

CHAPTER 3

Enforcement

SECTIONS

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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.

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 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).

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).

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 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.

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.