REPUBLIC OF THE MARSHALL ISLANDS

ENVIRONMENTAL PROTECTION AUTHORITY

ENVIRONMENTAL IMPACT

ASSESSMENT REGULATIONS

1994

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REPUBLIC OF THE MARSHALL ISLANDS
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PART I - GENERAL PROVISIONS

1. Authority

a) These regulations are promulgated by the Republic of the Marshall Islands Environmental Protection Authority (hereafter the "Authority") with the approval of the Minister of Health and Environment, pursuant to Section 21 of the National Environmental Protection Act 1984 and Section 27 of the Coast Conservation Act 1988.

b) These regulations have the force and effect of law.

2. Purpose

a) The purpose of these regulations is to implement Part IV of the National Environmental Protection Act 1984 ("NEPA") and Section 11 of the Coast Conservation Act 1988 ("CCA") by establishing standard procedures for the preparation and evaluation of an environmental impact assessment ("EIA") for proposed public and private development activities that may affect the quality of the environment of the Republic. These Regulations establish uniform standards under two Acts so that environmental scrutiny of proposed development activities may be streamlined and simplified.

b) EIA's are intended to help the general public and government officials make decisions with the understanding of the environmental consequences of their decisions, and take actions consistent with the goal of protecting, restoring, and enhancing the environment. These Regulations are designed to integrate the EIA process into early planning of projects to ensure timely consideration of environmental factors and to avoid delays, as well as to identify at an early stage the significant environmental issues facing the Republic.

c) The specific directions to achieve this purpose are contained in these Regulations, which may be invoked as an aid to the Authority and other regulatory entities before issuance of permits pursuant

to NEPA and CCA.

3. Effective date

These regulations shall come into force one day after their approval by the Cabinet.

4. Interpretation

In these regulations, unless the context otherwise requires:

a) "Authority" means the Republic of the Marshall Islands Environmental Protection Authority, established under Section 4 of the National Environmental Protection Act 1984, or its authorized representative.

b) "Beneficial use" 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) "Chairman" means the Chairman of the Authority appointed under Section 6 of the National Environmental Protection Act 1984;

d) "Council" means the Environmental Advisory Council established under Section 40 of the National Environmental Protection Act 1984;

e) "Cumulative environmental impacts" means the effects on the environment which result from the incremental impact of the proposed development activity when added to other past, present, and reasonable foreseeable future actions, including individually minor but collectively significant actions taking place over a period of time in the same locality;

f) "EIA" means an Environmental Impact Assessment pursuant to Section 11 of the Coast Conservation Act 1988, also known as an environmental impact statement under Part IV of the National Environmental Protection Act 1984, which is a written environmental analysis of a public or private proposed development activity imposed at the discretion of the Authority as set forth in these Regulations. In these Regulations, an EIA may be either a Draft EIA, a Revised EIA, or a Final EIA;

g) "EIA process" means an analytical system of assessing and reviewing environmental consequences that may result from proposed development activities, beginning at the inception and ending at the completion or decommissioning of a proposed development activity, during which various environmental analyses and documents are prepared, reviewed and approved, in accordance with these Regulations;

h) "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;

i) "General Manager" means the executive officer of the Authority appointed under Section 14(1)(a) of the National Environmental Protection Act 1984, also known as the Director of Coast Conservation under the Coast Conservation Act 1988, or that person's authorized representative;

j) "Minister" means the Minister of Health and Environment;

k) "Person" means any individual, corporation, company, association, trade consortium, partnership, citizen, non-citizen, agency, authority, commission, foundation, national government or its political subdivisions, or any local or foreign government or municipality, or other institution or entity, whether public or private;

l) "Physical" means pertaining to a material, structural, geological, chemical, biological, ecological, or cultural property of the environment;

m) "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;

n) "Preliminary Proposal" means a short report submitted to the Authority during the planning stages of a proposed development activity as set forth in Part II of these Regulations;

o) "Proponent" means the person proposing and assuming responsibility for any proposed development activity, also known as the "responsible official" under Section 34 of the National Environmental Protection Act 1984, and the permit "applicant" under Section 11 of the Coast Conservation Act 1988 and other regulatory instruments;

p) "Proposed development activity" means any plan, proposition or intention by any person to embark on any action, scheme, construction, project, development, or undertaking which is likely to alter the physical nature of the environment in any way, including, but not limited to, earthmoving and other activities pursuant to the National Environmental Protection Act 1984, and coastal zone activities pursuant to the Coast Conservation Act 1988, such as the construction of buildings and works, the deposit of wastes or other material from outfalls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, sea grass or other substances, dredging and filling, land reclamation and mining or drilling for minerals, but not including fishing or those activities specifically excluded in writing by the General Manager;

q) "Register" means the register established under Regulation 34 of these Regulations.

