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A BILL FOR AN ACT

To provide for the protection and enhancement of environmental quality of the air, land, and water of the Federated States of Micronesia; to provide for the establishment of the Federated States of Micronesia Environmental Protection Board; to provide for the delegation and transition of functions of the Trust Territory Environmental Protection Board to the Federated States of Micronesia Environmental Protection Board; to provide for cooperation between the new Board and the States in protecting the environment; and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Short title. This act may be cited as the Federated
2 States of Micronesia Environmental Protection Act.

3 Section 2. Public policy.

4 (1) The Federated States of Micronesia, recognizing the
5 profound impact of man's activity on the interrelations of all components
6 of the natural environment, particularly the profound influences of
7 population growth and redistribution, cultural change, resources
8 exploitation, and new expanding technological advances, and recognizing
9 further the critical importance of restoring and maintaining environmental
10 quality to the overall welfare and development of man, declares that it is
11 the continuing policy of the Federated States of Micronesia, in
12 cooperation with State and municipal governments, and other concerned
13 public and private organizations, to use all practicable means and
14 measures, including financial and technical assistance, in a manner
15 calculated to foster and promote the general welfare, to create and
16 maintain conditions under which man and nature can exist in productive
17 harmony, and fulfill the social, economic, and other requirements of
18 present and future generations of the Federated States of Micronesia.

19 (2) In order to carry out the policy set forth in this act, it
20 is the continuing responsibility of the Federated States of Micronesia to
21 use all practicable means, consistent with other essential considerations
22 of National policy, to improve and coordinate governmental plans,
23 functions, programs, and resources to the end that the inhabitants of the
24 Federated States of Micronesia may:

25 (a) Fulfill the responsibilities of each generation as

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1 trustee of the environment for succeeding generations;

2 (b) Assure for all Micronesians safe, healthful,
3 productive, and esthetically and culturally pleasing surroundings;

4 (c) Attain the widest range of beneficial uses of the
5 environment without degradation, risk of health or safety, or other
6 undesirable and unintended consequences; and

7 (d) Preserve important historic, cultural, and natural
8 aspects of our Micronesian heritage, and maintain, wherever possible,
9 an environment which supports diversity and variety of individual
10 choice.

11 (3) The effort to protect and preserve the environment will
12 be carried forward in close cooperation with the States in the
13 formulation of policy, enforcement, and other activities.

14 (4) The Federated States of Micronesia recognizes that each
15 person has a responsibility to contribute to the preservation and
16 enhancement of the environment.

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

19 (1) "Administrator" means the administrator of the United
20 States Environmental Protection Agency;

21 (2) "Board" means the Federated States of Micronesia
22 Environmental Protection Board;

23 (3) "Chairman of the Environmental Protection Board" or
24 "Chairman" shall mean the Chairman personally or his duly authorized
25 representative;

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1 (4) "Federal acts" or Federal act" means the United States
2 Safe Drinking Water Act, Public Law No. 93-523; the United States
3 Federal Environmental Pesticide Control Act of 1972, Public Law No.
4 92-516; and the United States Federal Water Pollution Control Act, as
5 amended, Public Law No. 92-500;

6 (5) "National Government" means the National Government of
7 the Federated States of Micronesia.

8 (6) "Person" means the Federated States of Micronesia, a
9 State, municipality, political subdivision, a public or private
10 institution, corporation, partnership, joint venture, association,
11 firm, or company organized or existing under the laws of the Federated
12 States of Micronesia or any State or country, lessee or other occupant
13 of property, or individual, acting singly or as a group;

14 (7) "Primary drinking water regulation" means a regulation
15 which:

16 (a) Applies to public water systems;

17 (b) Specifies contaminants which, in the judgment of
18 the Board, may have any adverse effect on the health of persons; and

19 (c) Specifies for each such contaminant either:

20 (i) A maximum contaminant level, if, in the
21 judgment of the Board, it is economically and technologically feasible
22 to ascertain the level of such contaminant in water in public water
23 systems; or

24 (ii) If, in the judgment of the Board, it is not
25 economically or technologically possible to so ascertain the level of

