ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-365

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 23, 2014

To amend the District of Columbia Air Pollution Control Act of 1984 to modify and clarify the authority of the Mayor to establish a comprehensive program for the control and prevention of air pollution in the District of Columbia, to establish an indoor air hazard education program, to provide the Mayor with inspection authority and a right of entry to safeguard and preserve air quality in the District, to require the Mayor to establish an electronic procedure for receiving and responding to air quality complaints, to provide for civil, criminal, administrative and other enforcement of the act, to provide a penalty for false statements, and to provide a right to an administrative appeal of certain actions; to require disclosure of information related to the operation of demand response generating sources to the District Department of the Environment, to prohibit demand response generating sources from being permitted as emergency generators, to require that demand response generating sources implement, at a minimum, best available control technology; to amend the Rental Housing Act of 1985 to require a residential property owner to disclose indoor mold contamination to a tenant; to provide definitions for indoor mold, professional indoor mold assessment, and professional indoor mold remediation, to require the District Department of the Environment to set a threshold of indoor mold beyond which professional remediation is required, to require the District Department of the Environment to issue standards and certifications for indoor mold assessment and remediation, to require a residential property owner to remediate indoor mold, to provide that in a cause of action by a tenant against a residential property owner for a violation of the District Housing or Property Maintenance Codes ("Codes"), an indoor mold assessment finding a threshold level of indoor mold shall create a rebuttable presumption of a violation of the property owner's obligation to maintain the property under the Codes, to establish the Indoor Mold Assessment and Remediation Fund; and to repeal a section of the District of Columbia Air Pollution Control Act of 1984.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Air Quality Amendment Act of 2014".

TITLE I. AIR POLLUTION CONTROL PROGRAM.

Sec. 101. The District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code § 8-101.01 *et seq.*), is amended as follows:

(a) Section 5 (D.C. Official Code § 8-101.05) is amended to read as follows:

"Sec. 5. Comprehensive air pollution control program.

"(a) The Mayor shall develop a comprehensive program for the control and prevention of air pollution in the District that provides for the administration and enforcement of the requirements of this act and the regulations promulgated pursuant to this act.

"(b)(1) The Mayor, in the administration of the comprehensive program for the control and prevention of outdoor air pollution, may exercise the following powers to safeguard and preserve air quality in the District:

"(A) Conduct research, monitoring, modeling, investigations, experiments, training demonstrations, surveys, and studies, relating to the causes, effects, extent, prevention, and control of air pollution in the District;

"(B) Collect and distribute, through publication, educational and training programs, and other means, the results of, and other information pertaining to, the activities carried out under subparagraph (A) of this paragraph;

"(C) Advise, consult, cooperate, and enter into agreements with the governments and agencies of any state or political subdivision and any interstate or other regional organization representing these states or political subdivisions to:

"(i) Establish cooperative effort and mutual assistance agreements or programs for the prevention and control of air pollution and the enforcement of their respective air pollution laws; and

"(ii) Establish or participate in any organization as may be necessary to carry out these agreements;

"(D) Adopt air pollution control standards, require and issue permits, and establish any other program necessary to regulate sources of air pollution emissions in the District;

"(E) Adopt ambient air quality standards;

"(F) Adopt standards governing emission of nuisance air pollutants likely to injure public health or welfare or interfere with reasonable enjoyment of life and property; and

"(G) Establish and maintain an indoor air hazard education program to educate District residents on the potential threats posed by and mitigation methods for indoor air hazards.

"(2) In determining interference with reasonable enjoyment of life and property under paragraph (1)(F) of this subsection, the Mayor shall consider:

"(A) The frequency, duration, and intensity of the source;

"(B) The number of complaints filed about the source;

"(C) The number of distinct complaints filed about the source;

"(D) The zoning classification of the affected area; and

"(E) The source's ability to prevent complaints.

"(c) For the purpose of executing the authority under this act, the Mayor may:

"(1) Hold hearings relating to the administration of this act;

"(2) Secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract, or otherwise;

"(3) Receive and administer grants or donations made to carry out the purposes of this act; and

"(4) Take any other action necessary.

