The Trump Administration is moving toward the view, long popular in industry, that when it regulates a pollutant, EPA can consider only the health impacts of that particular pollutant – even when the regulation will also reduce other harmful pollutants. This idea is especially important in climate change regulation, because cutting carbon emissions almost always results in reductions of other pollutants like particulates that are dangerous to health. This may seem like a minor technical issue. But by ignoring the "co-benefits" of cutting carbon, the Administration wants to justify drastic weakening of existing regulations. The Administration's laser-like focus on the regulated pollutant is not consistent with the Clean Air Act, the legal basis for regulating carbon, or with general principles of law.

The courts have interpreted the Clean Air Act and other environmental statutes to require broad consideration of environmental impacts almost from the beginning. In *Portland Cement Association v. Ruckelshaus*, the D.C. Circuit held in 1973 that EPA did not need to do an environmental impact statement when issuing a § 111 standard of performance under § 111 of the Clean Air Act. The reason was that:

> "[S]ection 111 of the Clean Air Act requires a 'standard of performance' which reflects 'the best system of emission reduction', and requires the Administrator to take 'into account the cost of achieving such reduction.' These criteria require the Administrator to take into account counter-productive environmental effects of a proposed standard, as well as economic costs to the industry."

Congress eventually passed a provision exempting EPA from the requirement to do an environmental impact statements when implementing the Clean Air Act based on the same reasoning that an impact statement just duplicated what EPA had to do anyway.

The Clean Air Act itself also indicates that a broad range of environmental impacts should be considered when choosing the best available technology. For instance, section 112, which involves standards for plant emitting toxic pollutants, and section 111, which primarily involves standards for new plants, call for consideration of "non-air quality health and environmental impacts and energy requirements." Impacts, of course, is a broader term than "harm," including both positive and negative effects. (My dictionary defines "impact" as "influence; effect.") No doubt Congress felt that it was too obvious to require mentioning that, in implementing an air pollution statute, EPA could consider the full impact of its actions on air quality. But Congress made it clear that it could consider other environmental impacts, including authority impacts on forests or animals that were the primary responsibility of other government agencies.

Justice Scalia's opinion in *Michigan v. EPA* drives home the point that EPA must consider a broad range of environmental issues in its decisions, not just the effects of the particular substance it is regulating. *Michigan v. EPA*, involved mercury emissions from power plants, in which the Supreme Court instructed EPA to consider regulatory costs in applying a statutory mandate for "necessary and appropriate" regulation. Justice Scalia's opinion for the Court found it clear that the phrase "appropriate and necessary" requires at least some attention to cost. "One would not say that it is even rational, never mind 'appropriate,'' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits. Justice Scalia also made it clear that the agency was obligated to consider all costs, not just financial impacts on industry. "In addition," Justice Scalia wrote, "'cost' includes more than the expense of complying with regulations." Rather, he said, "any disadvantage could be termed a cost." He complained that "EPA's interpretation precludes the Agency from considering any type of cost— including, for instance, harms that regulation might do to human health or the environment." And here's the kicker: "No regulation is 'appropriate' if it does significantly more harm than good."

In other words, the agency should consider both sides of the balance. "Consideration of cost," as Justice Scalia put it, "reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions."

It might be argued that Michigan v. EPA only requires consideration of the full range of environmental costs of a regulation, not the full range of environmental benefits. But that's inconsistent with Scalia's insistence that "reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions." It's just as irrational to ignore benefits as it is to ignore costs.

Moreover, benefits and costs are just opposite sides of the same coin: positive and negative numbers on the same scale. (Remember your junior high algebra?)

Trump's effort to repeal Obama's Clean Power Plan illustrates the craziness of distinguishing between relevant costs and relevant benefits. The Clean Power Plan was designed to limit carbon dioxide, but many of its benefits came from its effect on other pollutants. But for Trump's repeal, the tables are turned: one of the *costs* of the repeal is increasing those other pollutants. Under *Michigan v. EPA*, it is " not even rational, never mind 'appropriate,''' to ignore those health costs of the repeal. By the same token, it would have been irrational to ignore the health benefits from reducing those pollutants when the Clean Power Plan was issued.