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1 such contaminant, each treatment technique known to the Board which
2 leads to a reduction in the level of such contaminant sufficient to
3 satisfy the requirements of section 1412 of the Safe Drinking Water
4 Act, United States Public Law No. 93-523;

5 (d) Contains criteria and procedures to assure a supply
6 of drinking water which dependably complies with such maximum
7 contaminant levels; including quality control and testing procedures to
8 ensure compliance with such levels and to ensure proper operation and
9 maintenance of the system and requirements as to:

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

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

14 (8) "Public water system" means a system for the provision
15 to the public of piped water for human consumption, if such system has
16 at least 15 service connections or regularly serves at least 25
17 individuals. Such term includes:

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

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

24 (9) The term "secondary regulation" means a regulation which
25 applies to public water systems and which specifies the maximum

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1 contaminant level which in the judgment of the Board are requisite to
2 protect the public welfare. Such regulations may apply to any
3 contaminant in drinking water:

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

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

11 (10) "State plan" means an individual plan for:

12 (a) The certification of applicators of pesticides
13 under section 4 of the Federal Insecticide, Fungicide, and Rodenticide
14 Act (FIFRA), as amended; or

15 (b) Issuance of pesticide product registrations to meet
16 special local needs as defined under section 24(a) of FIFRA, as
17 amended; or

18 (c) Issuance of experimental use permits under section
19 (5) (f) FIFRA, as amended.

20 Section 4. Federated States of Micronesia Environmental
21 Protection Board created; Membership; Terms; Vacancies; Chairman;
22 Vice Chairman; Records; Qualifications.

23 (1) There is hereby established in the Office of the
24 President a board to be known as the Federated States of Micronesia
25 Environmental Protection Board to be composed of seven members as

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1 follows: one representative from each of the four States of the
2 Federated States of Micronesia and three members at large, to be
3 appointed by the President with the advice and consent of the Congress
4 of the Federated States of Micronesia. The initial appointments of the
5 members shall be made as follows: two for a period of one year; two
6 for a period of two years; and three for a period of three years.
7 Successors to the first appointees hereunder shall be appointed for
8 terms of three years each. Vacancies shall be filled by the President
9 by appointment, in the same manner as the original appointment was
10 made, for the unexpired term.

11 (2) The Board shall elect from among its members a Chairman
12 and Vice Chairman. The President shall designate a member to serve as
13 temporary chairman of the Board until such time as the Board shall
14 elect a chairman.

15 (3) The Board shall provide for the keeping of all of its
16 records and actions. These records shall be open to the public for
17 public inspection.

18 (4) The President in his appointments shall select persons
19 for their ability and who are citizens of the Federated States of
20 Micronesia. All appointments shall be of such nature as to aid the
21 work of the Board to inspire the highest degree of cooperation and
22 confidence in carrying out the policy and purpose of this act.

23 Section 5. Meetings; Quorum.

24 (1) The Board shall meet at least once each calendar
25 quarter. Meetings may be held at any time or place to be determined by

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1 the Board upon the call of the Chairman or upon written request of any
2 three members. All announcements of meetings shall be posted in public
3 places and shall be announced on the radio throughout the Federated States of
4 Micronesia.

5 (2) Five members of the Board shall constitute a quorum for
6 the transaction of business.

7 Section 6. Compensation. Members of the Board who are employed
8 by either the State or National Government shall serve without
9 compensation as such, but shall be entitled to receive reasonable
10 travel costs and per diem at standard Federated States of Micronesia
11 rates when engaged in the performance of the duties of the Board. Any
12 employee of the National Government shall be granted leave with pay
13 while engaged in the performance of the duties of the Board.

14 Section 7. Technical assistance. The Board may call upon any
15 department, office, or agency of the National Government for technical
16 assistance. All departments, offices, or agencies of the National
17 Government shall, upon request, assist the Board in the performance of
18 its duties.

19 Section 8. Officers; Staff.

20 (1) The Attorney General shall, upon request of the
21 Chairman, act as legal advisor to the Board.

