

CHAPTER 1

**ENVIRONMENTAL PROTECTION AGENCY**

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27 PC 1-101. Short title. This chapter is known and may be cited as the “Pohnpei Environmental Protection Act of 1992.”

Source: S.L. No. 3L-26-92 §1, 11/19/92

27 PC 1-102. Public policy.

(1) The Government of Pohnpei, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth and redistribution, cultural change, resource exploitation, and new expanding technological advances, and recognizing the critical importance of restoring and maintaining environmental quality for the overall welfare and development of man, declares that it is the continuing policy of the Pohnpei Government, in cooperation with the Federated States of Micronesia, the local governments of Pohnpei, and other concerned public and private organizations, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of the present and future generations of Pohnpeians.

(2) In order to carry out this guiding policy, it is the continuing responsibility of the state of Pohnpei, using all practical means available and taking into account considerations of economic development, budgetary limitations, and traditional cultural relations, to do the following:

- (a) Act as trustees of the environment for the current and future generations of Pohnpei;
- (b) Assure for all Pohnpeians safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (c) Attain the widest range of beneficial uses of the environment by maintaining a level of air, land, and water quality as will protect human health, welfare, and safety from undesirable or unintended consequences; and
- (d) Prevent injury to plant and animal life.

(3) The effort to protect and preserve the environment will be carried forward in close cooperation with the national government, each local government of Pohnpei, and all elements of the public and private sector.

(4) The state of Pohnpei recognizes that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Source: S.L. No. 3L-26-92 §2, 11/19/92

27 PC 1-103. Definitions.

Unless the context clearly requires otherwise, the following words, when used in this chapter, shall have the meanings set forth below:

(1) "Agency" shall mean the Pohnpei Environmental Protection Agency (EPA) as established by this chapter.

(2) "Board" shall mean the Pohnpei Environmental Protection Board as established by this chapter.

(3) "Environmental impact statement" means a thorough study and intensive consideration of possible environmental effects of a developmental action before it is undertaken.

(4) "Executive officer" shall mean the executive officer of the Pohnpei Environmental Protection Agency, or one or more of his duly authorized representatives.

(5) "Persons" shall mean the governments of Pohnpei, the Federated States of Micronesia, the United States of America or other foreign governments and every local government and political subdivision of said governments, any public or private institution, corporation, partnership, joint venture, association, firm or company, any lessee or other occupant of property, and any individual acting singly or as part of a group.

(6) "Pollutant" means one or more substances or forms of energy that, when present in the air, land or water, are or may be harmful or injurious to the health, welfare or safety of humans, animals, plants or property or that unreasonably interfere with the enjoyment of the lives and properties of the people.

Source: S.L. No. 3L-26-92 §3, 11/19/92

#### 27 PC 1-104. Establishment of Environmental Protection Agency.

There is hereby established an independent governmental agency to be known as the Pohnpei Environmental Protection Agency ("EPA").

Source: S.L. No. 3L-26-92 §4, 11/19/92

#### 27 PC 1-105. Board of Directors: membership; terms; vacancies; officers; removal.

(1) All powers vested in the EPA shall be exercised by a Board of Directors to be composed of seven members. Each member shall be appointed by the Governor with the advice and consent of the Pohnpei Legislature. In the appointment of Board members, the Governor shall, when possible, select members whose experience demonstrates knowledge of environmental issues and processes.

(2) Members of the Board shall serve staggered terms of four years, subject to reappointment, or until their successors have been appointed and qualified. Three members of the initial Board shall serve for a period of two years and four members for four years. The terms for each of the initial Board members shall be determined by the Governor.

(3) Appointees shall be FSM citizens and residents of Pohnpei. Vacancies in unexpired terms of more than one year shall be filled in the same manner as the original appointment was made, for the remainder of the unexpired term.

(4) Members of the Board may be removed by the Governor for good cause.

(5) The Board shall elect from among its members a Chairman, a Vice-Chairman, and a Secretary. The Governor shall designate a member to serve as temporary Chairman of the Board until such time as the Board shall elect a Chairman. The Board of Directors shall act as the chief officer within the meaning of Article 9 §10 of the Pohnpei Constitution.

