

AN ACT

To amend title 25 of the Code of the Federated States of Micronesia by repealing chapters 1 through 4 of subtitle I in their entirety and amending chapters 5 through 7 of subtitle II by renumbering chapters 5 through 7 as chapters 1 through 3, for the purpose of revising and updating the Federated States of Micronesia Environmental Protection Act, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Chapters 1 through 4 of title 25 of the Code of
2 the Federated States of Micronesia are hereby repealed in their
3 entirety.

4 Section 2. Chapter 5 of title 25 of the Code of the Federated
5 States of Micronesia is hereby renumbered as chapter 1.

6 Section 3. Section 501 of title 25 of the Code of the
7 Federated States of Micronesia entitled "Short title" is hereby
8 amended to read as follows:

9 "Section 101. Short title.

10 This title may be cited as the Federated States of
11 Micronesia Environmental Protection Act."

12 Section 4. Section 502 of title 25 of the Code of the
13 Federated States of Micronesia entitled "Public policy" is hereby
14 amended to read as follows:

15 "Section 102. Public policy.

16 (1) It is the policy of the Federated States of
17 Micronesia to use all practicable means, consistent with
18 other considerations of national policy, to improve and

1 coordinate governmental plans, functions, programs, and
2 resources to the end that the inhabitants of the
3 Federated States of Micronesia may:

4 (a) fulfill the responsibilities for each
5 generation as trustee of the environment for succeeding
6 generations;

7 (b) enjoy safe, healthful, productive, and
8 aesthetically and culturally pleasing surroundings;

9 (c) attain the widest range of beneficial uses of
10 the environment without degradation, risk to health or
11 safety, or other undesirable or unintended consequences;

12 (d) preserve important historic, cultural, and
13 natural aspects of our Micronesian heritage, and
14 maintain, wherever possible, an environment which
15 supports diversity and variety of individual choice; and

16 (e) remain responsible members of the global
17 community by complying with the international legal
18 obligations accepted by the Federated States of
19 Micronesia upon ratifying or acceding to international
20 environment agreements.

21 (2) The effort to protect and preserve the environment
22 will be carried forward in close consultation with the
23 States in the formulation of policy, enforcement, and
24 other activities.

25 (3) The Federated States of Micronesia recognizes that

1 each person has a responsibility to contribute to the
2 preservation and enhancement of the environment."

3 Section 5. Section 503 of title 25 of the Code of the
4 Federated States of Micronesia entitled "Definitions" is hereby
5 amended to read as follows:

6 "Section 103. Definitions.

7 The following words, for the purpose of this title shall
8 have the following meanings:

9 (1) "*Director*" means the Director of the Office of
10 Environment and Emergency Management;

11 (2) "*Exclusive Economic Zone*" means the exclusive
12 economic zone defined in title 18 of the Code of the
13 Federated States of Micronesia;

14 (3) "*Office*" means the Office of Environment and
15 Emergency Management of the Federated States of
16 Micronesia;

17 (4) "*Person*" means the Federated States of Micronesia,
18 a State, municipality, political subdivision, a public
19 or private institution, corporation, partnership, joint
20 venture, association, firm, or company organized or
21 existing under the laws of the Federated States of
22 Micronesia or any State or country, lessee or other
23 occupant of property, or individual, acting singly or as
24 a group;

25 (5) "*Pollutant*" means one or more substances or forms

1 of energy which, when present in the air, land, or
2 water, are or may be harmful or injurious to human
3 health, welfare, or safety, to animal or plant life, or
4 to property, or which unreasonably interfere with the
5 enjoyment by the people of life or property.

6 Section 6. Chapter 6 of title 25 of the Code of the
7 Federated States of Micronesia is hereby renumbered as chapter 2.

8 Section 7. Sections 601 through Section 605 entitled
9 "RESERVED" are amended to read as follows:

10 "Sections 201 - 205. RESERVED."

