

National Environmental Protection Act 1984 [35 MIRC Ch 1]

35 MIRC Ch 1

MARSHALL ISLANDS REVISED CODE 2004

TITLE 35. – ENVIRONMENT

CHAPTER 1.

ENVIRONMENTAL PROTECTION

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An Act to provide for the establishment of a National Environmental Protection Authority for the protection and management of the environment, and for matters connected therewith or incidental thereto.

[Section numbering style modified to conform to new Code format (Rev.2003)]

Commencement: December 19, 1984
Source: P.L. 1984-31
P.L. 1987-2
P.L. 2002-55

PART I - PRELIMINARY

§101. Short title.

This Act may be cited as the 'National Environmental Protection Act 1984'. **[P.L. 1984-31, § 1.]**

§102. Application.

This Act shall have effect subject to Title I, Article VI of the Compact of Free Association by and between the Government of the United States of America and the Government of the Marshall Islands. **[P.L. 1984-31, §2.]**

§103. Interpretation.

In this Act unless the context otherwise requires:

- (a) 'the Authority' means the National Environmental Protection Authority established under Section 104 of this Act;
- (b) 'beneficial uses' means a use of the environment that is conducive to public benefit, welfare, safety or health and which requires protection from the effects of wastes, discharges, emissions and deposits;
- (c) 'the Council' means the Environmental Advisory Council established under Section 140 of this Act;
- (d) 'environment' means the physical factors of the surroundings of human beings and includes the land, soil, water, atmosphere, climate, sound, odors, tastes and the biological factors of animals and plants of every description situated within the territorial limits of the Republic including the exclusive economic zone;
- (e) 'exclusive economic zone' means the zone declared to be the exclusive economic zone under Section 108 of the Marine Zones (Declaration) Act 1984;
- (f) 'the Fund' means the National Environmental Protection Authority Fund established under Section 135 of this Act;
- (g) 'land' includes messuages, buildings and any easements relating thereto;
- (h) 'local authority' means any Local Government Council and includes any authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding or similar to the powers, duties and functions exercised, performed and discharged by any such Council;
- (i) 'the President' means the President of the Republic of the Marshall Islands;
- (j) 'pollution' means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by the discharge, emission or deposit of wastes so as to affect any beneficial use adversely or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, aquatic life or to plants of every description;
- (k) 'protection and management' includes all rules, regulations, methods and measures that:
 - (i) are required to build, restore or maintain, or are useful in building, restoring or maintaining the environment; and
 - (ii) are designed to ensure that:
 - (A) beneficial uses may be made on a continuing basis;
 - (B) irreversible or long-term ill effects on the environment are avoided; and,

(C) there will be a multiplicity and variety of options available with respect to uses of the environment;

(l) 'public water system' means a system for the provision of pipe-borne water for human consumption that has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals, including:

(i) any collection, treatment, storage and distribution facilities under the control of the operator of the system, which are used primarily in connection with that system; and

(ii) any collection or pretreatment storage facilities whether or not under the control of such system, which are used primarily in connection with such system;

(m) 'waste' includes any matter prescribed by regulation to be waste, and any matter whether liquid, solid, gaseous, or radioactive which is discharged, emitted or deposited in the environment in such volume, component or manner as to cause an alteration of the environment. [P.L. 1984-31, § 3.][paragraph (i) amended by P.L. 2002-55]

PART II- NATIONAL ENVIRONMENTAL PROTECTION AUTHORITY

§104. Establishment of the Authority.

(1) For the purposes of this Act, there shall be established an Authority called the National Environmental Protection Authority (in this Act referred to as the 'Authority').

(2) The Authority:

(a) shall be a body corporate with perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold, charge or dispose of property; and

(d) may sue or be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and shall presume that it was duly affixed.

(4) The common seal of the Authority shall be in the custody of the Authority and may be altered in such manner as may be determined by the Authority.

(5) The common seal of the Authority shall not be affixed to any document except in the presence of the Chairman of the Authority or a member of the Authority authorized by the Authority to sign on his behalf, and the General Manager of the Authority or an officer of the Authority authorized by the Authority to sign on his behalf. [P.L. 1984-31, §4.]

§105. Inapplicability of the Corporations, Partnership and Associations Act.

The provisions of the Corporations, Partnership and Associations Act shall not apply or relate

to the Authority. [P.L. 1984-31, §5.]

§106. Members and their appointments.

(1) The Authority shall consist of a Chairman and four (4) other members:

(a) two (2) of whom shall be persons with adequate qualifications and experience in the subject of the environment;

(b) one of whom shall be a person with adequate skill and experience in environmental management; and

(c) one of whom shall be a person representing the general public.

(2) The President shall appoint the Chairman and other members of the Authority.

(3) Every member of the Authority shall, subject to Section 108 of this Act, hold office for a term of four (4) years and shall, unless removed from office, be eligible for reappointment. [P.L. 1984-31, §6][(2) amended by P.L. 2002-55]

§107. Compensation.

(1) The Chairman and other members of the Authority, except a member who otherwise holds a salaried office under the Government of the Marshall Islands, shall be entitled to receive such compensation for their services as the Cabinet may determine.

(2) All members of the Authority shall be entitled to receive travel expenses and per diem allowances at such rates and upon such terms and conditions as may be determined by the Authority; provided, however, that such rates shall in no event exceed rates paid to employees of the Government of the Marshall Islands. [P.L. 1984-31, §7.]

§108. Vacation of office.

