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Nationwide Permit 12/Oil or Natural Gas Pipeline Activities: U.S. Corps of Engineers Federal Register Notice Announcing Formal Review

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The United States Army Corps of Engineers ("Corps") published in the March 28th Federal Register Oil or Natural Gas Pipeline Activities regarding Clean Water Act Nationwide Permit ("NWP") 12 which include:

- Formal review of NWP 12
- Public and tribal virtual meetings to obtain input regarding future decision making
- Public documents to obtain written comments

See 87 Fed. Reg. 17281.

The Corps issues two types of Clean Water Act Section 404 permits. An individual permit authorizes specific activities on a case-by-case basis.

In contrast, a NWP is a general permit that provides standing permission for all activities that fit within the description of the permit. Such permits provide for preauthorized permission for activities that conform to the standards of the NWP. Certain NWPs do require some type of authorization from or notice to the Corps prior to starting work.

NWP 12 was originally authorized in 1977 for "utility lines." Most recently in January 2021 NWP 12 was modified and reissued expressly for "oil or natural gas pipeline activities." Its application is limited to oil or natural gas pipelines rather than all utility lines, unlike previous versions of NWP 12. The January 2021 NWP 12 also eliminated a number of preconstruction notification requirements. However, it included a new preconstruction notification requirement for new oil or natural gas pipelines greater than 250 miles in length. See 86 Fed. Reg. 2860 (describing this version of NWP 12).

The Corps states in conformance with Executive Order 13990 that it has decided to undertake a formal review of NWP 12 to determine whether any further actions may be appropriate under 33 CFR 330.5 for NWP 12 prior to its March 14, 2026, expiration.

The Federal Register Notice further notes in part:

... The Army seeks input on the appropriate balance for allowing efficient authorization processes with due consideration for the potential effects of oil and natural gas pipelines as well as the need to engage and inform the public, particularly communities that potentially may be impacted by pipeline construction and operations. Previous uses of NWP 12 have raised concerns identified in Executive Order 13990, such

as environmental justice, climate change impacts, drinking water impacts, and notice to impacted communities.

The Corps also includes in the Federal Register preamble questions that it describes as “guideposts for comments.” Examples of the nine questions include:

- Should the Corps consider utilization of the procedures in 33 CFR 330.5 in advance of the current cycle for nationwide permit review?
- Should modifications be considered to further ensure NWP 12 has no more than minimal individual and cumulative adverse environmental effects?
- Should notice be provided to potentially impacted communities?
- Should further limits be considered in NWP 12?
- Should distinctions be drawn between new construction and existing?
- Should distinctions be drawn between oil and natural gas pipelines?
- Does the NWP 12 verification process ensure environmental justice/climate change factors are considered?
- Are the preconstruction notification requirements adequate?
- Should there be new triggers for oil and natural gas pipeline activities in jurisdictional waters that mandate review under an individual permit?

A copy of the Federal Register Notice can be downloaded [here](#).