11 Section 8. Section 606 of title 25 of the Code of the
12 Federated States of Micronesia entitled "Technical assistance" is
13 hereby amended to read as follows:

14 "Section 206. Technical assistance.

15 The President shall provide the Office with necessary
16 technical and legal assistance through departments,
17 offices, and agencies of the National Government."

18 Section 9. Sections 607 of title 25 of the Code of the
19 Federated States of Micronesia entitled "RESERVED" is hereby
20 amended to read as follows:

21 "Section. 207. RESERVED."

22 Section 10. Section 608 of title 25 of the Code of the
23 Federated States of Micronesia entitled "Reports" is hereby
24 amended to read as follows:

25 "Section 208. Reports.

1 The Director shall transmit to the President and
2 Congress, no later than September 30th of each year, an
3 environmental quality report for the preceding calendar
4 year, covering the status and conditions of the
5 environment of the Federated States of Micronesia, and a
6 review of the programs and activities of the National
7 Government, state governments, municipal governments and
8 nongovernmental entities, with particular reference to
9 their effect on the environment of the Federated States
10 of Micronesia."

11 Section 11. Section 609 of title 25 of the Code of the
12 Federated States of Micronesia is hereby amended to read as
13 follows:

14 "Section 209. General powers and duties of the Office.
15 The Office shall have the power and duty to protect the
16 environment, human health, welfare, and safety and to
17 abate, control, and prohibit pollution or contamination
18 of air, land, and water in accordance with this title
19 and with the regulations adopted and promulgated
20 pursuant to this title, including measures undertaken to
21 prohibit or regulate the testing, storage, use,
22 disposal, import and export of radioactive, toxic
23 chemical, or other harmful substances. The Office shall
24 balance the needs of economic and social development
25 with those of environmental quality and shall adopt

1 regulations and pursue policies which, to the maximum
2 extent possible, promote both these needs and the
3 policies set forth in section 102 of this title."

4 Section 12. Section 610 of title 25 of the Code of the
5 Federated States of Micronesia is hereby amended to read as
6 follows:

7 "Section 210. Specific powers and duties of the Office.
8 For the purposes set forth in section 209 of this
9 chapter, the Director is authorized and empowered to:

10 (1) adopt, approve, amend, revise, promulgate, and
11 repeal regulations to effect the purposes of this title,
12 and enforce such regulations which shall have the force
13 and effect of law. These may include regulations to give
14 effect to the obligations contained in the following
15 international environmental treaties ratified by the
16 Federated States of Micronesia

17 (a) Basel Convention on the Control of Trans
18 boundary Movements of Hazardous Wastes and Their
19 Disposal;

20 (b) Montreal Protocol on Substances that Deplete
21 the Ozone Layer;

22 (c) Stockholm Convention on Persistent Organic
23 Pollutants; and

24 (d) Waigani Convention to Ban the Importation
25 into Forum Island Countries of Hazardous and Radioactive

1 Wastes within the South Pacific Region.

2 (2) in accordance with regulations adopted under this
3 section may collect fees from persons submitting
4 applications or receiving permits or licenses. Fees
5 collected under this subsection shall be paid to the
6 Treasury of the Federated States of Micronesia for
7 credit to the General Fund of the Federated States of
8 Micronesia;

9 (3) accept appropriations, loans, and grants from any
10 appropriate sources, public or private, which shall not
11 be expended for other than the purposes of this title;

12 (4) adopt and provide for the continuing
13 administration of nationwide programs for the protection
14 of the environment, human health, welfare, and safety of
15 the Federated States of Micronesia, and from time to
16 time review and modify such programs as necessary; and

17 (5) collect information and establish recordkeeping,
18 monitoring, and reporting requirements as necessary and
19 appropriate to carry out the purposes of this title."

20 Section 13. Chapter 7 of title 25 of the Code of the
21 Federated States of Micronesia is hereby renumbered as chapter 3.

