

SECOND CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST SPECIAL SESSION, 1981

C.B. No. 2-118

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A BILL FOR AN ACT

To provide for the protection and enhancement of environmental quality of the air, land, and water of the Federated States of Micronesia; to require study and consideration of environmental effects before undertaking major developmental actions; to provide for the establishment of an Environmental Protection Board and State Environmental Protection Advisory Board; and for other purposes.

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

1 Section 1. Short title. This act may be cited as the Federated States
2 of Micronesia Environmental Protection Act.

3 Section 2. Public Policy.

4 (1) The Federated States of Micronesia, recognizing the profound
5 impact of man's activity on the interrelations of all components of the natural
6 environment, particularly the profound influences of population growth and
7 redistribution, cultural change, resource exploitation, and new expanding tech-
8 nological advances, and recognizing further the critical importance of restoring
9 and maintaining environmental quality to the overall welfare and development
10 of man, declares that it is the continuing policy of the Federated States of
11 Micronesia, in cooperation with State and municipal governments, and other
12 concerned public and private organizations, to use all practicable means and
13 measures, including financial and technical assistance, in a manner calculated
14 to foster and promote the general welfare, to create and maintain conditions
15 under which man and nature can exist in productive harmony, and fulfill the
16 social, economic, and other requirements of present and future generations of
17 the Federated States of Micronesia.

18 (2) In order to carry out the policy set forth in this act, it is
19 the continuing responsibility of the Federated States of Micronesia to use
20 all practicable means, consistent with other essential considerations of
21 National policy, to improve and coordinate governmental plans, functions, pro-
22 grams, and resources to the end that the inhabitants of the Federated States of
23 Micronesia may:

24 (a) Fulfill the responsibilities of each generation as trustee
25 of the environment for succeeding generations;

HESA

1 (b) Assure for all Micronesians safe, healthful, productive,
2 and esthetically and culturally pleasing surroundings;

3 (c) Attain the widest range of beneficial uses of the environ-
4 ment without degradation, risk of health or safety, or other undesirable and
5 unintended consequences; and

6 (d) Preserve important historic, cultural, and natural aspects
7 of our Micronesian heritage, and maintain, wherever possible, an environment
8 which supports diversity and variety of individual choice.

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

12 Section 3. Definitions. The following words, for the purpose of this
13 act, shall have the following meanings:

14 (1) "Chairman of the Environmental Protection Board" or "chairman"
15 shall mean the chairman personally;

16 (2) "Board" means the Federated States of Micronesia Environmental
17 Protection Board;

18 (3) "State advisory board" means the Environmental Protection
19 Advisory Board of each State in the Federated States of Micronesia;

20 (4) "Person" means the Federated States of Micronesia, a State,
21 municipality, political subdivision, a public or private institution, corpora-
22 tion, partnership, joint venture, association, firm, or company or any State
23 or country, lessee, or other occupant of property, or individual, acting singly
24 or as a group;

25 (5) "Administrator" means the administrator of the United States

HESA

1 Environmental Protection Agency;

2 (6) "Federal acts" or "Federal act" means the Safe Drinking Water Act, Public
3 Law No. 93-523; the Federal Environmental Pesticide Control Act of 1972, Public
4 Law No. 92-516; and the Federal Water Pollution Control Act, as amended, Public
5 Law No. 92-500;

6 (7) "Primary Drinking Water Regulation" means a regulation which:

7 (a) Applies to public water systems;

8 (b) Specifies contaminants which, in the judgment of the Board,
9 may have any adverse effect on the health of persons; and

10 (c) Specifies for each such contaminant either:

11 (i) A maximum contaminant level, if, in the judgment of the
12 Board, it is economically and technologically feasible to ascertain the level of
13 such contaminant in water in public water systems; or

14 (ii) If, in the judgment of the Board, it is not economically
15 or technologically possible to so ascertain the level of such contaminant, each
16 treatment technique known to the Board which leads to a reduction in the level
17 of such contaminant sufficient to satisfy the requirements of section 1412 of
18 the Safe Drinking Water Act, United States Public Law No. 93-523;

19 (d) Contains criteria and procedures to assure a supply of
20 drinking water which dependably complies with such maximum contaminant levels;
21 including quality control and testing procedures to insure compliance with such
22 levels and to insure proper operation and maintenance of the system and
23 requirements as to:

24 (i) The maximum quality of water which may be taken into
25 the system; and

HESA

1 (ii) Siting for new facilities for public water systems.