(1) A member of the Authority vacates his office:

(a) upon death;

(b) subject to Subsection (2) of this Section, if he resigns his office by letter addressed to the President; or

(c) if he is removed from office under Subsection (3) or (4) of this Section.

(2) A resignation under Subsection (1) of this Section shall take effect when it is received by the President or on such later date as may be agreed upon between the President and the member resigning.

(3) The President may for cause remove the Chairman or any other member of the Authority from office.

(4) The President may suspend the Chairman or any other member of the Authority from office pending a decision under Subsection (3) of this Section.

(5) In the event of the vacation of office by the Chairman or any other member of the Authority the President may appoint another person in his place. Any person so appointed shall hold office during the period of the unexpired term of the member whom he succeeds.

(6) If the Chairman or any other member of the Authority is unable to discharge the duties of his office on account of ill health or absence from the Republic or any other cause, the President may, appoint another person to act in his place.

(7) Any appointment made by the President under this Section or Section 105 of this Act whether permanent, temporary or following a vacation of office, shall be published in the Government Gazette.

(8) Any decision by the President to remove or suspend the Chairman or any other member of the Authority from office shall be final and conclusive and shall not be questioned in any court of law in any manner whatsoever.

(9) No act or proceeding of the Authority shall be invalid by reason only of the existence of any vacancy among its members or any irregularity in the appointment of a member thereof. [P.L. 1984-31, §8.][subsections (5) and (6) amended by P.L. 2002-55]

§109. Delegation by the Authority.

(1) The Authority may, by written instrument, delegate any of its powers and functions to any person or body of persons, except the power to make by-laws under Section 113 of this Act and regulations under Section 121 of this Act.

(2) A delegation under Subsection (1) of this Section may relate:

(a) to the whole of the territory of the Republic or any part thereof specified in the instrument of delegation; or

(b) to any or all of the activities conducted by the Authority as specified in the instrument of delegation.

(3) A delegation under Subsection (2) of this Section may be made subject to limitations and conditions.

(4) Any delegation under this Section may be varied or revoked by written instrument, and no such delegation shall prevent the exercise or performance of any power or function by the Authority. [P.L. 1984-31, §9.]

§110. Procedure.

Subject to this Act and to the by-laws made under Section 113 of this Act the Authority shall determine its own procedures. [P.L. 1984-31, §10.]

§111. Disclosure of, and disqualification for, interest.

(1) If a member of the Authority has any personal interest in the subject matter of any question before a meeting of the Authority:

- (a) he shall disclose such interest at the meeting; and
- (b) he shall not participate in the deliberations (except as directed by the Authority) or in the decision of the Authority on the question.

(2) A disclosure under Subsection (1) of this Section shall be recorded in the minutes.

(3) Unless the President directs otherwise, failure to comply with the requirements of Subsection (1) or (2) of this Section shall not invalidate any act or proceeding of the Authority. [P.L. 1984-31, §11.]

§112. Misconduct in public office.

A failure to comply with Section 111 of this Act shall be deemed to be misconduct in public office within the meaning of Section 146 of the Criminal Code. [P.L. 1984-31, §12, modified.]

§113. Bylaws.

(1) Subject to this Act and any regulations made under Section 121 of this Act, the Authority may make bylaws to govern and regulate the operations of the Authority.

(2) The by-laws shall provide for:

- (a) the quorum at and the conduct of the meeting of the Authority;
- (b) the appointment and duties of a Secretary to the Authority; and
- (c) any other matters relating to the Authority and the operations of the Authority which the Authority may think appropriate. [P.L. 1984-31, §13.]

§114. Staff of the Authority.

(1) Subject to the directions of the President, the Authority:

- (a) shall employ an executive officer called the General Manager of the Authority who shall be a person with adequate skill and experience in administration; and
- (b) may employ such other officers, servants, agents, consultants and advisers as may be necessary for the performance of the duties and functions of the Authority.

(2) Persons referred to in Subsection (1) of this Section shall be employed on such terms and conditions as may be determined by the Authority in consultation with the Public Service

Commission.

(3) At the request of the President, the Public Service Commission may make available to the Authority services of any members of the Public Service on such terms and conditions as that Commission may determine.

(4) Where pursuant to Subsection (3) of this Section a member of the Public Service is appointed to serve the Authority he shall be subject to the disciplinary control of the Public Service Commission.

(5) Except as provided in this Section, Article VII of the Constitution of the Marshall Islands shall not apply or relate to the Authority. [P.L. 1984-31, §14][P.L. 2002-55 amending (1) and (3)]

§115. Application of bribery laws.

Every member and employee of the Authority shall be subject to the provisions of Section 118 of the Criminal Code with respect to every act in the performance of his duties under the Authority, and any such act shall be deemed to be an official act within the meaning of Section 118 of the Criminal Code herein referred to. [P.L. 1984-31, §15.]

§116. Protection for action taken under this Act, or on the direction of the Authority.

(1) No suit or prosecution shall lie:

(a) against the Authority for any act which in good faith is done or purported to be done by the Authority under this Act or any regulation made under this Act; or

(b) against any member, officer, servant or agent of the Authority for any act which in good faith is done or purported to be done by him under this Act or any regulation made under this Act or on the direction of the Authority.

(2) Any expenses incurred by the Authority in any suit or prosecution brought by or against the Authority before any court shall be paid out of the Fund of the Authority; and any costs, fines or damages paid to or recovered by the Authority in any such suit or prosecution shall be credited to the Fund of the Authority.

