NEPA seems to be everyone's favorite punching bag this days. One major focus of the Senate's permitting bill is to cut back on remedies for NEPA violations. The bill would generally allow projects to proceed even though their environmental impact statements are seriously flawed. The funny thing is that the drive to prune NEPA seems unabated even though the statute itself was dramatically weakened three times in the past three years.

First, Congress took a bite out of NEPA with the 2023 BUILDER Act, which was part of the debt ceiling deal that Biden negotiated with Congress. It's a poorly drafted law, though some of it seemed to more or less follow existing practices. But it did make some significant changes. It narrowed the definition of the major federal projects that are subject to NEPA. It also expanded the use of categorical exclusions, a procedure that allows agencies to exempt projects from NEPA. In addition, it placed time limits on environmental reviews and imposed page limits on the resulting documents to limit their scope and complexity, while also authorizing project applicants to draft the reviews of their own projects.

Second, in 2025, the Trump Administration abolished the regulations that had governed the NEPA process for nearly fifty years. Those regulations were issued by the Council on Environmental Quality in the White House. They had provided a detailed framework that courts could turn to in deciding NEPA cases. The CEQ regulations were replaced by agency-by-agency rules that are often incomplete, difficult to access, and subject to change. As a result, courts have lost the yardstick that they used to measure NEPA compliance.

Third, the Supreme Court decided to pile on in the *Seven County* case. The majority opinion claimed that NEPA had caused delay after delay in projects with Kafkaesque procedural demands from courts. The Court hurried to the rescue. It cut back on the scope of environmental reviews, excusing agencies from considering environmental impacts that are inevitable but indirect. And finally, the Court emphasized that the "the bedrock principle of judicial review in NEPA cases can be stated in a word: Deference." In short, the Court was sending a message that lower courts should bend over backwards to reject challenges to environmental impact statements.

In effect, NEPA has been poisoned, bludgeoned, and stabbed in succession by the three branches of government. You would think that NEPA reform might seem less urgent after all that. Yet permit reformers still seem to think it's as dangerous as ever, like a vampire that can only be killed by a wooden stake through the heart at midnight.