

KOSRAE ISLAND RESOURCE MANAGEMENT AUTHORITY
PERSISTENT ORGANIC POLLUTANT REGULATIONS

PART 1 AUTHORITY

These Regulations are promulgated and adopted by Kosrae Island Resource Management Authority (KIRMA) pursuant to Kosrae State Code, Title 19, Chapter 5, Subchapter C, known as the Persistent Organic Pollutants Act of 2009.

PART 2 PURPOSE

The purpose of these Regulations is to establish the effective date of ban for substances on the priority list, and to define unlawful activities pertaining to substances on the priority list after the effective date of the ban.

PART 3 DEFINITIONS

As used herein, unless the context otherwise requires, the term:

- (a) "Environment" includes water, air, land, and all plants, humans and other animals living therein, and the interrelationships which exist among them.
- (b) "KIRMA" means the Kosrae Island Resource Management Authority, or its authorized representative.
- (c) "Person" means the governments of Kosrae, the Federated States of Micronesia, the United States or other foreign governments and every municipality and political subdivision of said governments, any public or private institution, corporation, partnership, joint venture, association, firm or company, any lessee or other occupant of property, and any individual acting singly or as part of a group.
- (d) "Priority List" means the following substances those hazardous substances declared by KIRMA in accordance with Section 19.509 of the Kosrae State Code to be on the Priority List, and those hazardous substances added to the Priority List in accordance with Section 19.510 of the Kosrae State Code. The Priority List shall be scheduled to this Regulation as Schedule 1.

~~(1) Aldrin~~

~~(2) Chlordane~~

~~(3) DDT (Dichloro-diphenyl trichloroethane)~~

~~(4) Dieldrin~~

~~(5) Dioxins~~

~~(6) Endrin~~

~~(7) Furans~~

~~(8) Heptachlor~~

~~(9) Hexachlorobenzene (HCB)~~

~~(10) Mirex~~

~~(11) Polychlorinated Biphenyls (PCBs)~~

~~(12) Toxaphene~~

- (e) “Inorganic waste” means wastes not consisting or deriving from living matter. It includes, but is not limited to, petroleum-based products such as plastic and plastic-coated packaging and other materials, tires, oil and lubricants, and unsorted household or industrial waste.
- (f) “Organic waste” means wastes consisting or derived from living matter. It includes, but is not limited to, cuttings, clippings and branches of trees, plants, grasses and herbs, and vegetable and food scraps such as coconut husks, fruit and vegetable peels and egg shells.

Paragraphs (d), (e) and (f) added by Regulation No.88/14, August 28, 2014.

PART 4 EFFECTIVE DATE OF BAN

- 4.1 The effective date of ban applicable to all substances included initially (Phase 1) on the priority list is January 1, 2013.
- 4.2 Phase 2 Additions to Priority List. The effective dates for the phase out of substances added to the Priority List are as follows:
- (1) No person may sell any product containing any substance added to the Priority List in Phase 2 (Substances 13-22 on the Priority List) from January 1, 2015.
 - (2) No person may possess, sell, buy, use, apply, store, transport, discard, or otherwise discharge of any product containing any substance added to the Priority List in Phase 2 (Substances 13-22 on the Priority List) from January 1, 2016.
 - (3) The effective date of the ban for the Phase 2 additions to the Priority List (Substances 13-22 on the Priority List) is January 1, 2016.
- 4.3 Subsequent additions to Priority List. The effective date for the phase out of substances added to the Priority List are as follows:
- (1) No person may sell any product containing any substance added to the Priority List from January 1 in the year immediately following the addition of the substance to the Priority List.
 - (2) No person may possess, sell, buy, use, apply, store, transport, discard, or otherwise discharge of any product containing any substance added to the Priority List from January 1 in the second year immediately following the addition of the substance to the Priority List.

Section 4.1 amended, and Section 4.2 and 4.3 added by Regulation No.88/14, August 28, 2014.

PART 5 UNLAWFUL ACTS ~~AFTER EFFECTIVE DATE OF BAN~~

- (a) It shall be unlawful for any person within the State of Kosrae to possess, sell, buy, use, apply, store, transport, discard or otherwise discharge any substance on the priority list after the effective date of ban.
- (b) No person shall violate Section 4.2, 4.3 or 8.1 of this Regulation.
- (c) No person shall violate the terms and conditions of any permit, authority or exemption granted under Part 8 of this Regulation.
- (d) No person shall ignite, set alight, or cause to be burnt inorganic waste, except in an incinerator facility approved by KIRMA.

Sections (b), (c) and (d) added by Regulation No.88-14, August 28, 2014.

