

TITLE 25
ENVIRONMENTAL PROTECTION

SUBTITLE I
FSM ENVIRONMENTAL PROTECTION ACT

CHAPTERS

- 1 General Provisions (§§ 101-103)**
- 2 FSM Environmental Protection Board (§§ 201-210)**
- 3 Enforcement (§§ 301-308)**

Editor's note: Former chapters 1 through 4 of this title were designated subtitle I at the time of the first cumulative supplement in order to distinguish the provisions of the Trust Territory Environmental Protection Act from the FSM Environmental Protection Act, which was codified in chapters 5 through 7 of subtitle II. Section 1 of PL 17-57 repealed chapters 1 through 4 of this title. Section 2 of PL 17-57 renumbered chapters 5 through 7 as chapters 1 through 3, respectively. Chapters 1 through 3 are designated as subtitle I to retain the integrity of the FSM Environmental Protection Act and to allow for future enactment of other laws on environmental protection not a part of the FSM Environmental Protection Act. The subtitle II designation is removed as no longer currently necessary. Section 3 of PL 17-57 designated this title as the Federated States of Micronesia Environmental Protection Act, but the original designation of this title as Environmental Protection is retained to comport with standard code format. The "Federated States of Micronesia" in subtitle I is changed to "FSM" to shorten the subtitle's designation.

[FORMER SUBTITLE I
TT ENVIRONMENTAL QUALITY PROTECTION ACT
REPEALED BY SECTION 1 OF PL 17-57]

CHAPTERS

- 1 General Provisions (§§ 101-104) [REPEALED]**
- 2 Environmental Protection Board (§§ 201-208) [REPEALED]**
- 3 Enforcement (§§ 301-309) [REPEALED]**
- 4 District Advisory Boards [REPEALED]**

Editor's note: Former chapters 1 through 4 of this title were designated subtitle I at the time of the first cumulative supplement in order to distinguish the provisions of the Trust Territory Environmental Protection Act from the FSM Environmental Protection Act, which was codified in chapters 5 through 7 of subtitle II. Section 1 of PL 17-57 repealed chapters 1 through 4 of this title. Section 2 of PL 17-57 renumbered chapters 5 through 7 as chapters 1 through 3, respectively. Chapters 1 through 3 are designated as subtitle I to retain the integrity of the FSM Environmental Protection Act and to allow for future enactment of other laws on environmental protection not a part of the FSM Environmental Protection Act. The subtitle II designation is removed as no longer currently necessary.

**SUBTITLE I
FSM ENVIRONMENTAL PROTECTION ACT**

**CHAPTER 1
General Provisions**

SECTIONS

- § 101. Short title.**
§ 102. Public policy.
§ 103. Definitions.

Editor’s note: Former chapters 1 through 4 of this title were designated subtitle I at the time of the first cumulative supplement in order to distinguish the provisions of the Trust Territory Environmental Protection Act from the FSM Environmental Protection Act, which was codified in chapters 5 through 7 of subtitle II. Section 1 of PL 17-57 repealed chapters 1 through 4 of this title. Section 2 of PL 17-57 renumbered chapters 5 through 7 as chapters 1 through 3, respectively. Chapters 1 through 3 are designated as subtitle I to retain the integrity of the FSM Environmental Protection Act and to allow for future enactment of other laws on environmental protection not a part of the FSM Environmental Protection Act. The subtitle II designation is removed as no longer currently necessary. Section 3 of PL 17-57 designated this title as the Federated States of Micronesia Environmental Protection Act, but the original designation of this title as Environmental Protection is retained to comport with standard code format. The “Federated States of Micronesia” in the subtitle is changed to “FSM” to shorten the subtitle’s name. PL 17-57 was signed into law by President Manny Mori on June 15, 2012.

§ 101. Short title.

This subtitle may be cited as the Federated States of Micronesia Environmental Protection Act.

Source: PL 3-83 § 1; PL 17-57 § 3.

Editor’s note: The “Federated States of Micronesia” in this subtitle I is changed to “FSM” to shorten the subtitle’s name.

§ 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 aesthetical 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

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(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.

Source: PL 3-83 § 2; PL 17-57 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 103. Definitions.

The following words, for the purpose of this subtitle, 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 this code;

(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.

