

# Army Corps Signals Narrowing Nationwide Permit 12



The U.S. Army Corps of Engineers (Corps) recently published [notice](#) that it is initiating a formal review of Nationwide Permit (NWP) 12 a little over a year after its latest iteration took effect. NWP 12, which serves as a general permit under Section 404 of the Clean Water Act, is designed to streamline the federal permitting process for qualifying oil or natural gas pipeline activities that have insignificant environmental effects. While NWPs typically are valid for up to five years, the Corps’ notice explains that a review of the permit is proper now to consider whether modifications to NWP 12 may be appropriate in light of President Biden’s instructions to all federal agencies under Executive Order 13990 to take a fresh look at environmental rules issued under the previous administration. This review also responds to years of ongoing litigation involving NWP 12, including its temporary nationwide [vacatur](#), and the 2021 re-promulgation of NWP 12 limiting it to oil and gas pipelines as opposed to other pipelines or utilities.

During the upcoming review, the Corps is seeking stakeholder input on the adequacy of NWP 12’s consideration of potential impacts of oil and gas pipeline activities on environmental justice, climate change, and drinking water, as well as sufficiency of notice provided to impacted communities. The Corps indicates that it will consider adopting “potential off-ramps” for these concerns that would require heightened agency review and potentially render a proposed project ineligible for NWP 12 coverage, thus requiring proponents to acquire individual permits. This could cause substantial delays, thereby increasing costs, time, energy, and mitigation needed for project approval.

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The Corps is encouraging comments on all aspects of NWP 12, but included the following questions to guide stakeholder input:

1. As part of any future action the Corps may take with respect to NWP 12, should the Corps consider utilization of the procedures in 33 CFR 330.5 in advance of the current cycle for nationwide permit review?
2. Should modifications be considered to further ensure NWP 12 has no more than minimal individual and cumulative adverse environmental effects under Section 404(e) of the Clean Water Act?
3. Should modifications to NWP 12 be considered to provide notice to and an opportunity to be heard by potentially impacted communities, particularly with regard to environmental justice communities?
4. Would it be prudent for the Corps to consider further limits on the NWP 12, Pre-Construction Notification (PCN) requirements, general conditions, and the ability of division and district engineers to modify, suspend, and revoke NWP authorizations to further ensure that the NWP 12 causes no more than minimal cumulative adverse environmental effects at the national, regional, and site scales?
5. Should distinctions be drawn between new construction of oil and natural gas pipelines and maintenance of existing oil and natural gas pipelines?
6. Should distinctions be drawn between oil pipelines and natural gas pipelines, especially in consideration of differences in overall Federal regulation of different types of pipelines?
7. Does the NWP 12 verification process ensure that environmental justice and climate change factors are adequately considered?
8. Are the PCN requirements for the current NWP 12 adequate?
9. Should there be new triggers for oil or natural gas pipeline activities in jurisdictional waters that mandate review under an individual permit?

Any comments must be received on or before May 27, 2022.

As part of this review, the Corps will also host a series of public and tribal virtual meetings and requests for written recommendations. The public meetings are on May 10, 12, 17, and 19, 2022. The tribal meeting dates are May 11 and 18, 2022. Registration for the meetings can be found [here](#).

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