2 (8) "Public water system" means a system for the provision to the
3 public of piped water for human consumption, if such system has at least
4 15 service connections or regularly serves at least 25 individuals.

5 Such term includes:

6 (a) Any collection, treatment, storage, and distribution faci-
7 lities under control of the operator of such system and used primarily in con-
8 nection with such system; and

9 (b) Any collection or pretreatment storage facilities not under
10 such control which are used primarily in connection with such system.

11 (9) "State plan" means an individual plan for:

12 (a) The certification of applicators of pesticides under
13 section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),
14 as amended; or

15 (b) Issuance of pesticide produced registrations to meet special
16 local needs as defined under section 24(a) of FIFRA, as amended; or

17 (c) Issuance of experimental use permits under section (5)(f)
18 FIFRA, as amended.

19 (10) The term "secondary regulation" means a regulation which applies
20 to public water systems and which specifies the maximum contaminant levels
21 which in the judgment of the Board are requisite to protect the public welfare.
22 Such regulations may apply to any contaminant in drinking water:

23 (a) Which may adversely affect the odor or appearance of such
24 water and consequently may cause a substantial number of persons served by
25 the public water system providing such water to discontinue its use; or

HESA

1 (b) Which may otherwise adversely affect the public welfare.
2 Such regulations may vary according to geographic and other circumstances.

3 Section 4. Federated States of Micronesia Environmental Protection
4 Board created: membership; terms; vacancies; chairman; qualifications; com-
5 pensation; cooperation of other agencies; meeting of board; quorum; report.

6 (1) There is hereby established in the Office of the President a
7 board to be known as the Federated States of Micronesia Environmen-
8 tal Protection Board to be composed of seven members as follows: one representative
9 from each of the four States of the Federated States of Micronesia and three
10 members at large, to be appointed by the President with the advice and consent
11 of the Congress of the Federated States of Micronesia. The initial appoint-
12 ments of the members shall be made as follows: two for a period of one year;
13 two for a period of two years; and three for a period of three years. Succes-
14 sors to the first appointees hereunder shall be appointed for terms of three
15 years each. Vacancies other than by expiration of term shall be filled by
16 the President by appointment, in the same manner as the original appointment
17 was made, for the unexpired term.

18 (2) The Board shall elect from among its members a chairman and a
19 vice chairman. The President shall designate a member to serve as temporary
20 chairman of the Board until such time as the Board shall elect a chairman.

21 (3) The President in his appointments shall select persons who are
22 residents of the Federated States of Micronesia for their ability, and all
23 appointments shall be of such nature as to aid the work of the Board to inspire
24 the highest degree of cooperation and confidence in carrying out the policy and
25 purpose of this act.

HEIA

1 (4) Members of the Board who are employed by either the State or National
2 Government shall serve without compensation as such, but shall be entitled to
3 receive reasonable travel costs and per diem at standard Federated States of
4 Micronesia rates when engaged in the performance of the duties of the Board.

5 Any employee of the Federated States of Micronesia Government shall be granted
6 leave with pay while engaged in performance of the duties of the Board.

7 (5) The Board may call upon any Federated States of Micronesia
8 Department, office, or agency for technical assistance. All Departments,
9 offices, or agencies of the Federated States of Micronesia shall, upon request,
10 assist the Board in the performance of its duties.

11 (6) The Board shall meet at least once every three months. Meetings
12 may be held at any time or place to be determined by the Board upon the call of
13 the chairman or upon written request of any three members. All meetings shall
14 be posted in public places and shall be announced on the radio throughout the
15 Federated States of Micronesia.

16 (7) Five members of the Board shall constitute a quorum for the
17 transaction of business.

18 (8) The Attorney General or his designee shall act as legal advisor
19 to the Board.

