ENVIRONMENTAL PROTECTION

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).

Title 1 of the Compact governs the relationship between and amongst the parties to the Compact and its environmental protection section does not create a private cause of action since it provides that actions brought pursuant to that section may be initiated only by the FSM government. Damarlane v. Damarlane, 18 FSM R. 177, 179 (Pon. 2012).

No private cause of action exists under the FSM Environmental Act – Section 704 by its own terms limits enforcement of the Act to the Board and Section 502 is aspirational. Damarlane v. Damarlane, 18 FSM R. 177, 179-80 (Pon. 2012).

When the plaintiffs have not stated a claim based on national law on which the FSM Supreme Court may grant relief and when all that remains is state law, including state environmental regulations, they have not persuaded the court to retain the case, and the court will therefore abstain. Damarlane v. Damarlane, 18 FSM R. 177, 181 (Pon. 2012).

Defendants may be liable for nuisance regardless of whether they violated any environmental regulations and regardless of and without reference to any environmental regulations or laws. Violation of any such regulations might be used as evidence that a nuisance exists. A plaintiffs' nuisance cause of action is not and cannot be based on statutes or regulations when the complaint would state a common law cause of action for nuisance even if there were no environmental laws. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

National or state environmental laws and regulations are relevant to a nuisance claim only to the extent that failure to comply with those laws and regulations that apply to the defendants, may be evidence that the defendants' conduct is unreasonable, negligent, or reckless. However, reference to those laws is not necessary for the plaintiffs to prevail on a nuisance

cause of action. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

Nuisance law is frequently used to address liability in environmental contamination cases. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

The FSM Environmental Protection Act, 25 F.S.M.C. 501 *et seq.*, and its enforcement provisions, 25 F.S.M.C. 703-707, do not, as a matter of law, provide for a private cause of action or a citizen's claim for money damages but may support a claim for injunctive relief. Berman v. Pohnpei, 19 FSM R. 111, 116 (App. 2013).

When a regulation's plain language applies only to toilet facilities that might contaminate sources of water that could be used for drinking purposes – in other words, fresh water and when the term "body of water" might be construed as covering the lagoon but in light of the regulation's clear intent to preserve potable water sources, it must be read as a catchall phrase meant to cover any other potential potable water source, the regulation does not apply to a toilet on a berm in a salt-water lagoon. Berman v. Pohnpei, 19 FSM R. 111, 116-17 (App. 2013).

When a regulation's purpose – the evil that the regulation is designed to prevent – is the contamination of drinking water, it would not apply to a case where it might be proven that the privy on the berm leaks pollutants into the lagoon as the lagoon is not a possible potable water source since it is salt water and that evil is not covered by the regulation. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

Money damages are not available in a private environmental protection lawsuit even if injunctive relief is available. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

The potential for a significant impact on the public interest exists when Pohnpei's entire population will be directly and adversely affected by an unsustainable sea cucumber harvest, potentially affecting Pohnpei's public health, welfare, and economy in a negative manner since allowing a potentially environmentally devastating sea cucumber harvest is certainly not in the public interest. There is strong public interest in protecting Pohnpei's precious environment and natural resources. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 552 (Pon. 2016).

The plaintiffs' reasonable fears of environmental pollution is sufficient injury-in-fact to support standing. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 645 (Pon. 2016).

Under the Pohnpei Marine Sanctuary and Wildlife Refuge Act of 1999, any person may commence a civil suit on his own behalf to enjoin any person who is alleged to be in violation of § 5-107 of that Act, and "person" includes any individual, corporation, partnership, association or other entity, and any governmental entity including, but not limited to, the FSM or any of the FSM states or any political subdivision thereof, and any foreign government, subdivision of such government, or any entity thereof. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

Since, unlike 26 Pon. C. § 5-115 which expressly grants to the Attorney General the right to bring a suit to enjoin a person who is in "imminent violation," the citizen suit provision of 26 Pon. C. § 5-117 only allows a person to commence a civil suit to enjoin a person who is "alleged to be in violation" of § 5-107," the plain statutory language can only be read to allow the Attorney General the power to seek equitable relief for an imminent violation but not private persons who do not allege facts that are sufficient to grant traditional constitutional standing when it has not asserted injury to itself. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 647 (Pon. 2016).

That none of the edible species are included in the sea cucumber harvest's plan does not mean that the population of such species will not be negatively affected by a harvest which is more likely than not to have an impact on the ecosystem they inhabit. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 21 FSM R. 150, 158 (Pon. 2017).