# Nationwide Permit 12/Oil or Gas Natural Pipeline Activities: Sierra Club Files Judicial Challenge



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07/23/2026

Sierra Club and other environmental organizations filed a Complaint for Declaratory and Injunctive Relief ("Complaint") in the United States District Court for the District of Columbia ("Court") challenging the United States Army Corps of Engineers ("Corps") prior issuance of Clean Water Act Nationwide Permit 12 ("NWP 12"). See Civil Action No.: 1:26-cv-2571.

Sierra Club and the other organizations argue that the Corps violated the Endangered Species Act ("ESA"), the National Environmental Policy Act ("NEPA"), the Clean Water Act ("CWA"), and the Administrative Procedure Act ("APA") by issuing NWP 12 without adequately assessing its significant, direct, indirect, and cumulative environmental effects.

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

In contrast, an NWP is a general permit that provides standing permission for all activities that fit 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 is described in the Complaint as a final permit authorizing a streamlined process for oil and gas pipelines to be built across rivers, streams, and wetlands, often with no further Corps involvement. The Complaint further states that projects using NWP 12 may proceed without undergoing the comprehensive environmental review ordinarily required by Section 404(a) of the CWA, and there is no public notice or opportunity for public involvement when projects are approved under NWP 12.

Sierra Club argues that in previous litigation over the 2017 NWP 12, the U.S. District Court for the District of Montana ruled that the Corps violated the ESA by failing to undertake programmatic consultation pursuant to Section 7 of the ESA with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to consider the cumulative adverse environmental effects of discharges on protected species and their critical habitats. That Court is stated to have declared NWP 12 unlawful and remanded it to the Corps for compliance with the ESA. The Court declined to rule on claims brought under the NEPA and the CWA, stating that the Court "anticipates that the ESA Section 7(a)(2) consultation will inform" the Corps' NEPA and CWA assessments of NWP 12's environmental effects.

The Corps is alleged to have refused to initiate ESA Section 7 programmatic consultation on the 2017 NWP 12. Instead, it is argued to have reissued a new version of NWP 12 in 2021, and flouting the Montana

District Court's ruling on the 2017 NWP 12, again determined that the issuance of the 2021 NWP 12 would have "no effect" on listed species based on the same reasoning rejected by the Montana court.

Sierra Club states that the Corps in 2026 reissued a new set of nationwide permits, including NWP 12. Because the issuance of the 2026 iteration of NWP 12 mooted Plaintiffs' claims regarding the 2021 NWP 12, the parties stipulated to voluntary dismissal on April 23, 2026.

The Corps is stated to have once again disregarded its legal obligation to complete programmatic ESA Section 7 consultation with the Services by concluding that the issuance or reissuance of the permit would have "no effect" on listed species. The "no effect" determination is alleged to be inconsistent with applicable regulations, which require consultation at both the programmatic and project-specific stages for NWP 12. Therefore, this is alleged to be a violation of the ESA and continues to violate the CWA.

Sierra Club further alleges that the Corps' inadequate environmental analysis for NWP 12 also violates NEPA.

Sierra Club seeks a declaration that the Corps' issuance of NWP 12 violated the ESA, NEPA, CWA, and APA, and seeks an order vacating the permit.

A copy of the Complaint can be found here.