(3) Any expenses incurred by any such person referred to in Subsection(1)(b) of this Section in any suit or prosecution brought against him before any court with respect to any act which is done or purported to be done by him under this Act, or any regulation made under this Act, or on the direction of the Authority shall, if the court holds that such act was done in good faith, be paid out of the Fund of the Authority unless such expenses are recovered by him in such suit or prosecution. [P.L. 1984-31, §16.]

§117. Immunity.

No writ against person or property shall be issued against a member of the Authority in any action brought against the Authority. [P.L. 1984-31, §17.]

§118. Attorney-General.

The Attorney-General shall provide legal assistance and representation to the Authority in any suit or prosecution brought by or against the Authority or against any member, officer, servant or agent of the Authority, and shall advise the Authority on matters of law whenever thereto requested. [P.L. 1984-31, §18.]

PART III - OBJECTS, POLICIES, POWERS, FUNCTIONS AND DUTIES

Division 1 - Objects, Policies and Powers.

§119. Objects.

The primary purpose of the Authority shall be to preserve and improve the quality of the environment, and to that end, the following shall be the objectives of the Authority:

- (a) to study the impact of human activity including population growth and redistribution, cultural change, exploitation of resources and technological advances on the environment;
- (b) to restore and maintain the quality of the environment;
- (c) to use all practicable means including financial and technical assistance to foster and promote the general welfare of the people by creating conditions under which mankind and nature can coexist in productive harmony;
- (d) to improve and coordinate consistently with other essential considerations of national policy, governmental plans, functions, and programs and resources, so as to prevent, as far as practicable, any degradation or impairment of the environment;
- (e) to regulate individual and collective human activity in such manner as will ensure to the people safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (f) to attain the widest possible range of beneficial uses of the environment without degradation or impairment thereof and other undesirable consequences to the health and safety of the people; and
- (g) to preserve important historical, cultural and natural aspects of the nation's culture and heritage, maintaining at the same time an environment which supports multiplicity and variety of individual choice. [P.L. 1984-31, §19.]

§120. Policies of the Authority.

- (1) Subject to this Act, the Authority shall be responsible for determining its own policies for carrying out its objectives, duties and functions.
- (2) The Authority shall keep the President informed of the policies of the Authority and of any major plans, programs and measures for the protection, improvement and management of the environment or any aspects thereof in which the Authority proposes to engage.
- (3) The President may at any time give to the Authority directions as to policy, and in particular as to its priorities.

(4) If the Authority considers that a policy direction under Subsection (3) of this Section:

- (a) is not in the best interest of the performance of its function;
- (b) is not reasonably within the financial capabilities of the Authority; or
- (c) would unduly strain the resources of the Authority;

the Authority may so advise the Cabinet in writing, but until the Cabinet otherwise directs the Authority shall carry out such policy direction.

(5) A copy of any direction given under Subsection (3) of this Section, and of any advice or direction under Subsection (4) of this Section, shall be presented, as soon as practicable, by the President to the Nitijela. [P.L. 1984-31, §20][P.L. 2002-55, substituting 'Minister' with 'President' under (2) (3) and (5)]

§121. Powers of the Authority.

(1) Subject to this Act and any other law, the Authority shall have all such powers as are necessary or convenient for carrying out its objects, duties and functions.

(2) Without prejudice to the generality of the powers conferred by Subsection(1) of this Section, the Authority may in consultation with the Council and any other person or organization in the Republic or abroad, make regulations with respect to the following:

- (a) primary drinking water;
- (b) secondary drinking water;
- (c) pollutants;
- (d) use or application of pesticides, fungicides, insecticides, rodenticides and other chemicals which have a deleterious or harmful effect on the environment or any aspect thereof or human health and safety;
- (e) discharge or hazardous waste; and
- (f) the preservation of important historical, cultural and natural aspects of the nation's heritage, and other aspects of the environment which, in the opinion of the Authority, require regulation.

(3) In addition to the powers conferred by Subsection (2) of this Section the Authority may:

- (a) acquire by purchase, lease, sublease, easement or otherwise, any land or interest in land, with or without any building, for the purpose of its own use, conservation or rehabilitation;
- (b) acquire by purchase, lease, hire or otherwise, any land vehicle, sea craft, aircraft or other

machinery or equipment for the purpose of carrying out its duties and functions;

(c) requisition any land vehicle, sea craft, aircraft or other machinery or equipment as an emergency measure to prevent any threatened damage or repair any actual damage to the environment caused by any natural or human agency;

(d) obtain the advice and services of any person or organization in the Republic or abroad, with or without payment of a fee, wage or salary;

(e) make contracts and other instruments for the supply of goods and services which the Authority may consider necessary or convenient for the effective and efficient discharge of its duties and performance of its functions;

(f) expend monies out of its funds for the purpose of carrying out its duties and functions;

(g) borrow money with the approval of the President (or in accordance with the terms of any general authority given by him) from the Government of the Marshall Islands, any person, bank or other lending institution, in such sum as the Authority may require for its purposes generally or for any particular purpose;

(h) accept grants, advances, contributions, gifts or other assistance in money, materials or services from any source in the Republic or abroad;

(i) detect, prosecute or cause the prosecution of, any offenses committed in contravention of the provisions of this Act and the regulations made under this Act, or take such other action as is therein prescribed; and

(j) whenever it is necessary for the purpose of this Act or any regulation made thereunder, the Authority, any member, servant or agent of the Authority when duly authorized in that behalf by the Authority or by order of court, may, at reasonable times, enter any establishment, building or other premises or upon any land, public or private, for the purpose of obtaining information, making inspections, obtaining samples, inspecting or copying records required to be maintained under the provisions of this Act or any regulation made thereunder, or conducting surveys or investigations or detecting any offenses committed in contravention of the provisions of this Act or any regulation made under this Act. **[P.L. 1984-31, §21][P.L. 2002-55 amending para (g) by inserting 'President' in place of 'Minister']**

§122. Primary drinking water regulations.