20 (9) The Board shall transmit to the President and Congress annually,
21 an environmental report which shall set forth:

22 (a) The status and conditions of the major natural, man-made,
23 or altered environmental classes of the Federated States of Micronesia, includ-
24 ing, but not limited to, the air, the waters, including marine, estuarine, and
25 fresh water, and the terrestrial environment, including, but not limited to,

HBI 1

1 the forest, mangrove areas, beaches, reefs, dryland, wetland, urban, and rural
2 environment;

3 (b) Current and foreseeable trends in the quality, management,
4 and utilization of such environments and the effects of those trends on the
5 social, economic, and other requirements of the Federated States of Micronesia;

6 (c) The adequacy of available natural resources for fulfilling
7 human and economic requirements of the Federated States of Micronesia in the
8 light of expected population pressures;

9 (d) A review of the program and activities (including regulatory
10 activities) of the Federated States of Micronesia National Government, State
11 governments, local governments, and nongovernmental entities or individuals,
12 with particular reference to their effect on the environment, the conservation,
13 development, and utilization of natural resources and the social and economic
14 requirements of the Federated States of Micronesia; and

15 (e) A program for remedying the deficiencies of existing programs
16 and activities, together with recommendations for legislation.

17 Section 5. Powers and duties of the Board.

18 (1) The Board shall adopt and implement procedures for the enforce-
19 ment of primary drinking water regulations.

20 (2) The Board shall establish and provide for the continuing admini-
21 stration of a permit system whereby a permit shall be required for the discharge
22 by any person of any activity, including, but not limited to, the operation,
23 construction, expansion, or alteration of any installation, which results in or
24 may result in the discharge of any pollutant in the air, land, or water; provide
25 for the issuance, modification, suspension, revocation, and termination of such

HESA

1 permits, and for the posting of an appropriate bond.

2 (3) The Board shall adopt and implement plans for the certification
3 of applicators of pesticides and ~~for the issuance of experimental use permits for~~
4 a pesticide, and it also shall adopt and implement a plan to meet.

5 (a) The Board shall adopt and implement such other measures as
6 necessary to carry out the purposes of the Federal Insecticide, Fungicide,
7 and Rodenticide Act, Public Law No. 92-516.

8 (4) The Board shall promulgate and enforce regulations established
9 by the administrator pursuant to the Federal act.

10 (5) The Board is authorized and empowered to:

11 (a) Establish criteria for classifying air, land, and water in
12 accordance with present and future uses;

13 (b) Publish technical manuals establishing procedures and
14 criteria for the administration and enforcement of the Board's regulations,
15 which shall have the force and effect of law; and

16 (c) Accept appropriations, loans, and grants from the United
17 States Government or any agency thereof and other sources, public or private,
18 which loans and appropriation shall not be expended for other than the purposes
19 of this act.

20 Section 6. Administration.

21 (1) Executive officer. The Board shall appoint an executive officer
22 to administer matters of the Board under the supervision of the Board. The
23 executive officer shall not be a member of the Board and shall not have the
24 right to vote. The executive officer shall be given the necessary authority
25 and shall be held responsible for the administration of the Board in all its activities.

HESA

1 subject only to such policies as may be adopted and such orders as may be
2 issued by the Board.

3 (2) Supporting staff. The executive officer shall be assisted in
4 his duties by a supporting staff, to consist of an environmental specialist,
5 sanitary engineer, and secretary.

6 Section 7. State environmental protection advisory boards.

7 (1) There is hereby created in each State of the Federated States of
8 Micronesia an advisory board of perpetual duration to be designated as a State
9 Environmental Protection Advisory Board. The State board shall be deemed for
10 all purposes an agency of the Federated States of Micronesia Environmental
11 Protection Board.

12 (2) The powers of the State board shall be vested in a State environ-
13 mental protection advisory board, which shall consist of seven members, one of
14 whom will be the representative of the State to the National Environment Pro-
15 tection Board; the other six shall serve four-year terms, and shall be appointed by the
16 Governor with the advice and consent of the State legislature, which shall be
17 required to act within 30 days from the date of each respective appointment.
18 Appointments made while a State legislature is not in session may be made with
19 the advice and consent of a committee of the legislature authorized to approve
20 appointments; PROVIDED, that the first appointments made under the provisions
21 of this section shall be made as follows:

- 22 (a) One member for a period of five years;
- 23 (b) Two members for a period of four years;
- 24 (c) One member for a period of three years;
- 25 (d) One member for a period of two years; and

HESA

1 (e) ~~one~~ member for a period of one year.