r) "Scoping process" means the process of determining the range of actions, alternatives, and impacts that shall be considered in an EIA, including, but not limited to, specific procedures and requirements to be followed, extent of documentation, alternatives to be addressed, special studies such as engineering and ecological feasibility inquiries, possible mitigation measures to reduce or avoid impacts, further public involvement, and required regulatory approvals;

s) "Significant effect" means an important, meaningful, or serious impact on the environment, either in the context of the setting of the proposed development activity, or in the context of the intensity of the proposed development activity's effect on the environment. Criteria for determining significance include, but are not limited to:

(i)the degree to which public health and safety are affected;

(ii)the degree to which the unique characteristics of the geographic area are affected;

(iii)the degree to which effects on the environment are likely to involve controversy;

(iv)the degree to which unique or unknown risks are taken;

(v)the degree to which a precedent for future action is made;

(vi)the potential for cumulative environmental impacts;

(vii)the degree to which the natural functioning of the ecosystem is likely to be inhibited;

(viii)the degree to which a cultural, natural, scientific, or historic resource may be threatened;

(ix)the potential to threaten the existence of rare or endangered species, or their critical habitats;

(x)the degree to which fish and wildlife resources of ecological, commercial, subsistence, and recreational importance are jeopardized; and

(xi)the extent to which one use of a resource may be incompatible with another use of that resource.

PART II - PRELIMINARY PROPOSAL

5. Submission of Preliminary Proposal

a) The proponent of each and every proposed development activity shall prepare and submit to the General Manager of the Authority a Preliminary Proposal at the inception of the proposed development activity. The inception of a proposed development activity is the stage at which the proponent has a development goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.

b) In no event shall a Preliminary Proposal be submitted to the General Manager later than the date of first submission of the proposed development activity to any entity of Government or the date of first public notification of the proposed development activity, whichever is earlier.

c) A Preliminary Proposal shall be submitted to the Authority regardless of whether permits for the proposed development activity are required by other regulatory instruments or laws of the Republic. If permits are required, a Report may be submitted before or at the time of application to the Authority or other Government entities for issuance of a permit.

d) If permits in relation to any aspect or aspects of the proposed development activity are required by other regulatory instruments under NEPA and CCA, approval of such permits shall be stayed

until a determination of significant effect is made pursuant to Regulation 8.

6. Content of Preliminary Proposal

The Preliminary Proposal shall be submitted on forms supplied by the Authority and shall contain at a minimum the following particulars:

(i)WHO -identification and contact information regarding the project proponent and beneficiaries;

(ii)WHAT -a brief description of the proposed development activity;

(iii) HOW -a brief description of the methods, materials, and techniques used to accomplish the proposed development activity;

(iv)WHERE -a brief description of the area to be affected and the nature of the proposed change to the area;

(v) WHEN -a statement of the commencement -and completion dates for the proposed development activity;

(vi)WHY -a brief justification of the purpose and need for the proposed development activity;

(vii)HOW MUCH -an assessment of the cost of the proposed development activity;

(viii)IMPACT -a brief statement of possible adverse impacts to the environment, and possible alternatives to mitigate those impacts.

7. Review of Preliminary Proposal

a) The General Manager may, by notice in writing within ten (10) days of receipt of the Report, require the proponent to furnish such additional information, preliminary plans or specifications as the General Manager thinks fit.

b) The General Manager may, at his discretion, convene a meeting of relevant regulatory agencies, Ministries, and the proponent, or any of them, to review permitting and other regulatory requirements that may arise in connection to the proposed development activity.

c) The General Manager shall review and make a written determination regarding the Proposal in a timely manner.

d) Until a determination is issued, no action concerning the proposed development activity shall be taken by the proponent or any other person which may have an adverse environmental impact or limit the choice of reasonable alternatives.

