NEPA was long an island of legal stability, standing almost unamended for over a half century. Then in the summer of 2023, everything changed. As a rider on the agreement to raise the debt ceiling, Congress extensively rewrote and expanded NEPA, gifting us with a new statutory regime. As I've written before — and discuss in more detail in a forthcoming article — the new statute is something of a disaster in terms of legal drafting.

When the 2023 amendments to NEPA passed, I wrote a series of blog posts about the drafting errors. I added another post later when I discovered new glitches. It's understandable that the drafting was poor, since the final text was negotiated by the President and the Speaker of the House under great time pressure.

It's all very well to complain about how badly a law was written. But it's still the law, and we need to know what it means — "we" meaning judges, federal agencies, private firms, environmental groups, and affected communities. With that in mind, I set myself the task of trying to decipher the statute, which sometimes reads as if it were badly translated from some other language.

This requires tracing language back to earlier judicial decisions, two sets of CEQ regulations, prior versions of the same bill, and earlier congressional permitting statutes. This analysis explains some of the puzzling drafting glitches. It turns out that one major puzzle was probably the result of a failure to delete an old provision when adding the replacement. In a couple of other cases language was cut-and-pasted from regulations but dropped into a different context where it didn't fit.

In the new article, I try to tease out the statute's drafting puzzles. My general conclusion is that the amendments often codify prior understandings or make incremental changes. There are only a few real breaks with existing law. However, given the confusing language of the statute, we may be due for a long period of confusion and conflict over what it means.

Today's Supreme Court is devoted to minute textual analysis, spending paragraphs on a single word or punctuation mark in a statute. One moral of my article is that this approach is pretty much useless when considering a statute like this one, that emerged from a truncated, unorthodox legislative process.