2 All appointments made thereafter shall be for a period of four years. The State
3 Planning Officer shall be an ex officio, nonvoting member of the State Board.
4 Any member of the State board may be removed from the board by the Governor
5 for inefficiency, neglect of duty, or misconduct in office. In the event of
6 any vacancy on the membership of the board, such vacancy shall be filled in
7 the same manner as the original appointments; PROVIDED, that appointments to
8 fill vacancies on the State board shall be made for the unexpired term of the
9 member who received the seat.

10 (3) The State board shall elect from among its members a chairman
11 and vice chairman. The Governor shall designate a member to serve as temporary
12 chairman of the board until such time as the board shall elect a chairman. The
13 State Chief of environmental health and sanitation shall serve as advisor for
14 the State board.

15 (4) Members of the board shall receive no compensation for their
16 services, but shall be entitled to per diem at standard Federated States of
17 Micronesia rates and reimbursement for travel costs when engaged in the busi-
18 ness of the State board.

19 (5) The board shall meet not less than once each calendar quarter,
20 and may hold such additional meetings as it deems necessary and appropriate.

21 (6) The State government shall provide such office space as may be
22 required by the State board and shall provide such logistical and administrative
23 support as may be required by the State board within the limits of availability.

24 (7) The powers and duties of the State Environmental Protection Advi-
25 sory Board shall include, but not be limited to, the following:

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1 (a) Collecting data and any information relative to identifying
2 the local needs with respect to controlling, protecting, and enhancing the environ-
3 mental quality of the State and the Federated States of Micronesia islands;

4 (b) Act as an agent of the Federated States of Micronesia Environ-
5 mental Protection Board in implementing its programs at the State level;

6 (c) Accept allotments from the Federated States of Micronesia
7 Environmental Protection Board for the purpose of the State environmental pro-
8 tection program activities;

9 (d) Conduct investigations, make studies, review local grie-
10 vances, and make recommendations as needed to the Federated States of Micro-
11 nesia Environmental Protection Board for constructive action;

12 (e) Conduct its activities as a committee for the Federated
13 States of Micronesia Environmental Protection Board under appropriate circum-
14 stances; and

15 (f) Perform any other related activities within the jurisdic-
16 tion of the Federated States of Micronesia Environmental Protection Board.

17 Section 8. Environmental studies and decisions.

18 (1) To the fullest extent possible, the secretarial orders, policies,
19 regulations, and public laws applicable in the Federated States of Micronesia
20 shall be interpreted and administered in accordance with the policies set forth
21 in this act; and

22 (2) All agencies of the Federated States of Micronesia Government shall:

23 (a) Utilize a systematic, interdisciplinary approach which
24 will insure the integrated use of the natural and social sciences, traditional
25 wisdom, and the environmental design arts in planning and in decision making

HESA

1 which may have an impact on man's environment;

2 (b) Identify and develop methods and procedures in consulta-
3 tion with the Federated States of Micronesia Environmental Protection Board
4 created under this act, which will insure that presently unquantified environ-
5 mental amenities and values may be given appropriate consideration in decision
6 making along with economic and technical consideration; and

7 (c) Include in every recommendation for report on proposals
8 for legislation and other major Federated States of Micronesia Government
9 actions significantly affecting the quality of the human environment, a de-
10 tailed environmental impact statement by the responsible official on:

11 (i) The environmental, including cultural, impact of the
12 proposed action;

13 (ii) Any adverse environmental affects which cannot be
14 avoided should the proposal be implemented;

15 (iii) Alternatives to the proposed action;

16 (iv) The relationship between local short-term uses of man's
17 environment and the maintenance and enhancement of long-term productivity; and

18 (v) Any irreversible and irretrievable commitments of
19 resources which would be involved in the proposed action should it be imple-
20 mented. Prior to making any detailed environmental impact statement, the
21 responsible Federated States of Micronesia Government official shall consult
22 with and obtain the comments of the interested public and any Federated States
23 of Micronesia Government agency which has jurisdiction by law or special
24 expertise with respect to any environmental impact involved. Copies of such
25 statement and the comments and views of the appropriate Federated States of

HEJA

1 Micronesia Government and local agencies shall be made available to the Federated States of Micronesia Environmental Protection Board, and to the public for inspection and copying, and the affected public shall be notified of the existence of the environmental impact statement a reasonable time before completion of the governmental decision-making process.