8. Determination of significant effect

a) The General Manager shall make a determination, based on the Proposal or other data, regarding a proposed development activity's potential to have a significant effect on the environment.

b) If a determination is made that a proposed development activity does not significantly affect the environment, the General Manager shall give written notification to the proponent of that finding. Upon receiving this notification, no further action is required under these Regulations before the proponent may continue with the proposed development activity. The proponent shall still remain subject to regulatory and permitting requirements pursuant to NEPA, CCA, the Historic Preservation Act 1991, and any other applicable law of the Republic.

c) If a determination is made that the proposed development activity may have a significant effect on the environment, the General Manager shall notify the proponent in writing that an Environmental Impact Assessment is required.

d) The General Manager may, at his discretion, waive any aspect or aspects of the EIA requirements and contents enumerated in Parts III and IV, below, upon sufficient showing that the fulfillment of certain requirements may be onerous or unnecessary.

PART III - ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS

9. General requirement

a) Upon receipt of notification by the General Manager, the proponent of a proposed development activity that has been determined to have the potential for significant environmental effect shall conduct an EIA process and submit an Environmental Impact Assessment ("EIA") to the Authority.

b) An EIA shall be submitted to the Authority regardless of whether permits for the proposed development activity are required by other regulatory instruments or laws of the Republic. If permits are required, an EIA may be submitted before or after application is made to the Authority or other Government entities for issuance of a permit.

c) If permits in relation to any aspect or aspects of the proposed development activity are required by other regulatory instruments under NEPA and CCA, approval of such permits shall be stayed until approval of the EIA for a proposed development activity pursuant to Regulation 31 shall allow the permitting process to go forward.

10. Series of parts

a) An EIA, as part of the EIA process, shall include an assessment of the full proposed development activity, including, but not limited to, planning, acquisition, development, construction, operational and decommissioning phases of the proposed activity.

b) A proponent may make a written request to the General Manager for exemption from Subregulation (1) above. The General Manager may, at his discretion, provide an exemption to allow an EIA to be submitted as a series of parts, each part of which shall be considered a complete EIA for the purposes of these Regulations.

11. Scoping process

a) Upon being informed that an EIA shall be required for a proposed development activity, the Authority shall immediately initiate a scoping process to identify the significant issues related to the proposal and to determine the scope of issues to be addressed.

b) In the course of the scoping process, the proponent of any proposed development activity involving Governmental action 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 by law, or expertise with respect to any environmental impact of the proposed action.

c) If considered necessary by the Authority, the General Manager may require the proponent of a proposed development activity not involving Governmental action to notify and request scoping comments from the public, all persons responsible for resources affected by the proposal, and all persons having jurisdiction by law with respect to the proposal.

d) To aid the proponent in the performance of the requirements of Subregulations (b) and (c) above, the General Manager may convene a scoping meeting. This meeting may include all affected parties and regulatory entities, and may require the proponent to make a presentation regarding the purpose and need for the proposed development activity. If such a meeting is convened, the General Manager shall issue a written summary of the meeting to all parties in attendance.

e) As part of the scoping process the General Manager may set time or page limits on environmental documents, and shall set time limits for submission of comments. For projects of limited scope, the General Manager may assist the proponent in the preparation of documentation required in these Regulations.

f) Subject to this Regulation, the scope of the EIA shall be the responsibility of the proponent, and be developed, in written form, based on information gathered in the Preliminary Proposal, comments received, the written summary of the scoping meeting, if any, and professional judgment.

g) The written scope of the EIA shall be submitted by the proponent to the General Manager of the Authority. The General Manager shall review and approve the scope of the EIA before the EIA process may continue, taking into consideration the comments and concerns of other regulatory entities and affected parties. Written approval of the official scoping document shall be submitted to the proponent and other appropriate regulatory entities by the General Manager.