22 (2) The Board shall designate a full-time salaried executive
23 officer who shall administer the functions of the Board and shall have
24 such duties and responsibilities as may be delegated to him by the
25 Board. The executive officer shall not be a member of the Board and

1 shall not have the right to vote.

2 (3) The executive officer shall be assisted in his duties by
3 supporting staff to include an environmental specialist, sanitary
4 engineer, secretary, and such other staff as the Board determines to be
5 necessary.

6 Section 9. Reports. The Board shall transmit to the President
7 and Congress, no later than May 9 of each year, an environmental
8 quality report for the preceding calendar year, which shall set forth:

9 (a) The status and conditions of the major natural,
10 manmade, or altered environmental classes of the Federated States of
11 Micronesia, including, but not limited to, the air; the waters,
12 including marine, estuarine, and fresh water; and the terrestrial
13 environment, including, but not limited to, the forest, mangrove areas,
14 beaches, reefs, drylands, wetlands, and urban and rural environments;

15 (b) Current and foreseeable trends in the quality,
16 management, utilization of such environments and the effects of those
17 trends on the social, economic, and other requirements of the Federated
18 States of Micronesia;

19 (c) The adequacy of available natural resources for
20 fulfilling human and economic requirements of the Federated States of
21 Micronesia in the light of expected population pressures;

22 (d) A review of the program and activities (including
23 regulatory activities) of the National Government, State governments,
24 local governments, and nongovernmental entities or individuals, with
25 particular reference to their effect on the environment, the

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1 conservation, development, and utilization of natural resources and the
2 social and economic requirements of the Federated States of Micronesia;
3 and

4 (e) A program for remedying the deficiencies of
5 existing programs and activities, together with recommendations for
6 legislation.

7 Section 10. General powers and duties of the Board. The Board
8 shall have the power and duty to protect the environment, human health,
9 welfare, and safety and to abate, control, and prohibit pollution or
10 contamination of air, land, and water in accordance with this act and with
11 the regulations adopted and promulgated pursuant to this act. The
12 Board shall balance the needs of economic and social development
13 against those of environmental quality and shall adopt regulations and
14 pursue policies which, to the maximum extent possible, promote these
15 twin needs, any other provision of this act notwithstanding.

16 Section 11. Specific powers and duties of the Board. For the
17 purposes set forth in section 10 of this act, the Board is authorized
18 and empowered to:

19 (1) Adopt, approve, amend, revise, promulgate, and repeal
20 regulations, in the manner which is or may be provided by law, to
21 effect the purposes of this act, and enforce such regulations which
22 shall have the force and effect of law;

23 (2) Adopt, approve, amend, revise, promulgate, and repeal
24 primary and secondary drinking water regulations, including the
25 establishment of an underground injection control program, which

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1 program shall conform to all requirements of the Safe Drinking Water
2 Act (U.S. Public Law No. 93-523) and any applicable regulations
3 promulgated thereunder, and enforce such regulations which shall have
4 the force and effect of law;

5 (3) Accept appropriations, loans, and grants from the United
6 States government or any agency thereof and other sources, public or
7 private, which loans, grants, and appropriations shall not be expended
8 for other than the purposes of this act;

9 (4) Adopt and provide for the continuing administration of a
10 Federated States of Micronesia-wide program for the protection of the
11 environment, human health, welfare, and safety, and for the prevention,
12 control, and abatement of pollution of the air, land, and water,
13 including programs for the abatement or prevention of the contamination
14 of drinking water systems of the Federated States, and from time to
15 time review and modify such programs as necessary;

16 (5) Establish criteria for classifying air, land, and water
17 in accordance with present and future uses;

18 (6) Adopt and implement plans for the certification of
19 applicators of pesticides, for the issuance of experimental use permits
20 for pesticides and a plan to meet special local needs, and such other
21 measures as may be necessary to carry out the purposes of the Federal
22 Insecticide, Fungicide, and Rodenticide Act (U.S. Public Law No.
23 92-516);

24 (7) Establish and provide for the continuing administration
25 of a permit system whereby a permit shall be required for the discharge

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1 by any person of any pollutant in the air, land, or water, or for the
2 conduct by any person of any activity, including, but not limited to,
3 the operation, construction, expansion, or alteration of any installation,
4 which results in or may result in the discharge of any pollutant in the
5 air, land, or water, provide for the issuance, modification, suspension,
6 revocation, and termination of such permits, and for the posting of an
7 appropriate bond; and

8 (8) Collect information and establish record keeping,
9 monitoring, and reporting requirements as necessary and appropriate to
10 carry out the purposes of this act.