"(d) To assist in enforcing the provisions of this act and regulations issued pursuant to this act, the Mayor shall:

"(1) Make available an electronic complaint form to receive complaints of air quality violations from the public, including, at a minimum, complaints of odors and engine idling;

"(2) Acknowledge receipt of an air quality complaint to the complainant no later than 7 days after receipt, in a writing or through an electronic message;

"(3) Track all air quality complaints, the agency's response to each complaint, and the resolution of each complaint;

"(4) Establish an electronic mechanism by which the complainant, the source of the complaint, and any interested party may access any publically available information on the complaint; and

"(5) Make publicly available on the District Department of the Environment's website a quarterly report listing all air quality complaints received and their resolution.".

(b) New sections 5a, 5b, 5c, 5d, 5e, 5f, 5g, and 5h are added to read as follows:

"Sec. 5a. Inspection; right of entry.

"(a) Upon the presentation of appropriate credentials to the owner, agent in charge, or tenant, the Mayor shall have the right, subject to subsection (c) of this section, to enter a premises or inspect an activity reasonably believed to be subject to this act to determine compliance with this act or a regulation promulgated pursuant to this act. The right of entry shall be for the following purposes:

"(1) Inspection, including the right to inspect and copy records related to compliance with this act and regulations promulgated pursuant to this act;

"(2) Observation;

"(3) Measurement;

"(4) Sampling;

"(5) Testing; and

"(6) Collection of evidence.

"(b) The Mayor may:

"(1) Investigate and take testimony under oath regarding any report of noncompliance with a federal or District law or regulation applicable to air pollution control;

"(2) Require a person or entity subject to this act or a regulation promulgated pursuant to this act, or who the Mayor reasonably believes may have information necessary to carry out the purposes of this act, on a one-time, periodic, or continuous basis to:

"(A) Establish, maintain, and submit records and reports;

"(B) Install, use, and maintain monitoring equipment, and use audit procedures, or methods;

"(C) Sample emissions in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Mayor shall prescribe;

"(D) Keep records on control equipment parameters, production variables, or other indirect data, as appropriate;

"(E) Submit compliance certifications; and

"(F) Provide other information as the Mayor may require.

"(c) If the Mayor is denied access to enter or inspect the premises in accordance with this section, the Mayor may apply to the Superior Court of the District of Columbia, pursuant to D.C. Official Code § 11-941, or the Office of Administrative Hearings, pursuant to section 12(b)(12) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.09(b)(12)), for a search warrant. An owner's denial of access to conduct an inspection in accordance with this section shall constitute a violation of this section, and the owner shall be subject to the civil and administrative penalties imposed by section 5c and the criminal penalties imposed by section 5d.

"(d) The Mayor may require reimbursement of costs for services, including inspections, sample collection, document review, or other reasonable costs or fees incurred in implementing this section and section 5.

"Sec. 5b. Violations.

"Each day of a violation of or failure to comply with this act or a regulation promulgated pursuant to this act shall constitute a separate offense, and the penalties set forth in sections 5c, 5d, 5e, and 5f shall be applicable to each separate offense.

"Sec. 5c. Civil penalties.

"(a) A person who violates this act or a regulation promulgated pursuant to this act shall be civilly liable and shall be subject to a civil penalty of no more than $37,500 per day per offense. The Mayor may adjust this civil penalty by rulemaking to account for inflation and shall adjust this civil penalty by rulemaking to meet or exceed the civil penalty authorized for violations pertaining to the Clean Air Act, approved July 14, 1955 (77 Stat. 392; 42 U.S.C. § 7401 *et seq.*).

"(b) The Mayor may impose civil infraction penalties, fines, and fees as alternative sanctions for any violation of this act or a regulation promulgated pursuant to this act, pursuant to the procedures of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*).

"Sec. 5d. Criminal penalties.

"A person who willfully or recklessly violates this act or a regulation promulgated pursuant to this act shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed $25,000 per offense per day, imprisonment not to exceed one year, or both. The fines set forth in this section shall not be limited by section 101 of the Criminal Fine

Proportionality Amendment Act of 2012, approved June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).

"Sec. 5e. False statements.

"A person who knowingly makes a false statement in an application, record, report, plan, or other document submitted or maintained under this act shall be guilty of a misdemeanor, and subject to a fine not to exceed $10,000, imprisonment not to exceed 6 months, or both. The fines set forth in this section shall not be limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2011, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).

