



# President And Industry Must Make Nation's Energy Agenda Top Priority

By Jeff Share/Editor



Wayne D'Angelo

**T**he oil and gas industry will be watching closely to see whether the fractious relationship between it and the Obama administration can be repaired in a way that enables the country to continue forward in its quest for energy security.

Legal energy expert Wayne D'Angelo has often worked on complex energy-related initials involving the petroleum industry and in this interview says he believes the two sides can work together if they both make the nation's agenda their first priority.

D'Angelo is special counsel in Kelley Drye & Warren's Washington, DC office where he counsels clients on a wide array of environmental and energy matters. He specializes in issues surrounding hydraulic fracturing, conventional/non-conventional

fuels, resource extraction, greenhouse gas regulation, and stationary and mobile sources issues under the Clean Air Act.

Prior to joining Kelley Drye, D'Angelo served as counsel to the American Petroleum Institute where he directed API's most critical issues including climate change, greenhouse gas regulatory issues and litigation, numerous federal and state hydraulic fracturing regulatory and legal actions as well as energy access issues. He can be reached at [wdangelo@kelleydrye.com](mailto:wdangelo@kelleydrye.com).

**P&GJ:** What do you foresee for the oil and gas industry under the Obama administration, especially after the president's comments about natural gas and weaning ourselves off of foreign oil?

**D'Angelo:** I've written about this specific issue in our blog, [frackinginsider.com](http://frackinginsider.com). I do not believe this administration is intent on settling scores and killing off the domestic oil and gas industry. President Obama needs this industry to continue to be a catalyst for economic recovery and jobs, and he needs the lower GHG emissions profile of natural gas to secure his climate change legacy.

That being said, this administration, more than most, believes in top-down regulation from Washington. It will push for stricter air emissions standards for refineries and upstream operations. It will have an intense multimedia regulatory focus on hydraulic fracturing as it pushes for regulations that duplicate effective state regulations.

This administration will continue to push aggressive fuel efficiency standards and will continue to try to pick winners in the renewable energy field while calling for increased taxes on the oil and gas industry. Again, none of this is intended to kill off the oil and gas industry, but damage will be done if the administration does not work closely with industry to find an appropriate regulatory balance.

**P&GJ:** Do you think Obama needs to bring someone with oil and gas experience to head the Department of Energy or work in another substantive role?

**D'Angelo:** Bringing someone from the oil and gas industry into the Department of Energy would be a tremendous step forward for a couple of reasons. First of all, sometimes this admin-

istration operates, and regulates, with insufficient knowledge about the oil and gas industry, energy-extraction processes, and markets for conventional, unconventional, and emerging energy. Appointing someone into a key position in the DOE who understands the regulatory and market pressures faced by America's domestic energy companies could help this administration regulate more effectively.

Secondly, the relationship between the administration and the oil and gas industry has been strained. Bringing in an industry representative would send a clear signal that President Obama is interested in collaboration with key stakeholders with a goal of informed decision-making.

**P&GJ:** Will those with an environmental agenda have strengthened clout, and do you expect to see a more restrictive environment concerning oil and gas development? Will the issue of climate change resurface?

**D'Angelo:** I anticipate the administration will continue its restrictive regulatory approach toward oil and gas development. I think some new federal lands will be opened for development but not as many as needed to secure America's energy future. The majority of development will remain on private land. Unlike others, I do not see this administration entirely shutting out oil and gas development.

While there may be some significant second term pressure to further "green" the administration, those pressures will hopefully be counterbalanced, to some degree, by strong pressure to get unemployment under control — a goal which is not achievable without a strong domestic energy industry.

I do not think there is much chance that the present Congress will pass any significant climate change legislation. However, I do not

see this administration putting the brakes on its regulatory initiatives. In the absence of legislative action on climate change, this administration has been aggressively using the Clean Air Act to regulate greenhouse gas emissions and is pushing for more GHG regulation at power plants, refineries, and in upstream oil and gas operations. A recent opinion from the D.C. Court of Appeals has validated EPA's regulatory approval toward climate change. For this reason, I would expect to see increased regulatory activity under the Clean Air Act.

**P&GJ:** Many in the industry, particularly the API, openly campaigned against the president. Do you see the possibility of any fence-mending?

**D'Angelo:** I do. I think the president and the oil and gas industry will work together because they have to. Energy issues are far too important, particularly in these economic times. The domestic energy industry supports 9.2 million jobs. Increased oil and gas development has pulled desperate communities back from the brink in states like Pennsylvania, Ohio, and North Dakota. Decreased natural gas prices have been the catalyst for a domestic manufacturing renaissance during the worst economic downturn in generations.

President Obama is a smart guy. He knows that America's economic recovery does not happen without a strong domestic energy industry. And the people at API are very effective advocates for their industry. I imagine that they are ready, willing, and eager to work with him. I'm not naive enough to think that both sides will agree on all of the means, but I think they both want a healthy domestic energy industry.



### Q&A: Executive Profile

*Continued from page 120*

**P&GJ:** Do you anticipate increased federal oversight of fracking or will this continue to be left to the states?

**D'Angelo:** I think we will see increased federal oversight of hydraulic fracturing. This administration is already moving forward with increased regulation under the Clean Air Act, under the Safe Drinking Water Act, and on federal land. They are under tremendous pressure to take authority away from the states which have been effectively regulating hydraulic fracturing for decades.

I suspect the administration, and particularly EPA, is identifying where they think they have authority to regulate hydraulic fracturing further and, over the next four years, will attempt to layer more regulation on top of state rules.

**P&GJ:** Other than the fracking issue, what pending regulations could affect the oil and gas business, especially pipelines?

**D'Angelo:** My firm closely tracks all kinds of developments in the oil and gas indus-

try including permit challenges, challenges under the National Environmental Policy Act (NEPA), and challenges under the Endangered Species Act (ESA). In the past few years we have seen a marked increase in challenges to permits for natural gas pipelines and liquid natural gas (LNG) export facilities.

In some cases, we are seeing extremely aggressive challenges from the large, well-heeled national environmental groups to permits for fairly modest-sized local projects. Generally, these groups are not so concerned with the impacts of the actual pipeline or LNG facilities as much as they are opposed to hydraulic fracturing.

So far, however, anti-hydrocarbon environmental groups have been unable to ban hydraulic fracturing or regulate it out of existence, but they have recognized that operations in many of the more recently developed formations, like the Marcellus basin, will not grow unless there is sufficient midstream capacity to move the product and sufficient markets to sell the product.

As such, they are now aggressively moving to sever the upstream natural gas wells from downstream markets through aggressive, and sometimes frivolous, permit challenges. Some environmental groups are now bringing guns to what used to be modest scuffles over small projects. They are increas-

ingly looking to the citizen suits and trying to find justification under NEPA, the ESA, and other statutes to stop permit approvals. These are not new statutes or regulations, but their use is broadly expanding and midstream companies should be aware because their pipelines are squarely in the crosshairs.

**P&GJ:** Do you think we will continue to see more natural gas-dependent manufacturers return to the U.S.?

**D'Angelo:** Yes. I'm not an economist but I represent a number of manufacturers that hire very smart economists who are looking at the long-term price trends for natural gas and either moving to the U.S. or expanding manufacturing operations in the U.S. As you can imagine, strategic decisions regarding manufacturing location, energy prices, and feedstock availability can have billion-dollar impacts.

I consider real-world decisions such as these as strong evidence of long-term price stability for natural gas. The businesses that have made these decisions or are poised to make them are coming to us in increasing numbers to better understand the regulatory pressures that could significantly impact natural gas prices. **P&GJ**