may use a salamander or other device fired with propane gas or
   No. 2 fuel oil for heating if the device does not create visible
   emissions.

3. **Recreational purposes.** A person may set an open fire, such as
   a campfire, for recreational purposes if visible emissions do not
   exceed 20 percent opacity for more than 3 minutes total in any
consecutive 60 minute period. The fire must not be larger than 3 feet in diameter.

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

1. **Agricultural open burning.** A **person** may set a fire during agricultural operations if the fire complies with subsection (d) and the **person** obtains an agricultural burning **permit** before setting the fire. The **Department** may grant a **permit** to burn excessive lodging or destroy diseased crops and other vegetation originating on the applicant's property only:
   - **(A)** on a property that is agriculturally assessed for property tax purposes; and
   - **(B)** if the burning is necessary to maintain agricultural land in production.

2. **Ceremonial burning.** A **person** may set fires for a ceremonial purpose.

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

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

(d) **Conditions.** The **Director** may impose any condition on an open burning **permit** to prevent **air pollution** or protect the health, safety.
comfort and property of persons. An open fire must at all times be attended by a permittee or the permittee's agent. The permittee or the permittee's agent must have the burning permit in possession during the burning. The Director must not grant a permit if the intended activity would:

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

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

(1) the applicant has not shown that the applicant can comply with this Chapter and any applicable state or federal air pollution control law; or
(2) the Director finds, based on the applicant's history, that the applicant is not likely to comply with all applicable requirements of County, state, or federal air pollution control laws.
(f) **Permit revocation or suspension.** The **Director** may revoke, suspend, or modify a **permit** granted under this Section if the **Director** finds that the permittee has violated any term or condition of the **permit**. Notice of any proposed revocation, suspension, or modification must be in writing, include the reason for the decision, and give the permittee an opportunity for a hearing under Section 3-14. A request for a hearing does not stay the **Director's** action.

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

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

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

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

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

1. Witnesses the violation; or
2. Receives complaints from at least two individuals who have personal knowledge of an air pollution odor.

Abatement orders.

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

(b) When the director determines, either upon his own investigation or upon petition of those affected, that a nuisance as defined by this chapter exists and effects at least thirty (30) percent of a sample of people
exposed to it in their usual places of occupancy, the sample size to be at least twenty (20) people or seventy-five (75) percent of those exposed if fewer than twenty (20) people are exposed, he shall immediately issue an abatement order to the person responsible for the condition in accordance with subsection (a) herein.]

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

(a) A person must not cause or allow the emission of indoor air pollutants beyond the person’s property line in a manner that creates indoor air pollution in an adjacent or connected property or leasehold].

(b) Subsection (a) does not apply to odors created by any routine];

(1) the residential living activity such as cooking, use of personal hygiene products; or smoking in non-restricted areas]

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

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

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

[The department shall issue an order suspending or revoking any permit for violations of this chapter and regulations adopted pursuant thereto, state or any federal air pollution control laws or regulations, state or county fire control laws or an approved plan of compliance. The department shall revoke any permit for violations or for any false statement in the application or because of conditions revealed by such application or any report, record or inspection or any other means which would warrant refusal of a permit on any original application. An order suspending or
revoking a permit shall be served in person or by certified mail upon the permit holder and shall be final unless the holder appeals such order as provided in section 3-16.]

3-11. Determining compliance.

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

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

3-12. Testing and monitoring.

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

(b) Manner. The department is hereby authorized to conduct or cause to be conducted any test or tests to determine compliance with this chapter or regulations adopted thereto. All tests shall be conducted in a manner...
determined by the director and a complete, detailed test report of such
test or tests shall be submitted to him in timely fashion. When tests are
taken by the owner or the owner's independent testers, the director shall
require that such tests be conducted by reputable, qualified personnel, as
determined by the director or representatives of the department.]

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

[(d) **Cost.** If emission tests conducted as the result of the action of the
director substantiate that a violation exists, the person or persons
responsible for the violation shall be responsible for paying all attendant
costs for conducting such tests. If such tests do not show that a
violation exists, then the county shall be responsible for paying all costs
for conducting such tests. In no event shall the county assume costs of
providing facilities, utilities and access for such testing. The cost of
emission tests required by the director on newly installed equipment for
the issuance of the initial permit to install and operate shall be the
owner's regardless of the results. When the person responsible elects to
conduct his own tests, then the person so electing shall pay for the test
or tests notwithstanding other provisions of this section and irrespective
of the result.]
[(e) Data. Emission data secured as the result of this regulation or other provisions of law shall be correlated with applicable emission limitations or other control measures and shall be available for public inspection during regular business hours or by appointment during other hours at the offices of the department. Information other than emission data which relates to production, sales figures or processes of any owner or operator shall not be disclosed publicly upon finding by the director that to do so will result in a significant and adverse effect upon the competitive position of such owner or operator, except in or following public hearing or except as necessary to protect the public health, safety or well-being, unless such owner or operator shall expressly agree to their publication or availability to the general public.]

3-12. Emergency provisions.

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

(b) If the Governor or the Secretary of the Department of the Environment declares an air pollution episode, the Director may take any action authorized under state law to protect the public health or safety.

[(a) Circumvention and right of entry.]

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

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

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

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

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

(a) The Director may enter a non-residential site during normal business hours or at any other reasonable time to inspect, investigate, or monitor activities subject to this Chapter. If the person in charge of the site does not consent to an entry by the Director, the Director must obtain an administrative search warrant from a court with jurisdiction by showing that reasonable legislative or administrative standards for conducting an inspection have been satisfied.

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

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

(d) [[Upon finding a violation of this Chapter, the]] The Director, the Fire Administrator, or the Administrator's designee may issue a notice of violation, corrective order, stop-work order, or civil citation to any person [[causing or permitting the violation]] who causes or allows a violation of this Chapter.
(e) A person [[that]] who causes or [[permits]] allows a violation of this Chapter must submit a plan for compliance if required under a notice of violation or corrective order. The plan [[of]] for compliance must include a schedule to correct the violation. The Director must approve any plan [[of]] for compliance and any [[later]] amendment to an approved plan.

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

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

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

[3-14. Emergency provisions.]

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

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

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


[(In any hearing of the district court for the county or any court of competent jurisdiction, the fact of operation without a valid permit, together with testimony as to ownership or responsibility from the records of the department shall be prima facie evidence of unlawful emissions and that the equipment for which the permit is not in effect is being operated in violation of the provisions of this chapter and regulations enacted pursuant thereto.] [(3-15. Judicial review.)]

[(A person aggrieved by a final decision of the Director may appeal the decision to the Circuit Court for Montgomery County under the provisions of the Maryland Rules governing judicial review of administrative decisions. Any party to the Circuit Court proceeding may appeal from the Circuit Court decision to the]
appellate courts of Maryland under the applicable provisions of the Maryland
Rules.]]

[3-16. Appeals.]

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

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

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

Sec. 2. Transition.

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

Approved:

Blair G. Ewing, President, County Council

November 21, 2001

Disapproved:

Douglas M. Dunbar, County Executive

November 27, 2001

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council