

Nationwide Permit 12/Oil or Natural Gas Pipeline Activities: Republican Senators Announce Opposition to U.S. Corps of Engineers Formal Review



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Ranking Environment and Public Works Committee Member United States Senator Shelley Moore Capito and other Republican Senators sent an April 20th letter to the Assistant Secretary for the Army for Civil Works of the United States Corps of Engineers (“Corps”) expressing opposition to its recent decision to review Nationwide Permit (“NWP”) 12 for oil or natural gas pipeline activities.

The Corps had published in the March 28th Federal Register a decision to undertake formal review of NWP 12. 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.” 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 recent version of 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.

Ranking Member Capito and the other Senators’ described the Corps decision to review NWP 12 as “disappointing and perplexing” due to concerns such as:

- Recent spike in energy prices
- Rapid rise of inflation economy-wide
- Crisis in Ukraine
- Demand for American energy from our allies

The Senators view the decision to formally review NWP 12 as an unnecessary obstacle and generator of uncertainty for the development of energy projects. They also cite a court filing by the Biden

Administration in the United States District Court for the District of Montana in NWP 12 litigation as contradictory to a concern the United States previously expressed:

Vacatur [of NWP 12] would thus operate to require a cumbersome individualized Corps permitting process for thousands of projects across the country, contravening the statutory design Congress created in Section 404(e). That would be the case even for activities that required only a few square feet of fill at a single location. The resulting programmatic impacts on the Corps would be large, and lead to delays in permitting.

The Senators coauthoring the letter include:

- James M. Inhofe
- Kevin Cramer
- Cynthia M. Lummis
- Richard C. Shelby
- John Boozman
- Roger F. Wicker
- Dan Sullivan
- Joni Ernst
- Lindsey O. Graham

A copy of the letter can be downloaded [here](#).