"Sec. 5f. Other sanctions.

"In addition to, or in lieu of, a civil or criminal penalty or fee:

"(1) The Mayor may modify, suspend, revoke, or deny a permit or certification issued by the District for failure to comply with this act or a regulation promulgated pursuant to this act, after notice and opportunity for a hearing pursuant to section 5h; and

"(2) The Attorney General for the District of Columbia may commence appropriate civil action in the Superior Court of the District of Columbia or any other court of competent jurisdiction for damages, cost recovery, reasonable attorney and expert witness fees, and injunctive or other appropriate relief to enforce compliance with this act or the regulations adopted pursuant to this act.

"Sec. 5g. Orders.

"(a) If the Mayor determines that a hazardous condition exists that may endanger the health or safety of the residents or property, or the environment in the District due to a person's noncompliance with this act or a regulation promulgated pursuant to this act, the Mayor may issue a cease and desist order requiring the person to cease operations immediately or to otherwise cease noncompliance with this act or a regulation promulgated pursuant to this act.

"(b) If the Mayor has reason to believe that there has been a violation of this act or a regulation promulgated pursuant to this act, the Mayor may issue a compliance order requiring a violator to take action to come into compliance with this act or a regulation promulgated pursuant to this act and to take such measures as may be necessary to remedy a hazardous condition.

"Sec. 5h. Administrative appeals.

"(a) A person aggrieved by an action of the Mayor taken pursuant to this act or a regulation promulgated pursuant to this act may appeal the action of the Mayor to the Office of Administrative Hearings, pursuant to section 6(a) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03(a)). The Office of Administrative Hearings shall provide a de novo hearing and shall determine whether the Mayor's action was legally proper.

"(b) An appeal shall be filed within 15 days after the adverse action of the Mayor or within 20 days if notice of the adverse action is served by United States mail or commercial carrier.

"(c) A person subject to an order issued pursuant to section 5g shall comply with the order pending appeal.".

TITLE II. DEMAND RESPONSE GENERATING SOURCES.

Sec. 201. Definitions.

For the purposes of this title, the term:

(1) "Best available control technology" or "BACT" means the pollution control standard as determined by the Director consistent with, but no less stringent than, section 169(3) of the federal Clean Air Act, approved July 14, 1955 (77 Stat. 392; 42 U.S.C. § 7479(3)).

(2) "Demand response generating source" means a stationary generator subject to an agreement or obligation to provide power in response to power grid needs, economic signals from competitive wholesale electric markets, or special retail rates. The term "demand response generating source" shall not include a generator that derives its energy from an energy source that qualifies as a tier one renewable source under the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15-340; D.C. Official Code § 34-1431 *et seq.*).

(3) "Director" means the Director of the District Department of the Environment.

Sec. 202. Disclosure.

A person who owns or operates an internal combustion engine as a demand response generating source shall track and submit an annual report disclosing the total number of hours, including the dates and times, that the source operated during the preceding year, and the total number of hours, including the dates and times, that the source operated as a demand response generating source during the preceding year, as well as any additional information the Director requires. The report shall be submitted to the District Department of the Environment by March 1, 2015, and annually on March 1 thereafter.

Sec. 203. Limitation on the use of a generator as a demand response generating source.

(a) No person shall construct or operate an internal combustion engine as a demand response generating source unless the source implements, at a minimum, current best available control technology in accordance with a permit issued by the Director.

(b) A demand response generating source shall not be classified or permitted as an emergency generator.

(c) Nothing in this title shall prevent the Director from denying an application for or renewal of a permit for a demand response generating source to protect air quality or to encourage energy efficiency or conservation-based demand response in the District.

(d) A person found by the Director to be in violation of this section shall be subject to the civil penalties available under section 5c of the District of Columbia Air Pollution Control Act of 1984, passed on 2nd reading on June 3, 2014 (Enrolled version of Bill 20-368).

Sec. 204. Rules; fees

(a) The Mayor, pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this title, including establishing permit fees and other fees necessary to support the implementation of this title.

(b) The Mayor may require reimbursement of costs for services, including inspections, sample collection, document review, or other reasonable costs or fees incurred in implementing this title or a regulation promulgated pursuant to this title.