11 Section 12. National and State cooperation in policy-making,
12 enforcement, and other activities.

13 (1) The Board is authorized to enter into written cooperative
14 agreements with the District Advisory Boards of each State for the
15 following purposes; PROVIDED that such delegation will not jeopardize any
16 grant of financial assistance:

17 (a) Collecting data and any information relative to
18 identifying the local needs with respect to controlling, protecting, and
19 enhancing the environmental quality of the State and the Federated States
20 of Micronesia islands;

21 (b) Act as an agent of the Federated States of Micronesia
22 Environmental Protection Board in implementing its programs at the
23 State level;

24 (c) Accept allotments from the Federated States of Micro-
25 nesia Environmental Protection Board for the purpose of implementing

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1 environmental protection program activities within each State;

2 (d) Conduct investigations, make studies,
3 review local grievances, and make recommendations as needed to
4 the Federated States of Micronesia Environmental Protection Board
5 for constructive action;

6 (e) Conduct its activities as a committee for
7 the Federated States of Micronesia Environmental Protection Board
8 under appropriate circumstances; and

9 (f) Perform any other related activities within
10 the jurisdiction of the Federated States of Micronesia Environmental
11 Protection Board.

12 (2) Such function or functions delegated to the States
13 pursuant to subsection 1 of this section may be reassumed and
14 performed by the Board if such delegation will result in the actual
15 termination of any financial grant under the federal acts. Notice
16 of such reassumption shall be by written notice to each State
17 Advisory Board involved.

18 Section 13. Environmental requirements for development
19 proposals. All public and private agencies shall include in their
20 major development proposals an environmental assessment study in
21 accordance with regulations established by the Board.

22 Section 14. Right of entry. Whenever it is necessary for
23 the purposes of this act, the Board, or any member, agent, or
24 employee when duly authorized by the Board or by court order may,
25 at reasonable times, enter any establishment or upon any property,

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1 public or private, for the purpose of obtaining information, making
2 inspections, obtaining samples, inspecting or copying records
3 required to be maintained by the provisions of this act and any
4 regulations promulgated thereunder, or conducting surveys or
5 investigations for the purpose of carrying out the purpose and
6 policy of this act.

7 Section 15. Violations subject to enforcement--Civil penalty.

8 Any person who violates any provision of this act shall be subject
9 to enforcement action by the Board. Such enforcement action may
10 include, but not be limited to, issuance of an order to cease and
11 desist from such violation, imposition of a civil penalty of up to
12 \$10,000 for each day of violation, or commencement of a civil action
13 to enjoin such violation.

14 Section 16. Discharge of waste--Cease and desist orders.

15 (1) Whenever the Board finds that a discharge of waste is
16 taking place or threatening to take place within the Federated States
17 of Micronesia that violates or will violate requirements prescribed by
18 the Board or that the waste collection, treatment, or disposal
19 facilities of a discharger are approaching capacity, the Board shall
20 require the discharger to submit for approval of the Board, with such
21 modifications as it may deem reasonably necessary, a detailed time
22 schedule of specific actions the discharger shall take in order to
23 correct or prevent a violation of requirements.

24 (2) When the Board finds that a discharge of waste is taking
25 place or threatening to take place within its jurisdiction in violation

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1 of requirements of discharge prohibitions prescribed by the Board, the
2 Board shall issue an order to cease and desist and direct that those
3 persons not complying with requirements or discharge prohibitions:

4 (a) Comply forthwith;

5 (b) Comply in accordance with a time schedule set by
6 the Board, or

7 (c) In the event of a threatened violation, take
8 appropriate remedial or preventive action.