(1) The regulations made for the purposes of Section 121(2)(a) of this Act shall:

(a) apply to public water systems;

(b) specify contaminants which, in the opinion of the Authority, may have an adverse effect on human health;

(c) specify for each contaminant:

(i) a maximum permissible contaminant level, if, in the opinion of the Authority, it is economically and technologically feasible to ascertain the level of that contaminant in water in a public water system; or

(ii) if, in the opinion of the Authority, the ascertainment of the level of a certain contaminant is not economically and technologically feasible, each treatment technique known to the Authority which leads to a reduction in the level of that contaminant sufficient to meet the standards set by the Authority; and

(d) specify criteria and procedures to ensure a supply of drinking water which dependably complies with maximum permissible contaminant levels, including:

(i) quality control and testing procedures to ensure compliance with those levels and the proper operation and maintenance of any public water system, functions, contravention of the provisions of this Act and the regulations made under surveys or investigations or detecting any offenses committed in contravention of the provisions of this Act or any regulation made under this Act.

(ii) requirements as to the minimum quality of water which may be taken into any public water system; and

(iii) requirements as to the siting of new facilities for public water systems.

(2) The regulations made for the purposes of Section 121(2)(b) of this Act shall:

(a) apply to public water systems; and

(b) specify the maximum contamination levels which, in the opinion of the Authority, are necessary to protect the public welfare.

(3) The regulations referred to in Subsection (2) of this Section may apply to any contaminant in drinking water which may:

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

(b) otherwise adversely affect the public welfare and may vary according to geographic and other circumstances. [P.L. 1984-31, §22.]

§123. Pollutants.

The regulations made under Section 121(2)(c) of this Act shall provide for:

(a) a permit system under which a permit is required for:

(i) the discharge of a pollutant into the air or water, or on land; or

(ii) the conduct of any activity (including the operation, construction, expansion or alteration of any installation) which results in the discharge of a pollutant into the air or water, or on land;

(b) the issuance, modification, suspension, revocation and termination of any such permits;

and

(c) the posting of appropriate bonds or other securities for compliance. [P.L. 1984-31, §23.]

§124. Pesticides, etc.

The regulations made under Section 121(2)(d) of this Act shall provide for:

- (a) the certification of applicators of pesticides and such other chemical products;
- (b) the issuance of experimental use permits for pesticides and such other chemical products;
and
- (c) plans to meet local needs with respect to pesticides and such other chemical products.
[P.L. 1984-31, §24.]

§125. Nuclear and radioactive waste, etc.

Subject to any law dealing with nuclear and radioactive waste, the regulations made under Section 121 (2)(e) of this Act shall regulate the storage and disposal of nuclear, radioactive and other hazardous waste. [P.L. 1984-31, §25.]

Division 2 - Functions and Duties

§126. Functions and duties of the Authority.

The functions and duties of the Authority shall be:

- (a) to administer the provisions of this Act and the regulations made thereunder;
- (b) to recommend to the President, national environmental policy and criteria for the protection of any aspect of the environment with respect to the uses and values, whether tangible or intangible, to be protected, the quality to be maintained, the extent to which the discharge of wastes may be permitted without detriment to the quality of the environment, and long-range development uses and planning and any other factors relating to the protection and management of the environment;
- (c) to undertake and carry out surveys and investigations as to the causes, nature, extent and prevention of pollution, and to assist and cooperate with other persons or bodies carrying out similar surveys or investigations;
- (d) to conduct, promote and coordinate research in relation to any aspect of environmental degradation or the prevention thereof, and to develop criteria for the protection and improvement of the environment;
- (e) to specify standards, norms and criteria for the protection of beneficial uses and for maintaining the quality of the environment;
- (f) to publish reports and information with respect to any aspects of environmental protection and management;

- (g) to collect information and to establish record keeping, monitoring and reporting requirements as necessary to carry out the principles and objectives of this Act;
- (h) to undertake and carry out investigations and inspections to ensure compliance with this Act and the regulations made thereunder and to investigate complaints relating to noncompliance with any of such provisions;
- (i) to specify methods to be adopted in taking samples and carrying out tests for the purposes of this Act and the regulations made thereunder;
- (j) to provide information and education to the public regarding the protection and improvement of the environment;
- (k) to establish and maintain liaison with other countries and international organizations with respect to environmental protection and management;
- (l) to report to the President upon matters concerning the protection and management of the environment and to advise the Minister as to the need for any new legislation or amendment to existing legislation concerning any aspect of the environment, and upon any matters referred to the Authority by the Minister;
- (m) to promote, encourage, coordinate and carry out long-range planning in environmental protection and management;
- (n) to promote, encourage and give effect to methods of converting and utilizing residues; and
- (o) to classify land, water and air according to present and future uses. [P.L. 1984-31, §26][P.L. 2002-55 substituting 'Minister' with 'President']

§127. Environmental management.

