

United States Senate

WASHINGTON, DC 20510

July 21, 2022

The Honorable Michael L. Connor
Assistant Secretary of the Army for Civil Works
108 Army Pentagon
Washington, DC 20310

Dear Assistant Secretary Connor:

We strongly support the Army Corps of Engineers (Corps) initiating a formal review of Nationwide Permit 12 (NWP 12), and urge you to eliminate NWP 12 altogether. The fast-tracking of oil and gas infrastructure projects through NWP 12 threatens neighboring communities, the local environment, endangered species, and Tribal sovereignty, and contributes to the climate crisis.

For over a decade, oil and gas companies have exploited the NWP program to fast-track oil and gas infrastructure projects that are clearly contrary to public interest and have adverse effects on the environment. Prior to issuing a permit under the Clean Water Act or the Rivers and Harbors Act, the Corps is required to conduct a review that assesses the project's impact on the public and the environment. Among the review criteria are an environmental assessment and a determination as to whether the project is contrary to public interest.

The Corps conducts an independent, site-specific review for a project unless the Corps determines that a project "will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effect on the environment." For those projects that have "minimal adverse effects," the Corps expedites the approval process by issuing general permits, or Nationwide Permits (NWPs), that cover different categories of similar activities. Projects that fall within the scope of an NWP generally do not require independent review by the Corps. Given the state of our climate crisis there is no new fossil fuel project that can have a "minimal adverse impact" on the environment. Every additional project worsens the wild fires, flooding, extreme heat, drought, hurricanes and other climate impacts that Americans are already facing.

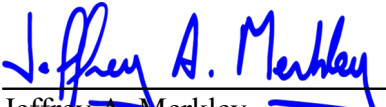
Additionally, NWP 12 authorizes all "activities required" for the construction of oil and gas infrastructure, so long as the activity does not result in a loss of more than one-half acre of water at each point that the project crosses jurisdictional waters. This creates a loophole for oil and gas companies to segment projects so they fall within the scope of individual permits and bypass independent review. As a result, massive pipelines, such as the Dakota Access Pipeline, are filed as a series of separate projects to avoid undergoing site-specific review. Oil and gas pipelines that cross state lines, threaten multiple communities, undermine Tribal sovereignty, and endanger sensitive ecosystems deserve a project-specific review, at a minimum.


NWP 12 also undermines President Biden's efforts to advance environmental justice and tackle the climate crisis through sound science. Fossil fuel infrastructure disproportionately impacts


minority and low-income communities. Through NWP 12, oil and gas infrastructure projects will continue to bypass the public interest review that requires the Corps to consider the impacts of risks such as oil spills and air pollution on the welfare of surrounding communities. Oil and gas companies will also continue to use NWP 12 to circumvent study of the impacts of new fossil fuel infrastructure on the climate emergency. In order for the Corps to understand the scope of a project's contribution to the climate crisis, the Corps must be able to assess a project's cumulative impacts. This will not be possible as long as NWP 12 is in place, and allows infrastructure projects to be approved in pieces.

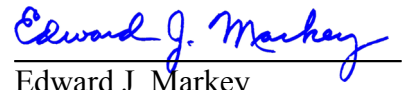
We appreciate the initial step that you have taken in opening NWP 12 for review, and we urge you to eliminate this overly broad and harmful permit. We look forward to supporting further action to ensure that all oil and gas infrastructure projects undergo a complete review that comports with the law, science, and the Administration's goals on advancing environmental justice and addressing the climate emergency.


Sincerely,



Jeffrey A. Merkley
United States Senator


Sheldon Whitehouse
United States Senator


Bernard Sanders
United States Senator


Edward J. Markey
United States Senator


Cory A. Booker
United States Senator


Elizabeth Warren
United States Senator