Source: PL 3-38 § 3; PL 5-21 § 10; PL 17-57 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

CHAPTER 2
FSM Environmental Protection Office

SECTIONS

- §§ 201-205. [RESERVED]**
§ 206. Technical assistance.
§ 207. [RESERVED]
§ 208. Reports.
§ 209. General powers and duties of the Office.
§ 210. Specific powers and duties of the Office.

Editor's note: Section 6 of PL 17-57 renumbered chapter 6 as chapter 2 of this subtitle. The designation of this chapter has been changed to FSM Environmental Protection Office to reflect the amendments and content of the chapter.

§§ 201-205. [RESERVED].

Source: PL 17-57 § 7.

§ 206. Technical assistance.

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

Source: PL 3-83 § 7; renumbered by PL 5-21 § 15; PL 17-57 § 8.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 207. [RESERVED].

Source: PL 17-57 § 9.

§ 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.

Source: PL 3-38 § 9; renumbered by PL 5-21 § 15; PL 17-57 § 10.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress and the Legislature are found in title 3 of this code.

§ 209. General powers and duties of the Office.

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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 subtitle and with the regulations adopted and promulgated pursuant to this subtitle, 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 subtitle.

Source: PL 3-83 § 10; renumbered by PL 5-21 § 15; PL 17-57 § 11.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

§ 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 subtitle, 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 Trans boundary 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 subtitle;

(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 subtitle.

Source: PL 3-38 § 7; renumbered by PL 5-21 § 15; PL 17-57 § 12.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: Earthmoving regulations themselves represent a governmental determination as to the public interest, and the clear violation of such regulations may therefore be enjoined without a separate

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court assessment of the public interest and balancing of hardships between the parties. *Damarlane v. Pohnpei Transp. Auth.*, 4 FSM R. 347, 349 (Pon. 1990).

Where the national government, in previous appearances and filings, stated that no valid earthmoving permit was in effect the burden is on the national government at a motion for summary judgment to establish that there was a valid delegation of permit granting authority by the national government to the state officials. *Damarlane v. Pohnpei Transp. Auth.*, 5 FSM R. 1, 7 (Pon. 1991).

Although neither the Environmental Protection Act nor the earthmoving regulations contain any absolute requirement that a public hearing be held before an earthmoving permit may be issued, the issuance by national government officials of a permit authorizing earthmoving by a state agency without holding a hearing and based simply upon the application filed by the state agency and the minutes prepared by the state officials, is arbitrary and capricious where the dredging activities have been long continued in the absence of a national earthmoving permit and where the parties directly affected by those activities have for several months been vigorously opposing continuation of the earthmoving activities at the dredging site. *Damarlane v. Pohnpei Transp. Auth.*, 5 FSM R. 1, 8 (Pon. 1991).

CHAPTER 3
Enforcement

SECTIONS

- § 301. Cooperative agreements.**
- § 302. Environmental impact statements.**
- § 303. Right of entry and seizure.**
- § 304. Violation—Enforcement action.**
- § 305. Administrative procedure applicable.**
- § 306. Judicial review.**
- § 307. False statement.**
- § 308. Authorized officers.**

Editor's note: Section 13 of PL 17-57 renumbered chapter 7 as chapter 3 of this subtitle.

§ 301. Cooperative agreements.

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 subtitle. 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 subtitle.

Source: PL 3-38 § 12; renumbered by PL 5-21 § 15; PL 17-57 § 14.

Editor's note: A subsection (1) of this section was designated, but no other subsections were set forth in this section. Therefore, the subsection (1) designation was removed.

PL 17-57 was signed into law by President Manny Mori on June 15, 2012.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 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.

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Source: PL 3-38 § 13; renumbered by PL 5-21 § 15; PL 17-57 § 15.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 303. Right of entry and seizure.

(1) Whenever it is necessary for the purposes of this subtitle, 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 subtitle, 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 subtitle or regulations made pursuant to this subtitle.

(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 subtitle or regulations made pursuant to this subtitle.

(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 subtitle or regulations made pursuant to this subtitle, or where the owner has not satisfied the Director under subsection (3) of this section 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.

Source: PL 3-38 § 14; renumbered by PL 5-21 § 15; PL 17-57 § 16.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 304. Violation—Enforcement action.

Any person who violates any provision of this subtitle, or any permit, regulation, standard, or order issued or promulgated under this subtitle, 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

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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.