22 Section 14. Section 701 of title 25 of the Code of the
23 Federated States of Micronesia entitled "Cooperative agreements"
24 is hereby amended to read as follows:

25 "Section 301. Cooperative agreements.

1 (1) The Director is authorized to enter into written
2 cooperative agreements with the States or state agencies
3 to assist in achieving the purposes set out in this
4 title. The Director is authorized to enter into written
5 cooperative agreements with the departments or agencies
6 of the National Government of the Federated States of
7 Micronesia to assist in achieving the purposes of this
8 title."

9 Section 15. Section 702 of title 25 of the Code of the
10 Federated States of Micronesia entitled "Environment impact
11 statements" is hereby amended to read as follows:

12 "Section 302. Environmental impact statements.

13 (1) Any person, prior to taking any action that may
14 significantly affect the quality of the environment
15 within the Exclusive Economic Zone of the Federated
16 States of Micronesia, or within the boundaries of the
17 National Capital Complex at Palikir, must submit an
18 environmental impact statement to the Director, in
19 accordance with regulations established by the Director.

20 (2) The environmental impact statements required by
21 subsection (1) of this section are public documents, and
22 must include a detailed statement on:

23 (a) the environmental impact of the proposed
24 action;

25 (b) any adverse environmental effects which

1 cannot be avoided should the proposal be implemented;
2 (c) the alternatives to the proposed action;
3 (d) the relationship between local short-
4 term uses of the environment and the maintenance and
5 enhancement of long-term productivity; and
6 (e) any irreversible and irretrievable
7 commitments of resources which would be involved in the
8 proposed action should it be implemented."

9 Section 16. Section 703 of title 25 of the Code of the
10 Federated States of Micronesia entitled "Right of entry" is hereby
11 amended to read as follows:

12 "Section 303. Right of Entry and Seizure.

13 (1) Whenever it is necessary for the purposes of this
14 title, the Director, or any officer, agent, or employee
15 when duly authorized by the Director or by court order,
16 may, at reasonable times, enter any establishment or
17 upon any property.

18 (2) Whenever it is necessary for the purposes of this
19 title, the Director, or any officer, agent, or employee
20 when duly authorized by the Director, may seize any
21 substance, materials, goods or equipment which the
22 Director, or any officer, agent or employee reasonably
23 suspects is the subject of a breach of any provision of
24 this title or regulations made pursuant to this title.

1 (3) Any substance, materials, goods or equipment
2 seized under this section:

3 (a) shall be stored at a place, and in a manner,
4 in accordance with a direction given by the Director;
5 and

6 (b) may be retained until such time as the
7 Director has been satisfied by its owner, or the person
8 from whom it has been seized, that it is not and has not
9 been the subject of any breach of this title or
10 regulations made pursuant to this title.

11 (4) Where it is agreed by the owner of the
12 substance, materials, goods or equipment that they are
13 the subject of a breach of this title or regulations
14 made pursuant to this title, or where the owner has not
15 satisfied the Director under subsection (3) within six
16 months of the date of seizure, the substance, materials,
17 goods or equipment may be disposed of or destroyed in a
18 manner determined by the Director."

19 Section 17. Section 704 of title 25 of the Code of the
20 Federated States of Micronesia entitled "Violation - Enforcement
21 action" is hereby amended to read as follows:

22 "Section 304. Violation - Enforcement action.