12. EIA undertaken

a) Upon completion of the scoping process, and subject to any further requirements

pursuant to Subregulation (b) below, the proponent shall undertake to complete the EIA in a timely manner and shall then submit the document to the Authority. The EIA shall be considered and titled a "Draft EIA" until such time as either a Revised EIA is prepared pursuant to Regulations 29 and 30, or a Final EIA is prepared pursuant to Regulation 31.

b) For a proposed development activity requiring special studies, or for a proposed development activity of especially large scope, the Authority may require that the Draft EIA include such additional studies and materials as are ordered in writing by the Authority. The Draft EIA, to be called a Revised EIA if the Authority's order is issued subsequent to the submission of the Draft EIA, shall include such contents, and be subject to such public and Governmental scrutiny, as is required by the Authority. If prepared in accordance with the particulars required in Subregulation 31(b), and unless prepared inadequately or erroneously, the Revised EIA may also serve as a Final EIA.

c) The Authority shall determine whether a proposed development activity is of limited scope pursuant to Subregulation 11(e) or of especially large scope pursuant to Subregulation (b) above.

d) Any person or organization employed by the proponent for the purpose of undertaking any aspect of the EIA shall be:

(i)qualified, independent and unbiased;

(ii)excluded from contracting for work in regard to the proposed development activity subsequent to preparation of the EIA; and

(iii)approved by the Authority before commencing work.

13. Consideration of Authority guidelines

When formulating an EIA, the proponent shall recognize and take account of any guidelines, directions, policies or plans issued by the Authority regarding the protection, conservation and management of the environment.

14. Further information

The General Manager may, by notice in writing at any time during the EIA process, require the proponent to furnish such additional information, plans or specifications as he thinks fit, which information shall be deemed part of the EIA.

15. Early submission

A proponent may submit an EIA for a present or future proposed development activity at any time before notification requiring an EIA is issued.

16. Interim action

a) Once notified that an EIA is required, the proponent of a proposed development activity shall take no action concerning the proposal which may have an adverse environmental impact or limit the choice of reasonable alternatives to the proposed activity.

b) While preparing a required EIA submission, neither the proponent nor any other person shall undertake any action covered by the EIA which may significantly affect the quality of the environment unless such action:

(i)is justified independently of the EIA;

(ii)is itself accompanied by an adequate EIA; and

(iii)shall not prejudice the ultimate decision on the original EIA. Interim action is deemed to prejudice the ultimate decision when it tends to determine subsequent development or limit possible alternatives.

c) Nothing in this Regulation is intended to preclude the development of plans or designs or the performance of other work necessary to support an application for national or local permits or assistance.

PART IV - EIA FORMAT AND CONTENT

17. Format

The following format shall be followed by the proponent in the preparation of the EIA unless otherwise directed by the Authority:

(i)Cover sheet;

(ii) Summary;

(iii) Table of contents;

(iv) Purpose and need for proposed action;

(v) Alternatives, including proposed action;

(vi) Affected environment;

(vii) Environmental consequences;

(viii) List of preparers;

(ix) Distribution list;

(x)Index;

(xi) Appendices (if any).

18. Cover sheet

The cover sheet shall not exceed one page. It shall include:

(i)the title of the proposed development activity that is the subject of the EIA and where the proposed action is to be located;

(ii)the name, address, and telephone number of the proponent of the EIA;

(iii)the name, address, and telephone number of the preparer of the EIA;

(iv)a designation of the EIA as Draft, Revised, or Final.

(v) a one paragraph abstract of the EIA.

19. Summary

Each EIA shall contain a summary of the proposed development activity and its consequences in simple, straightforward and accurate language. The summary shall stress the major conclusions, areas of controversy, the issues to be resolved, the choice among alternatives, and how to mitigate the significant impacts.

20. Purpose and need for proposed action

Each EIA shall include a description of the type of proposed development activity, a statement of its underlying purpose, and the long-term and short-term objectives sought by the proponent. The statement shall further include a justification of the rationale for the proposed development activity, including such supporting information as appropriate. The description of the proposal need not supply extensive detail beyond that required for evaluation and review.

