SECOND LEGISLATURE OF THE STATE OF CHUUK CSL No. 2-94-01

FIRST REGULAR SESSION
FIRST SPECIAL SESSION, OCT., 1993 ACT NO:2-17

AN ACT

To implement Section 1, Article IV of the State Constitution by providing for the protection and enhancement of environmental quality of the air, land, and water of Chuuk State; to provide for the establishment of Chuuk State Environmental Protection Agency; to provide for cooperation between the Agency and other entities in protecting the environment, and for other purposes.

BE IT ENACTED BY THE CHUUK STATE LEGISLATURE:

Section 1. Short Title. This Act may be cited as the Chuuk State Environmental Protection Act.

Section 2. Public Policy. The Chuuk State Government, recognizing the impact of man's activity on the inter-relations of all components of the natural environment, particularly the profound influence of population growth and distribution, cultural change, resource exploitation, and technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the State of Chuuk, in cooperation with the FSM National Government, municipal governments, and other concerned public and private organizations, to use all practical means and measures, including financial and technical assistance, to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Chuuk State.

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

1) "Agency" shall mean the Chuuk State Environmental Protection Agency.

2) "Chairman" means chairman of the Board of Directors of the Agency.

3) "Person" means a natural person, Chuuk State, the Federated States of Micronesia, municipality, a political subdivision, a public or private institution, corporation, partnership, joint venture, association, firm or company, lessee or other occupant of property, acting singly or as a group organized or existing under the laws of Chuuk State or any state, or Country.

4) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 50 individuals and such term includes:

(a) Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

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

5) "Pollutant" means one or more matters or forms of energy which, when present in the air, land and water are or may be harmful or injurious to the health,

welfare or safety of humans, animals, plants, or property, or which unreasonably interferes with the enjoyment by the people of life or property.

6) "Primary Drinking Water Regulations" means a regulation which:

(a) Applies to Public Water System;

(b) Specifies contaminant levels which in the judgment of the Agency, may have an adverse effect on the health of persons; and

(c) Specifies for each of such contaminant level, either:

(i) A maximum contaminant level, if, in the judgment of the Agency, it is economically and technologically feasible to ascertain the level of such contaminant in water system; or

(ii) If, in the judgment of the Agency, it is not economically possible to ascertain the level of such contaminant, each treatment known to the Agency which leads to a reduction in the level of such contaminant; and

(d) Contains criteria and procedures to assure a supply of drinking water which complies with established maximum contaminant level, including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to:

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

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

7) "Secondary Drinking Water Regulation" means a regulation which applies to public water system and which specifies the maximum contaminant levels which in the judgement of the Agency are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water:

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

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

(8) "State Plan" means an individual plan for:

(a) The certification of applicators of pesticides; and

(b) Issuance of pesticide registration to meet special local needs.

Section 4. Chuuk State Environmental Protection Agency Created; Board of Directors; Membership; Vacancies; Chairman; Records; Qualifications.

1) Establishment of Agency/Board memberships.

There is hereby established an independent agency to be

known as the Chuuk State Environmental Protection Agency, to be composed of five members one from each of the five senatorial regions of the State of Chuuk. All five members shall be appointed by the Governor with the advice and consent of the Senate. The Governor in his appointment shall select persons who are citizens of the Federated States of Micronesia and residents of Chuuk, to carry out the policies and purposes of this Act. Members shall serve for four years. The first appointments under this Section shall be made as follows:

(a) One member for a period of 4 years;

(b) Two members for a period of 3 years; and

(c) Two members for a period of 2 years.

Vacancies shall be filled in the same manner as the original appointment was made, for the unexpired terms only. Any member of the Board of Directors may be removed by the majority of all members of the Board for inefficiency, neglect of duty, or misconduct in office.

2) Officers. The Board of Directors shall elect from among its members a Chairman and a Vice-Chairman. The oldest member shall serve as Acting Chairman until such time the Board shall elect a Chairman.

3) Compensation. Any member of the Board of Directors who is an employee of the State Government shall be granted administrative leave with pay while

engaged in the performance of the duties of the Agency. Non-State Government members of the Board of Directors shall receive compensation of not more than $25.00 per day when engaged in the performance of the duties of the Board. Any member of the Board who is an employee of the State whose daily base salary or wages is less than $25.00, shall be entitled to the difference of his daily base salary or wages and the maximum daily board allowance of $25.00. Members shall also be entitled to receive reasonable travel costs and per diem at standard Chuuk State rates when engaged in the performance of the duties of the Board.

4) Meeting. The Board shall meet once during the first part of the calendar year and once during the latter part of the calendar year. Special meetings may be held at any time and at such places as determined by the Board, or upon the call of the chairman or upon written request of any three members. All meetings shall be opened to the public, and public notice of time and place of such meetings shall be posted in public places and shall be announced on the radio to the general public throughout Chuuk State.

(a) Three members of the Board shall constitute a quorum for transaction of business.

(b) The Agency may seek independent counsel.

(c) The Agency shall submit to the Governor and the State Legislature, not later than January 30 of each year a report on its activities for the

preceding calendar year.

(5) Records. The Agency shall provide for the keeping of all of its records and actions. These records shall be open to the public for inspection.

(6) Staff. The Board shall designate a full time executive director who shall be administrator of the functions of the Agency and shall have such duties and responsibilities as may be delegated to him by the Board. The executive director shall not be a member of the Board of Directors and shall not have the right to vote. The executive director shall be assisted in the performance of his duties by supporting staff as the Agency deems necessary to implement the functions of the Agency. Employees thereof shall be governed under the Public Services System, or may join a merit System created by the Board therefor.

7) Technical Assistance. The Board may request for the Agency with the necessary technical assistance from the departments, offices, and agencies of the State Government.