TITLE III. INDOOR AIR QUALITY.

SUBTITLE A. INDOOR MOLD DISCLOSURE AMENDMENT.

Sec. 301. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 *et seq.*), is amended as follows:

(a) Section 222(b)(1) (D.C. Official Code § 42-3502.22(b)(1)) is amended as follows:

(1) Subparagraph (F) is amended by striking the phrase "housing code" and inserting the phrase "housing code and property maintenance code" in its place.

(2) Subparagraph (J) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new subparagraph (K) is added to read as follows:

"(K) Information known or that should have been known about the presence of indoor mold contamination as defined in section 302(5) of the Air Quality Amendment Act of 2014, passed on 2nd reading on June 3, 2014 (Enrolled version of Bill 20-368), in the rental unit or common areas in the previous 3 years, unless the mold has been remediated by an indoor mold remediation professional certified and licensed by the District.".

SUBTITLE B. RESIDENTIAL INDOOR MOLD ASSESSMENT AND REMEDIATION.

Sec. 302. Definitions.

For the purposes of this subtitle, the term:

(1) "Director" means the Director of the District Department of the Environment.

(2) "Dwelling unit" means a building or structure used or designed to be used, in whole or in part, as a living or sleeping place for one or more persons.

(3) "Indoor mold assessment professional" means an indoor mold assessor certified and licensed by the District in accordance with section 304.

(4) "Indoor mold" means living or dead fungi or related products or parts, including spores hyphae, and mycotoxins, on an interior surface of a building, including common spaces, utility spaces, HVAC, or other systems.

(5) "Indoor mold contamination" means indoor mold at or above the threshold established under section 303(a)(1).

(6) "Indoor mold remediation professional" means an indoor mold remediator certified and licensed by the District in accordance with section 304.

(7) "Professional indoor mold assessment" means an indoor mold assessment conducted by an indoor mold assessment professional.

(8) "Professional indoor mold remediation" means an indoor mold remediation conducted by an indoor mold remediation professional.

Sec. 303. Indoor mold assessment and remediation standards.

(a) Consistent with applicable U.S. Environmental Protection Agency or U.S. Department of Labor, Occupational Safety and Health Administration guidelines and regulations relating to the assessment and remediation of mold, the Director shall:

(1) Set a threshold level of indoor mold contamination that requires professional indoor mold remediation at residential properties;

(2) Establish scientific and objective methods to be used by individuals certified by the District when conducting an indoor mold assessment;

(3) Establish minimum performance standards and work practices for conducting professional indoor mold remediation in the District; and

(4) Establish guidelines for the removal of indoor mold below the threshold set by paragraph (1) of this subsection.

(b) When professional indoor mold remediation is required under section 305 because a professional indoor mold assessment found indoor mold contamination at a property, the Director may require the property owner to provide a remediation report from an indoor mold remediation professional to the tenant and to the Department of the Environment.

Sec. 304. Certification of mold assessment and remediation professionals.

(a)(1) The Director shall issue licenses and may issue certifications for conducting indoor mold assessment and remediation in the District.

(2) In licensing a person to conduct indoor mold assessment or remediation, the Director may recognize certification programs of other states or independent bodies that the Director determines to be sufficient to ensure professional conduct of indoor mold assessment or remediation.

(b) No person shall engage in the business of residential indoor mold assessment or remediation unless the person is certified and licensed in accordance with requirements promulgated by the Director.

(c) The Director shall maintain a publicly available list of all certified indoor mold assessment and remediation professionals in the District.

(d) The Director shall establish reasonable and necessary fees to administer this section, including fees for certifications and licenses. The fees shall be set, at a minimum, in an amount sufficient to recover the costs of administering this section. All fees collected under this subsection shall be deposited into the Indoor Mold Assessment and Remediation Fund established under section 308.

Sec. 305. Indoor mold remediation obligations at residential properties.

(a) A residential property owner who receives written or electronic notice from a tenant that indoor mold or suspected indoor mold exists in the dwelling unit or in a common area of the property shall inspect the property within 7 days and remediate the condition in accordance with subsections (b) and (c) of this section within 30 days of the inspection unless a shorter timeframe is ordered by a court or the Mayor.

