

## Environmental Group Of The Year: Morgan Lewis

By Juan Carlos Rodriguez

*Law360, New York (January 7, 2016, 6:30 PM ET)* -- From shielding Anadarko Petroleum Corp. from what could have been a \$3.5 billion penalty over the company's role in the Deepwater Horizon disaster, to winning a groundbreaking hydraulic fracturing pollution decision in favor of a Pennsylvania oil and gas operator, Morgan Lewis & Bockius LLP made the cut as one of Law360's Environmental Practice Groups of the Year.



With 50 total attorneys, about half of which are partners, Morgan Lewis boasts a presence in California's Bay Area; Los Angeles; Irvine, California; Houston; Washington, D.C.; New York; Boston; Pittsburgh; Philadelphia; and Princeton, New Jersey. Environmental practice group leader Jim Dragna said the firm is "in all the places where there's work."

In one of the firm's cases that grabbed headlines in 2015, Anadarko escaped the Clean Water Act penalty phase of litigation surrounding the 2010 Deepwater Horizon oil spill with a \$159 million penalty, a far cry from the potential \$3.5 billion maximum or the \$1 billion the federal government had asked for.

"While the number seems high, Anadarko considered it to be a significant victory given the potential penalty and the demand the federal government was seeking," Dragna said.

He explained that when the firm got the case shortly after the spill, the first thing it had to do was stabilize the proceedings so that it could sit down and work with Anadarko on a strategy. Morgan Lewis used its entire national environmental group to put people in different areas to help the company.

Dragna said, for example, there was a Coast Guard hearing that started several weeks after the spill, that was basically a trial on the merits of the case.

"We had to staff that, prepare the factual analysis and start to work with the government. So it was really kind of a classic fire drill. And if the firm didn't have the breadth of practice and practitioners, who

include regulatory folks as well as litigators, then we wouldn't have been able to do that," he said.

Ultimately, the approach the firm and Anadarko embraced, and was most successful, was convincing the court — over strenuous objection by the federal government — that the non-operating investors like Anadarko, while having a financial interest in the well and being strictly liable under the Clean Water Act — were not culpable for the events leading up to the spill.

Those non-operating investors had no obligation or duty to take action because they aren't on the rig, Dragna said.

"They aren't making the decisions that the court ultimately found lead to the explosion and release of hydrocarbons into the Gulf," he said. "Emanating from that victory, we were able to win the dismissal of all the various cross claims and counter claims against us for contribution. So ultimately the case narrowed down to a case between Anadarko and BP over its obligations under their joint contract."

The second big victory for Morgan Lewis' team was convincing the district court, the Fifth Circuit and ultimately the Supreme Court that the primary jurisdiction in this case rested in federal law, not state law.

Dragna said that had the result of centering all of the lawsuits in front of U.S. Judge Carl Barbier in New Orleans and eliminating the need to have individual state actions in distant courts in other states along the Gulf and state enforcement actions in different states along the Gulf.

"It was very important for the defendants to have one forum in which they could resolve their liability fairly and in front of one trier of fact," he said.

In another big win for the firm, it successfully defended Range Resources Corp. from allegations the company's drilling site caused the contamination of a landowner's well water. The Pennsylvania Environmental Hearing Board in June tossed the landowner's 2011 claim, saying that although he presented extensive evidence of leaks and spills, he didn't conclusively show a hydrogeological connection between his well and the site. And in December, a Pennsylvania appeals court declined to reopen the case.

Dragna said the Range Resources case was the first to get at the technical arguments associated with fracking and the potential environmental impacts. He said there was a full administrative hearing on all aspects of the fracking operation and the potential impacts it could have on the environment.

"It was significant because it was a test case on a whole series of expert theories on the role of fracking and the impact fracking may have on the environment," Dragna said.

He said the firm was able to win because of the depth of litigation expertise in the environmental group and because the firm has focused its efforts on the fracking industry in Pittsburgh.

"We have been working that area of the law for years, unlike other environmental practices," Dragna said. "I think there are few firms that are positioned in a way to pull off something like this. It wasn't depth we had to go searching for. It was depth we already had in place and had predicted where we thought the market was going. And ultimately it turned out to be a benefit for us."

Dragna said the environmental practice is a significant group in the firm, and its expansion, both

internally and geographically, is a priority. He said one reason for that is because it not only generates its own work outside the firm, but work for other groups inside the firm.

“Sometimes the firm can be your best client, and your partners can be your best client by teaching them what environmental lawyers can do and what the practice can do for other clients,” he said.

He also said the firm boasts a large number of attorneys with government experience, which is an important part of an environmental practice because it provides access and understanding about how the government makes decisions.

“We are also steeped in the technical sciences that drive the laws that generate the work — whether it’s groundwater or chemistry or air modeling or emissions. When you’ve done this long enough and you’ve got a real environmental group, your eyes don’t glaze over when someone talks about an isopleth or air modeling or other technical issues that drive these environmental cases,” Dragna said.

--Additional reporting by Brandon Lowrey, Hannah Sheehan and Alex Wolf. Editing by Emily Kokoll.

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