

TITLE 27
ENVIRONMENTAL
PROTECTION

TITLE 27 ENVIRONMENTAL PROTECTION

CHAPTER

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CHAPTER 1 ENVIRONMENTAL PROTECTION AGENCY

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§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

§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

§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

§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

§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

§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

§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 Subchapter I, as amended or superseded, 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

§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. 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;

(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

§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, 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; 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 Office of Fisheries and Aquaculture, 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 therefor 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; S.L. No. 7L-20-08 §13, 11/26/08

§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

§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 §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 §1-112(1)(c).

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

§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

§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

§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

§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

§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

§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.

ENVIRONMENTAL PROTECTION

CHAPTER 2 LITTER ABATEMENT

Section

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§2-101. Statement of policy and intent. — The proliferation of personal litter from such sources as beer and soft drink cans, plastic and foam take-out containers, candy and snack wrappers, and discarded sakau bottles is a major source of pollution in the state of Pohnpei. These types of litter are the most rapidly growing segment of state-wide waste, imposing a heavy burden on the government and citizens of Pohnpei for their collection and disposal. The littering of our public properties and casual disposal of other solid waste materials are a continuing threat to the health, safety, and welfare of the citizens of Pohnpei. The Pohnpei Legislature hereby declares that it is the public policy of this state to preserve the pristine beauty of our natural environment and to protect, maintain and improve the aesthetic attributes of our state for the promotion of public health and welfare of our people and for the enhancement of recreational and tourist facilities, as well as for agricultural and other legitimate beneficial uses. It is therefore the intent of this chapter to provide a comprehensive program in the public interest for the prevention, abatement, and control of littering and the proper disposal of solid wastes within the State. It is the further intent of this chapter to provide effective means for the enforcement and carrying out of such a program.

Source: S.L. No. 6L-66-06 §1, 5/18/06

§2-102. Definitions. — As used in this chapter:

(1) “Abandoned vehicle” means any motor vehicle which is no longer capable of being operated on the public roads of Pohnpei. A vehicle that has not been registered pursuant to Title 71 for more than three years shall be presumed to have been abandoned.

(2) “Agency” means the Environmental Protection Agency.

(3) “Executive Officer” means the Executive Officer of the Environmental Protection Agency.

(4) “Dump” means any area, whether on public or private property, where garbage, trash, refuse, junk, debris or other broken and rejected material is deposited, other than in legal trash or garbage receptacles or other authorized disposal sites.

(5) “Garbage” means the solid or semi-solid but reusable animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods, including cans, bottles, containers, and cartons, in which it was received and wrapping in which it may have been placed for disposal.

(6) “Litter” means rubbish, refuse, waste material, garbage, trash, offal, or any debris of whatever kind or description, whether or not it is of value, and includes improperly discarded paper, metal, plastic, glass, or solid waste.

(7) “Person” means and includes individuals, partnerships, corporations, and other associations.

(8) “Premises” means any private property or occupied public land on which is located one or more of the following: home, apartment, hotel or commercial or manufacturing establishment, but does not include a dump.

(9) “Public place” means any area that is used or held out for use by the public, whether owned or operated by public or private interests.

(10) “Rubbish” means disposable solid waste, including ashes, consisting of both combustible and noncombustible waste such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and broken or rejected matter or litter of any kind.

Source: S.L. No. 6L-66-06 §2, 5/18/06

§2-103. Responsibility of the Environmental Protection Agency. — Primary responsibility for the enforcement of this chapter shall be with the Pohnpei Environmental Protection Agency, which shall have the authority to issue regulations for its proper enforcement. Such regulations shall, upon written concurrence of the Governor, carry the force and effect of law. The responsibility of the Environmental Protection Agency for enforcement shall be concurrent with that of the Department of Public Safety and local law enforcement agencies operating under joint law enforcement agreements pursuant to Title 16 Chapter 2. The Environmental Protection Agency may also solicit the assistance of the Department of Land and Natural Resources, Department of Education, the Office of Social Affairs, the Office of Transportation and Infrastructure, the Pohnpei Transportation Authority, the local governments of the state, and other public agencies and voluntary groups in the conduct of its promotional activities under this chapter.

Source: S.L. No. 6L-66-06 §3, 5/18/06

§2-104. Public education. — The public policy of this state recognizes that the most efficient means to abate the pollution of our natural environment caused by litter and the improper disposal of waste is through the concerted actions of an educated, concerned and cooperative public. Litter and improperly disposed wastes cannot pollute our environment if they never occur in the first place. To this end, the Environmental Protection Agency shall develop and maintain a continuous and vigorous program of public education for both children and adults as to their responsibilities in keeping Pohnpei clean.

