The White House announced on July 22, 2021, President Biden’s nomination of David Uhlmann to be the Assistant Administrator for Enforcement and Compliance Assurance (OECA) at the US Environmental Protection Agency (EPA). Uhlmann is currently the director of the Environmental Law and Policy Program at the University of Michigan Law School and was previously a federal prosecutor for 17 years, including as the Chief of the Environmental Crimes Section of the US Department of Justice. His nomination signals the White House’s clear intent to reinvigorate EPA’s enforcement program after what the EPA’s Inspector General found in its March 31, 2020 report to be years of declining case statistics across multiple administrations.

In leading OECA, Uhlmann will oversee all administrative, civil/judicial, and criminal enforcement programs and EPA’s compliance monitoring and assurance program, which includes civil inspections, evaluations, and investigations. He will have at least one opportunity to set National Compliance Initiatives (“NCIs,” formerly known as National Enforcement Initiatives), which are national program priorities that focus enforcement and compliance resources on the most serious environmental violations. NCIs are designated every three years, with the current group set to expire in 2023. Thus, Uhlmann will have more than a year to review current NCI’s (including the naming of “compliance initiatives” vs. “enforcement initiatives”) and determine whether to continue any and/or propose new areas to focus. It is likely that, given the Biden Administration’s focus on climate change and environmental
justice, a significant amount of Uhlmann’s focus for OECA will be on the same areas, with some compliance/enforcement initiatives focusing on specific types of violations that disproportionately impact climate and environmental justice communities.

Uhlmann’s focus as a professor, and the topic of many of his public presentations in the last nearly ten years, has been on the decline in environmental enforcement by the EPA, and specifically the decline in criminal prosecutions. He has led the Environmental Crimes Project, the first empirical study of criminal enforcement under U.S. pollution laws, and has used the data collected to advocate before Congress, in legal forums such as American Bar Association events, and in the media. In short, since leaving government in 2007 he has been an outspoken critic of EPA’s declining enforcement trends. As the Assistant Administrator for OECA, Uhlmann will be in his most influential position yet to attempt to address the reasons behind the trends.

Uhlmann’s role at OECA will also be informed by his long and successful career as a federal prosecutor. As Chief of the Environmental Crimes Section, Uhlmann chaired the Justice Department’s Environmental Crimes Policy Committee, made up of representatives from United States Attorney’s Offices around the country. He also coordinated national legislative, policy, and training initiatives across a variety of federal agencies, including EPA, Fish & Wildlife Service, the U.S. Coast Guard, and others. In short, Uhlmann will bring to OECA a deep understanding of EPA, its partner agencies, and the policies and practices that will be necessary to achieve the Biden Administration’s environmental enforcement and compliance goals.

President Biden’s nomination of Uhlmann is a critical step in filling positions that will have a direct role in managing Administration priorities. OECA, and other EPA program offices such as the Office of Air and Radiation, are currently lead by career staff in temporary “Acting” positions. Nominating appointees and ensuring their Senate confirmation will allow policies to be developed, put in place, and executed in ways that do not happen without a political appointee leading a program. The Biden Administration has been very direct about its intention to increase environmental enforcement. Uhlmann’s nomination is a very strong signal of how serious the Administration is in this regard. Given this unambiguous policy direction, companies should prioritize review of environmental compliance and performance and remain vigilant.