



Presidential Executive Order Streamlines Federal Authorization For Infrastructure and Oil and Gas Projects

On Thursday, June 4, 2020, President Trump issued an [Executive Order](#) (EO) aimed at streamlining federal permitting and project authorizations to promote infrastructure investments and development—including upstream, midstream and downstream oil and gas projects—in an effort to foster economic development and job creation to mitigate the severe economic downturn caused by the coronavirus pandemic.

The Bottom Line: The EO allows for more efficient individual permitting by the U.S. Army Corps for a variety of oil and gas pipeline projects that have been stalled out by recent adverse federal court decisions regarding utilization of Nationwide Permit 12 under the Clean Water Act, and related compliance issues involving the Endangered Species Act and National Environmental Policy Act (NEPA). The EO also allows for more efficient authorization of infrastructure and oil and gas projects involving federal lands and/or federal minerals.

What You Need to Know: As we have seen with similar Presidential Executive Orders in the past, to achieve your business objectives, companies must present to the agencies a legal roadmap for their permit or project that provides a defensible path forward for authorization. By engaging collaboratively with the agency, and showing them a viable path forward, you will be both promoting faster approvals and minimizing litigation risk in the event of a legal challenge from environmental or anti-industry plaintiff organizations alleging that the fast-tracking of permit authorizations violated applicable statutes and regulations.

Overview: The EO instructs federal agencies to use emergency provisions in NEPA, the Endangered Species Act, Clean Water Act, and other authorities and mechanisms to streamline and expedite permitting of infrastructure and energy projects. The EO focuses on projects within the jurisdiction of the U.S. Army Corps, and also federal lands and federal minerals projects within the jurisdiction of the U.S. Department of the Interior, Bureau of Land Management, and other federal land management agencies (*e.g.*, U.S. Forest Service).

NEPA: The EO instructs agencies to use existing NEPA and Council on Environmental Quality (CEQ) regulations to perform efficient environmental analyses. These existing methods include: statutory NEPA exemptions, categorical exclusions, and tiering to previous NEPA analysis, for focused and concise NEPA analysis (*i.e.*, environmental assessments.) The EO expressly states that any such efforts must be “consistent with NEPA, CEQ’s NEPA regulations, and agencies’ NEPA procedures.” E.O. Section 6(b); *see also* E.O. Section 6(a)(i)(E).

U.S. Army Corps Permits: The EO requires agencies to identify planned or potential actions that may be subject to emergency treatment pursuant to the regulations and nationwide permits promulgated by the U.S. Army Corps of Engineers or jointly by the Corps and the

Environmental Protection Agency, and to use the emergency Army Corps permitting provisions, to facilitate permitting and project authorizations.

Endangered Species Act Consultation: The EO directs agencies to identify planned or potential actions that may be subject to the Endangered Species Act regulations and consultation requirements, and directs agencies use those regulations to the fullest extent possible to facilitate efficient consultations and permitting.

The President's EO aims to reduce the timeline for pending and future oil and gas pipeline projects and fossil fuel export terminals. Specifically, the EO mandates that the secretaries of the Departments of Transportation, Agriculture, Interior, Defense, and the head of the U.S. Army Corps of Engineers shall identify planned or potential actions for expedited treatment, no later than 30 days from the date of the EO.

Beatty & Wozniak, P.C. is continually monitoring the relevant agencies' responses to the EO and will advise on their responses and any potential impacts as more information becomes available.

For additional information or questions regarding strategies to best utilize the E.O. to achieve your business objectives, please contact [Bret Sumner](#) or [Nicole Blevins](#).