

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: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

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

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

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

2-112. Jurisdiction.

* * *

(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]]
* * *	* * *

* * *

Chapter 3.

AIR QUALITY CONTROL.

3-1. Purpose of Chapter.

- (a) It is the policy of the County to protect the County's ambient air quality as necessary to:
- (1) protect the health, safety, comfort and well-being of the County's residents and businesses;
 - (2) prevent injury to plant and animal life and to property; and
 - (3) protect the recreational resources of the County.
- (b) It is the County's goal to protect and facilitate the improvement of the indoor air quality experienced by businesses and occupants of multi-tenant buildings.
- (c) The Department must apply principles of sound environmental health management and use reasonably available air quality control technology to implement this Chapter.

23 3-2. Definitions.

24 In this Chapter, the following words and phrases have the following meanings:

25 **Air pollutant:** Any substance whose release into the atmosphere causes air
26 pollution. An **air pollutant** may be in the form of a smoke, gas, dust, odor,
27 **particulate matter** or combinations of smoke, gas, dust, odor, or **particulate**
28 **matter**.

29 **Air pollution:** The presence in the atmosphere of any substances or
30 combinations of substances whose character, quantities or duration make those
31 substances likely to pose a health hazard to humans, plants, or animals, or
32 unreasonably interfere with the use and enjoyment of property. The substances may
33 be emitted as odors, solids, vapors, liquids, or gases from any single source or in
34 combination with other sources.

35 **Air pollution episode:** A recognized occurrence designated by the Governor
36 of Maryland or the Secretary of the state Department of the Environment as an
37 accumulation of ambient **air pollutants** at levels harmful to human health.

38 **Control equipment:** Any device or equipment that prevents or reduces
39 emissions.

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

41 **Director:** The Director of the Department or the Director's designee.

42 **Emission:** Any substance, other than water in an uncombined form,
43 discharged into the atmosphere, including odors, **particulate matter**, vapors, gases,
44 or any combination of these substances.

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

48 **Incinerator:** Any equipment or device used to destroy garbage, rubbish or
49 other wastes by burning.

50 **Indoor air pollutant:** Any substance whose indoor presence causes
51 **indoor air pollution.** An indoor air pollutant may consist of particles such as dust,
52 fibers, asbestos, or radon progeny; gases such as formaldehyde, carbon monoxide,
53 mists, or bioaerosols; biological substances such as viruses, bacteria, fungi or molds;
54 or combination of substances.

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

60 **Installation:** Any article, machine, or equipment, including **emission control**
61 **equipment,** processing equipment, manufacturing equipment, fuel burning
62 equipment, incinerators or any equipment or construction capable of generating,
63 causing or reducing **emissions.**

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

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

67 **Opacity:** The degree to which **emissions** reduce the transmission of light and
68 obscure the view of an object in the background.

69 **Open fire:** A fire in which any material is burned in the open or in a receptacle
70 other than a furnace, incinerator or other equipment not in conformance with the
71 design requirements of the applicable building code of the County or the air quality
72 control regulations of the State.

73 **Particulate matter:** Material other than water in uncombined form which is or
74 has been airborne and exists as a liquid or solid at standard conditions of temperature
75 25 degrees Celsius (77 degrees Fahrenheit) and pressure of 29.92 inches (760 mm)
76 [Hg]] mercury.

77 **Permit:** An air pollution control permit issued by the Department or the
78 Maryland Department of the Environment covering open burning, installation, or
79 operation of equipment with the potential to emit air pollution.

80 **Person:** An individual, group of individuals, partnership, firm, voluntary
81 association, public or private corporation, or an agency, or department of the County
82 or of any federal, state, or municipal government to the extent allowed under federal,
83 state, or municipal law.

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

87 **Source:** A person or property that is contributing to air pollution.

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

92 **3-3. Administration.**

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

98 (b) This Chapter does not waive any requirement of State or federal law.

99 **3-4. Regulations.**

100 The County Executive may adopt regulations under method (2) to implement
101 this Chapter. Regulations adopted under this Chapter must not conflict with, waive
102 any provisions of, or be less restrictive than any requirement of State or federal law.

103

3-5. **Ambient air quality requirements for visible emissions.**

(a) **Generally.** A person must not cause or allow the discharge of any visible emission from any **installation** or building, other than water in an uncombined form, into the atmosphere .

(b) **Exceptions.** Subsection (a) does not apply to any:

(1) **Emission** during start-up and process modifications or adjustments, or occasional cleaning of **control equipment**, that 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 char-broiler or pit barbecue, that operates at one location less than 15 days in any 365-day period, or that is not greater than 10 percent **opacity**.

(3) **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** (except a salamander) that complies with this Chapter.

supervision of the director, department of fire and rescue services.

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

A **person** must not cause or 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. **Ambient air quality requirements for particulate matter from materials handling and construction.**

(a) A **person** must not cause or allow 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 a paved street to which the material was transported by truck, earth moving equipment, or water erosion.

3-8. **Control or 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;

157 (2) instruct public fire fighters or industrial employees under
158 supervision of the Fire Administrator if the instruction does not
159 occur during an **air pollution episode** and the fires do not contain
160 asphaltic or asbestos materials; or

161 (3) protect the public health, safety or welfare.

