

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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

The Honorable Vance Hartke
Hartke & Hartke
The Hartke Building
7637 Leesburg Pike
Falls Church, Virginia 22043

Dear Senator Hartke:

This is a supplemental response to your letter of December 4, 1997 addressed to Robert Perciasepe, Assistant Administrator for the Office of Water. A copy of your letter was referred to me for an explanation of the applicability of the Resource Conservation and Recovery Act (RCRA) to oil and gas exploration and production (E&P) wastes.

Through the 1980 amendments to RCRA, Congress exempted produced water, drilling fluids, and other wastes associated with oil and gas exploration, development, and production activities from regulation as hazardous wastes under RCRA Subtitle C [RCRA Section 3001(b)(2)(A)] pending a study by the Environmental Protection Agency (EPA) and a regulatory determination. Congress further stated that "[t]he Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress" [RCRA Section 3001(b)(2)(C)].

EPA submitted the results of its study in a Report to Congress dated December 1987. In its Regulatory Determination published in July 1988 (53 FR 25446), the Agency stated that regulation of E&P wastes as hazardous wastes under RCRA Subtitle C was not warranted. The Agency determined that, although there are gaps in some states' regulatory programs, regulation of E&P wastes would be more effective if left to the states. Therefore E&P wastes and waste management practices are regulated by the states. Since promulgation of the regulatory determination, the Agency has been working with the states and others to encourage improvements, where necessary, in states' regulatory and enforcement programs.

With regard to your specific concerns with debris, packaging materials such as drums, sacks, plastic buckets, pallets, etc., are not covered by the exemption, but are likely non-hazardous debris. I will address this circumstance, as well as the possibility of the debris containing hazardous wastes. If the debris is non-hazardous, it is primarily addressed by state solid waste management programs. I would add that, under Section

RO 14260

4005 of RCRA, any solid waste management practice which is not in compliance with the Agency's Criteria for Classification of Solid Waste Disposal Facilities and Practices (40 CFR Part 257) is considered to be an act of "open dumping" which is prohibited by Section 4005(a) RCRA. While not Federally enforceable, such violations are subject to the citizen suit provisions of Section 7002 of RCRA.

If the debris contains hazardous waste, it would be subject to hazardous waste regulations. It is unlikely, however, the debris from E&P operations contains hazardous wastes, because E&P wastes are exempt from hazardous waste regulations. The debris would have to contain hazardous wastes not uniquely associated with E&P (such as unused materials which are listed or characteristic hazardous wastes). Even then, RCRA exempts point source discharges subject to regulation under section 402 of the Clean Water Act, as amended. As reflected in Mr. Perciasepe's response and the above information, the Agency primarily relies on those statutes and programs outlined in Mr. Perciasepe's response to control E&P debris in our nation's waters.

I hope you find this information helpful. If you have further questions please contact me at (703) 308-8895 or Richard Kinch of my staff at 703-308-8214.

Sincerely,

Elizabeth A. Cotsworth, Acting Director
Office of Solid Waste