

Keystone XL Pipeline: Two Major Lawsuits Filed Against ExxonMobil for Arkansas Tar Sands Spill

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Two major lawsuits were recently filed in the U.S. District Court for the Eastern District of Arkansas against [ExxonMobil, the “private empire”](#) behind the March 2013 [Pegasus tar sands pipeline spill](#) of over 1.1 million gallons of [diluted bitumen \(“dilbit”\)](#) into the neighborhoods and waterways of Mayflower, AR, located in [Faulkner County](#).

One is a [class-action lawsuit](#) filed by the Duncan Firm, Thrash Law Firm and Parker Waichman LLP on June 27. The other is a suit filed on June 13 by the U.S. Environmental Protection Agency (EPA) in concert with the Arkansas Attorney General’s Office, led by AG Dustin McDaniel.

Collectively, both lawsuits lay out the damning facts of the second biggest tar sands pipeline spill in U.S. history, caused by a [22-foot gash in the pipeline](#), second only to Enbridge’s “[dilbit disaster](#)” in Kalamazoo, Michigan. The cases also call for the spill’s victims – both people, government bodies and the ecosystem – to receive reparations.

Among other things, both suits clarify that ExxonMobil Pipeline Company dilbit has contaminated Lake Conway, the largest man-made lake in the United States, which serves as a tributary of the Arkansas River.

The class-action tort lawsuit slaps ExxonMobil with willful negligence under Arkansas state law, alleging Exxon knew Pegasus – built in the 1940’s far before the age of “[extreme energy](#)” and designed to carry light crude – would spill at some point. The suit also reveals for the first time that the spill was just the biggest of 13 other spills preceding it, meaning it was not just a spill out of the blue.

The joint [EPA/Arkansas AG civil lawsuit](#) cites Exxon for violating the Clean Water Act, Arkansas’ Hazardous Waste Management Act and Arkansas’ Water and Air Pollution Control Act.

Taken together, both suits keep the heat on ExxonMobil and on Alberta [tar sands](#) production at-large as the battle over the proposed northern half of TransCanada’s [Keystone XL](#) tar sands pipeline heats up. U.S. President Barack Obama’s State Department is [expected to make a decision](#) on that pipeline’s fate in the next few months.

Class-Action Tort Lawsuit Lays Out Ecological Costs of Exxon’s Negligence

Arkansas’ class-action suit legally covers “all real property owners who have...property abutting Lake Conway...which has been physically contaminated and polluted by ExxonMobil’s toxic and dangerous Tar Sands released from ExxonMobil’s unsafe and

deficient oil and gas pipeline.”

A major crux of the suit is that dilbit is more corrosive to pipelines than conventional crude, a fact ExxonMobil knew but allegedly disregarded for the sake of profit when proposing Pegasus’ flow reversal.

“Bitumen blends are more acidic, thick and sulfuric than conventional crude oil,” explains the suit. “[B]itumen contains 15 to 20 times higher acid concentrations than conventional crudes and five to ten times as much sulfur. Bitumen blends are 70 times more viscous...than conventional crudes. Additional sulfur, acid and viscosity in the bitumen leads to weakening or embrittlement of pipelines.”

In 2006, Pegasus underwent a transformation from a 20-inch pipeline carrying conventional light crude from Texas up to the northern U.S. into a dilbit line carrying Alberta’s tar sands from Patoka, IL to Nederland, TX for refining on the Gulf Coast. The pipe wasn’t built to carry tar sands crude and was only meant to carry a maximum of 95,000 barrels of light crude per day, the suit explains, a fact Exxon allegedly knew but proceeded with the tar sands project anyway.

Exhibit A: Enbridge attempted to team up with Exxon in a joint venture partnership that would entail replacing the pipeline. Exxon turned down the deal and instead increased tar sands carrying capacity through the antiquated line to a level surpassing the maximum limit for light crude, an example the class-action cites as willful negligence.