Source: S.L. No. 3L-26-92 §5, 11/19/92

27 PC 1-106. Board of Directors: meetings; quorum.

(1) The Board of Directors shall meet at least once quarterly. Meetings may be held at any time or place as determined by the Board, or upon the call of the Chairman or upon the written request of any four members. All members of the Board shall be given reasonable notice of the date, time, and place of each meeting as set forth in the regulations of the Board. All meetings shall be open to the public except executive sessions as agreed upon by unanimous vote of the members present. Public notice of the date, time, and place of all meetings, except executive sessions, shall be announced on the radio at least two days prior to the meeting.

(2) Four members of the Board shall constitute a quorum for the transaction of business and the assent of four members shall be required for all actions requiring a vote. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board.

Source: S.L. No. 3L-26-92 §6, 11/19/92

27 PC 1-107. Board of Directors: compensation.

Members of the Board shall be compensated at the rates established by the Government Officers Salary Act, Title 9 Chapter 4, as amended or superseded, (9 PC 4-\*), when actually performing functions of the Board at the direction of the Chairman, except that those members who are Pohnpei Government employees shall instead be granted administrative leave from their regular duties while performing functions of the Board. All members shall also receive travel expenses and per diem at Pohnpei Government rates when those amounts would be payable to Pohnpei Government employees in the same circumstances.

Source: S.L. No. 3L-26-92 §7, 11/19/92

27 PC 1-108. Management.

The Board shall designate an executive officer of the Environmental Protection Agency whose term of office shall be determined by the Board. The executive officer shall be subject

to the Public Service System Act, Title 9 Chapter 2, (9 PC 2-\*). The executive officer shall have the following powers and duties:

- (1) To be in full charge and control of the daily operation and administration of the Environmental Protection Agency functions assigned to him under this chapter;
- (2) To hire, retain, and terminate the services of employees in accordance with decisions or policies of the Board that shall be in conformance with the Public Service System Act, Title 9 Chapter 2, as amended, (9 PC 2-\*);
- (3) To attend all meetings of the Board and to submit a general report on the affairs of the Board;
- (4) To keep the Board advised on the needs of the EPA;
- (5) To approve demands for payment of obligations within the purposes and amounts authorized by the Board;
- (6) To devote full time to the business of the EPA;
- (7) To plan, organize, coordinate, and control the services of EPA's employees and independent contractors;
- (8) To prepare or assist in preparing fiscal and budget reports as required by law or by this chapter; and
- (9) To perform such other and additional duties as the Board may require.

Source: S.L. No. 3L-26-92 §8, 11/19/92

#### 27 PC 1-109. Powers and duties of the Agency.

The Agency 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 chapter and with the regulations adopted and promulgated under this chapter, and any administrative directive issued by the Governor pursuant to this chapter, balancing the needs of economic and social development against those of environmental quality. To fulfill this obligation and the public policy stated herein, the Agency shall do the following:

- (1) Establish rules and regulations within one year of the appointment of an executive officer to effectuate the purposes of this chapter, which rules and regulations shall have the force and effect of law when issued as provided by the Administrative Procedures Act, Title 8 Chapter 1, (8 PC 1-\*), to include, but not to be limited to the following:
  - (a) Earth moving regulations;
  - (b) Regulations pertaining to mining and dredging and the removal of mined and dredged materials; PROVIDED that the regulations issued by the Agency shall, with respect to mining

and dredging on Public Trust Lands and the removal of mined and dredged materials from Public Trust Lands, contain provisions that prohibit the Agency from accepting or considering any application for a permit that will directly or indirectly cause the removal of mined or dredged materials by any person or organization, public or private, from any area of Public Trust Lands that has not been designated as available for removal of mined and/or dredged materials under Title 42 Chapter 9, as it is currently in effect or as it may be amended or superseded, (42 PC 9-\*); PROVIDED FURTHER that the regulations of the Agency adopted under this paragraph may allow for joint consideration by the Pohnpei Public Lands Trust Board of Trustees and the Agency of individual applications for respective permits to be issued by the two entities for the removal of mined and/or dredged materials from such areas as are currently so designated under said law and for which all proper clearances as required by that law have been issued to the Board of Trustees;

(c) Environmental impact assessment regulations;

(d) Water supply systems regulations;

(e) Pesticide regulations;

(f) Sewage regulations;

(g) Solid waste regulations;

(h) Marine and fresh water quality regulations;

(i) Air pollution regulations;

(j) Ground water regulations; and

(k) Hearing procedure regulations for the Board.