21. Alternatives, including proposed action

Each EIA shall present the environmental impacts of the proposed development alternatives in comparative form, including the proposed action, thereby defining the issues and providing a clear basis for choice among options. Alternatives include alternative sites, designs and scales. In this section the proponent shall:

(i)include the precise location and boundaries of the proposal shown on a detailed map;

(ii)include a general description of each alternative's technical, economic, and environmental characteristics, taking into consideration current engineering and supporting utilities data;

(iii)rigorously explore and objectively evaluate all reasonable alternatives, including the

alternative of no action. For alternatives eliminated from detailed study, briefly discuss the reasons for elimination;

(iv)describe each alternative in detail so that reviewers may evaluate their comparative merits;

(v)identify the proponent's preferred alternative or alternatives;

(vi)include appropriate mitigation measures to minimize the significant environmental effects for all alternatives;

(vii)identify any significant environmental effects that cannot be avoided; and

(viii)compare alternatives in terms of relative costs, technical feasibility, benefits and effects.

The use of tables is a particularly useful and efficient means to display comparisons among alternatives.

22. Affected environment

a) Each EIA shall include a description of the environment in the vicinity of the proposed development activity as it exists before the commencement of the proposal and as it is projected to exist if no proposed development activity is initiated. Special emphasis shall be placed on specific environmental, cultural, and historic resources in the region.

b) Specific reference to related projects in the region, both public and private, existing and planned, shall also be included for purposes of examining the possible cumulative impacts of such projects.

c) Possible conflicts or inconsistencies between the proposed development activity, competing activities, and the objectives of applicable national, regional or local land use plans, marine use plans, policies and controls for the area concerned shall be discussed herein.

23. Environmental consequences

a) Each EIA shall include a sound scientific analysis of the environmental consequences of the alternatives including the proposed action. This discussion shall include:

(i)direct environmental effects and their significance;

(ii)indirect environmental effects and their significance;

(iii)a description of the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity;

(iv)consideration of cumulative environmental impacts;

(v)natural or depletable resources requirements and the potential for their conservation;

(vi)urban quality, scenic quality, historic and cultural resources, and the design of the built environment;

(vii)impact on population and human uses of the land;

(viii)alterations to ecological systems;

(ix)projected pollution of the environment through use of potential environmental pollutants or by other means;

(x)means to mitigate adverse environmental impacts;

(xi)description of any unavoidable adverse environmental impacts, including any permanent change in the physical, biological, social or cultural characteristics of the affected environment or in the possible future use of that environment;

(xii)an analysis of the costs and benefits that may result from the proposed development activity; and

(xiii)identification of any irreversible or irretrievable commitments of resources required for the proposed development activity.

b) All phases of the proposed development activity shall be considered when evaluating its impact on the environment, including but not limited to planning, acquisition, development, commissioning, construction, operation, and decommissioning.

24. List of preparers

Each EIA shall include a list of names of the persons who organized and prepared the EIA, and the persons' qualifications. The specific persons responsible for particular analyses or background papers shall be identified.

PART V - EIA REVIEW AND APPROVAL PROCESS

25. Notice and distribution

Upon receipt of the completed Draft EIA, the General Manager shall:

(i)submit a copy of the Draft EIA to the Council and the Minister for their comments, if any; and

(ii)by notice published in the Government "Gazette", or, if the "Gazette" is not published on a regular and timely basis, by notice published in one or more

newspapers circulated nationally:

A.notify the place and times at which such Draft EIA will be available for inspection by the public;

B.notify the date, time, and location of any public hearing convened pursuant to Regulation 27; and

C.invite the public to make its comments regarding the Draft EIA, if any, within thirty (30) days from the date the notice was first published; or

(iii)send a copy of the Draft EIA to all persons who, in the opinion of the Authority, may be affected or interested, and advise such persons in writing:

A.of the date, time, and location of the public hearing; and

B.that written comments may be sent to the Authority regarding the Draft EIA by a date specified, which date shall correspond to the date set in Subregulation (ii) or (iii) above.

26. Public comment

a) Any person or authority may, within the time specified in a notice under Regulation 25, make written comment to the Authority concerning any aspect of the Draft EIA.

b) Upon receipt of written comment, the General Manager may invite the person or authority making the comment to provide further information or to enter into consultation with the Authority.

27. Public hearing on EIA

At any time during the EIA process, the Authority may convene a public hearing or hearings for the purpose of facilitating public involvement in the EIA process. Adequate notice of the hearing or hearings, adequate opportunity to appear and be heard, and adequate opportunity to provide written comment, shall be given to all interested persons.