(b) Where professional indoor mold remediation is not required under subsection (c) of this section, a residential property owner notified of indoor mold by a tenant in accordance with subsection (a) shall clean and remove the indoor mold from the contaminated surface in accordance with the guidelines established under section 303(a)(4). Failure of the Director to issue guidelines under section 303(a)(4) shall not excuse the residential property owner from the obligation to clean and remove visible indoor mold from the contaminated surface.

(c) If a residential property owner knows or has reason to know that indoor mold contamination exists in a tenant's dwelling unit or in a common area of the property, the residential property owner shall cause the mold to be remediated by an indoor mold remediation professional.

(d) The provisions of this section may be enforced pursuant to section 306.

Sec. 306. Violations.

(a) In a private cause of action, claim, or defense by a tenant against a residential property owner for a violation of Title 12G of the District of Columbia Municipal Regulations (12G DCMR § 101G *et seq.*) ("Property Maintenance Code") or Title 14 of the District of Columbia Municipal Regulations (14 DCMR § 100 *et seq.*) ("Housing Code"):

(1) A professional indoor mold assessment finding indoor mold contamination in a tenant's dwelling unit or a common area of the property shall create a rebuttable presumption of a violation of the property owner's obligation to maintain the property free from defective surface conditions as required by the Property Maintenance Code and the Housing Code. To establish the presumption, the tenant must demonstrate that the property owner received a professional indoor mold assessment in written or electronic form that determined that indoor mold contamination existed in the tenant's dwelling unit.

(2) When ruling in favor of a tenant with respect to a Property Maintenance Code or Housing Code violation based on a professional mold assessment, the court shall have discretion to reimburse indoor mold assessment costs and award attorney fees and court costs to the tenant. The court may award treble damages to a tenant when:

(A) The tenant discovered the indoor mold;

(B) A professional indoor mold assessment determined that indoor mold contamination existed in the tenant's dwelling unit;

(C) The residential property owner received the indoor mold assessment in written or electronic form;

(D) The residential property owner did not remediate the indoor mold within 60 days; and

(E) The court finds that the residential property owner acted in bad faith.

(b) In issuing a notice of violation to a property owner for failure to maintain the property free from defective surface conditions as required by the Property Maintenance Code and the Housing Code, the Mayor shall have discretion to rely upon a professional indoor mold assessment.

Sec. 307. No private right of action against the District.

Nothing in this subtitle is intended to, or does, create a private right of action against the government of the District of Columbia and its officers, employees, agents, representatives, contractors, successors, and assigns based upon compliance or noncompliance with its provisions. No person or entity may assert any claim or right as a beneficiary or protected class under this act in any civil, criminal, or administrative action against the District of Columbia.

Sec. 308. Indoor Mold Assessment and Remediation Fund.

(a) There is established a special fund the Indoor Mold Assessment Fund, which shall be administered by the District Department of the Environment in accordance with subsection (c) of this section.

(b) The Fund shall consist of the revenue from the fees collected in accordance with section 304 and any other money accepted for the benefit of the Fund. The Fund may be supplemented by other District funds at the Mayor's discretion or by an act of the Council.

(c)(1) The Fund shall be used to administer the certification and licensing programs established under section 304 and may be used to administer grants issued under paragraph (2) of this subsection.

(2) Where there are funds in excess of the amount needed to administer the certification and licensing programs under section 304, those funds shall be used to provide financial assistance grants to:

(A) Low-income District residents for the purpose of having a professional mold assessment conducted in their premises, in the event that the owner of the resident's property fails to comply with the requirements in section 305; and

(B) Residential property owners without financial means, as determined by the Mayor, to comply with section 305.

(d)(1) The money deposited into the Fund, and any interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

Sec. 309. Common law unaffected.

The remedies under this subtitle do not supplant rights and remedies that may be available against property owners and other liable parties under the common law.

Sec. 310. Rules.

The Mayor, pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this subtitle, including civil penalties or fines to enforce this subtitle.

TITLE IV. REPEALER.

Sec. 401. Section 4 of the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code § 8-101.04), is repealed.

TITLE V. FISCAL IMPACT AND EFFECTIVE DATE.

Sec. 501. Fiscal impact statement.

The Council adopts the June 3, 2014 fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 502. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
June 23, 2014