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 Chapters 1 through 4 of title 25 of the Code of the Federated States of Micronesia are hereby repealed in their entirety.

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

3. Section 3. Section 501 of title 25 of the Code of the Federated States of Micronesia entitled “Short title” is hereby amended to read as follows:

   “Section 101. Short title.
   This title may be cited as the Federated States of Micronesia Environmental Protection Act.”

4. Section 4. Section 502 of title 25 of the Code of the Federated States of Micronesia entitled “Public policy” is hereby amended to read as follows:

   “Section 102. Public policy.
   (1) It is the policy of the Federated States of Micronesia to use all practicable means, consistent with other considerations of national policy, to improve and
coordinate governmental plans, functions, programs, and resources to the end that the inhabitants of the Federated States of Micronesia may:

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

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

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

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

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

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

(3) The Federated States of Micronesia recognizes that
each person has a responsibility to contribute to the preservation and enhancement of the environment.”

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

“Section 103. Definitions.

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

(1) “Director” means the Director of the Office of Environment and Emergency Management;

(2) “Exclusive Economic Zone” means the exclusive economic zone defined in title 18 of the Code of the Federated States of Micronesia;

(3) “Office” means the Office of Environment and Emergency Management of the Federated States of Micronesia;

(4) “Person” means the Federated States of Micronesia, a State, municipality, political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm, or company organized or existing under the laws of the Federated States of Micronesia or any State or country, lessee or other occupant of property, or individual, acting singly or as a group;

(5) “Pollutant” means one or more substances or forms
of energy which, when present in the air, land, or water, are or may be harmful or injurious to human health, welfare, or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.

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

Section 7. Sections 601 through Section 605 entitled “RESERVED” are amended to read as follows:

“Sections 201 – 205. RESERVED.”

Section 8. Section 606 of title 25 of the Code of the Federated States of Micronesia entitled “Technical assistance” is hereby amended to read as follows:

“Section 206. Technical assistance.

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

Section 9. Sections 607 of title 25 of the Code of the Federated States of Micronesia entitled “RESERVED” is hereby amended to read as follows:

“Section. 207. RESERVED.”

Section 10. Section 608 of title 25 of the Code of the Federated States of Micronesia entitled “Reports” is hereby amended to read as follows:

“Section 208. Reports.”
The Director shall transmit to the President and Congress, no later than September 30th of each year, an environmental quality report for the preceding calendar year, covering the status and conditions of the environment of the Federated States of Micronesia, and a review of the programs and activities of the National Government, state governments, municipal governments and nongovernmental entities, with particular reference to their effect on the environment of the Federated States of Micronesia."

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

"Section 209. General powers and duties of the Office. The Office shall have the power and duty to protect the environment, human health, welfare, and safety and to abate, control, and prohibit pollution or contamination of air, land, and water in accordance with this title and with the regulations adopted and promulgated pursuant to this title, including measures undertaken to prohibit or regulate the testing, storage, use, disposal, import and export of radioactive, toxic chemical, or other harmful substances. The Office shall balance the needs of economic and social development with those of environmental quality and shall adopt
regulations and pursue policies which, to the maximum extent possible, promote both these needs and the policies set forth in section 102 of this title.”

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

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

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

(a) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal;

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

(c) Stockholm Convention on Persistent Organic Pollutants; and

(d) Waigani Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive
Wastes within the South Pacific Region.

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

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

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

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

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

Section 14. Section 701 of title 25 of the Code of the Federated States of Micronesia entitled “Cooperative agreements” is hereby amended to read as follows:

“Section 301. Cooperative agreements.
(1) The Director is authorized to enter into written cooperative agreements with the States or state agencies to assist in achieving the purposes set out in this title. The Director is authorized to enter into written cooperative agreements with the departments or agencies of the National Government of the Federated States of Micronesia to assist in achieving the purposes of this title."

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

"Section 302. Environmental impact statements.

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

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

(a) the environmental impact of the proposed action;

(b) any adverse environmental effects which
cannot be avoided should the proposal be implemented;  
(c) the alternatives to the proposed action;  
(d) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and  
(e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.”

Section 16. Section 703 of title 25 of the Code of the Federated States of Micronesia entitled “Right of entry” is hereby amended to read as follows:

“Section 303. Right of Entry and Seizure.

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

(2) Whenever it is necessary for the purposes of this title, the Director, or any officer, agent, or employee when duly authorized by the Director, may seize any substance, materials, goods or equipment which the Director, or any officer, agent or employee reasonably suspects is the subject of a breach of any provision of this title or regulations made pursuant to this title.
(3) Any substance, materials, goods or equipment seized under this section:

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

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

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

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

"Section 304. Violation — Enforcement action.

Any person who violates any provision of this title, or any permit, regulation, standard, or order issued or promulgated under this title, shall be subject to
enforcement action by the Office. Such enforcement action may include, but is not limited to:

(1) an order to cease and desist from the violation, or to comply within a specific time period;
(2) an order to clean up or abate the effects of any pollutant;
(3) the imposition of a civil penalty up to $100,000 for each day of the violation. Penalties collected under this subsection shall be paid to the Treasury of the Federated States of Micronesia for credit to the General Fund of the Federated States of Micronesia;
(4) a civil action commenced in the Trial Division of the Federated States of Micronesia Supreme Court to enjoin the violation;
(5) a civil action for damages commenced in the Trial Division of the Federated States of Micronesia Supreme Court. Such action may be in addition to any civil penalties imposed hereunder. In determining such damages, the Court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurred, and corrective action, if any, taken by the violator. Damages collected under this subsection shall be paid to the
Treasury of the Federated States of Micronesia for credit to the General Fund of the Federated States of Micronesia; and

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

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

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

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


(1) Any person who is or will be adversely affected by the enforcement of any standard, policy, regulation, permit, order, or penalty imposed under this title or
regulations made pursuant to this title and who alleges its invalidity may file a petition for a declaratory judgment thereon in the Trial Division of the Federated States of Micronesia Supreme Court.

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

Section 20. Section 707 of title 25 of the Code of the Federated States of Micronesia entitled “False statements” is hereby amended to read as follow:

“Section 307. False statement.

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

Section 21. Section 708 of title 25 of the Code of the
Section 22. Title 25 of the Code of the Federated States of Micronesia is hereby amended by enacting a new section 308 which shall be entitled "Authorized officers" to read as follows:

"Section 308. Authorized officers.
Agreements made under section 301 of this title may include the authorization by the Director of officers of national and state government agencies to perform the duties and exercise the powers provided in this title or in regulations adopted and promulgated pursuant to this title."
Section 23. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

June 15, 2012

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