Source: PL 3-38 § 15; renumbered by PL 5-21 § 15; PL 17-57 § 17.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on the President and the Executive are found in title 2 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Case annotations: Earthmoving regulations themselves represent a governmental determination as to the public interest, and the clear violation of such regulations may therefore be enjoined without a separate court assessment of the public interest and balancing of hardships between the parties. *Damarlane v. Pohnpei Transp. Auth.*, 4 FSM R. 347, 349 (Pon. 1990).

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Various environmental acts that do not provide for a private citizen's cause of action for monetary damages cannot be used to create a duty for the breach of which damages may be awarded. *Damarlane v. United States*, 6 FSM R. 357, 360-61 (Pon. 1994).

The FSM Environmental Protection Act does not provide for a citizen's claim for damages. *Damarlane v. FSM*, 8 FSM R. 119, 121 (Pon. 1997).

Claims for damages for violation of the FSM Environmental Protection Act and for damage based on an alleged property interest in the reef and lagoon adjoining plaintiffs' land will be dismissed for failure to state a claim for which relief may be granted. *Damarlane v. FSM*, 8 FSM R. 119, 121 (Pon. 1997).

A savings clause that merely states that private parties who could previously seek civil remedies for what are now violations of the Chuuk State Environmental Protection Act still retain that right even if the Chuuk Environmental Protection Agency decides to act, does not create any new rights for those persons. Nor does it entitle them to collect any of the penalties created which may be asserted only by the Chuuk

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Environmental Protection Agency and only to its credit. *Moses v. M.V. Sea Chase*, 10 FSM R. 45, 51 (Chk. 2001).

When Pohnpei's refusal to hold a *trochus* harvest allegedly stemmed from environmental concerns, but all of the reports addressing this issue recommended that a *trochus* harvest be held and the concern was not that there would be too little *trochus*, but that there would be too much, nothing stood in the way of reasonable limitations on the harvest that could have harmonized both Pohnpei's legitimate environmental concerns and the national law requirement that it not limit the production of any commodity. Failure to do so violated 32 F.S.M.C. 302(2). *AHPW, Inc. v. FSM*, 12 FSM R. 544, 552 (Pon. 2004).

A cause of action exists in admiralty and maritime law for recovery of damages for oil contamination of wildlife and other natural resources in the marine environment. The type of injury includes both physical loss or injury, such as due to the grounding on the reef, as well as loss of use, either because of a government ban or because there has been a diminution of the resources because of oil contamination. Maritime nations generally recognize that parties injured by an oil spill should recover their damages, as the polluter must pay. Such a cause of action is available under the general admiralty and maritime law of the Federated States of Micronesia. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 416 (Yap 2006).

Nuisance law is frequently used to address liability in environmental contamination cases. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 416 (Yap 2006).

No offset for sums spent on cleanup can be given since the defendants had a duty to mitigate their damages and a legal duty imposed by Yap law to respond to the oil spill and clean up as much as possible. The oil spill cleanup protected them from greater liability. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 420 (Yap 2006).

When the issue of continued monitoring of the marine environment remains unresolved, the court may hold in abeyance its ruling with respect to the monitoring issue and will retain jurisdiction over this issue in the expectation that the parties (and the State) can resolve any differences themselves. *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM R. 403, 422 (Yap 2006).

§ 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.

Source: PL 3-83 § 16; renumbered by PL 5-21 § 15; PL 17-57 § 18.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

§ 306. Judicial review.

(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 subtitle or regulations made pursuant to this subtitle 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.

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Source: PL 3-83 § 17; renumbered by PL 5-21 § 15; PL 17-57 § 19.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 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 subtitle, or by any permit, regulation, or order issued under this subtitle, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this subtitle or by a permit, regulation, or any order issued under this subtitle, 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.

Source: PL 3-83 § 18; renumbered by PL 5-21 § 15; PL 17-57 § 20.

§ 308. Authorized officers.

Agreements made under section 301 of this subtitle 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 subtitle or in regulations adopted and promulgated pursuant to this subtitle.

Source: PL 3-83 § 19; renumbered by PL 5-21 § 15; PL 17-57 § 21.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

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CHAPTER 4
District Advisory Boards
[REPEALED in its entirety by PL 3-83 § 19]

Editor's note: The former chapter 4 on District Advisory Boards was repealed in its entirety by PL 3-83 § 19.