

The background of the slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes in detail. The flag is waving, creating a sense of movement. The colors are vibrant, with the blue field of stars on the left and the red and white stripes on the right.

CIBO
EPA ENFORCEMENT OUTLOOK
ENERGY & ENVIRONMENT VIRTUAL MEETING
SEPTEMBER 14, 2021

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ENFORCEMENT OUTLOOK AUGUST 2021

I. BIDEN NOMINEE DAVID UHLMANN - EPA OFFICE OF ENFORCEMENT & COMPLIANCE ASSURANCE

II. EPA ENVIRONMENTAL JUSTICE & CLIMATE

A. Broader enforcement by incorporating EJ and climate into all existing regulatory programs

For example: Clean Air Act §112(r) Risk Management Plan Rule

- Obama Rule >> Trump Rule
- Biden Rule
 - Obama Rule + EJ and climate impacts
 - “maximum possible protection”
 - OSHA Process Safety Management (PSM) standard

B. Enforcement of EJ principles

- OECA Memo re Criminal Enforcement of EJ (June 21, 2021)
- Permit and Rule challenges >>> Title VI Civil Rights Act claims
 - EG: Port Arthur TX calcining plant, ENVs seek EPA civil rights investigation of TCEQ permit

ENFORCEMENT OUTLOOK AUGUST 2021

III. CLEAN AIR ACT FEDERAL / STATE ENFORCEMENT

A. EPA greater scrutiny/likely opposition to State Title V permit decisions

- pending Title V challenges to TX permits - EPA settled case, setting deadlines
- “Hunter policy” now in place, deferring to States, may be rescinded
 - EG: IN Title V permit for Waelz kiln

B. State authority to duplicate US penalties under State law?

- 9th Circuit & OH Supreme Court: States can prosecute VW for defeat devices
 - VW agreed to \$4.3 billion US penalty. (14.7 billion including buybacks).
 - OH Supreme Court okayed a \$1 trillion state penalty
 - 9th Cir okayed \$10 billion in claims by Counties in FL and UT
 - USSCT cert petitions pending

ENFORCEMENT OUTLOOK AUGUST 2021

III. SEC ENFORCEMENT OF ENVIRONMENTAL SOCIAL GOVERNANCE (ESG) REQUIREMENTS

- Mandatory disclosure rule by end of 2021
- Scope of emissions: operations, use, indirect in value chain?
- Must climate disclosures *filed* or *furnished*?

IV. OSHA

V. “ATTRIBUTION SCIENCE”

- Attributing extreme weather event impacts to ghg emissions of individual sources, for climate liability
- 2016 NAS Report
- 2021 NAS judicial workshop