The Authority shall, in consultation with the Council and with the assistance of the Ministry of Internal Affairs¹, formulate and recommend to the Minister a Land Use Scheme consistent with the following objectives:

- (a) to provide a rational, orderly and efficient system of acquisition, utilization and disposition of land and its resources in order to derive therefrom maximum benefits; and
- (b) to encourage the prudent use and conservation of land resources in order to prevent an imbalance between the needs of the nation and such resources. [P.L. 1984-31, §27.]

¹ [Correct name (of the Ministry) inserted]

§128. Land Use Scheme.

The Land Use Scheme formulated under Section 127 of this Act may include:

- (a) a scientifically adequate land inventory and classification system;
- (b) a determination of present land uses, the extent to which land is utilized, under-utilized or rendered idle or abandoned;

- (c) a comprehensive and accurate determination of the adaptability of land for community development, agriculture, industry or commerce;
- (d) identification of areas having important historic, cultural or aesthetic value where uncontrolled development or exploitation could result in irreparable damage;
- (e) a method for exercising control by the Government of the Marshall Islands over the use of land in areas where environmental control is deemed necessary; and
- (f) a policy for influencing the location of new areas for the resettlement of persons and the methods for assuring appropriate controls over the use of land in and around such areas. [P.L. 1984-31, §28.]

§129. Natural resources.

The Authority shall, in consultation with the Council and with the assistance of the Ministry of Resources and Development, recommend to the President the basic policy on the management and conservation of the country's natural resources in order to obtain the optimum benefits therefrom and to preserve the same for future generations, and the general measure through which such policy may be carried out effectively. [P.L. 1984-31, §29][P.L. 2002-55 inserting 'President in place of 'Minister']

§130. Fisheries.

(1) The Authority shall, in consultation with the Council and with the assistance of the Ministry in charge of the subject of fisheries, recommend to the Minister a system of rational exploitation of fisheries and of the aquatic resources within the territorial waters of the Republic including its exclusive economic zone, and shall encourage citizen participation therein to maintain and enhance the optimum and continuous productivity of such waters.

(2) Measures for the rational exploitation of fisheries and other aquatic resources may include the regulation of the harvesting and marketing of threatened species of fish or other aquatic life. [P.L. 1984-31, §30.]

§131. Soil conservation.

The Authority shall, in consultation with the Council and with the assistance of the Ministry of Internal Affairs², recommend soil conservation programs, including therein encouragement of scientific farming techniques, physical and biological means of soil conservation, and short-term and long-term research and technology for effective soil conservation. [P.L. 1984-31, §31.]

² [see footnote 1 above]

§132. Studies, research, etc.

The Authority may undertake and promote continuing studies and research programs on environmental management and shall from time to time, determine priority areas of environmental research. [P.L. 1984-31, §32.]

PART IV - GENERAL RULES AS TO GOVERNMENTAL ACTION

§133. Environmental impact.

All Ministries, Departments, offices and agencies of the Government of the Marshall Islands shall, in all matters in which there is or may be an environmental impact:

(a) utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences, traditional wisdom and the environmental design arts in planning and decision-making;

(b) identify and develop, in consultation with the Authority, methods and procedures which will ensure that presently un-quantified environmental amenities and values are given appropriate consideration in decision making along with economic and technical considerations;

(c) include in every recommendation or report on proposals for legislation and other major governmental action significantly affecting the human environment, an environmental impact statement in accordance with Section 134 of this Act;

(d) study, develop and describe appropriate alternatives to recommended courses of action in any proposal which contains unresolved conflicts concerning alternative uses of available resources;

(e) recognize the worldwide and long-range character of environmental problems, and give appropriate support to initiatives, resolutions, programs and other proposals or activities designed to increase international cooperation in foreseeing and preventing a decline in the quality of the world environment of mankind;

(f) make available to institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the environment;

(g) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(h) assist the Authority. [P.L. 1984-31, §33.]

§134. Environmental impact statements.

(1) For the purposes of Section 133(c) of this Act an environmental impact statement is a detailed statement by the responsible official on:

(a) the environmental and cultural impact of the proposed action;

(b) any adverse environmental effects which cannot be avoided if the proposal is carried out;

(c) alternatives to the proposed action;

(d) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(e) any irreversible and irretrievable commitment of resources which the proposed action will necessitate if it is carried out.

(2) Before making an environmental impact statement, the responsible official shall consult and obtain the comments of the interested public and any Ministry, Department, office or agency of the Government of the Marshall Islands which has jurisdiction bylaw, or expertise with respect to any environmental impact of the proposed action.

(3) Copies of an environmental impact statement and of the comments and views of the appropriate Ministries, Departments, offices and agencies of the Government of the Marshall Islands shall be made available to the Authority, and to the public for inspection and copying, and the public shall be notified of the existence and availability of the statement a reasonable time before the completion of the Government of the Marshall Islands decision making process.

(4) The environmental impact statement shall accompany the proposal through the review process, and the decision shall be explained in a statement of basis and purpose which shall include findings by the responsible official body that:

(a) the environmental impact of the proposed action has been studied and considered by the responsible Ministry, Department, office or agency of the Government of the Marshall Islands;

(b) alternatives to the proposed action have been given consideration;

(c) any adverse environmental effects which cannot be avoided by adopting reasonable alternatives are justified by other stated considerations of national policy; and

(d) any short-term uses of the environment are consistent with maintaining and enhancing long-term productivity or usefulness, or if not, why it is proposed that the action proceed regardless. [P.L. 1984-31, §34.]

PART V - FINANCE

§135. National Environmental Protection Authority Fund.