Source: S.L. No. 6L-66-06 §4, 5/18/06

§2-105. Environmental awareness programs. — The public policy of this state embraces the concept that the best defense against a dirty environment is an offense for clean and healthy lifestyles. To this end, the Environmental Protection Agency shall budget for and implement environmental awareness programs including, but not limited to:

(1) The institution of community award programs designed to honor communities that, by example, show the highest commitment to litter abatement and solid waste control;

(2) The conduct of programs for the recycling of cans and other materials; and

(3) The initiation of road and park adoption programs and the development of other strategies designed to maintain the aesthetic value of our roadways and recreational areas.

Source: S.L. No. 6L-66-06 §5, 5/18/06

§2-106. Littering in public places. □ — It shall be unlawful for any person to throw, discard, scatter or abandon any waste materials, rubbish, garbage or other debris in any form or substance upon any public road, street, easement, land, stream, rivers, or body of water accessible to the general public, other than a public dumping ground maintained by the Government of Pohnpei or any of the local governments of Pohnpei.

Source: S.L. No. 6L-66-06 §6, 5/18/06

§2-107. Prohibition on rubbish and garbage on premises. — No person shall have on his premises any garbage or rubbish except as provided in this chapter.

Source: S.L. No. 6L-66-06 §7, 5/18/06

§2-108. Storage. — All garbage and rubbish shall be stored and maintained in durable receptacles unless otherwise prescribed in the regulations promulgated by the Environmental Protection Agency under this chapter.

Source: S.L. No. 6L-66-06 §8, 5/18/06

§2-109. Residence. — Each person shall provide adequate containers for the storage of all garbage and rubbish and is responsible for its disposal, subject to rules and regulations established by Environmental Protection Agency.

Source: S.L. No. 6L-66-06 §9, 5/18/06

§2-110. Non-residential establishments. —

(1) The owner or operator of any business establishment or commercial operation shall provide adequate containers for the storage of garbage or rubbish that is generated in the course of operating his/her business or commercial enterprise.

(2) The Governor, the Speaker of the Legislature, the Chief Justice of the Pohnpei Supreme Court and the Public Auditor of the Pohnpei Government or their designees shall ensure for the provision of adequate containers for the storage of garbage or rubbish generated by the Pohnpei Government.

(3) The Chief Executive Officer of every public corporation, religious institution, charitable organization, and non-profit corporation or association shall ensure for the provision of adequate containers for the storage of garbage or rubbish generated by such an entity.

Source: S.L. No. 6L-66-06 §10, 5/18/06

§2-111. Removal. — Garbage, rubbish and other solid wastes shall be removed from all premises at regular intervals as may be established by regulation by the Environmental Protection Agency. Except as provided in §2-112, garbage, rubbish and other solid wastes shall only be disposed of at a public dumping ground maintained by the Government of Pohnpei or any of the local governments of Pohnpei.

Source: S.L. No. 6L-66-06 §11, 5/18/06

§2-112. Dumps. — No person shall maintain or permit the establishment of a dump on their premises unless permitted by regulation of the Environmental Protection Agency; PROVIDED that in issuing such regulations, the Agency shall be mindful of the needs of those persons residing or operating businesses in remote areas without ready access to Pohnpei Government or local government dumping grounds and shall develop special regulations to ensure safe waste disposal practices in said remote areas.

Source: S.L. No. 6L-66-06 §12, 5/18/06

§2-113. Edible garbage. — The Environmental Protection Agency is authorized to prescribe by regulation such processing and limitations with respect to the use of garbage as animal feed or other use as may be deemed necessary for the public health. No garbage shall be sold or disposed of as food for human consumption.

Source: S.L. No. 6L-66-06 §13, 5/18/06

§2-114. Commercial vehicles. — Commercial vehicles used for conveying garbage or rubbish shall not be used for the transportation or conveyance of any food or drink that will or may be used for human consumption.

Source: S.L. No. 6L-66-06 §14, 5/18/06

§2-115. Abandoned and stored vehicles. — The Environmental Protection Agency shall by regulation provide for the proper removal and disposal of abandoned vehicles from premises, the sides of roadways and other places. Such regulations shall further regulate the storage of unregistered vehicles at vehicle repair shops and wrecking sites.

