



## Feds Renew Focus on Worker Safety and Individual Accountability

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Massey Energy CEO Donald Blankenship reported to a California prison on May 12 to begin serving a one-year sentence for willfully violating mine safety standards. His conviction was related to the deadliest United States mine explosion in decades, one in which 29 people died. Earlier that day, the United States Circuit Court of Appeals for the Fourth Circuit denied a motion by his counsel to allow him to remain free while his appeal is pending. More than likely, that means he will serve his sentence before an appellate court can even consider his appeal.

The case against Mr. Blankenship illustrates the federal government's renewed focus on worker safety laws and holding individuals accountable for their conduct. The renewed focus began in 2010 with the BP Deepwater Horizon oil spill, and some say it culminated in December, 2015 when U.S. Deputy Attorney General Sally Quillan Yates issued a memorandum that has come to be known as the "Yates Memo." The Yates Memo announced a Department of Justice (DOJ) initiative to impose criminal and civil liability on the individuals responsible for corporate misdeeds. Among other things, it states that both criminal and civil corporate investigations should focus on individuals from the inception of the investigation. It also requires corporations seeking cooperation credit to provide DOJ with all relevant facts about the individuals involved in the corporate misconduct.

Also in December, 2015, Deputy Attorney General Yates issued a memorandum to all 93 United States Attorneys around the country indicating that DOJ and the Department of Labor (DOL) were launching an initiative to investigate and prosecute environmental and worker safety violations more effectively. Federal prosecutors were encouraged to "engage regularly" with DOJ and DOL enforcement personnel to identify matters appropriate for investigation and prosecution. Environmental laws are front and center under the worker safety initiative because workers often are tasked with handling hazardous substances and responding to releases.

It's important to understand that environmental crimes don't always require the "willful" conduct that sent Don Blankenship to jail. In fact, many environmental laws require only that the defendant acted "knowingly," meaning the defendant intended the act or omission regardless of whether he knew he was breaking the law. Thus, the endangerment provisions of the Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act can apply whenever an individual commits a violation that

puts others in danger. In fact, the Clean Water Act and Clean Air Act contain provisions under which even negligent conduct can constitute a crime. In all of these instances, the Yates Memo makes clear that both the company and the employees who engaged in the conduct are at risk of prosecution.

What should companies do? Employers should consider an internal audit of all environmental, health and safety risks and should conduct such an audit under the attorney-client privilege. Developing an appropriate internal investigation can be complicated, and companies must consider potential reporting obligations, use of EPA's Audit Privilege, and other applicable regulatory obligations. An internal audit can be extremely helpful in identifying activities that could give rise to liability not only for the corporation, but also for the individuals associated with it.

Memorandum from Assistant Attorney General Yates regarding individual accountability (Sept. 9, 2015);  
Memorandum from Deputy Attorney General Yates regarding worker safety violations (Dec. 17, 2015).

## **Related People**

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