

DOJ Leaders Will Stress Criminal Environmental Enforcement

DECEMBER 22, 2021

On December 14 and 15, 2021, environmental enforcement leaders at the Department of Justice announced their intent to “stress” criminal prosecution for environmental violations going forward. This will include not just corporations, but “the individuals who commit and profit from corporate malfeasance.” For “only individuals can go to jail.” We look at what to expect from DOJ in the coming year.

Recent Public Remarks by DOJ Leadership

DOJ’s Assistant Attorney General for the Environment and Natural Resources Division (ENRD) leads much of the civil and criminal enforcement of federal environmental law. ENRD includes an Environmental Crimes Section (ECS), whose attorneys bring cases throughout the 94 federal judicial districts. ECS also provides advice and training to other prosecutors and investigators in U.S. Attorneys’ Offices, which can also variously investigate and prosecute environmental crimes in their districts.

On December 14, ENRD AAG Todd Kim delivered remarks at the American Bar Association’s National Environmental Enforcement Conference’s Section on Environmental, Energy, and Resources.^[1] In his speech, AAG Kim “stresse[ed]” that the “enforcement of the criminal provisions of the environmental laws is a priority” for him, and that ENRD is planning to use criminal enforcement to encourage and incentivize compliance by private-sector business entities.^[2]

AAG Kim said that DOJ is looking at all of its options, and explained that there are multiple tools “available in criminal and civil environmental enforcement that can be used to incentivize compliance and promote a law-abiding corporate culture.”^[3] One of these tools is the “Corporate Crime Advisory Group” that was recently created to consider “cooperation credit, corporate recidivism, and factors relevant to whether a company will qualify for deferred prosecution agreements or non-prosecution agreements.”^[4] As covered in a prior alert,^[5] this was one of several new department-wide policies announced by Deputy Attorney General Lisa Monaco on October 28, 2021, impacting environmental and ESG enforcement.

AAG Kim further said that “[v]igorous criminal enforcement is critical to the proper functioning of the overall enforcement scheme under the environmental statutes. It also expresses our values as a society and is an

appropriate response to the most egregious and harmful conduct.” Criminal prosecutions “are an indispensable and powerful deterrent” and a “genuine threat of criminal prosecution can and will change the conduct of individuals and corporations who would not be deterred by the threat of civil enforcement alone. For many of these reasons, ENRD will prioritize prosecuting individuals who commit and profit from corporate malfeasance. Only individuals can go to jail, and we have found that criminal corporate accountability starts with accountability for individuals responsible for criminal conduct.”^[9]

Deborah Harris, AAG Kim’s Chief of the Environmental Crime Section, spoke at the same ABA conference the next day. Chief Harris said while there has not been an official announcement from DOJ or EPA, she expects government investigators are “going back to a little bit more stick than carrot.”^[10] Chief Harris said that, during the last administration, companies were told that the government would prioritize getting them into compliance, rather than bringing enforcement actions against them. She said that is going to change: “we’re going to have both, but given how the prosecutions declined over the course of the last four years—civil inspections were way down, and if you ask me, things just got worse—I think we’re going to head more to vigorous enforcement as opposed to just aiming for compliance.”

Beyond these two speeches, and the recent policy announcements by DAG Monaco regarding DOJ investigation and pursuit of corporate crime generally,^[11] expect EPA to similarly emphasize the use of criminal referrals, charges, and remedies in coming years. The United States Senate’s Environment and Public Works Committee recently voted 10–9 to advance David Uhlmann, a former Chief of ENRD ECS, to lead EPA’s Office of Enforcement and Compliance Assurance (OECA). As a professor at the University of Michigan Law School, Uhlmann was critical of the decline in the number of agents and criminal investigators at EPA, and the overall decline in the number of criminal prosecutions for pollution-control violations at EPA and DOJ. EPA OECA plays a critical role in the criminal enforcement of environmental laws because Special Agents of EPA’s Criminal Investigation Division (rather than DOJ’s FBI) investigate the most significant and egregious violations of environmental laws that pose significant threats to human health and the environment.

For further information or answers to questions on DOJ’s new policies and their implications, contact Jonathan D. Brightbill* (Partner, White Collar, Regulatory Defense & Investigations, Environmental Litigation), or Jennie Roualet (Associate, White Collar, Regulatory Defense & Investigations).

** Jon served at DOJ’s Environment & Natural Resources Division from 2017–2021, including as Acting Assistant Attorney General of ENRD.*

^[9] Assistant Attorney General Todd Kim Delivers Remarks at the American Bar Association’s National Environmental Enforcement Conference’s Section of Environment, Energy and Resources (“Kim Speech”), December 14, 2021.

^[10] Kim Speech.

^[11] Kim Speech.

^[12] Kim Speech.

^[13] Jon Brightbill and Jennie Roualet, *New DOJ Policies Impact Environmental and ESG Enforcement*, (Nov. 9, 2021) <https://www.winston.com/en/winston-and-the-legal-environment/new-doj-policies-impact-environmental-and-esg-enforcement.html>.

^[14] Kim Speech.

^[15] Juan Carlos Rodriguez, *DOJ Enviro Crimes Section Leader Says Enforcement Coming*, Law360 (Dec. 15, 2021), <https://www.law360.com/articles/1448968/doj-enviro-crimes-section-leader-says-enforcement-coming>.

^[16] Jonathan Brightbill and Jennie Roualet, *New DOJ Policies Impact Environmental and ESG Enforcement*, Winston’s Environmental Law Update (Nov. 9, 2021), <https://www.winston.com/en/winston-and-the-legal-environment/new-doj-policies-impact-environmental-and-esg-enforcement.html>.

4 Min Read

Author

Jonathan D. Brightbill

Related Locations

Washington, DC

Related Topics

Department of Justice (DOJ)

Environment and Natural Resources Division

Environmental Crimes

Related Capabilities

Environmental Litigation & Enforcement

Maritime & Admiralty

Related Regions

North America

Related Professionals



Jonathan D. Brightbill

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.