“ExxonMobil discarded this joint plan for a new, safer and larger pipeline to replace the sixty-seven year old...Pegasus Pipeline,” write the plaintiffs. “Instead, ExxonMobil, in order to increase its profits at the expense of public safety, made a deliberate corporate decision to increase...Pegasus Pipeline by 50% [in 2009], from 66,000 barrels per day to 99,000 barrels per day.”

Rather than responding to the spill honestly, ExxonMobil tried to cover the situation up through its “command center,” also [running the Federal Aviation Administration’s “no fly zone” on the FAA’s behalf](#). Thus, the class-action lawsuit also sues Exxon for its response to the spill, in which deployment of crisis communications public relations tactics were favored over a legitimate all-out on-the-ground crisis response effort.

“After the [spill], [ExxonMobil] gave false, inconsistent and misleading factual assurances to the media and public...Exxon’s suppression, concealment and omission of material facts gave a false impression to the public that the Pipeline had only experienced a three inch gash...and there was no bitumen in the oil,” the lawsuit filing explains.

The ecological hazards of the spill, which the lawsuit says Exxon actively attempted to cover up in wholesale fashion, are nothing short of catastrophic.

“The hazardous materials being transported through Arkansas and which Mayflower citizens were exposed to are known to pose serious health effects, including lung damage if aspirated, skin cancer, irritant to eyes, mucous membranes and lungs, nausea, unconsciousness, loss of coordination, central nervous system depression, narcosis and death,” the suit states.

The “Lake Conway Class” seeks absolute liability, nuisance, and negligence tort charges for

ExxonMobil, demanding a jury trial. They seek tort repayment for damages suffered above \$75,000 for each category as individuals and tort repayment for damages suffered above \$5 million as a group.

EPA/Arkansas Attorney General Civil Lawsuit

By comparison, the EPA/Arkansas AG civil lawsuit is much more straightforward, though it could end up with ExxonMobil doling out much more money at the end of the day. The two respective bureaucracies have demanded ExxonMobil pay fines for gross violations of bread-and-butter environmental laws, just as a citizen who got a ticket for speeding would have to pay a fine.

Main problem: ExxonMobil has yet to admit, as explained in the class-action case, that it's done anything wrong. Exxon's now caught in a bind, having to choose between settling out of court with the plaintiffs and claiming no wrong-doing, or duking it out in court and making its case that it did nothing wrong in Mayflower.

EPA is holding ExxonMobil accountable for \$1,100 per barrel of dilbit spilled if not willful negligence and \$4,300 per barrel spilled if it was willful negligence. That equates to a steep fine ranging from between \$29.7 million to \$116.1 million. The state-level penalties could amount to another \$4.23 million owed by ExxonMobil, as of July 1, 2013.

On the whole, ExxonMobil could owe the EPA and Arkansas AG between \$33.93 million and \$120.33 million if it loses the suit, at most [a third of a percent of its 2012 annual profit](#), at minimum .0008 of its 2012 annual profit.

Environmental Refugees: A Teachable Moment for Keystone XL?

The "Lake Conway Class," put another way, are environmental refugees who may never be able to return to their homes again.

"Exxon's Mayflower spill is a reminder of who bears the risks of fossil fuel development like the Keystone XL pipeline," [wrote Greenpeace USA's Jesse Coleman in a recent blog post](#), summing up the situation. "[T]he residents of Mayflower must now live in a contaminated environment and many families will never be able to go back to their homes."

Keystone XL proponents claim because it is a newer pipeline, it is safe and sound and another Mayflower or Kalamazoo would never happen. The facts defy this logic, though.

The southern half of Keystone XL - [already over 75-percent complete](#) via an Obama Administration [March 2012 Executive Order](#) - has [been plagued by faulty welding and anomalies](#). Icing on the cake: the [original Keystone pipeline has already spilled 14 times](#).

As the Mayflower lawsuits proceed and the Keystone XL northern half decision approaches, Mayflower can serve as a teachable moment as it applies to Keystone XL. Or it can serve as just yet another lesson not learned. Class begins now.

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