(1) There shall be established a fund called the National Environmental Protection Authority Fund, hereinafter referred to as 'the Fund.'

(2) The Fund shall be a fund other than the Marshall Islands General Fund within the meaning and for the purposes of Article VIII, Section 3 of the Constitution of the Marshall Islands.

(3) There shall be paid into the Fund:

(a) any monies appropriated by the Nitijela for the purposes of the Authority either generally or in relation to any particular purpose:

(b) any monies recovered by the Authority by way of fines, penalties, fees, and monies awarded to the Authority by way of costs, penalties, fines, or damages in any suit, prosecution or other proceeding under this Act or any other law; and

(c) any monies received by the Authority by way of loans, grants, advances, contributions, gifts or other assistance.

(4) The Authority shall keep within the Fund a separate account with respect to each of such matters as are referred to in Subsection (3) of this Section.

(5) Where any money is borrowed or any advance, grant, contribution, gift or assistance is received for a specific purpose or subject to any conditions, it may be expended or used only for that purpose or subject to those conditions. [P.L. 1984-31, §35.]

§136. Bank accounts.

The Authority shall open a bank account or accounts with a bank approved by the Minister of Finance for the purpose. [P.L. 1984-31, §36]

§137. Accounts and records.

(1) The Authority shall maintain proper accounts and records, to the satisfaction of the Secretary of Finance, of:

(a) the National Environmental Protection Authority Fund;

(b) the disposition of monies made out of the Fund; and

(c) the property and financial transactions of the Authority generally.

(2) The accounts to be laid before the Nitijela by the Minister of Finance under Article VIII, Section 5(4) of the Constitution of the Marshall Islands shall include accounts relating to the Authority.

(3) The accounts and records referred to in Section 136 of this Act and Subsections (1) and (2) of this Section shall be audited by the Auditor-General as provided for in Article VIII, Section 15 of the Constitution of the Marshall Islands.

(4) Before the end of the month of June each year, the Authority shall submit to the President a report of the work of the Authority including its property and financial transactions during the previous financial year.

(5) Before submitting the report (referred to in Subsection (4) of this Section) to the President, the Authority shall submit it to the Auditor-General who shall report to the Minister:

(a) whether the financial statements in the report are based on proper accounts and records;

(b) whether the statements in the report are in agreement with the accounts and records and

show fairly the financial operation and the state of the affairs of the Authority;

(c) whether the receipt and expenditure of monies, the acquisition and disposal of assets, and the operations of the Authority during the financial year have been in accordance with this Act;

(d) as to such other matters arising out of the report as the Auditor-General considers should be reported to the President; and

(e) the President shall cause the report and financial statements of the Authority together with the report of the Auditor-General and his own comments to be laid before the Nitijela within fifteen (15) days after their receipt by him, or if the Nitijela is not in session, within fifteen (15) days after the commencement of the next session of the Nitijela. [P.L. 1984-31, §37][P.L. 2002-55 substituting 'President' in the place of 'Minister']

§138. President may require report.

Notwithstanding the provisions of Section 137 of this Act the President may at any time require the Authority to submit to him a report in such form and as to such matters as he thinks necessary. [P.L. 1984-31, §38.][PL2002-55]

§139. Exemption from tax, etc.

The income, property and transactions of the Authority shall not be subject to any tax, rate, charge or impost under any other law. [P.L. 1984-31, §39.]

PART VI- ENVIRONMENTAL ADVISORY COUNCIL

§140. Constitution.

(1) There shall be established a Council called the Environmental Advisory Council which shall consist of a Chairman and ten (10) other members composed as follows:

(a) a senior officer of the Ministry of Finance nominated by the Minister of Finance;

(b) a senior officer of the Ministry of Foreign Affairs nominated by the Minister of Foreign Affairs;

(c) a senior officer of the Ministry of Public Works nominated by the Minister of Public Works;

(d) a senior officer of the Ministry of Transportation and Communication nominated by the Minister of Transportation and Communication;

(e) a senior officer of the Ministry of Education nominated by the Minister of Education;

(f) a senior officer of the Ministry of Interior and Outer Islands Affairs nominated by the Minister of Interior and Outer Islands Affairs;

(g) a senior officer of the Ministry of Resources and Development nominated by the Minister of Resources and Development;

(h) a senior officer of the Ministry of Social Services nominated by the Minister of Social Services;

(i) a senior officer of the Ministry of Health Services nominated by the Minister of Health Services;

(j) one representative of private industry; and

(k) one representative of the general public.

(2) The President shall appoint the members of the Council and shall appoint one of the members to be the Chairman of the Council.

(3) The Chairman and other members of the Council shall hold office for a period of four (4) years and shall, unless removed from office, be eligible for reappointment.

(4) No member of the Authority shall be a member of the Council. [P.L. 1984-31] [P.L. 2002-55]

§141. Compensation.

(1) The Chairman and other members of the Council shall not be entitled to receive any compensation except the members referred to in Section 40(1)(j) and (k) of this Act who may be paid such allowance per sitting and at such rates and upon such terms and conditions as the Cabinet may determine.

(2) All members of the Council shall be entitled to receive travel expenses and per diem allowances at such rates and upon such terms and conditions as may be determined by the Authority; provided, however, that such rates shall in no event exceed rates paid to employees of the Government of the Marshall Islands. [P.L. 1984-31, §41.]

§142. Applicability of certain Sections.