6 (d) The environmental impact statement shall accompany the proposal through the existing agency review process, and the decision as to such action under consideration shall be explained in a statement of basis and purpose which shall include, but need not be limited to, findings by the responsible official that:

11 (i) The environmental impact of the proposed action has been studied and considered by the responsible Governmental agency:

13 (ii) Alternatives to the proposed action have been given reasonable consideration;

15 (iii) Any adverse environmental effects which cannot be avoided by following reasonable alternatives are justified by other stated considerations of Federated States of Micronesia National policy;

18 (iv) Any local short-term productivity; and

19 (v) Any irreversible and irretrievable commitments of resources are warranted.

21 (e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

24 (f) Recognize the worldwide and long-range character of environmental problems and lend appropriate support to initiatives, resolutions, and

HESA

1 programs designed to maximize international cooperation in anticipating and
2 preventing a decline in the quality of mankind's world environment;

3 (g) Make available to States, municipalities, institutions, and
4 individuals, advice and information useful in restoring, maintaining, and
5 enhancing the quality of the environment;

6 (h) Initiate and utilize ecological information in the planning
7 and development of resource-oriented projects; and

8 (i) Assist the Federated States of Micronesia Environmental
9 Protection Board.

10 Section 9. Right of entry. Whenever it is necessary for the purposes of
11 this act, the board, or any member, agent, or employee when duly authorized by
12 the Board and by court order, may, at reasonable times, enter any establishment
13 or upon any property, public or private, for the purpose of obtaining informa-
14 tion, making inspections, obtaining samples, inspecting, or copying records
15 required to be maintained by the provisions of this act and any regulations
16 promulgated thereunder or conducting surveys or investigations for the purpose
17 of carrying out the purpose and policy of this act.

18 Section 10. Enforcement and implementation.

19 (1) Any person who violates any provision of this act, shall be
20 subject to enforcement action by the board. Such enforcement action may
21 include, but is not limited to, issuance of an order to cease and desist from
22 such violation, imposition of a civil penalty up to \$10,000 for each day of
23 violation, or commencement of a civil action to enjoin such violation.

24 (2) Whenever the board finds that a discharge of waste is taking
25 place or threatening to take place within a State that violates or may

HESA

1 violate requirements prescribed by the board, or that the waste collection,
2 treatment, or disposal facilities of a discharger are approaching capacity,
3 the board shall require the discharger to submit for approval of the board,
4 with such modifications as it may deem reasonably necessary, a detailed time
5 schedule of specific actions the discharger shall take in order to correct or
6 prevent a violation of requirements.

7 (3) When the board finds that a discharge of waste is taking place
8 or threatening to take place within its jurisdiction in violation of require-
9 ments of discharge prohibitions prescribed by the board, the board shall issue
10 an order to cease and desist and direct that those persons not complying with
11 the requirements or discharge prohibitions:

12 (a) Comply forthwith;

13 (b) Comply in accordance with a time schedule set by the
14 board; or

15 (c) In the event of a threatened violation, take appropriate
16 remedial or preventive action. In the event of an existing or threatened
17 violation of waste discharge requirements in the operation of a community
18 system, cease and desist orders may restrict or prohibit the volume, type, or
19 concentration of waste that might be added to such system by dischargers who
20 did not discharge into the system prior to the issuance of the cease and desist
21 order.

22 (4) A public hearing to determine the authenticity of the facts
23 upon which the cease and desist order was issued shall be conducted by the
24 board, adequate notice of which an opportunity to appear and be heard at which
25 shall be afforded to all interested persons.

HESA

1 (5) Cease and desist orders of the board shall become effective upon
2 issuance and final as to the said board upon issuing findings after a public
3 hearing. Copies shall be served forthwith by registered mail upon the person
4 being charged with the violation of the requirements and upon other affected
5 persons who appeared at the hearing and requested a copy.