PART 6 AUTHORITY TO INSPECT

- (a) KIRMA, and its authorized representatives and employees, may enter upon and public or private property at any reasonable time to examine and inspect supplies of substances on the priority list, or being considered for the priority list, to examine and collect samples of plants, soil, water, or other materials, and to perform any other act for the purpose of carrying out its responsibilities under the Persistent Organic Pollutants Act of 2009, Kosrae State Code, Title 19, Chapter 5 and these regulations.
- (b) KIRMA may conduct its inspection, examination and sampling at any time, if conducted pursuant to information provided to KIRMA of potential bodily harm or adverse effects on the environment due to handling, disposal or discharge of a substance on the priority list.
- (c) KIRMA shall provide written notice of inspection to an adult person present at the property at time of entry. If any items are seized or samples taken, KIRMA shall provide a listing of seized items and samples taken to an adult person present at the property at time of entry. KIRMA will attempt, but is not required to, provide written notice and any listing of seized items and samples to a person of responsibility or management present at the property at time of entry.

PART 7 PENALTY FOR VIOLATION

- (a) First Violation.
 - (1) Any person who violates this ~~chapter, or any regulation issued under this chapter~~, shall receive a warning notice from KIRMA citing the specific violation and the necessary corrective action for the first violation.
 - (2) If the first violation is knowing and intentional, or if the first violation causes substantial harm to any person's health or to the environment, KIRMA may impose additional civil penalty between ten dollars (\$10.00) and fifty thousand dollars (\$50,000.00), depending on the severity of the harm to health and environment caused by the violation.
- (b) Second Violation.
 - (1) Any person who violates this ~~chapter, or any regulation issued under this chapter~~ a second time, shall be assessed a civil penalty between ten dollars (\$10.00) and fifty thousand dollars

(\$50,000.00), depending on the severity of the harm to the health and environment caused by the violation.

(c) Third and Successive Violation.

- (1) Any person who violates this ~~chapter, or any regulation issued under this chapter~~ a third or successive time, shall be assessed a civil penalty at least double the amount of the previous civil penalty, and depending on the severity of the harm to the health and environment caused by the violation.
 - (2) In addition, the repeat violator shall be guilty of a misdemeanor and shall be fined not more than \$500.00 or imprisoned for not more than one year, or both, upon conviction.
 - (3) In addition, if the repeat violator knowingly and intentionally violated and the violation caused serious bodily harm or serious adverse effects on the environment, the repeat violator shall be guilty of a felony and shall be fined not more than \$1,000.00 or imprisonment for not more than three years, or both, upon conviction.
- (d) In addition to the above penalties, a violator may be required to pay the costs of assessing the harm to health and the environment and the costs of any clean-ups or disposal, as directed by KIRMA, or as performed by KIRMA or its agents in the event that the violator is unwilling or unable to perform the clean-up as directed by KIRMA.
- (e) In addition to the above procedures and penalties, KIRMA may issue cease and desist orders and seize substances on the priority list after the effective date of ban.
- (f) In addition, any person who ignites, sets alight or causes inorganic waste to be burnt shall be guilty of a category 3 misdemeanor and shall be fined not more than \$500.00 or imprisoned for not more than six months, or both upon conviction.

Sections (a)(1), (b)(1), (c)(1) and (f) amended by Regulation No.88/14, August 28, 2014.

PART 8 PERMITS

- 8.1 Import, Use, Discharge, etc. No person shall import, possess, sell, buy, use, apply, store, transport, discard, or otherwise discharge any product containing any substance on the priority list but before the effective date of the ban indicated in Part 4, except with a permit granted by KIRMA.
- (a) A person shall submit an application for a permit to import, possess, sell, buy, use, apply, store, transport, discard, or otherwise discharge, any product containing any substance on the priority list to KIRMA on the prescribed form.
 - (b) An application for a permit shall be accompanied by a fee of \$100.
 - (c) All permits shall be subject to terms and conditions as may be determined by KIRMA from time to time, and may include:
 - (1) Compliance with recognized Codes of Practice for the use, application, storage, transport and disposal of hazardous substances;
 - (2) Record keeping;
 - (3) A disposal plan for unused or end-of-life products; and

- (4) Testing and monitoring requirements.

8.2 Denial, Suspension or Revocation, and Appeal

- (a) Denial. KIRMA may deny a permit to:
 - (1) Any person who fails to demonstrate that there are no alternatives to the product containing the substance on the priority list;
 - (2) Any person who fails to provide a disposal plan for managing the product containing the substance on the priority list at the end of its useful life; and
 - (3) Any person who has been found to be in violation of any part of this Regulation or other relevant laws.
- (b) Suspension or Revocation. Any permit issued pursuant to this Part may be suspended or revoked by KIRMA for violation of any condition of the permit or this Regulation, or upon assessment of a civil or criminal penalty against the permit holder under this Regulation or other law administered by KIRMA.
- (c) Notice. If KIRMA denies a permit or suspends or revokes a permit or authority issued pursuant to this Part, KIRMA must, within 7 days of making the decision, notify the applicant or permit holder in writing of the decision, including the reasons for the denial, suspension or revocation.
- (d) Appeal. Any person aggrieved by a decision of KIRMA in relation to the denial, suspension or revocation of a permit under this Part may appeal the decision of KIRMA to the KIRMA Board of Commissioners. An appeal must be brought within 14 calendar days of the date of notice, or within any longer period specified by the KIRMA Board of Commissioners before expiration of the initial 14 calendar days.

