President Trump’s new “energy” executive order is an attempt to roll back Obama regulations on climate change, and even make considerations of climate change disappear from much of the policymaking process altogether.

That’s quite a lot to accomplish by executive order, and despite all the media attention he got for it, the president is eventually going to discover that he can’t eradicate climate realities from federal consideration with the stroke of a pen.

Among other things, Trump’s order directs the EPA to take steps to get rid of the Clean Power Plan as currently constituted and begin rolling back an Obama era rule restricting methane emissions. These rules went through a full and complete rulemaking process; in order to undo them, the administration will have to undertake its own rulemaking.

That will take time – years. And along the way, it won’t be sufficient for the president to simply order up a different rule that ignores statutory requirements related to climate change. All actions by federal agencies, including rulemakings, must be made on the basis of evidence, and may not be arbitrary and capricious or an abuse of discretion. Having established a deep base of evidence in support of these rules, the EPA can’t simply say it changed its mind. It’ll need new evidence, new analysis and new public comments; and in all likelihood, this will spur new litigation.

Whatever President Trump says about the reality of climate change, neither he, nor the federal agencies within the executive branch can simply swap alternative facts into what must be a factually based decision.

Nor does a rollback of policies, other executive orders or guidance automatically change how the federal government must consider climate change. Consider the part of the EO that dismisses the use of the social cost of carbon.

The social cost of carbon was based on an effort to monetize the effects of climate change for purposes of conducting cost-benefit analyses in federal regulations. After considering many studies, the Obama administration settled on $36 per ton of carbon emissions. Even if President Trump tells an agency to stop using that metric, that doesn’t change the law that requires most agency decisions to be based on evidence and facts or the requirement to undertake a cost-benefit analysis in most cases.

If an agency’s action ignores the cost of climate change, a court would look to fact-based reasons for that decision. Neither Trump nor EPA administrator Scott Pruitt can just state that the impact of climate change is zero without coming up with evidence that this is true. Simply denying that climate change exists doesn’t change its impact on an agency’s bottom line and therefore can’t alter its decisions on that basis.
Similarly, President Trump cannot now simply compel federal agencies to stop considering climate change in their environmental reviews under the National Environmental Policy Act. NEPA requires every agency of the federal government to consider the environmental impacts of any major federal action. If a major action is going to contribute to climate change or be affected by climate change, such climactic impact could certainly constitute an environmental impact that a federal agency must consider under NEPA. If it fails to do so, its action will be challenged and likely overturned.

In short, executive orders may make for good photo opps, but they cannot change the law.

Neither can they change facts. The sea is still rising, and the Clean Air Act still requires the EPA to control air pollutants that cause harm to health and the environment. The Trump Administration can slow the U.S. response to climate change and waste precious resources while these cases go to court, but whether or not the federal government takes actions on climate change under existing statutes will be decided by the rule of law, not by the rule of Trump.

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