6 (6) Any person who discharges any pollutant into the water, air, or
7 on the land of the Federated States of Micronesia in violation of any discharge
8 permit, requirement, or other order issued by the board or who intentionally or
9 negligently causes or permits any pollutant to be deposited where it is dis-
10 charged into the water, air, or land of the Federated States of Micronesia shall,
11 upon order of the board, clean-up such pollutant or abate the effects thereof.
12 Upon failure of any person to comply with such cleanup or abatement order,
13 the Attorney General or his designated representative, at the request of the
14 board, shall petition a trial court of competent division of jurisdiction within
15 the State for the issuance of an injunction, mandamus, or other appropriate
16 remedy requiring such person to comply therewith.

17 (7) The provisions of this section shall be interpreted consistently
18 with the provisions of any law concerning administrative procedure which is or
19 may hereafter become Federated States of Micronesia law. In the event of
20 conflict between the two, the provisions of the latter shall supersede and be
21 controlling.

22 Section 11. Court actions, procedures, adjudication and relief; inter-
23 vention; standards and doctrine.

24 (1) The Attorney General, any political subdivision of the Federated
25 States of Micronesia, any instrumentality or agency of the Federated States of

HESA

1 Micronesia, any instrumentality or agency of the Federated States of Micronesia
2 or of a political subdivision thereof, or any person, partnership, corporation,
3 association, organization, or other legal entity may maintain an action in the
4 Federated States of Micronesia Courts for declaratory and equitable relief
5 against the Federated States of Micronesia, any political subdivision thereof,
6 any instrumentality or agency of the Federated States of Micronesia or of a
7 political subdivision thereof, or any person, partnership, corporation, or
8 other legal entity for the protection of the air, water, and other natural
9 resources and the public trust therein from pollution, impairment, or destruc-
10 tion.

11 (2) In granting relief provided by Subsection (1) where there is
12 involved a standard for pollution or for an antipollution device of proce-
13 dure, fixed by rules or otherwise by an instrumentality or agency of the
14 Federated States of Micronesia or a political subdivision thereof, including
15 the Federated States of Micronesia Environmental Protection Board, the court
16 may:

17 (a) Determine whether the standard is applicable, and deter-
18 mine its validity and reasonableness, employing a substantial evidence test; or

19 (b) When a court finds a standard to be deficient, direct the
20 adoption of a standard approved and specified by the court.

21 (3) If the court has reasonable grounds to doubt the solvency of
22 the plaintiff or the plaintiff's ability to pay any costs which might be
23 apportioned against him in an action brought under this act, the court may
24 order the plaintiff to post a surety bond or cash not to exceed \$500.

25 (4) When the plaintiff in the action has made a prima facie

HESA

1 showing that the conduct of the defendant has, or is likely to pollute, impair,
2 or destroy the air, water, or other natural resources or the public trust therein,
3 the defendant may rebut the prima facie showing by the submission of evidence
4 to the contrary. The defendant may also show, by way of an affirmative defense,
5 that there is no feasible and prudent alternative to defendant's conduct and
6 that such conduct is consistent with the promotion of the public health, safety,
7 and welfare in light of the Federated States of Micronesia's paramount concern
8 for the protection of its natural resources from pollution, impairment, or destruc-
9 tion. Except as to this affirmative defense and as otherwise provided in this
10 act, the principles of burden of proof and weight of the evidence generally
11 applicable in civil actions in the Federated States of Micronesia Supreme Court shall
12 apply to actions brought under this act.

13 (5) The Court may appoint a master or referee who shall be a dis-
14 interested person and technically qualified to take testimony and make a
15 record and a report of his findings to the Court in the action.

16 (6) Costs may be apportioned to the parties if the interests of
17 justice require.

18 (7) The Court may grant temporary and permanent equitable relief
19 or impose any conditions on the defendant that are required to protect the
20 air, water, and other natural resources or the public trust therein from
21 pollution, impairment, or destruction.

22 (8) If administrative, licensing, or other proceedings are required
23 or available to determine the legality of the defendant's conduct, the Court
24 may remit the parties to such proceedings, which proceedings shall be con-
25 ducted in accordance with and subject to the provisions of this act. In so

HESA

1 remitting, the Court may grant temporary equitable relief where necessary for
2 the protection of the air, water, and other natural resources or the public
3 trust therein from pollution, impairment, or destruction. In so remitting, the
4 Court shall retain jurisdiction of the action pending completion thereof for
5 the purpose of determining whether adequate protection from pollution, impair-
6 ment, or destruction has been afforded.