8.3 Exemptions to Requirement for Permit under Regulation 8.1.

- (a) KIRMA, may following receipt of a written request by a state and national government department or agency, grant an exemption from the requirement for a permit to allow for:
 - (1) use and discharge of a substance on the priority list if the substance serves a health need with no reasonably available alternative, as certified by the Department of Health; or
 - (2) experimental or research work related to the impact of the substance on health and the environment.

In either case, KIRMA may prescribe conditions for the import, possession, use, application, storage, transport, discarding, or otherwise discharge any product containing any substance included on the priority list.

- (b) Section 8.3 of this Regulation shall apply to written requests for an exemption to the requirement for a permit.

8.4 Export of substances on the Priority List. The export of substances included on the Priority List shall only be permitted in accordance with the FSM National Government's Regulations to Control Transboundary Movements of Hazardous Waste and to Ban Persistent Organic Pollutants in accordance with the Basel, Waigani and Stockholm Conventions. KIRMA shall

act as the State focal point for exports of substances included on the Priority List and shall liaise with the Office of Environment and Emergency Management in relation to the export of any substance included on the Priority List.

Part 8 added by Regulation No.88/14, August 28, 2014.

PART 9 REDUCTION OF UNINTENTIONAL RELEASES OF POPS

- (a) Prohibition on burning of inorganic wastes. No person shall ignite, set alight, or cause to be burnt inorganic waste, except in an incinerator facility approved by KIRMA.
- (b) Education program to reduce unintentional releases of POPs. KIRMA shall implement an educational program to increase community awareness about the unintentional releases of POPs. The program shall include:
 - (1) Increasing awareness of the hazards to humans, plants and animals from the unintentional release of POPs;
 - (2) Reducing the burning of organic yard wastes; and
 - (3) Promoting the use of composting of household organic and yard wastes.

Part 9 added by Regulation No.88/14, August 28, 2014.

PART 10 SEVERABILITY

If any provision of this Regulation or the application of any provision in this Regulation to any person or circumstances is held invalid, the application of such provision to other persons or circumstances and the remainder of this Regulation shall not be affected thereby.

PART 11 DATE OF EFFECT

This Regulation shall become effective upon publication and shall have the force and effect of law as of that date, except that the effective date of the ban for Phase 2 and 3 additions to the Priority List shall be as stated in Part 4 of this Regulation.

This Regulation has been reviewed by the Office of the Attorney General and is found to conform with law.

S/S _____
Office of the Attorney General

1/9/2013
Date

The undersigned certifies that this Regulation has been adopted in compliance with Kosrae State Code, Section 2.402. The Kosrae Island Resource Management Authority hereby adopts this Regulation.

S/S _____
Daniel Thomson, Senior Commissioner

1/09/2013
Date

I hereby approve the adoption of this Regulation.

S/S _____
Lyndon H Jackson, Governor

1/14/2013
Date

Filing of Regulation Number 79/13

S/S
Office of Public Affairs, Kosrae State Government

1/14/2013
Date

Amended by Persistent Organic Pollutant (Amendment) Regulations

This Regulation has been reviewed by the Office of the Attorney General and is found to conform with law.

S/S
Office of the Attorney General

5/28/2014
Date

The undersigned certifies that this Regulation has been adopted in compliance with Kosrae State Code, Section 2.402. The Kosrae Island Resource Management Authority hereby adopts this Regulation.

S/S
Daniel Thomson, Senior Commissioner

5/26/2014
Date

S/S
Robert H. Jackson, Administrator

5/26/2014
Date

I hereby approve the adoption of this Regulation.

S/S
Lyndon H Jackson, Governor

8/28/2014
Date

Filing of Regulation Number 88/14

S/S
Office of Public Affairs, Kosrae State Government

8/28/2014
Date

Schedule 1: Priority List of Hazardous Substances

The following substances are included on the Priority List in accordance with the Persistent Organic Pollutants Act of 2009.

1. Aldrin
2. Chlordane
3. DDT (Dischloro-diphenyl trichloroethane)
4. Dieldrin
5. Dioxins
6. Endrin
7. Furans
8. Heptachlor
9. Hexachlorobenzene (HCB)
10. Mirex
11. Polychlorinated Biphenyls (PCBs)
12. Toxaphene
13. Alpha hexachlorocyclohexane
14. Beta hexachlorocyclohexane
15. Chlordecone
16. Hexabromobiphenyl
17. Hexabromodiphenyl ether and heptabromodiphenyl ether (commercial octabromodiphenyl ether)
18. Lindane
19. Pentachlorobenzene (PeCB)
20. Perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOS-F)
21. Technical endosulfan and its related isomers
22. Tetrabromodiphenyl ether and pentabromodiphenyl ether (commercial pentabromodiphenyl ether)

* Phase 1 Substances 1 – 12; Phase 2 Substances 13-22