23 Any person who violates any provision of this title, or
24 any permit, regulation, standard, or order issued or
25 promulgated under this title, shall be subject to

1 enforcement action by the Office. Such enforcement
2 action may include, but is not limited to:

3 (1) an order to cease and desist from the violation,
4 or to comply within a specific time period;

5 (2) an order to clean up or abate the effects of any
6 pollutant;

7 (3) the imposition of a civil penalty up to \$100,000
8 for each day of the violation. Penalties collected
9 under this subsection shall be paid to the Treasury of
10 the Federated States of Micronesia for credit to the
11 General Fund of the Federated States of Micronesia;

12 (4) a civil action commenced in the Trial Division of
13 the Federated States of Micronesia Supreme Court to
14 enjoin the violation;

15 (5) a civil action for damages commenced in the Trial
16 Division of the Federated States of Micronesia Supreme
17 Court. Such action may be in addition to any civil
18 penalties imposed hereunder. In determining such
19 damages, the Court shall take into consideration all
20 relevant circumstances, including, but not limited to,
21 the extent of harm caused by the violation, the nature
22 and persistence of the violation, the length of time
23 over which the violation occurred, and corrective
24 action, if any, taken by the violator. Damages
25 collected under this subsection shall be paid to the

1 Treasury of the Federated States of Micronesia for
2 credit to the General Fund of the Federated States of
3 Micronesia; and

4 (6) conducting a public hearing to determine the
5 authenticity of the facts upon which the alleged
6 violation is based, adequate notice of which and
7 opportunity to appear and be heard at which shall be
8 afforded to all interested persons."

9 Section 18. Section 705 of title 25 of the Code of the
10 Federated States of Micronesia entitled "Administrative procedure
11 applicable" is hereby amended to read as follows:

12 "Section 305. Administrative procedure applicable.
13 The provisions of sections 304 and 307 of this chapter
14 shall be interpreted consistently with the provisions of
15 any law concerning administrative procedure which is or
16 may hereafter become Federated States of Micronesia law.
17 In the event of conflict between the two, the provisions
18 of the latter shall supersede and be controlling."

19 Section 19. Section 706 of title 25 of the Code of the
20 Federated States of Micronesia entitled "Judicial review" is
21 hereby amended to read as follows:

22 "Section 306. Judicial review.

23 (1) Any person who is or will be adversely affected by
24 the enforcement of any standard, policy, regulation,
25 permit, order, or penalty imposed under this title or

1 regulations made pursuant to this title and who alleges
2 its invalidity may file a petition for a declaratory
3 judgment thereon in the Trial Division of the Federated
4 States of Micronesia Supreme Court.

5 (2) The Court shall declare the standard, policy,
6 regulation, permit, order, or penalty invalid if it
7 finds that it exceeds the statutory authority of the
8 Director, or that it is arbitrary and capricious."

9 Section 20. Section 707 of title 25 of the Code of the
10 Federated States of Micronesia entitled "False statements" is
11 hereby amended to read as follow:

12 "Section 307. False statement.

13 Any person who knowingly makes any false statement,
14 representation, or certification in any application,
15 record, report, plan, or other document filed or
16 required to be maintained under this title, or by any
17 permit, regulation, or order issued under this title, or
18 who falsifies, tampers with, or knowingly renders
19 inaccurate any monitoring device or method required to
20 be maintained under this title or by a permit,
21 regulation, or any order issued under this title, is
22 guilty of a felony, and upon conviction thereof, shall
23 be punished by a fine of not more than \$100,000, or by
24 imprisonment for a maximum of ten years, or by both."

25 Section 21. Section 708 of title 25 of the Code of the

1 Federated States of Micronesia is hereby repealed in its entirety.

2 Section 22. Title 25 of the Code of the Federated States of
3 Micronesia is hereby amended by enacting a new section 308 which
4 shall be entitled "Authorized officers" to read as follows:

5 "Section 308. Authorized officers.

6 Agreements made under section 301 of this title may
7 include the authorization by the Director of officers of
8 national and state government agencies to perform the
9 duties and exercise the powers provided in this title or
10 in regulations adopted and promulgated pursuant to this
11 title."

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Section 23. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its
3 becoming law without such approval.

4

5

6

7

June 15 _____, 2012

8

9

10

11

12

/s/ Manny Mori
Manny Mori
President
Federated States of Micronesia

13

14

15

16

17

18

19

20

21

22

23

24

25