The provisions of Sections 108, 111, 112, 115, 116, 117 and 118 of this Act shall apply mutatis mutandis and relate to the Council and its members. [P.L. 1984-31, §42.]

§143. Meetings.

The Council may regulate the procedures in regard to its meetings and the transaction of its business, provided, however, that the Council shall meet at least four (4) times a year. [P.L. 1984-31, §43]

§144. Functions,

The functions of the Council shall be:

- (a) generally to advise the Authority on matters pertaining to its responsibilities, powers, duties and functions; and
- (b) to advise the Authority on any matters referred to the Council by the Authority.

[P.L. 1984-31, §44.]

PART VII- ENFORCEMENT

Division 1 - General

§145. Enforcement action generally.

(1) A person who violates any provision of this Act or the regulations made under this Act shall be subject to enforcement action by the Authority.

(2) The enforcement action may be:

- (a) the making of a cease and desist order in relation to the subject matter of the violation;
- (b) the imposition of a civil penalty in accordance with Section 157 of this Act;
- (c) the institution of civil proceedings to restrain the violation; or
- (d) any other action authorized by or under this Act or any other law. [P.L. 1984-31, §45.]

§146. Discharges of waste.

(1) When the Authority finds that:

(a) a discharge of waste is taking place, or is threatening to take place, in violation of legal requirements as to discharges; or

(b) the waste collection, treatment or disposal facilities of a discharger are approaching capacity, the Authority shall require the discharger to submit for approval by the Authority a detailed time schedule of specific action to be taken by the discharger to prevent a violation of the requirements as to discharges, and the Authority may approve the schedule subject to such modifications as it considers reasonably necessary.

(2) When the Authority finds that a discharge of waste is taking place, or is threatening to take place, in violation of the requirements as to discharges, the Authority shall issue a cease and desist order, and direct that the discharger:

- (a) comply forthwith with those requirements;
- (b) comply with those requirements in accordance with a time schedule set by the Authority;
- or
- (c) in the event of a threatened violation, take appropriate remedial or preventive action.

(3) Where an existing or threatened violation of legal requirements as to discharges is in the operation of a community system, a cease and desist order under Subsection (2) of this Section may restrict or prohibit the volume, type or concentration of waste that may be added to the system by dischargers who did not discharge into the system before the issuing of the order. [P.L. 1984-31, §46]

§147. Pollutants.

Any person who:

- (a) discharges any pollutant into the air or water, or on land in violation of this Act or of any permit, requirement or order issued or made by the Authority under this Act; or
- (b) intentionally or negligently causes or permits any pollutant to be deposited where it is discharged into the air or water, or on land, shall, on the order of the Authority, clean up the pollutant or abate its effects. [P.L. 1984-31, §47.]

Division 2 - Cease and Desist Orders Application of administrative procedure laws.

§148. Application of administrative procedure laws.

The provisions of this Division are subject to the provisions of any law concerning administrative procedure, and in the event of any inconsistency the latter provisions shall prevail. [P.L. 1984-31, §48.]

§149. Issuing, etc., of cease and desist order.

(1) A cease and desist order made under Division 1 of this Part is effective on being issued, and final when the Authority, after a public hearing in accordance with Section 150 of this Act, issues a finding to that effect.

(2) A copy of a cease and desist order, and of a finding referred to in Subsection (1) of this Section, shall forthwith be served:

- (a) on the violator; and
- (b) on any person affected who appears at the public hearing and requests a copy. [P.L. 1984-31, §49]

§150. Public hearings.

(1) When a cease and desist order is made under Division I of this Part, a public hearing shall be conducted by the Authority to determine the authenticity of the facts upon which the order was made.

(2) Adequate notice of the hearing, and an adequate opportunity to appear and be heard at the hearing, shall be given to all interested persons. [P.L. 1984-31, §50.]

Division 3 - Judicial Proceedings, etc.

§151. Declaratory and equitable relief.

(1) The Attorney-General, any agency or instrumentality of the Government of the Marshall Islands, a local government or any other person or body may maintain an action in the High Court for declaratory or equitable relief against any person or body for the protection of the air, land, water or other aspect of the environment from pollution, impairment or destruction.

(2) Any person or body of persons may maintain an action in the High Court for declaratory relief against the Government of the Marshall Islands, or any agency or instrumentality of the Government of the Marshall Islands for the protection of the air, land, water or other aspect of the environment from pollution, impairment or destruction.

(3) Subject to Subsection (4) of this Section, if in an action under Subsection (1) or (2) of this Section, the High Court finds that any relevant standard or requirement fixed or made by the Authority or any other instrumentality or agency of the Government of the Marshall Islands is unreasonable, either generally or in the particular circumstances, the Court may apply, and may order the adoption of, a reasonable standard or requirement.

(4) Subsection (2) of this Section does not apply with respect to a standard or requirement fixed or made by an Act, or by the Cabinet by virtue of powers conferred on it by an Act. **[P.L. 1984-31, §51.]**

§152. Defenses.

(1) It shall be a defense to an action under Section 151 of this Act if the defendant proves that there is no feasible and prudent alternative to his conduct, and that such conduct is consistent with the promotion of public health, safety and welfare, in light of:

(a) the paramount concern of the Republic for the protection of the air, land and water, and other national resources from pollution, impairment or destruction; and

(b) the purposes of this Act.

(2) Subsection (1) of this Section does not limit any other defense that is available. **[P.L. 1984-31, §52.]**

§153. Relief.

