Regulations Can Crush Production Job Growth

American oil and natural gas production generates new American jobs. Over the past few years the industry has been a significant bright spot in the challenging American economy. But, these new jobs can be hampered by federal government actions. The regulatory framework that confronts the oil and natural gas production industry is complex, extensive and growing. Opponents of American oil and natural gas production will try to use the regulatory process to limit American energy.

Environmental Regulation – principally through regulation by the Environmental Protection Agency (EPA), oil and natural gas producers must cope with constraints that needlessly limit or prevent American production.

- ***Clean Air Act*** – EPA's Green House Gas (GHG) reporting requirement contorted the definition of a "facility" only for oil and natural gas production to aggregate emissions from individual wells in large geographic basins because EPA recognized that an individual well did not emit enough to be counted. EPA has been seeking ways to aggregate individual well emissions under the Clean Air Act as well. These actions impose costs on producers that are beyond Congressional intent.

  EPA revised the ozone ambient air quality standard in 2008 but is considering revising it again before the 2008 standard's regulations have even been implemented. The revision being considered would likely make rural areas targets – areas that have never been subjected to ozone regulations. Most American oil and natural gas wells are in these rural areas.

- ***Clean Water Act*** – EPA developed regulations implementing changes to the Clean Water Act in 2005 regarding storm water construction management associated with oil and natural gas production activities. These were challenged in court and remanded to EPA. No revisions have been proposed. Action prior to 2005 by EPA resulted in regulations that could have reduced future American oil and natural gas production by 10 percent of current production. Future action by EPA needs to be cost effective.

  EPA is developing new Effluent Limitation Guidelines for water discharges associated with coal bed methane production. Current permitting practices effectively control this wastewater; a new regulatory program is unnecessary. Environmentalists are seeking action by EPA to develop guidelines in other areas such as shale gas where current permitting practices are similarly effective.

- ***Safe Drinking Water Act*** – EPA in 2010 posted a website notice that it would regulate hydraulic fracturing under the Safe Drinking Water Act Class II Underground Injection Control program when diesel fuels are used. A website notice is not an appropriate rulemaking process. Producers should not be subjected to EPA enforcement of a regulatory action that has not gone through a full notice and comment process.

- ***Resource Conservation and Recovery Act*** – EPA determined in 1988, under a Congressional mandate, that use of the federal Subtitle C (hazardous waste) regulatory program was not appropriate for oil and natural gas production wastes, that state regulatory programs effectively managed these wastes and that the adverse consequences to US production would be significant. Environmental organizations want to reopen this EPA action, but the conclusions would be unchanged. It is a thinly disguised effort to suppress American production.

- ***EPA Enforcement Initiative*** – EPA has identified the oil and natural gas production section as a target for an enforcement initiative. EPA's first action appears to be using its "imminent and substantial endangerment" authority under the Safe Drinking Water Act to attack a Texas producer over two private water wells that have methane in them. EPA took this action despite investigations by the Texas regulators and other studies showing the methane came from an unrelated source. EPA should not be using an ill-defined federal club to step over state regulators and persecute oil and natural gas producers.

Federal Resource Access

- ***Offshore Permitting*** – Despite lifting the moratorium in the Gulf, the Department of Interior is moving slowly to issue permits in either the shallow or deep waters of the Gulf. Rulemaking to put in place a firm structure for future development can drag out for years. Without clear, consistent, reasonable and expeditious action by the federal agencies, development of the Gulf of Mexico will wither. America cannot afford to diminish the production from this critical component of US energy supply – a component that now contributes 27 percent of US oil production and 15 percent of US natural gas production
- ***Onshore Federal Resources*** – The Interior Department is initiating a new "wild lands" program that can inhibit the development of multiple use federal land by starting a process to declare it as wilderness. This action circumvents the normal designation process and excludes the Congress. These are federal lands that have historically been available for all users – farming, ranching, recreation and energy.

  The Administration is avoiding the use of permit expediting "categorical exclusions". Congress provided the authority to expedite permitting in limited cases – like drilling wells on sites where prior wells were drilled. By not using these options, the Interior Department is arbitrarily delaying new permits. The Bureau of Land Management (BLM) has overseen a 79 percent drop in leases issued over five years in the western states.

  The Administration has expanded its Endangered Species Act activities. New designations could create uncertainty regarding development – on both federal and non-federal lands. For example, the Endangered Species Act could be used to threaten or delay development of the Niobrara formation which is largely on non-federal lands.

Financial Regulation

- ***CFTC End User Regulation*** – Oil and natural gas producers hedge their production on commodity markets to manage their cash flow and plan investments. In this activity, they are considered "end users". However, the end user provisions in the Dodd-Frank financial reform legislation allow for the regulators – primarily the Commodity Futures Trading Commission (CFTC) – to prescribe limits and/or impose collateral and margin requirements that could prevent effective hedging for end users. The CFTC regulatory process needs to allow adequate flexibility for hedging to continue by exempting end users from the margin and real-time reporting requirements aimed at large market players and financial firms.