Source: S.L. No. 6L-66-06 §15, 5/18/06

§2-116. Environmental Quality Fund. —

(1) There is hereby created within the Pohnpei Treasury a special revenue fund which shall be known as the Environmental Quality Fund. All fees received by the Environmental Protection Agency pursuant to §2-117 shall be deposited in the fund created by this section. Monies may also be appropriated to the fund from other revenue funds of the Pohnpei Treasury, including excess funds from the Litter Reward Fund, and the fund shall be entitled to receive gifts and donations from other sources.

(2) There is hereby authorized for appropriation from the Environmental Quality Fund a sum or sums to be determined annually and as may be allocated in the Comprehensive Budget Act for the conduct of public education, environmental awareness, and clean-up programs pursuant to this chapter.

(3) Monies appropriated from the Environmental Quality Fund shall be administered and expended by the Executive Officer of the Environmental Protection Agency, upon direction of the Environmental Protection Board, solely for the purposes specified in this section. All sums appropriated under the authorization of this section in a fiscal year remaining unexpended or unobligated for expenditure at the close of the fiscal year shall revert to the Environmental Quality Fund. The Executive Officer shall submit an annual report to the Legislature on or before October 15, which report shall provide for an accounting of all expenses drawn from the fund for the previous fiscal year.

Source: S.L. No. 6L-66-06 §16, 5/18/06

§2-117. Shipping container, loose cargo, and motor vehicle waste disposal fee. — The public policy of this state declares that a fee is owed by those bringing materials into the state to ensure that such materials are disposed of properly following consumption or at the end of their useful life. Accordingly, the Environmental Protection Agency shall establish by regulations a special waste disposal fee not to exceed \$100 on each shipping container and each motor vehicle, whether or not within a shipping container, brought into the state on any sea vessel from any port of origin outside the state; PROVIDED that the fee imposed by this section shall be waived or discounted on a pro rata basis by the Environmental Protection Agency upon a showing that:

(1) the contents of the container or a portion of the contents of the container or that the motor vehicle is not for sale, use or consumption within the state, but for transshipment to a destination without the state; or

(2) that the contents of the shipping container is principally composed of one or more motor vehicles upon which a waste disposal fee has been levied by the Environmental Protection Agency under the regulations issued pursuant to the provisions of this section; PROVIDED FURTHER that the burden of proof shall be upon the person so bringing the shipping container or motor vehicle into the state that said person is entitled to the waiver or discount. All fees so paid to the Environmental

Protection Agency shall be deposited in the Environmental Quality Fund established by §2-116.

Source: S.L. No. 6L-66-06 §17, 5/18/06

§2-118. Litter Reward Fund. —

(1) There is hereby established within the Pohnpei Treasury, a special expenditure fund which shall be known as the Litter Reward Fund. All fines collected by the state of Pohnpei pursuant to §2-119 shall be collected by the Pohnpei Supreme Court and are hereby continuously appropriated, as though incorporated in the annual Comprehensive Budget Act, for deposit into the Litter Reward Fund. Monies may also be appropriated to the fund from other revenues of the Pohnpei Treasury.

(2) Monies in the Litter Reward Fund shall be used by the Environmental Protection Agency to reward persons that provide information or evidence leading to convictions of persons that violate this chapter.

(3) Monies continually appropriated to the Litter Reward Fund shall be administered and expended by the Environmental Protection Agency solely for purposes specified in this section. If, at the close of the fiscal year, the Environmental Protection Agency determines that there are excess monies within the Litter Reward Fund that are not needed to reward persons pursuant to §2-120, the Environmental Protection Agency shall transfer such excess monies to the Environmental Protection Agency for deposit into the Environmental Quality Fund established pursuant to §2-116.

Source: S.L. No. 6L-66-06 §18, 5/18/06

§2-119. Violations. — Any person who shall willfully violate any provision of this chapter or regulation of the Environmental Protection Agency issued pursuant to this chapter shall be guilty of an offense against Pohnpei and:

(1) Upon conviction of a first offense shall be fined not less than \$25 and not more than \$500, which fine shall be deposited into the Litter Reward Fund established pursuant to §2-118, and shall be required to engage in no fewer than 10 hours of community service in the form of participation in clean-up programs; or

(2) Upon conviction of any subsequent offense shall be fined not less than \$50 and not more than \$1000, which fine shall be deposited into the Litter Reward Fund established pursuant to §2-118, and shall be required to engage in no fewer than 20 hours of community service in the form of participation in clean-up programs, and, upon a finding by the Pohnpei Supreme Court that imprisonment is necessary to deter such person from violating this chapter in the future, imprisonment for not more than one year.

