

CHAPTER 2**FSM Environmental Protection Office****SECTIONS**

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§ 206. Technical assistance.

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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].

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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.

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 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).