9 (3) In the event of an existing or threatened violation of
10 waste discharge requirements in the operation of a community system,
11 cease and desist orders may restrict or prohibit the volume, type, or
12 concentration of waste that might be added to such system by
13 dischargers who did not discharge into the system prior to the issuance
14 of the cease and desist order.

15 (4) A public hearing to determine the authenticity of the
16 facts upon which the cease and desist order was issued shall be
17 conducted by the Board, adequate notice of which and opportunity to
18 appear and be heard at which shall be afforded to all interested
19 persons.

20 (5) Cease and desist orders of the Board shall become
21 effective upon issuance and final as to the Board upon issuing findings
22 after a public hearing. Copies shall be served forthwith by registered
23 mail upon the person being charged with the violation of the
24 requirements and upon other affected persons who appeared at the
25 hearing and requested a copy.

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1 Section 17. Discharge of pollutants-abatement.

2 (1) Any person who discharges any pollutant into the water,
3 air, or on the land of the Federated States of Micronesia in violation
4 of any discharge permit, requirement, or other order issued by the
5 Board or who intentionally or negligently causes or permits any
6 pollutant to be deposited where it is discharged into the water, air,
7 or land of the Federated States of Micronesia shall, upon order of the
8 Board, clean up such pollutant or abate the effects thereof.

9 (2) Upon failure of any person to comply with such clean up
10 or abatement order, the Attorney General or his designated
11 representative, at the request of the Board, shall petition the Trial
12 Division of the Federated States of Micronesia Supreme Court for the
13 issuance of an injunction, mandamus, or other appropriate remedy
14 requiring such person to comply therewith.

15 Section 18. Administrative procedure applicable. The provisions
16 of this section and of sections 15 through 17 and 19 of this act shall
17 be interpreted consistently with the provisions of any law concerning
18 administrative procedure which is or may hereafter become Federated
19 States of Micronesia law. In the event of conflict between the two,
20 the provisions of the latter shall supersede and be controlling.

21 Section 19. Judicial review.

22 (1) Any person who may be adversely affected by the
23 enforcement of any standard policy, regulation, permit, or order of the
24 Board and who alleges its invalidity may file a petition for a
25 declaratory judgment thereon addressed to the Trial Division of the

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1 Federated States of Micronesia Supreme Court.

2 (2) The Court shall declare the standard, policy,
3 regulation, permit, or order invalid if it finds that it exceeds the
4 statutory authority of the Board, or is arbitrary and capricious.

5 Section 20. Fines and penalties.

6 (1) Any person who violates any provision of this act, or of
7 any permit, regulation, standard, or order issued or promulgated
8 hereunder, shall be subject to a civil penalty not to exceed \$10,000
9 per day of such violation. Such sums shall be paid to the Treasury of
10 the Federated States of Micronesia for credit to the General Fund of
11 the Federated States of Micronesia.

12 (2) The Attorney General or his designated representative,
13 upon request of the Board, shall petition the Trial Division of the
14 Federated States of Micronesia Supreme Court for a judgment assessing
15 damages. In determining such damages, the Court shall take into
16 consideration all relevant circumstances, including, but not limited
17 to, the extent of harm caused by the violation, the nature and
18 persistence of the violation, the length of time over which the
19 violation occurs, and corrective action, if any, taken by the
20 discharger.

21 (3) Any person who willfully or negligently:

22 (a) Discharges pollutants in violation of this act or
23 in violation of any condition or limitation included in a permit issued
24 under section 10 or 11; or

25 (b) Violates the requirements of section 10 or 11; or

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1 (c) With respect to the introduction of pollutants into
2 publicly owned treatment works, violates a pretreatment standard or
3 toxic effluent standard, shall be guilty of a misdemeanor, and upon
4 conviction thereof, shall be punished by a fine of not less than \$2,500
5 nor more than \$25,000 per day of violation. If such conviction is for
6 a violation committed after a first conviction of such person under
7 this act, punishment shall be a fine of not more than \$50,000 per day
8 of violation.

