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**Environment Secretary Discussed Oil and Gas Industry Exemptions from
Environmental Laws and Regulations at ABA Conference in Dallas**

Secretary Curry Addressed Attorneys, Regulators at American Bar Association's Gathering

(Santa Fe, NM) – New Mexico Environment Secretary Ron Curry addressed attorneys and regulators at a conference this week at meeting in Dallas, Texas hosted by the American Bar Association's Section of Environment, Energy, and Resources. Secretary Curry focused on the need for changes in federal and state laws that exempt the oil and gas industry from environmental regulations that other industries must follow.

Other regulators from Region 6, including Louisiana, Arkansas, Texas and Oklahoma, also addressed attendees at the conference concerning environmental issues and updates.

Secretary Curry's remarks focused on how oil and gas companies have benefited by certain state and federal exemptions to environmental laws and regulations. Those include the exemption in the Underground Injection Control program for hydraulic fracturing; the federal Comprehensive Environmental Response, Compensation, and Liability Act petroleum exclusion; the federal Resource Conservation Recovery Act oil field exemption; and the Clean Water Act Storm Water exemption.

"The oil and gas industry, like every other American industrial sector, must be held accountable for its operations that adversely affect the environment," said New Mexico Environment Department Secretary Ron Curry. "Some of the loopholes in these exemptions are so huge, you could drive a tanker truck through them."

The Underground Injection Control program under the Safe Drinking Water Act regulates the injection of fluids into subsurface formations through a well. Hydraulic fracturing or "fracking," is a technique that is used to increase the yield of an oil or gas production well. Until 2005, hydraulic fracturing had been subject to regulations under the UIC program as underground injection pursuant to federal case law. But in the Energy Policy Act of 2005, the U.S. Congress amended the Safe Drinking Water Act specifically to exempt from regulation under the UIC program the injection of fluids in hydraulic fracturing. The only exception is injection of diesel fuel. Thus, hydraulic fracturing is largely unregulated unless diesel fuel is used. This exemption is sometimes called the "Halliburton Loophole." The State of New Mexico believes this exemption should also be repealed.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), which places liability on parties responsible for sites contaminated with hazardous substances, exempts “petroleum, including crude oil or any fraction thereof” from the definition of hazardous substance. Because of this major loophole, there is no liability for the cleanup of releases of oil, of gasoline, or of diesel fuel. In addition, there is no CERCLA liability for natural resource damages resulting from releases of oil. The State of New Mexico urges Congress to repeal the CERCLA petroleum exclusion.

The federal Resource Conservation and Recovery Act (RCRA) provides for the regulation of the generation, transport, storage, treatment and disposal of hazardous waste. Both federal and state statutes contain an identical exemption for oil and gas, the so-called “Bentsen exemption.” They exempt “drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy.” Most oil field wastes, up to the point of the refinery, are not subject to regulation under the hazardous waste program in either the Hazardous Waste Act or RCRA. New Mexico also requests that Congress repeal this RCRA exemption.

The federal Clean Water Act regulates discharges of pollutants into surface waters connected to “navigable waters.” But there’s an exemption for storm water runoff from oil and gas facilities. National Pollutant Discharge Elimination System (NPDES) storm water permits are not required at oil and gas facilities as long as the discharge is directed through a conveyance system, such as pipes, conduits, ditches, or channels; and so long as the runoff is not contaminated. EPA regulates NPDES permits for New Mexico. EPA issued regulations providing that oil and gas construction facilities must have an NPDES storm water permit, because storm water from these facilities is always contaminated. In the Energy Policy Act of 2005, the U.S. Congress amended the Clean Water Act to include oil and gas construction sites within the exemption. That provision effectively overruled EPA’s regulations requiring a storm water permit for all oil and gas construction sites. If the discharge is directed through a conveyance, and the discharge is not contaminated, an oil and gas construction facility does not need an NPDES storm water permit.

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