Section 5. Powers and Duties of the Agency.

1) The Agency shall have the powers and duties to control and prohibit pollution of air, land, and water in accordance with this Act and with regulations adopted and promulgated pursuant to this Act, and for this purpose, is further empowered to:

a) Adopt, approve, amend, revise, promulgate, and repeal regulations or effect the purpose of this Act and enforce such regulations which shall have the force and effect of law;

b) Accept appropriations, loans and grants from the Chuuk State Legislature, FSM Congress, the FSM National Government, or any Agency thereof and other sources, public or private, which loans, grants and appropriations shall not be expended for other than the purpose of this Act except as limited by the nature of the loan, grant or appropriation;

c) Adopt and provide for the continuing administration of a State-wide program for the prevention, control, and abetment of pollution of the air, land and water of Chuuk State, and from time to time review and modify such programs as necessary;

d) Establish criterias for classifying air, land and water in accordance with their present and future uses;

e) Adopt and implement plans for the certification of importers and applicators of restricted pesticides, for the issuance of experimental use permits for pesticides and a plan to meet special local needs, and such other measures as may be necessary to carry out the purpose of this Act;

f) Establish and provide for the continuing administration of a permit system whereby a permit shall be required before the discharge by any person of any pollutant in the air, lands and

water or for the conduct by any person of any activity, including but not limited to, the operation, construction, expansion, alteration of any facilities; modification, suspension, revocation, and termination of such permit and/or the posting of an appropriate bond;

g) Collect information and establish record keeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purpose of this Act; and

h) Prepare a budget of the Agency and submit it to the Governor for inclusion in the State Budget to be submitted to the Legislature.

2) The Agency is authorized to enter into cooperative arrangements with the National Government, municipalities, and other agencies for the protection of the Chuuk State Environment.

3) The Agency, in order to effectively implement the provisions of this Act, shall have the power to issue subpoena deuces tecum and subpoena ad testificandum and shall have quasi-judicial powers of contempt, issuance of orders, and enforcement of the provisions of this Act.

Section 6. Environment Impact Statement. A person shall submit an environment impact statement to the Agency, in accordance with regulations established by the Agency, prior to taking any major action which may substantially affect the quality of the environment.

Section 7. Right of Entry. Whenever it is necessary for the purpose of this Act, the Agency, or any member, agent, or employee thereof when duly authorized by the Agency or by Court Order, may within reasonable times, enter any establishment or upon any property to make inspection or to do other acts as directed by the Agency or the Court.

Section 8. Violation Subject to Enforcement. Any person who violates any provision of this Act, 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:

1) The imposition of a civil penalty up to $100,000.00 for each day of the violation. Penalty collected hereunder shall be paid to the Treasury of Chuuk State for credit to the Chuuk Environmental Protection Agency. The Agency shall provide by regulation minimum due process requirements to apply before it exercises the powers pursuant to this subsection;

2) A civil action may be commenced in the Trial Division of the Chuuk State Supreme Court to enjoin the violation;

3) A civil action for damages may be commenced in the Trial Division of the Chuuk State 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 during which such violation occurred, and corrective action, if any taken by the violator. Damages collected hereunder shall be paid to the Treasury of Chuuk State and credited to the accounts of the Agency. The Agency shall apportion any monetary damages collected pursuant to this section among any private landowners or property owners actually affected by the violation, in accordance with its regulations;

4) A person who intentionally, knowingly, or recklessly violates any provision of this Act shall be guilty of an offense, and upon conviction, may be imprisoned for a period of up to ten years, or fined up to $500,000 or both. A criminal conviction may be in addition to any civil penalty herein provided; and

5) A person who is affected by any violation of this Act retains the right to seek civil remedies in the appropriate court irrespective of whether any claim or suit has been instituted pursuant to the other provisions of this section.

Section 9. <u>Transition.</u> All employees in the present Environmental Protection Agency of the Department of Health Services, who are responsible for environmental matters shall be transferred to and become employees of the Agency upon the effective date of this Act, and shall retain their salary levels until a specific law determines otherwise. The number of employees of the Agency shall be the maximum number of employees of the Agency as of the effective date of this Act, and no hiring of employees is

permitted until specifically provided for by law.

Section 10. Appropriation. The sum of $10,000.00 is hereby appropriated from the General Fund of the State for the fiscal year ending September 30, 1994 as initial operating cost of the Agency. This appropriation shall be allotted to and administered by the Board, which shall be responsible to the Legislature in ensuring that this fund is used only for the purposes specified herein and in accordance with the Financial Management Act. The Board shall submit to the Legislature no later than six months after the Agency begins to operate, a report detailing the use and status of this fund as of the reporting date; PROVIDED, however, that a supplemental report shall be submitted to the Legislature within thirty days after the end of the fiscal year. Funds not obligated by September 30, 1994 shall revert back to the General Fund of the State.

Section 11. Effective Date. This Act shall take effect upon approval by the Governor, or upon its becoming law without such approval.

Signed by: _____
Kisande K. Sos, Speaker
House of Representatives
Chuuk State Legislature

Attested: _____
Herter Sorim, Chief Clerk
House of Representatives
Chuuk State Legislature

Date: 12/08/93

CSL NO. 2-94-01

Signed by: _____
Roger S. Mori, President
Senate, Chuuk State Legislature

Attested:

_____
Datasi Albert, Chief Clerk
Senate, Chuuk State Legislature

Date: 12/08/93

Approved by: _____
Sasao H. Gouland, Governor
Chuuk State Government

Date: 1/4/94

HISTORY: H.B.NO.2-58;HD1;SD3
H.C.R.No: 1-11
S.S.C.R.No: 2-1-02