9 (4) Any person who knowingly makes any false statement,
10 representation, or certification in any application, record, report,
11 plan, or other document filed or required to be maintained under this
12 act, or by any permit, regulation, or order issued under this act, or
13 who falsifies, tampers with, or knowingly renders inaccurate any
14 monitoring device or method required to be maintained under this act or
15 by any permit, regulation, or any order issued under this act, shall be
16 guilty of a misdemeanor, and upon conviction thereof, shall be punished
17 by a fine of not more than \$10,000, or by imprisonment for not more
18 than 6 months, or by both.

19 Section 20. Transition. In order to ensure continued compliance
20 with the requirements of the federal acts and the United States Environmental
21 Quality Protection Act (title 25 of the Code of the Federated States of
22 Micronesia) and all regulations adopted pursuant thereto shall remain
23 in effect and shall control in the event of any conflict with this act,
24 except as follows:

25 (1) The Trust Territory Environmental Protection Board

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1 (TTEPB) may delegate through memorandum of understanding any of its
2 functions to the Board consistent with the requirements of the federal
3 acts, upon a finding by the TTEPB that such delegation will not
4 jeopardize any grant of financial assistance. Such delegated function
5 or functions may be reassumed and performed by the TTEPB, pursuant to
6 written notice to the Board, if such delegation will result in the
7 actual termination of any financial grant;

8 (2) Chapter 4 of title 25 of F.S.M.C. is repealed in its
9 entirety with respect to the National Government of the Federated
10 States of Micronesia. The District Advisory Board of each State,
11 created pursuant to chapter 4 of title 25 of the Code of the Federated States
12 of Micronesia, shall remain unaffected by this repeal or the repeal under
13 subsection (3) of this act. Each advisory board is within the jurisdiction
14 and control of its respective State. This act shall not be construed so as
15 to prevent a State legislature from enacting law to create a State Advisory
16 Board for the purpose of assuming the functions of the existing District
17 Advisory Board.

18 (3) The remainder of title 25 of the Code of the Federated States
19 of Micronesia shall be repealed in its entirety upon:

20 (i) The amending of Secretarial Order No. 3039 section
21 3(a)3; and

22 (ii) The amendment of the federal acts allowing the
23 Federated States of Micronesia to become a direct grantee.

24 (4) Upon repeal under subsection (3) of this act, all valid
25 regulations adopted pursuant to title 25 of the Code of the Federated States

1 of Micronesia shall continue to remain in effect until amended or repealed.
2 All references in said regulations to officials, boards, and agencies of the
3 Trust Territory Government shall refer to the functionally equivalent official,
4 board, or agency of the National Government pursuant to this act.

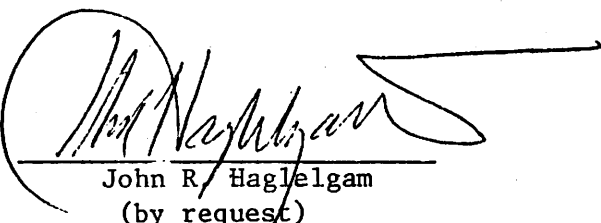
5 (5) Upon repeal under subsection (3) of this act, valid
6 permits and certificates issued for activities within the Federated
7 States of Micronesia pursuant to title 25 of the Code of the Federated States
8 of Micronesia shall continue to remain in effect in accordance with the
9 terms and conditions thereof until amended, suspended, or revoked pursuant to law.

10 Section 21. Severability and savings clause. If any provision
11 of this act or any regulation or order promulgated hereunder, or the
12 application of any such provision, regulation, or order to any person or
13 circumstances shall be held invalid, the remainder of this act, or any
14 regulations or orders promulgated pursuant thereto, or the application
15 of such provisions, regulations, or orders to persons or circumstances
16 other than those to which it is held invalid shall not be affected
17 thereby, and to this extent the provisions of this act are severable.

18 Section 22. Effective date. This act shall become law upon
19 approval by the President of the Federated States of Micronesia or upon
20 its becoming law without such approval.

21
22 Date: 6/6/83

Introduced by:


John R. Haglelgam
(by request)