In an action under Section 151 of this Act, the High Court may grant temporary and permanent relief including injunctive relief and may impose conditions on the defendant that are required to protect the air, land and water, and other natural resources, from pollution, impairment or destruction; provided, however, that no relief by way of a penalty, injunction or writ shall lie against the Government of the Marshall Islands. **[P.L. 1984-31, §53]**

§154. Remission for administrative proceedings, etc.

If in an action under Section 151 of this Act, administrative, licensing or other proceedings are required or available to determine the legality of the conduct of the defendant, the High

Court may remit the matter to such proceedings, and shall make a final determination after the completion of those proceedings. [P.L. 1984-31, §54.]

§155. Administrative proceedings, etc., subject to judicial review.

(1) This Section applies to any of the following proceedings:

- (a) administrative, licensing and other proceedings provided for by law with respect to which judicial review is provided for; and
- (b) proceedings on judicial review of any such proceedings.

(2) In any proceedings to which this Section applies the agency conducting the proceedings (in a case to which Subsection (1) of this Section applies), or the High Court, in any case, may permit the Attorney-General, any agency or instrumentality of the Government of the Marshall Islands, a local government or any other person to intervene as a party on the filing of a plea asserting that the proceedings involve conduct which has, or which is likely to have, the effect of polluting, impairing or destroying the air, land or water, or other aspect of the environment.

(3) In any proceedings to which this Section applies any alleged pollution, impairment or destruction of the air, land or water, or other aspect of the environment, shall be determined, and no conduct shall be authorized or approved which has, or which is likely to have, that effect, so long as there is a feasible and prudent alternative available which is consistent with the reasonable requirements of public health, safety and welfare. [P.L. 1984-31, §55.]

Division 4 - Fines, Penalties, etc. Violation.

§156. Violation.

In this Division, a reference to a violation of this Act including a reference to a violation of any provision of:

- (a) the regulations made under Section 121 of this Act; or
- (b) any permit, requirement or order issued or made by the Authority under this Act or the regulations made under this Act. [P.L. 1984-31, §56]

§157. Civil penalties.

(1) A person who violates any provision of this Act shall be liable to a civil penalty, fixed by the Authority, not exceeding \$10,000 for each day on which the violation continues.

(2) The amount of the penalty shall be paid into the Fund of the Authority. [P.L. 1984-31, §57.]

§158. Damages.

(1) Where a person violates any provision of this Act, the Attorney-General may petition the

High Court for a judgment awarding damages.

(2) In determining the damages, the Court shall consider all relevant circumstances, including:

- (a) the extent and nature of the harm caused by the violation;
- (b) the nature and persistence of the violation;
- (c) the length of time over which the violation occurred; and
- (d) the corrective action (if any) taken by the violator.

(3) Subject to any order of the Court, the damages shall be paid into the Fund of the Authority. [P.L. 1984-31, § 58.]

§159. Criminal violations generally.

(1) A person who:

- (a) discharges pollutants in violation of this Act or the regulations made under this Act;
- (b) with respect to the introduction of pollutants into any publicly owned treatment works, violates any applicable pretreatment standard or toxic effluent standard; or
- (c) violates any other provision of the regulations made under this Act or of any permit issued by the Authority, shall be guilty of a misdemeanor.

(2) The penalty for an offense under Subsection (1) of this Section shall be:

- (a) in the case of a first offense under that Subsection, a fine not exceeding \$25,000 for each day the offense continues to occur; or
- (b) in the case of a subsequent such offense, a fine not exceeding \$50,000 for each day the offense continues to occur. [P.L. 1984-31, §59.]

§160. Falsifying monitoring systems, etc.

A person who falsifies, tampers with or knowingly makes inaccurate any monitoring system, device or method required to be maintained under this Act or under a permit, requirement or order issued or made under this Act shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding six (6) months, or both. [P.L. 1984-31, §60][The effective date of this Act was retrospectively fixed as December 9, 1984, by P.L. 1987-2, §2]

§161. False statements, etc.

A person who knowingly falsifies or makes a false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this Act or the regulations made thereunder, or under a permit, requirement or order made under this Act, shall be guilty of a misdemeanor and shall upon conviction be liable to a

fine not exceeding \$10,000 or to a term of imprisonment not exceeding six (6) months, or both. [P.L. 1984-31, §61.]

PART VIII- MISCELLANEOUS

§162. Local authorities.

Every Local Government Council and other local authority shall be deemed to be an agent of the Authority and shall exercise and perform such powers, duties and functions as may be delegated to it by the Authority. [P.L. 1984-31, §62]

§163. Validity of regulations and by-laws.

No regulation or by-law made by the Authority shall be valid until it has been approved by the President. [P.L. 1984-31, §63] [P.L. 2002-55]

§164. Applicability to the Government.

This Act binds the Government of the Marshall Islands. [P.L. 1984-31, §64.]

§165. Exception.

This Act shall not apply or relate to that portion of the territory to which the Agreements regarding the military use and operating rights of the Government of the United States in the Marshall Islands concluded pursuant to Sections 321 and 323 of the Compact of Free Association, dated May 24, 1982, applies. [P.L. 1984-31, §65.]

§166. Repeal and Savings.

(1) 63 TTC (1980), Sections 501-5 10 are hereby repealed.

(2) Notwithstanding the provisions of Subsection (1) of this Section, all regulations, permits and certificates adopted or issued pursuant to 63 TTC(1980), Sections 501-510 and in force, shall continue to be in force until amended, modified or repealed, or revoked under the regulations made under this Act.