(2) Establish and administer a system requiring a permit for any person to discharge a pollutant into the air, land or water, or for any person to conduct any activity that results or may result in the discharge of any pollutant into the air, land or water such as the operation, construction, expansion or alteration of any facility; provide for the issuance, modification, suspension, revocation, and termination of such permits; and require the applicable payment of a reasonable fee and the posting of a bond as deemed appropriate. The Board may, by regulation, delegate minor permit issuance authority to the executive officer.

(a) Upon the receipt of a complete application for a permit, as defined by rules and regulations created under this chapter, the EPA shall submit a copy of the same, and where applicable, the environmental impact assessment statement necessary for the granting of the permit to appropriate government agencies for their comment and analysis. Government agencies shall include, but shall not be limited to, the Pohnpei Office of Economic Affairs, the Pohnpei Department of Land and Natural Resources, the Economic Development Authority, the Office of Transportation and Infrastructure, and the Pohnpei Transportation Authority. Each government agency notified and provided with a permit application and/or environmental impact assessment statement shall have 30 days to review and make recommendations on the granting of the permit. Any government agency that wishes to comment on a permit application shall be provided with a copy of the application and any supporting documents.

(b) The Board shall establish standard procedures, through regulation, as administered by the executive officer, for the preparation of an environmental impact assessment statement prior to issuing permits for any public or private project that may significantly affect the quality of the environment to include the land, water, and air. Regulations shall set forth criteria for the development of environmental impact statements and the payment for the preparation of such statements.

(c) The Agency shall consider all such recommendations which are submitted in a timely fashion in its determination of whether or not to grant the relevant permit. The Agency may request additional information and analysis from the appropriate governmental agency as it deems appropriate.

(3) Conduct, authorize, cooperate in or contract for the conducting of scientific investigations, experiments, and research and the collecting of data concerning environmental quality.

(4) Establish and consult with advisory boards and environmental associations; to advise and make recommendations to the Board on research, policies, administration, and other matters.

(5) Hold hearings upon matters pending before it for determination; PROVIDED that where a public hearing and published notice thereof are required, notice of the time, place, and purpose of the hearing shall be broadcast on the radio as set forth by the regulations.

(6) Subpoena and compel the attendance of witnesses at any investigation, hearing or proceeding before it, and the production of books, papers, and other evidence pertinent to any such matter. Administer oaths and examine witnesses under oath, and authorize any of its members or agents to do so. In the event of failure of any person to obey any subpoena or testify thereunder before the Board or before any member or agent of the Board authorized by it to take testimony, the person may be punished as for contempt of the Pohnpei Supreme Court, on application therefore by the Board to the Court.

(7) Seek enforcement in the courts of this chapter or any rule, regulation or order of the Board or the Governor hereunder.

(8) Intervene on behalf of the state and public in any suit in any court in which the quality of the air, land or water of Pohnpei is at question.

(9) Accept appropriations and grants from the Pohnpei Government and the FSM national government or any agency thereof, and other public or private sources; PROVIDED that said appropriations and grants shall be expended only for purposes consistent with this chapter.

(10) Adopt and administer programs for the prevention, control, and abatement of pollution of the air, land, and water of Pohnpei and, from time to time, review and modify such programs as necessary.

(11) Collect information, establish record keeping, monitoring, and reporting requirements, and require the posting of bonds as deemed necessary and appropriate to carry out the purposes of this chapter.

Source: S.L. No. 3L-26-92 §9, 11/19/92; S.L. No. 3L-45-93 §1, 10/12/93; S.L. No. 5L-14-00 §3-6, 10/1/00

27 PC 1-110. Right of entry.

Whenever it is necessary for the purposes of this chapter and when it is authorized by the Agency or by court order, the Agency, its agents, and employees may, at reasonable times, enter any establishment, or upon any property, public or private, to obtain samples, to inspect the premises or to copy records required to be maintained by this chapter and any regulations promulgated hereunder, or to conduct surveys or investigations for the purpose of carrying out the purposes and policy of this chapter.