Source: S.L. No. 6L-66-06 §19, 5/18/06

§2-120. Rewards. — Any person who provides information or evidence that, in the sole determination of the Attorney General, resulted in a conviction pursuant to §2-119, shall, if sufficient funds exist in the Litter Reward Fund, be rewarded with:

(1) \$25;

Source: S.L. No. 6L-66-06 §20, 5/18/06

Note: S.L. No. 6L-66-06 §21 repealing provision has been omitted.

ENVIRONMENTAL PROTECTION

CHAPTER 3 RECYCLING OF BEVERAGE CONTAINERS

Section

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§3-101. Findings. — The Legislature finds and declares that:

- (1) One of Pohnpei's most visible forms of pollution is the dumping of beverage containers throughout the state;
- (2) The existence of waste beverage containers increases the burden on limited landfill sites;
- (3) The existence of improperly disposed waste beverage containers increases the hazards to health and safety;
- (4) The lack of a statewide recycling program is a clear burden to the growth of the tourism industry in Pohnpei; and
- (5) The planning, development and operation of a statewide recycling program based upon a deposit fee for beverage containers is a self-funding means of addressing these concerns without cost to the citizens of Pohnpei.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-102. Definitions. — Unless the context clearly indicates otherwise, the following meanings shall apply to this chapter:

- (1) "Beverage" means beer or other malt beverages, mineral waters, soda water, and similar carbonated soft drinks in liquid form and intended for human consumption.
- (2) "Beverage container" means the individual, separate, sealed aluminum can manufactured to contain a beverage of twenty-four ounces or less.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-103. Recycling Program. — There is hereby established the Pohnpei Recycling Program. The purpose and aim of the Recycling Program is to establish a self-supported, safe and efficient system of beverage container disposal throughout Pohnpei.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-104. Declaration of Agency. — The Pohnpei Environmental Protection Agency (hereinafter referred to as "EPA") shall act as the agent for the sate of Pohnpei and shall have the duty and authority to administer the Recycling Program. Such authority includes, but is not limited to, the administration of the Recycling Fund, hiring of employees and contractors, purchasing and selling property and services, leasing or obtaining interests in land on behalf of the state, receiving donations and contributions, and entering into agreements to further the purposes of the Recycling Program. All such authority shall be exercised pursuant to applicable laws, including the provisions of the Pohnpei

Code on the Pohnpei Public Service, (9 PC 2), and the provisions of the Pohnpei Code on Public Contracts, (11 PC 6).

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-105. Recycling Fund. —

(1) There is hereby established a fund which shall be known as the “Recycling Fund”, to be maintained by the Department of Treasury and Administration separate and apart from other funds of the state. Independent records and accounts shall be maintained in connection therewith. The Recycling Fund shall be administered in accordance with Chapter 2 of Title 11 of the Pohnpei Code, (the Financial Organization and Management Act of 1987, as amended).

(2) All deposit fees collected and revenues received from the sale of beverage containers under the provisions of this chapter, as well as all appropriations by the Pohnpei Legislature, any grants, donations and contributions to the Recycling Program, and any interest or income earned on the money in the Recycling Fund shall be deposited into the Recycling Fund.

(3) Except when specific requirements are imposed by law or by the grantor or donor, the Recycling Fund shall be first applied to the expenses attributable to the administration of the Recycling Program, then to the payments required under §3-106 of this chapter, then to reserve to cover anticipated and unanticipated future expenses of the program. The balance, if any, shall be dedicated to enlarging the program to eventually include other kinds of trash.

(4) Money in the fund shall be administered by the EPA and may be obligated or expended without further legislative action for the purposes stated in this chapter.

(5) The EPA shall, not later than 90 days after the close of each fiscal year, submit to the Governor and the Legislature a complete report showing its activities under the Recycling Program and the use and condition of the Recycling Fund, and such other matters that the EPA deems appropriate. The activities concerning the Recycling Fund shall be examined by the State Auditor at least annually, and the report of such examination shall be supplied to the Governor and the Legislature.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-106. Purchasing beverage containers. — Using the monies in the Recycling Fund, the EPA shall purchase beverage containers for five cents per container and sell beverage containers for recycling at market prices. Beverage containers may only be purchased through redemption centers established pursuant to §3-107 of this chapter.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-107. Redemption centers. —

(1) To facilitate the return of empty beverage containers, the EPA shall establish one or more redemption centers at which empty beverage containers may be returned and payment received. Each local government may operate one or more redemption centers subject to the approval of the EPA.