28. Comment by the Council and Minister

The Council and Minister shall, within sixty (60) days of a Draft EIA being submitted to them under Regulation 25, make their comments, if any, and direct them to the Authority. The Authority shall within thirty (30) days give its direction regarding the Draft EIA to the General Manager.

29. EIA evaluation

a) After the expiration of all comment periods and conclusion of any public hearings set forth

above, the proponent and the General Manager shall have thirty (30) days to evaluate comments received from persons who reviewed the EIA or attended a public hearing or hearings.

b) The General Manager, with the assistance of the proponent, Government and non-Government personnel as required, shall assess and consider public comments. The General Manager shall issue a written Response to the proponent regarding the comments and listing additional concerns, if any, including conditions for completion of a Revised or Final EIA.

c) The Response may require the proponent to prepare a Revised EIA if the Draft EIA was inaccurate or incomplete, or if the Authority requires additional studies or information pursuant to Subregulation 12(b) or Subregulation (e) below.

d) A Revised EIA, if prepared in accordance with both the particulars required in Subregulation (e) below, if any, and Subregulation 31(b), and unless prepared inadequately or erroneously, may also serve as a Final EIA.

e) The Response may include, but is not limited to, the following instructions to the proponent:

(i)modify alternatives including the proposed development activity;

(ii)develop and evaluate alternatives not previously given serious consideration by the proponent;

(iii)supplement, improve, or modify the analyses;

(iv)make factual corrections;

(v)explain why the comments do not warrant further consideration.

30. Revised EIA

a) Where the Authority has required the proponent to revise an EIA pursuant to Regulation 12 or Regulation 29 above, a proponent may, after making those modifications to the EIA as are necessary or desirable, submit a Revised EIA to the Authority.

b) The Revised EIA shall include such studies and contents, and be subject to such public and Governmental scrutiny, as is required by the Authority.

31. Final EIA

a) Upon receipt of the Response to the Draft EIA by the Authority, and following submission of a Revised EIA if required, the proponent shall submit a Final Environmental Impact Assessment (Final EIA) to the Authority.

b) The Final EIA shall contain all of the particulars required for an EIA, and in additional shall contain the following:

(i)the alternative selected by the proponent;

(ii)mitigation measures;

(iii)monitoring schedules;

(iv)other commitments as required by the Authority.

c) The Response to comments by the Authority shall be appended to the Final EIA.

32. Standards for approval

a) When an EIA has been submitted, the Authority shall not approve the EIA as proposed if the Authority finds omission or inadequate treatment of any practicable alternative or practicable mitigation measures, within its powers or the powers of the proponent, that may substantially lessen any significant impact the proposal may have on the environment to an acceptable level.

b) As used in this Regulation, the term "acceptable level" means that the EIA describes:

(i)all significant adverse environmental effects that may be avoided have been eliminated or substantially lessened;

(ii)any remaining, unavoidable significant impacts are acceptable considering the balance of the benefits of a proposal against its unavoidable environmental risks.

33. EIA approval

a) Upon receipt of the Final EIA pursuant to Regulation 31, the Chairman of the Authority shall either approve or disapprove the EIA.

b) Any approval or disapproval shall be in writing, shall inform the proponent of the reasons for the decision, shall be forwarded to all regulatory entities, and shall include attached terms and conditions, if any.

c) The public shall be notified in a timely manner of the decision reached by the Authority regarding the EIA.

d) Disapproval of an EIA shall prohibit the Authority from issuing any permit or permits in regard to the proposed development activity. The proponent of a disapproved EIA may continue to revise and resubmit the EIA to the Authority until it is approved.

e) Upon approval of an EIA, the proponent shall remain subject to regulatory and permitting requirements pursuant to NEPA, CCA, the Historic Preservation Act 1991, and any other applicable law of the Republic.