Source: S.L. No. 3L-26-92 §10, 11/19/92

27 PC 1-111.

Authorization; use of general fund revenues by the Agency. There is hereby authorized for appropriation from the general fund of Pohnpei such sum or sums as may be determined annually in the Comprehensive Budget Act for all necessary and incidental expenses of the Pohnpei Environmental Protection Agency, its operations and its programs as are authorized by this chapter. The sum or sums hereby authorized shall be administered and expended by the executive officer or his designated representative and as authorized by the Board of Directors. All sums appropriated under the authorization of this section except sums deposited into the Environmental Quality Revolving Account of the general fund as limited by 27 PC 1-112(1)(c) and remaining unexpended or unobligated on September 30 each year shall revert to the general fund of Pohnpei. Unless otherwise provided or limited by Pohnpei law, the Agency shall be entitled to expend revenues raised and deposited into the Environmental Quality Revolving Account as limited by 27 PC 1-112(1)(c).

Source: S.L. No. 3L-26-92 §11, 11/19/92

27 PC 1-112.

Enforcement.

(1) Any person who violates or threatens to violate any provision of this chapter, or of any permit, regulation, standard or order issued or promulgated hereunder, shall be subject to enforcement action by the Agency. Such enforcement action may include, but is not limited to, any one or more of the following:

(a) Issuance of an order to cease and desist from such violation, or to comply within a specific time period;

(b) Issuance of an order to prevent, remedy, repair, clean up or abate the effects of any pollutant;

(c) Imposition of a civil penalty not less than \$100 per day for each day of such violation, with the amounts collected paid into the Environmental Quality Revolving Account within the

general fund as created herein to an amount of \$50,000. Funds deposited into the Environmental Quality Revolving Account shall be used only for emergency response to environmental accidents. Any additional funds shall be deposited into the Treasury for credit to the general fund of Pohnpei;

(d) Pursuit of a civil action to enforce Agency orders or to enjoin such violation;

(e) Pursuit of a civil action for monetary damages; and

(f) Giving of reasonable notice to all interested persons and an opportunity for them to appear and be heard at a public hearing to determine and consider the facts upon which an alleged violation is based.

(2) All orders of the Agency shall become effective and final as to the Agency upon issuance thereof. Copies shall be served forthwith by mail or personal delivery upon the persons being charged with the violation.

(3) In determining the amount of damages in a civil action, the Board 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 the corrective action, if any, taken by the violator. Damages collected hereunder shall be paid into the Treasury for credit to the general fund of Pohnpei.

Source: S.L. No. 3L-26-92 §12, 11/19/92

#### 27 PC 1-113. Judicial review.

Any person who may be adversely affected by the enforcement of any standard, policy, regulation, permit or order of the Agency or who alleges its invalidity, may file a petition for a declaratory judgment in the Pohnpei Supreme Court. The Court shall declare the standard, policy, regulation, permit or order invalid if it finds that it exceeds the statutory authority of the Agency or is arbitrary and capricious. An appeal may be had from the decision of the Court to the Appellate Division of the Supreme Court as provided by law.

Source: S.L. No. 3L-26-92 §13, 11/19/92

#### 27 PC 1-114. Criminal acts and penalties.

Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, permit, regulation or order issued under this chapter, or other document filed or required to be maintained under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, regulation or any order issued under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or imprisoned for not more than six months, or both such fine and imprisonment.

Source: S.L. No. 3L-26-92 §14, 11/19/92

27 PC 1-115. Technical assistance.

The Governor shall provide the Agency with necessary technical and legal assistance through the departments, offices, and agencies of the Pohnpei Government. If the Attorney General is unable to provide sufficient legal counsel, the Agency may seek independent counsel.

Source: S.L. No. 3L-26-92 §15, 11/19/92

27 PC 1-116. Cooperative agreements.

(1) The Agency is authorized to enter into cooperative agreements with the Environmental Protection Board of the FSM and other agencies of the FSM for the protection of the Pohnpei environment.

(2) Any function or functions delegated to or by the Agency pursuant to this section may be reassumed and performed by the delegating body.

Source: S.L. No. 3L-26-92 §16, 11/19/92

27 PC 1-117. Reports.

The Agency shall transmit to the Governor and the Legislature a quarterly and yearly report that shall include a review of the program and its activities for each quarter and any recommendations the Board deems relevant.

Source: S.L. No. 3L-26-92 §17, 11/19/92

Note: S.L. No. 3L-26-92 §18 severability, §19 temporary, and §20 transition provisions have been omitted.