UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

SEP 29 2009

LCDR Cèsar Acosta
Commanding Officer
Civil Engineering Unit Honolulu (CEUH)
Prince Kalanianaole Federal Building (PJKK)
300 Ala Moana Blvd, RM 8-134
Honolulu, HI 96850-4982

Dear Lieutenant Commander Cèsar Acosta:

This letter is in response to the email request sent by Mr. Thomas Hayes on behalf of the United States Coast Guard (USCG) dated February 12, 2009, seeking EPA's position on the shipment of certain PCB waste from the Yap Islands to the U.S. for disposal. In the request, Mr. Hayes stated that equipment containing PCBs was sent from the U.S., specifically from the USCG supply station in Brooklyn, New York, to the Yap Islands for use on a USCG Long Range Aids to Navigation (LORAN) station from 1965 to 1987. The PCB waste generated by the USCG, while operating the LORAN station, was disposed of in a sanitary landfill at the station. The USCG intends to clean up the site and remove all PCB wastes from the island for proper disposal.

The Yap Islands were part of the Trust Territories of the Pacific Islands administered by the United States from 1947 until 1986. All of the PCB waste in question is derived from PCB equipment that was sent to the Yap Islands by the U.S. government when the islands were part of the U.S. Trust Territories. In 1986, the U.S. administration of the Yap Islands was terminated, and the Yap Islands, along with other prior Trust Territories, entered into a Compact of Free Association (COFA) with the United States as the Federated States of Micronesia. This document, as amended, defines the relationship between the governments of the U.S. and the Federated States of Micronesia. There are two provisions of the U.S. law enacting the COFA that appear to cover the issue at hand.

First, pursuant to 48 U.S.C. § 1921d(a), whenever the U.S. government conducts a "program or activity" in the Federated States of Micronesia, it is subject to all the same standards, rules and regulations that would apply if the activity were occurring in the U.S., including its territories and possessions. We believe that this provision applies to the USCG's intended cleanup of PCB contamination at the former LORAN station. Therefore, EPA's

regulations at 40 C.F.R. Part 761, implementing the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. (TSCA), and governing the disposal of PCBs, apply to this USCG activity.

Second, the provision at 48 U.S.C. § 1921d(f)(3) specifically covers PCB cleanup on the islands, stating: "The programs and services of the Environmental Protection Agency regarding PCBs shall, to the extent applicable, as appropriate, and in accordance with applicable law, be construed to be made available to such islands for the cleanup of PCBs imported prior to 1987. The Secretary of the Interior and the Secretary of Defense shall cooperate and assist in any such cleanup activities." This requirement was intended to ensure that any PCBs that had been brought to the islands by the U.S. government, while the islands were U.S. Trust Territories would be handled responsibly by the U.S. to protect the fragile ecology of the islands of the Federated States of Micronesia, thereby lessening the burden on those islands from past U.S. activity, especially those activities that caused PCB contamination.

Thus, the USCG's PCB cleanup activity on the Yap Islands is subject to all rules and regulations that would apply if the USCG were performing a cleanup in the U.S. or in a U.S. Territory, such as Guam, and EPA must construe our programs and services regarding the cleanup of PCBs to be made available to the Yap Islands. If the USCG were conducting this cleanup inside the U.S., then it would be authorized to move the resulting cleanup wastes to any EPA-approved disposal facility in the U.S., even if the waste would cross a U.S. boundary or the boundary of the U.S. Customs Territory. See, e.g., 40 C.F.R. § 761.20(c)(2), § 761.99(a) and (c). Therefore, construing our PCB disposal program as being available to the Yap Islands, EPA believes that movement of PCB wastes from the USCG cleanup site to a TSCA-approved disposal facility in the U.S. would not constitute an impermissible import of PCBs for purposes of TSCA. Of course, disposal of the PCB waste in the United States must comply with all provisions of 40 C.F.R. Part 761.

Thank you for your inquiry and your efforts in cleaning up the PCB waste on the Yap Islands. If you have any questions regarding this letter or shipments of PCB waste in general, please contact William Noggle of my staff at 703-347-8769, noggle.william@epa.gov.

Sincerely,

Maria P. Cichas for

Matt Hale, Director
Office of Resource Conservation and Recovery