

Many people seem to think that considering climate impacts and the social cost of carbon was just a policy decision by the Obama Administration, which Trump if he doesn't buy the reality of climate change. But it's not that easy. But there are strong arguments that considering climate change is mandatory.

First, the whole idea of considering the social cost of carbon didn't come from the the Obama Administration. Rather, the Ninth Circuit overturned an action by the Bush Administration for failure to consider the harms of climate change. This decision was based both on omission of climate change from the environmental impact statement and on its omission from the cost-benefit analysis. The court concluded that it was arbitrary and capricious to leave climate change out of the cost-benefit analysis, and that the "impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." A decision from the Eighth Circuit also supports the Ninth Circuit's interpretation of NEPA.

Second, Justice Scalia's opinion in *Michigan v. EPA* creates a presumption that statutes require a comparison of regulatory benefits and costs. It also defines costs very broadly, explicitly including environmental harm:

"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. In addition, 'cost' includes more than the expense of complying with regulations; any disadvantage could be termed a cost. 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. The Government concedes that if the Agency were to find that emissions from power plants do damage to human health, but that the technologies needed to eliminate these emissions do even more damage to human health, it would still deem regulation appropriate. No regulation is "appropriate" if it does significantly more harm than good."

*Michigan v. EPA* was considered a blow to EPA at the time. It remanded EPA's regulation of mercury emissions from power plants for further consideration. Given the strong evidence of the benefits of the regulation, that was a set-back in controlling air pollution. The opinion was also considered too quick to embrace cost-benefit analysis. But along the way, Justice Scalia did embrace a requirement that agencies consider all of the environmental costs of a regulation. Climate change is clearly one of those costs in many situations, and *Michigan v. EPA* says that agencies must then consider the social cost of carbon.

Of course, the Trump Administration may claim that climate change doesn't exist or that it's

too uncertain to be considered at all in agency decisions. But it's going to be hard to make those arguments with enough support to survive judicial review, given the massive evidence on the other side.