

March 25, 2022

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland,

As elected officials representing communities in Delaware, we write to urge the Department of Justice to support our state's lawsuit seeking to hold accountable major polluters whose products and deception have played a central role in causing and driving the climate crisis that increasingly threatens our constituents' homes, businesses, critical infrastructure, tourism industry, and public health.

During the Trump administration, DOJ filed briefs in support of fossil fuel corporations in similar lawsuits. The DOJ has not updated its position in support of polluters since President Biden took office, and those same fossil fuel corporations are now citing DOJ's support for their arguments in Delaware's lawsuit. We respectfully call on you to reexamine and reverse DOJ's support for fossil fuel polluters, which is at odds with the stated goals of your department and the Biden administration, and file a brief supporting Delaware's communities in our fight for climate accountability and justice.

Delaware is the nation's lowest-lying state and extremely vulnerable to many weather disasters that have become more frequent and damaging as a result of climate change, including sea-level rise, flooding, extreme heat, and supercharged storms. Our taxpayers are facing significant costs to protect our communities and local industries from these risks, and many of the impacts will be felt hardest by Delawareans with fewer resources who are disproportionately low-income and people of color.

Major fossil fuel companies were aware decades ago that their products would cause these "catastrophic" effects, but the oil and gas industry downplayed the scientific evidence, concealed the danger, and engaged in a massive disinformation campaign to spread confusion and doubt in order to protect their profits.¹ This coordinated deception stole crucial decades in our nation's efforts to mitigate the worst impacts of climate change, leaving us instead with what a major report from the United Nations recently described as "a brief and rapidly closing window to secure a liveable future."²

On September 10, 2020, Delaware Attorney General Kathleen Jennings filed a statewide lawsuit against 31 fossil fuel entities on behalf of our state's residents and businesses. Our attorney general's action seeks to hold those companies accountable for falsely advertising their products and deliberately misleading Delaware consumers and officials about the known risks of fossil fuels — a deceptive practice that

¹ <https://insideclimatenews.org/news/16092015/exxons-own-research-confirmed-fossil-fuels-role-in-global-warming/>

² <https://www.ipcc.ch/report/ar6/wg2/resources/press/press-release/>

continues to this day.³ The case cites violations of Delaware’s Consumer Fraud Act, and it seeks punitive and other damages that would help offset the heavy price that Delawareans now must pay to protect ourselves from the climate crisis these polluters knowingly caused.

President Biden pledged, as part of his climate justice agenda, to direct DOJ to “strategically support ongoing plaintiff-driven climate litigation against polluters,” which would include lawsuits like Delaware’s.⁴ In an executive order on his first day in office, President Biden said it was the policy of his administration “to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities[.]”⁵

During your confirmation process, you acknowledged that communities of color “bear the brunt of the harm” caused by “pollution and climate change” and that it is the DOJ’s responsibility to protect Americans from “environmental degradation” and “fraud.”⁶ Assistant Attorney General Todd Kim said last year that “to the extent a corporate actor violates either civil or criminal law in a manner that implicates environmental justice or the climate crisis, corporations should be aware that my division is paying particular attention to these issues.”⁷

In a letter dated April 5, 2021, Attorney General Jennings and five of her fellow state attorneys general respectfully urged you to “review and reverse” positions that DOJ took during the previous administration in support of fossil fuel polluters in lawsuits like Delaware’s. “The urgency and importance of DOJ reversing these positions cannot be overstated,” they wrote, explaining that:

DOJ’s prior positions are misguided and contravene President Biden’s pledge to support lawsuits like the ones our states have filed and Executive Order 13990. Moreover, fossil fuel defendants continue to cite DOJ’s prior briefs as if they represent DOJ’s current positions.⁸

To date, DOJ has not acted on this request, which has allowed fossil fuel defendants to continue to attempt to use the DOJ’s Trump-era position to escape justice in state courts.⁹ Federal judges, however, have consistently allowed climate deception lawsuits filed in state courts to go forward in state courts, including a federal district court judge who ruled in Delaware’s case.¹⁰ The U.S. Court of Appeals for the Third Circuit will soon consider the fossil fuel industry’s arguments for federal jurisdiction in the lawsuit brought by Delaware, and there is an April 21 deadline for amicus briefs filed in support of The First State.

³ <https://news.delaware.gov/2020/09/10/ag-jennings-announces-suit-to-hold-exxon-american-petroleum-institute-29-others-accountable-for-climate-change-costs/>

⁴ <https://news.bloomberglaw.com/environment-and-energy/climate-litigants-see-cases-buoyed-by-biden-pledge-of-support?context=article-related>

⁵ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>

⁶ <https://www.judiciary.senate.gov/imo/media/doc/SJC%20Testimony.final.pdf>

⁷ <https://www.justice.gov/opa/speech/assistant-attorney-general-todd-kim-delivers-remarks-american-bar-association-s-national>

⁸ <https://payupclimatepolluters.org/uploads/media/4-5-2021-AGLetter.pdf>

⁹ <https://www.eenews.net/articles/biden-fails-to-fulfill-pledge-on-climate-lawsuits/>

¹⁰ <https://www.law360.com/articles/1452877/attachments/0>

We now respectfully call on you and DOJ to support the legal efforts of our vulnerable coastal state to seek justice for its residents and hold accountable polluters whose fraud has directly contributed to environmental degradation in Delaware.

This is an urgent matter of survival for many of our constituents, particularly our frontline communities, and we hope that DOJ will no longer remain on the sidelines in our fight for justice and accountability.

Sincerely,

Senator Sarah McBride, Senate District 1

Senator Elizabeth Lockman, Senate District 3

Senator Kyle Evans Gay, Senate District 5

Senator Stephanie L. Hansen, Senate District 10

Senator Marie Pinkney, Senate District 13

Representative Debra Heffernan, House District 6

Representative Larry Lambert, House District 7

Representative Sherae'a Moore, House District 8

Representative Eric Morrison, House District 27

Representative Kimberly Williams, House District 19

Representative Madinah Wilson-Anton, House District 26

Representative Sean M. Lynn, House District 31

This letter has also been endorsed by: Chesapeake Climate Action Network, Clean Air Council, Latin American Community Center, Central Delaware NAACP Branch, Delaware Audubon, Delaware Interfaith Power & Light, and Plant Powered Delaware.

CC:

President Joe Biden

Assistant Attorney General Todd Kim

U.S. Senator Tom Carper

U.S. Senator Chris Coons

U.S. Representative Lisa Blunt Rochester

Delaware Attorney General Kathleen Jennings