7 (9) Upon completion of such proceedings, the Court shall adjudicate
8 the impact of the defendant's conduct on the air, water, or other natural
9 resources and on the public trust therein in accordance with this act. In
10 such adjudication the Court may order that additional evidence be taken to
11 the extent necessary to protect the rights recognized in this act.

12 (10) Whenever administrative, licensing, or other proceedings, and
13 judicial review thereof which is available by law, the agency or the Court may
14 permit the Attorney General, any political subdivision of the Federated States
15 of Micronesia, any instrumentality or agency of the Federated States of
16 Micronesia or of a political subdivision thereof, any person, partnership,
17 corporation, association, organization, or other legal entity to intervene as
18 a party on the filing of a plea asserting that the proceedings or actions for
19 judicial review involves conduct which has, or which is likely to have, the
20 effect of polluting, impairing, or destroying the air, water, or other natural
21 resources or the public trust therein.

22 (11) In any such administrative, licensing, or other proceedings, and
23 in any judicial review thereof, any alleged pollution, impairment, or destruction
24 of the air, water, or other natural resources, or the public trust therein shall
25 be determined, and no conduct shall be authorized or approved which does, or is

HESA

1 likely to have such effect, so long as there is a feasible and prudent alter-
2 native consistent with the reasonable requirements of the public health, safety,
3 and welfare.

4 (12) The doctrines of collateral estoppel and res judicata may be
5 applied by the Court to prevent multiplicity of suits.

6 Section 12. Fines and penalties.

7 (1) Any person who violates any provision of this act, or of any
8 permit, regulation, standard, or order issued or promulgated hereunder, shall
9 be subject to a civil penalty not to exceed \$10,000 per day of such violation.
10 Such sums shall be paid to the treasurer of the Federated States of Micronesia
11 for credit to the General Fund of the Congress of the Federated States of
12 Micronesia.

13 (2) The Attorney General or his designated representative, upon
14 request of the Board, shall petition the Trial Division of the Federated States
15 of Micronesia Supreme Court for a judgment assessing damages. In determining such
16 damages, the Court shall take into consideration all relevant circumstances,
17 including, but not limited to, the extent of harm caused by the violation, the
18 nature and persistence of the violation, the length of time over which the
19 violation occurs, and corrective action, if any, taken by the discharger.

20 (3) Any person who willfully or negligently:

21 (a) Discharges pollutants in violation of this act or in
22 violation of any condition or limitation included in a permit issued under
23 section 5; or

24 (b) Violates the requirements of section 5; or

25 (c) With respect to introduction of pollutants into publicly

HESA

1 owned treatment works violates a pretreatment standard or toxic affluent
2 standard shall be guilty of a misdemeanor, and upon conviction thereof, shall
3 be punished by a fine of not less than \$2,500 nor more than \$25,000 per day
4 of violation. If such conviction is for a violation committed after a first
5 conviction of such person under this act, punishment shall be by fine of not
6 more than \$50,000 per day of violation.

7 (4) Any person who knowingly makes any false statement, representa-
8 tion, or certification in any application, record, report, plan, or other
9 document filed or required to be maintained under this act, or by any permit,
10 regulation, or order issued under this act, or who falsifies, tampers with,
11 or knowingly renders inaccurate any monitoring device or method required to
12 be maintained under this act or by any permit, regulation, or any order issued
13 under this act shall be guilty of a misdemeanor, and upon conviction thereof,
14 shall be punished by a fine of not more than \$10,000 or by imprisonment for
15 not more than six months, or by both.

16 Section 13. Appropriation. There is authorized to be appropriated from
17 the General Fund of the Congress of the Federated States of Micronesia to carry
18 out the purpose of this act \$300,000, for the fiscal year ending September 30, 1982;
19 \$450,000, for the fiscal year ending September 30, 1983; and an amount 12 percent
20 increased from each previous fiscal year's appropriation every year thereafter.

21 (1) Repeal. Public Law No. 49-7, as amended, is hereby repealed in its
22 entirety.

23 Section 14. Effective date. This act shall become law upon approval
24 by the President of the Federated States of Micronesia or upon its becoming
25 law without such approval.

C.B. No. 2-118

HESA

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2 Date: _____

Introduced by: _____

Luke Tman
(By request)

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