

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2 the Federated States of Micronesia are hereby repealed in their  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."

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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.

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June 15 \_\_\_\_\_, 2012

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

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