PART VI - PROCESS AFTER EIA APPROVAL

34. Permitting process

a) If the process of obtaining permits required by other regulatory instruments has been stayed during the development and submission of a Preliminary Proposal, a determination that the proposed development activity does not significantly affect the environment, pursuant to Subregulation 8(2), shall allow the permitting process and decision-making to go forward.

b) If the process of obtaining permits required by other regulatory instruments has been stayed during the development and submission of an EIA, approval of an EIA pursuant to Regulation 33 shall allow the permitting process and decision-making to go forward. Any terms and conditions placed on the EIA during the EIA process shall be addressed in the permitting documentation.

c) All written instruments regarding the proposed development activity arising from the permitting process and decision-making shall be forwarded to the Authority for inclusion in the Authority's EIA register pursuant to Regulation 38.

35. Permitting requirements

At the discretion of each regulatory entity, including the Authority, permit applications and documentation on behalf of a proposed development activity with an approved EIA shall require that plans and specifications for the construction of the proposed development activity are approved by the regulatory entity before solicitation of bids or construction is initiated. Such plans and specifications shall include:

(i)a description of required mitigation and monitoring measures that includes an Environmental Protection Plan;

(ii)plans modified after completion of the construction of the development activity to indicate the actual construction history, called "As-built plans";

(iii)other technical information as required.

36. Monitoring by the Authority

Upon initiation of the construction of an approved development activity, the Authority, the proponent, and other persons as requested, shall monitor the progress of construction.

37. Environmental audit

After completion of construction of an approved development activity, or during the operational phase of such an activity, or both, the Authority may require the proponent to furnish an independent examination and report, called an environmental audit. The environmental audit shall:

(i)describe the actual environmental effects of the completed activity;

(ii)identify those impacts inadequately or inaccurately addressed in the EIA; and

(iii)recommend corrective action as required.

PART VII - MISCELLANEOUS; PENALTIES AND ENFORCEMENT

38. Authority to keep register

a) The Authority shall keep a register which shall contain a copy of all Preliminary Proposals, EIA's, studies, evaluations, responses, submissions, Environmental Protection Plans, general plans and specifications, As-built plans, attachments, recommendations, decisions, and all written communication and documentation in connection with every proposed development activity considered by the Authority.

b) The register shall be made available for inspection at the Authority's offices by any person at reasonable hours of business.

c) Any person may search for, request and obtain copies of any entry in the register.

39. Duty to advise Authority

a) Any person having knowledge of a proposed development activity which may have significant environmental implications shall immediately:

(i)advise the Authority of that proposal; and

(ii)forward to the Authority any plans, specifications and other relevant information.

b) The Authority may from time to time, request information from any person concerning a development proposal, and that person shall furnish the requested information.

40. Violations

a) Any person who violates any provision of these Regulations or any requirement, order, recommendation, or decision issued thereunder, shall be subject to enforcement action by the Authority.

b) The enforcement action may be any or all of the following:

(i)the making of a cease and desist order in relation to the subject matter of the violation;

(ii)the imposition of a civil penalty, fixed by the Authority, not exceeding $10,000.00 for each day on which the violation continues; and

(iii)any other action authorized by NEPA, CCA, or any other law.

41. Public hearing for cease and desist order

a) When the Authority makes a cease and desist order under Subregulation 40(b)(i), a public hearing shall be conducted by the Authority to determine the authenticity of the facts upon which the order was made.

b) Adequate notice of the hearing, and an adequate opportunity to appear and be heard at the hearing, shall be given to all interested persons.

42. Right to enter

For the purposes of enforcing the provisions of these Regulations, the Authority may, at reasonable times, enter any establishment, building, vessel or other premises or upon or into any land or water, public or private, for the purpose of obtaining information, making inspections, obtaining samples, inspecting or copying records or plans required to be made and maintained, or conducting surveys or investigation or detecting any offenses committed in contravention of these Regulations.

43. Preservation of legal remedies and requirements

a) Nothing in these Regulations shall preclude the commencement of proceedings at law for an injunction or any other remedy.

b) Nothing in these Regulations shall relieve a proponent from compliance with any other legal or statutory requirement.

Adopted by the Authority on January 6, 1994.

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Jiba B. Kabua, Chairman
Environmental Protection Authority
Republic of the Marshall Islands

Approved by the Minister of Health and Environment on February 18, 1994.

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Honorable Evelyn Konou
Minister of Health and Environment
Republic of the Marshall Islands

EFFECTIVE DATE: January 7, 1994