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

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

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

174 (3) **Recreational purposes.** A **person** may set an **open fire**, such as
175 a campfire, for recreational purposes if the fire does not produce
176 visible **emissions** that exceed 20 percent **opacity** for a total of
177 more than 3 minutes in any 60-minute period and is not larger
178 than 3 feet in diameter.

179 (c) **Permitted fires.** Except as provided in subsections (a) and (b), a
180 **person** must not burn any refuse or plant life outside of a building
181 unless the **person** has obtained a **permit** from the **Director**. The
182 **Director** must limit the duration of the **permit**. The **Director** may
183 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 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 the permittee or the permittee's agent who has 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;

- 209 (2) be conducted during an **air pollution episode** or other burning
210 prohibition period declared by the Governor or the Secretary of
211 the Maryland Department of the Environment;
- 212 (3) be conducted within 500 yards of an occupied building or a
213 heavily traveled public road, walkway, path, or other facility used
214 by the public;
- 215 (4) violate any other law or regulation;
- 216 (5) create visible **emissions** whose **opacity** exceeds 20 percent for
217 more than a total of 3 minutes in any consecutive 60-minute
218 period; or
- 219 (6) include the burning of leaves, brush, other vegetation, or
220 household trash.
- 221 (e) **Permit denial.** The **Director** may deny a request for an open burning
222 **permit** if:
- 223 (1) the applicant has not shown that the applicant can comply with
224 this Chapter and any applicable State or federal **air pollution**
225 control law; or
- 226 (2) the **Director** finds, based on the applicant's history, that the
227 applicant is not likely to comply with all applicable **County**,
228 **State**, and federal **air pollution** control laws.
- 229 (f) **Permit revocation or suspension.** The **Director** may revoke, suspend,
230 or modify a **permit** granted under this Section if the **Director** finds that
231 the permittee has violated any term or condition of the **permit**. Notice
232 of any proposed revocation, suspension, or modification must be in
233 writing, include the reason for the decision, and give the permittee an
234 opportunity for a hearing. A request for a hearing does not stay the
235 **Director's** action.

- (g) **Extinguishing fires in violation.** A person responsible for starting a fire that violates 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. Ambient air quality requirements for odors.

- (a) A person must not cause or allow the emission into the atmosphere of any gas, vapor, or particulate matter beyond the person's property line or 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 2 individuals who have personal knowledge of the air pollution odor.

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.
- (b) Subsection (a) does not apply to:
- (1) the residential use of personal hygiene products;
 - (2) smoking in a private home; or
 - (3) residential cooking odors.
- (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 any boundary between a unit and a common area or between units.

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

- (1) witnesses the violation; or
- (2) receives complaints from at least 2 individuals who have personal knowledge of the indoor air pollution.

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. 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 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 Maryland 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.

3-13. Enforcement and Penalties.

- 289 (a) The **Director** may enter a non-residential site during normal business
290 hours or at any other reasonable time to inspect, investigate, or monitor
291 activities subject to this Chapter. If the **person** in charge of the site does
292 not consent to an entry by the **Director**, the **Director** must obtain an
293 administrative search warrant from a court by satisfying reasonable
294 statutory or administrative standards for conducting an inspection.
- 295 (b) The **Director** may, with the consent of the owner or occupant, enter a
296 private dwelling at any reasonable time to inspect, investigate, or
297 monitor activities subject to this Chapter. If the owner or occupant of
298 the residence does not consent to an entry by the **Director**, the **Director**
299 may obtain an administrative search warrant from a court by showing
300 that reasonable legislative or administrative standards for conducting an
301 area inspection have been satisfied.
- 302 (c) A **person** must not hinder, prevent, or unreasonably refuse to permit a
303 lawful inspection, investigation, or monitoring under this Chapter.
- 304 (d) The **Director**, the Fire Administrator, or the Administrator's designee
305 may issue a notice of violation, corrective order, stop-work order, or
306 civil citation to any **person** who causes or allows a violation of this
307 Chapter.
- 308 (e) A **person** who causes or allows a violation of this Chapter must submit
309 a **plan for compliance** if required under a notice of violation or
310 corrective order. The **plan** must include a schedule to correct the
311 violation. The **Director** must approve or disapprove the **plan** and any
312 amendment to an approved **plan**.
- 313 (f) The **Director** may issue a stop-work order to any **person** who violates
314 this Chapter in connection with an activity conducted under a building

315 permit issued under Chapter 8 or a sediment control permit issued
 316 under Chapter 19.

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

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

322 3-14. Appeals.

323 (a) A **person** aggrieved by an action taken or an order issued under this
 324 Chapter may seek reconsideration by filing a written request with the
 325 **Director** within 10 days after the action or order. The request must state
 326 the date and nature of the action or order, the remedy requested, and
 327 why the **Director** should grant the request. Within 10 days after
 328 receiving the request, the **Director** must:

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

331 (2) notify the **person** in writing of any material facts in dispute and:

332 (A) establish a deadline of not more than 30 additional days for
 333 the **Department** to resolve the dispute and the **Director** to
 334 issue a written decision on the request for reconsideration;

335 or

336 (B) refer the matter to a hearing officer under Article I of
 337 Chapter 2A.

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

(c) A person aggrieved by a final decision of the Director under this Chapter may appeal the action or order under Section 2A-11.

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.

Sec. 3. Emergency Effective Date.

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

Approved:

Steven A. Silverman, President, County Council

Date

Approved:

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council

Date