(2) The application for approval of a redemption center shall be filed with the EPA and contain such information as the EPA may require.

(3) The approval of a redemption center may contain such terms and conditions as the EPA deems appropriate. Such terms and conditions may differ among redemption centers and may be altered or amended from time to time as the situation warrants. Using the money in the Recycling Fund, the EPA may provide compensation to the redemption centers for their services.

(4) The EPA shall withdraw the right to serve as a redemption center at any time for noncompliance with the terms and conditions of this chapter, or the rules and regulations adopted pursuant to §3-108 of this chapter.

Source: S.L. No. 7L-96-11 §1, 8/1/11

Note: The redemption centers shall commence operations as soon after the imposition of the deposit fee as is practicable. See 27 PC 3-110.

§3-108. Program rules and regulations. —

(1) Subject to the provisions of Subsection (2) of this section, the EPA may promulgate, amend and enforce appropriate rules and regulations to carry out the duties and powers set out herein, which may include, but are not limited to, provisions governing:

- (a) The collection, purchase, sale or other disposal of beverage containers;
- (b) The type and condition of the beverage containers that may be redeemed;
- (c) The methods and requirements for the redemption of the beverage containers;
- (d) All matters concerning the operation of redemption centers; and
- (e) The prohibition of importing empty beverage containers for the purpose of redeeming them in Pohnpei.

(2) The power of the EPA to establish such rules and regulations is subject to the powers of the Director of the Department of Treasury and Administration to establish rules and regulations regarding the collection of the deposit fee and the establishment and operation of the Recycling Fund as set forth in §3-115 of this chapter. The rules and regulations established by the EPA shall be adopted pursuant to the procedures set forth in Chapter 1 of Title 8 of this Code, and when approved by the Governor, shall have the force and effect of law.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-109. Authorization for appropriation. — There is hereby authorized for appropriation from the General Fund of Pohnpei such sums as may be determined annually in the Comprehensive Budget Act for the Pohnpei Recycling Program and for the exercise of the powers and duties set forth herein. Such sums shall be deposited into the Recycling Fund and shall not revert to the General Fund. All sums appropriated for any fiscal year remaining unexpended or unobligated at the end of such fiscal year shall remain available to the Recycling Fund and in the state of Pohnpei.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-110. Imposition of deposit fee. — There is hereby assessed and levied a deposit fee of six cents on all beverages in individual beverage containers produced or brought into this state for consumption within the state. The recycling deposit imposed by this section is a fee for waste management and is not a tax.

Source: S.L. No. 7L-96-11 §1, 8/1/11

Note: The imposition of the deposit fee commenced on October 1, 2011.

§3-111. Payment. — The deposit fee levied under §3-110 of this chapter shall attach at the time of the first sale in Pohnpei. All deposit fees which have attached during a calendar month shall be paid by the first seller to the Department of Treasury and Administration on or before the fifteenth day of the succeeding month; except that the Director of the Department of Treasury and Administration may make special provision for the time of payment of deposit fees from the outer islands of Pohnpei. Deposit fee revenues not paid within the time specified shall be considered delinquent. The Director shall cause all payments received under the provision of this section to be promptly deposited in the Recycling Fund established by §3-105 of this chapter.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-112. Procedure. — The first seller of beverages subject to the deposit fee under this chapter shall keep accurate records of all sales of the beverages subject to this chapter, and shall provide the Department of Treasury and Administration with supporting documents to substantiate the accuracy of all reports filed.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-113. Presumption. — It shall be presumed that all beverage containers are subject to the deposit fee imposed by this chapter until the contrary is proved, and the burden of proving that a beverage container is not subject to the deposit fee shall be upon the seller.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-114. Prepayment. — The first seller of beverage containers shall have the option of prepaying all deposit fees due under this chapter in accordance with regulations issued by the Director of the Department of Treasury and Administration.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-115. Financial regulations. — The Director of the Department of Treasury and Administration may promulgate, amend and enforce appropriate rules and regulations regarding the collection of the deposit fee and the establishment and operation of the Recycling Fund. These rules and regulations shall be adopted pursuant to the procedures set forth in Chapter 1 of Title 8 of this Code, and when approved by the Governor, shall have the force and effect of law.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-116. Lien on property. — All deposit fees imposed under this chapter shall be a lien upon any property of the person obligated to pay the deposit fees and may be collected by levy upon such property in the same manner as the levy of an execution.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-117. Civil penalty. — All deposit fees due under this chapter shall be subject to a penalty of five percent (5%) of the unpaid fees due per month or portion thereof that such fees remain unpaid.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-118. Criminal penalty. — Any person who knowingly, willfully and unlawfully violates or refuses to comply with any provision of this chapter, or with any regulation duly issued by the Director of the Department of Treasury and Administration or the EPA for the enforcement of this chapter shall, upon conviction thereof, be imprisoned for not more than 90 days, or fined not more than \$500, or both such fine and imprisonment. The criminal penalties are in addition to the civil penalties which may be due under this chapter.

