



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MEMORANDUM

DATE: August 5, 2019

SUBJECT: Small Communities Exemption 40 CFR 258.1(f)(1) and its Application to Pacific Island Communities

FROM: Katherine Taylor, Branch Chief, Pollution Prevention Branch

TO: Betsy Devlin, Director, Materials Recovery and Waste Management Division

This memorandum is in follow up to the request for applying the Small Communities Exemption to Pacific Island Communities, who meet the requirements of 40 CFR 258.1(f)(1). Thank you for you and your Staff's efforts on this topic and for pushing a review by Office of General Counsel (OGC). Region 9 received an email from OGC's John Michaud dated June 24, 2019 stating, "I agree with the OLEM, R9 ORC position that reading the Small Community Exemption in 40 CFR 258.1(f)(1)(i) to apply to small remote islands is a reasonable exercise of Agency discretion." John also provide a succinct and thorough discussion of the issues and legal conclusions as excerpted below.

- After reading a report about the Pacific Islands, the R9 RA asked his staff to evaluate ways to improve conditions for remote Pacific Islands.
- Region 9 approached OLEM to help communities on small poor remote islands to more affordable comply with Subtitle D requirements.
- One option is to apply the Small Community Exemption in 40 CFR 258.1(f)(1)(i) – which applies to disposal of less than 20 tons of municipal solid waste daily, there is no evidence of groundwater contamination, and the unit serves:
 - (i) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility
- This provision was originally created to accommodate remote areas in Alaska, but a plausible argument can be made that it can be applied to the islands as well:
 - The remote nature of these islands may be an "interruption" of more than three months.
 - OLEM, R9 ORC, and I all agree that there is a plausible interpretation that the islands' remoteness also "prevents" access to a regional waste management facility. In many instances, water access is limited (in some instances people are going around in canoes). While it is not "impossible" to ship waste, it can be a significant burden and difficult.
 - Further, 258.1(f)(1)(i) is not geographically limited to Alaska itself, which suggest that it can be applied to many scenarios.
- Note: There are some islands like Guam, Tutuila, and Saipan that do have more than 20 tons a

day so it would not apply to all Pacific Islands. The islands at issue vary in populations of 3,136 - 177 people.

Additionally, Region 9 Staff received verbal indication that David Fotouhi, OGC Deputy General Counsel, agreed that this exemption could be applied to small Pacific Island communities who met the requirements. With this information, Region 9 will plan to move forward with applying the small community exemption to applicable Pacific Island communities unless we receive additional guidance from OLEM/OGC to the contrary within 14 days of the date of this memorandum.

Thank you again for your assistance. Applying the Small Communities Exemption to these less populated, economically challenged Pacific Island communities will provide a path for increased protection of human health and the environment and a more sustainable management of solid waste.