

## Attorney General Garland Affirms DOJ Commitment to *and Funding of* White Collar Crime Enforcement



Attorney General Merrick Garland recently delivered [remarks](#) to the ABA Institute on White Collar Crime, reinforcing previous commitments by top DOJ officials to an increased emphasis on prosecuting corporations and individuals for various corporate crimes, specifically referencing environmental offenses. AG Garland remarked, “[the] Environment and Natural Resources Division is also prioritizing the investigation and prosecution of individuals who commit and profit from corporate environmental malfeasance.” Of special significance is AG Garland’s focus on prosecuting individual defendants.

Previously, Assistant Attorney General for the Environment and Natural Resources Division (ENRD), Todd Kim, in an interview conducted by Beveridge and Diamond attorney John C. Cruden, delivered [remarks](#) strongly signaling an increased focus on prosecuting companies and individuals for environmental crimes. Likewise, DOJ Environmental Crimes Section (ECS) Chief Deborah Harris echoed Assistant Attorney General (AAG) Kim’s remarks, predicting “more vigorous enforcement as opposed to just aiming for compliance.” AG Garland’s comments do more than drive home DOJ’s commitment, with the announcement of significant funding to increase numbers of prosecutors, agents and inspectors.

Matters involving [Environmental Justice \(EJ\)](#), and [Environmental, Social and Governance \(ESG\)](#) issues will be central to the government’s focus. As previously noted, DOJ is motivated to answer Biden’s call to agencies to “hold polluters accountable for their actions,” and to “combat the climate crisis with bold, progressive action that combines the full capacity of the Federal Government” [EO 14008](#). As it relates to ESG, the Securities and Exchange Commission recently released long-awaited proposed rules addressing [climate-risk disclosures](#).

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### ABOUT B&D

Beveridge & Diamond’s more than 125 lawyers across the U.S. focus on environmental and natural resources law, litigation, and alternative dispute resolution. We help clients around the world resolve critical environmental and sustainability issues relating to their products, facilities, and operations.

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Under these proposed rules, companies, especially publicly traded companies, will need to ensure appropriate transparency and avoid any appearances of impropriety when disclosing environmental noncompliance in their ESG reporting. (See B&D's [news alert on proposed enhanced SEC climate disclosure requirements here](#).)

## DOJ's Key Enforcement Emphasis

AG Garland began his presentation by emphasizing the Department's renewed commitment to prosecuting individual defendants, and listed four reasons why that was important as their "first priority": (1) "corporations only act through individuals"; (2) "penalties imposed on individual wrongdoer are felt by wrongdoers"; (3) "the prospect of personal liability ... is the best deterrent to corporate crime"; and (4) "it is essential to Americans' trust in the rule of law... that there not be one rule for the powerful and another for the powerless...."

While AG Garland's remarks focused heavily on individual prosecutions, he announced initiatives that give key insight into the broader execution of DOJ's enforcement plan. It is important for companies to understand these priorities as they indicate an impending ramp up in enforcement activity – adding more prosecutors and law enforcement officers for an increase of the initiation and investigation of cases, demanding more transparency from companies in order to obtain cooperation credit, and targeting individual executives for prosecutions

## Key Takeaways Include:

- Increasing Funding and Resources:** AG Garland noted that the President's Fiscal Year 2022 (FY22) budget seeks increases for the Justice Department's corporate criminal enforcement efforts, which would extend to DOJ's 94 U.S. Attorneys' Offices, as well as to the Criminal, Antitrust, Tax, and Environment Divisions. AG Garland also stated that the FY22 budget seeks \$325 million to fund more than 900 FBI agents to support the FBI's White Collar-Crime Program.
- Restoring Department Guidance:** AG Garland highlighted DAG Monaco's reporting that the DOJ has restored its prior Department guidance "making clear that, to be eligible for any cooperation credit, companies must provide the Justice Department with all non-privileged information about individuals involved in or responsible for the misconduct at issue," and noted that DOJ has made, and plans to make corporate criminal enforcement policies with respect to both companies and individuals.
- Reversing the Downward Trend in Prosecutions:** Consistent with statements by AAG Kim, DAG Monaco, and Chief Harris, AG Garland noted that in FY21, the U.S. Attorneys' Offices charged 5,521 individuals with white collar crimes – a 10% increase in comparison to FY20
- Environmental Crimes are specifically mentioned:** AG Garland also highlighted Environment and Natural Resources Division's prioritization of the investigation and prosecution of individuals who commit and profit from corporate environmental malfeasance. In particular, he stated that the Division is currently trying or preparing to try 11 indicted cases against 11 companies and 34 individuals – including 14 current or former company executives – for a wide range of criminal environmental offenses.

## Suggested Actions

With the DOJ's top official now committed to increased – and funded – action, and the Department urging prosecutors to "be bold in holding accountable those who commit criminal conduct" and "not hesitat[ing] to hold companies accountable," it is imperative for businesses to review AAG Kim's advice for companies and DAG Monaco's [memorandum](#). AG Garland concluded his remarks by stating:

*"...the Justice Department's interest in prosecuting corporate crime wax and wane over time. Today, it is waxing again."*

Immediate steps to consider to mitigate the risk of this renewed effort are set forth below:

- Management should make sure their compliance program and related protocols are up to date and meet the demands of this new enforcement priority.
- Test the effectiveness of your company's compliance detection systems and related internal record-keeping.

3. Conduct an environmental justice risk audit and develop a strategy for the same. (*Listen to [Stacey Halliday](#) (Principal, Washington, DC), [Julius Redd](#) (Principal, Washington, DC), and [Hilary Jacobs](#) (Associate, Washington, DC) discuss the intersection of EJ and ESG with two EPA experts on ELI's "Groundtruth" podcast [here](#).)*)
4. Examine individual employee training related to relevant industry-specific regulations and employee understanding of relevant company policies and procedures, and evaluate related record-keeping.
5. Confirm "lessons-learned" are promptly incorporated into the compliance program and that otherwise the compliance program is evaluated and updated regularly. (*Read B&D's [additional tips on strengthening corporate compliance programs here](#).)*)
6. Ensure the appropriate allocation of resources for environmental compliance programming.
7. Review and conduct risk-assessment audits for your company's [supply chain](#) participants to include periodic debarment registry checks.
8. Prepare now for potential [surprise inspections](#) of facilities.

*Beveridge & Diamond's [Environmental Crimes/White Collar](#) lawyers counsel firm clients on high-stakes enforcement and compliance matters, particularly in complex environmental investigations. The team's expertise encompasses responding to search warrants, navigating grand jury subpoena responses, and negotiating with federal and state criminal agents and counsel to facilitate (when possible) early resolution of criminal inquiries. Our Environmental Crimes/White Collar team works closely with the firm's [Audits, Risk and Compliance Assessments](#) practice group and environmental subject matter practice groups to counsel companies on compliance management system design, assess and evaluate compliance risks, and prepare policies, procedures, and controls to manage and mitigate those risks. For example, B&D teams recently completed appointments as [Deputy Monitor-Emissions & Environmental in the Volkswagen AG "Dieselgate" proceeding](#) which involved a global compliance audit, and as [Court-Appointed Monitor in the Duke Energy coal ash spill remediation matter](#), which involved monitoring cleanups at four priority sites and oversight of environmental compliance audits of 21 coal ash facilities in the Southeast.*