

## **New Nationwide Permit 12 Released by United States Army Corps of Engineers**

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The United States Army Corps of Engineers (Corps) has completed its rule-making and released a [pre-publication version of its final rule](#) reissuing and modifying 12 existing nationwide permits (NWP) and issuing four new NWPs. One such reissued NWP is NWP 12, used to construct utility lines for the transport and/or delivery of water, sewer, electricity, gas, and telecommunications services.

The final rule splits the previous NWP 12 into three new permits:

- A new NWP 12 relating to the construction of oil or natural gas pipelines
- A new NWP 57 relating to the construction of electric or telecommunication utility lines
- A new NWP 58 relating to the construction of water and sewer lines

The action taken by the Corps only impacts the NWPs specifically addressed in the final rule, leaving the remaining 40 NWPs previously issued in 2017 unchanged.

The Corps also reduced the number of conditions that trigger the need for filing a pre-construction notification (PCN) prior to commencing construction activities pursuant to NWP 12. A PCN continues to be required where the Endangered Species Act (ESA) or the National Historic Preservation Act is potentially impacted, but a PCN is now also required for NWP 12 for all oil and gas pipelines which extend beyond 250 miles in total length, regardless of impacts.

Importantly, the final rule specifically sets forth how the Corps satisfies its duties under the ESA when issuing the new NWPs and specifically those related to pipeline construction. The final rule includes the Corps' new [biological assessment](#) which concludes that the new NWPs have no effect on listed species and designated critical habitat. The assessment is key to addressing deficiencies identified by a federal district court when it enjoined the use of NWP 12 for authorization of the Keystone pipeline.

The new NWPs were published in the Federal Register on January 13, 2021 and become effective

on March 15, 2021.

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