Source: S.L. No. 7L-96-11 §1, 8/1/11

§3-119. Deposit of penalty payments. — All civil and criminal penalties paid pursuant to §3-117 and §3-118 of this chapter shall be deposited in the Recycling Fund established by §3-105 of this chapter.

Source: S.L. No. 7L-96-11 §1, 8/1/11

CHAPTER 4 CONTROL OF PLASTIC WASTES

Section

4-101 Findings and purpose

4-102 Definition

4-103 Prohibition regarding plastic bags

4-104 Exceptions

4-105 Rules and regulations

§4-101. Findings and purpose. — Plastic bags provided by wholesale and retail businesses to contain and carry out merchandise purchased by consumers at those establishments are often quickly discarded into the environment after a single use. These plastic bags, however, have an estimated decay life of 1,000 years. It is therefore declared to be the public policy of the state of Pohnpei that this state shall rid itself of the unsightly nuisance and environmental hazards of plastic bag debris.

Source: S.L. No. 7L-103-11 §1, 10/12/11

§4-102. Definition. — Except as provided in §4-104 of this chapter, “plastic bag” means a carryout bag that is less than 5.0 mils thick and made primarily of thermoplastic synthetic polymeric material which is provided by a wholesale or retail establishment to a customer at the point of sale and incidental to the purchase of other goods.

Source: S.L. No. 7L-103-11 §1, 10/12/11

§4-103. Prohibition regarding plastic bags. —

(1) Except as provided in §4-104 of this chapter, no person selling or distributing any merchandise within the state, whether at wholesale or retail, shall offer or provide any form of plastic bag to hold or contain such merchandise for the convenience of the customer.

(2) Any person who violates this section shall be fined not more than \$100 for each offense. If any person after receiving written notice of a violation fails to cure such violation within such time and under such conditions as determined by the rules and regulations, such person shall be subject to a citation for a new and separate violation. There shall be a fine of not more than \$500 for each additional violation. The Environmental Protection Agency may also seek injunctive relief to prevent further violations.

Source: S.L. No. 7L-103-11 §1, 10/12/11

Note: The prohibition on plastic bags shall take effect on April 22, 2012.

§4-104. Exceptions. — The ban on plastic bags imposed by §4-103 of this chapter shall not apply to:

(1) The original packaging materials in which the merchandise is enclosed upon its manufacture, fabrication or preparation, inclusive of sanitary wrapping that is directly applied to fresh or frozen food products prepared by the retailer and as approved by the Environmental Protection Agency in the manner prescribed by said Agency in its regulations issued pursuant to this chapter;

(2) Plastic bags used exclusively to carry chilled or frozen merchandise sold by the merchant, such as refrigerated meats and vegetables and freezer ice cream and ice cubes, irrespective of whether the individual chilled or frozen commodities are also originally packaged in plastic as described in Subsection (1) of this section;

(3) Plastic bags certified by the Pohnpei State Environmental Protection Agency to be fully biodegradable within five years of their manufacture; and

(4) Durable plastic bags with a material thickness of at least five mil and sacks and satchels made of composite materials, which bags, sacks or satchels are certified by the Pohnpei State Environmental

Protection Agency to be convertible to continuous and rigorous use for household or business purposes for at least five years from the date of manufacture.

Source: S.L. No. 7L-103-11 §1, 10/12/11

§4-105. Rules and regulations. — Subject to the Administrative Procedures Act, Title 8 Chapter 1 of this Code, the Environmental Protection Agency shall make, promulgate and amend such rules and regulations as the Agency deems necessary to implement and enforce this chapter. All such rules and regulations shall, upon the approval of the Governor, carry the force and effect of law.

Source: S.L. No. 7L-103-11 §1, 10/12/11

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