

EXECUTIVE SUMMARY OF CENTRAL ARKANSAS WATER'S
COMMENTS TO THE PROPOSED CONSENT DECREE

On April 22, 2015, the United States of America, the State of Arkansas, ExxonMobil Pipeline Company and Mobil Pipe Line Company lodged a proposed Consent Decree with the United States District Court for the Eastern District of Arkansas in Civil Action No. 4:13-cv-0355, to settle claims under the federal Clean Water Act and various state laws following the rupture of the Pegasus pipeline near Mayflower, Arkansas.

Under the terms of the proposed Consent Decree, the Defendants (ExxonMobil Pipeline Company and Mobil Pipe Line Company) agreed to pay several million dollars in fines to the United States and the State of Arkansas and to:

1. Treat the northern segment of the Pegasus Pipeline (Patoka, Illinois to Corsicana, Texas) as “susceptible to longitudinal seam failure,” within the meaning of PHMSA regulations, for all risk assessment and operational purposes;
2. Provide supplemental spill response training for all of Defendants’ designated Pegasus Pipeline first responders or their replacements in year 2015 and year 2017; and
3. Assemble and place three caches of specified spill response supplies and equipment at the flowing locations (1) Cedar Creek reservoir near Dallas, Texas, (2) Richland Chambers Reserve near Corsicana, Texas, and (3) in Mayflower, Arkansas.

Unfortunately, the remedies available under Arkansas law are limited. Likewise, the protections available under Arkansas law are reactive (post spill), rather than proactive to prevent spills. Based on our limited research, the monetary fines to be paid by the Defendants to the State of Arkansas under the proposed Consent Decree are the largest ever recovered by the State for a hazardous spill of this type.

Yet, the United States of America could do more. Federal law has declared “that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon navigable waters of the United States” Section 311(b)(1) of the Clean Water Act. This is a zero tolerance pronouncement, but PHMSA has not adopted zero tolerance standards for pipeline operations.

The relief proposed in paragraph 1 above is unacceptable because the Defendants knew the Pegasus pipeline was subject to seam failures no later than 2006, and likely as early as 1991. In 2006, the Pegasus pipeline suffered multiple seam failures during testing, and the Defendants did nothing to prevent future seam failures – as evidenced by the Mayflower spill. PHMSA has clearly stated that the longitudinal seams failures that occurred during testing “*provided more than adequate information for the pipe to be considered susceptible to seam failure.*” The Defendants, knowing the Pegasus pipeline was subject to seam failures, put the pipeline back into operation, and refused to treat the pipeline as “susceptible to longitudinal seam failure” thereby putting the water supply sources for three-quarters of a million people in Arkansas in serious jeopardy. Therefore, this specific relief accomplishes

nothing; it is a throw away, mere fluff. The Consent Decree should require the Defendants to acknowledge that they knew the Pegasus pipeline was “susceptible to longitudinal seam failure” no later than 2006, and possibly earlier –PHMSA cites “long seam failures” in 1991 hydrostatic testing that indicated the presence of susceptibility to seam failure. In addition, the Defendants should agree that their failure to treat the pipeline as “susceptible to longitudinal seam failure,” and failure to modify their pipeline integrity management efforts accordingly in 2006 constitutes gross negligence under 33 U.S.C. § 1321(b)(7).

The relief proposed in paragraph 2 above is unacceptable because the proposed Consent Decree requires the Defendants to train the Defendants’ employees, who will not be the first responders, in expectation of a spill from a pipeline that will most likely not be in use during the period of required training. The Pegasus pipeline is empty. The Defendants are not planning to restart the pipeline anytime soon. So, the proposed Consent Decree requires the Defendants to provide supplemental training in the event of a spill from an empty pipeline.

Assuming the pipeline is not relocated, the proposed Consent Decree should require additional training for all first responders, including local, county and state emergency responders, and affected water suppliers whose water supply the Pegasus pipeline traverses. Local first responders were first on the scene for the Mayflower spill and are expected to be first responders for any future spill along the Pegasus pipeline. The additional training should be coordinated through the Arkansas Department of Emergency Management (ADEM), and it should include both table top and field exercises. In addition, the additional training should continue annually at minimum so long as any pipe “susceptible to longitudinal seam failure” remains in the ground and is utilized for the transportation of hazardous materials.

The relief proposed in paragraph 3 above is unacceptable for at least three reasons: (1) the locations of the caches are of no benefit to the 750,000 potentially affected citizens in the State of Arkansas; (2) the materials in the caches are insufficient to assist with containment or removal of oil products and hazardous materials that were most recently transported through Pegasus pipeline; and (3) an obligation to maintain the caches for two-year period when the pipeline will most likely be empty is absurd.

Specifically, Central Arkansas Water believes the United States should utilize the powers available to it to require the Defendants to:

1. Remove of the Pegasus pipeline from the Lake Maumelle watershed;
2. Replace all pipe sections at all river, stream or creek crossing up-stream from a potable water supply system’s in-take sites with additional redundancy and reinforcement and install automatic valves on both sides of the water body that close upon detection of a leak;
3. Complete a spike hydrotest of the Pegasus pipeline at minimum pressures equal to or exceeding 90% SMYS at all locations in the watersheds of public drinking water supplies and allow the tests and results to be monitored and reviewed by independent third parties and the Water Users;

4. Acknowledge that they should have treated the pipeline as susceptible to longitudinal seam failure since no later than 2006 and that their failure to modify their pipeline integrity management efforts accordingly in 2006 constitutes gross negligence under 33 U.S.C. § 1321(b)(7);
5. Place additional caches of equipment in meaningful locations, including, but not limited to, the Lake Maumelle watershed, and include equipment applicable to the clean-up of the materials to be transported in the pipeline prior to restart;
6. Inspect all additional caches of spill response equipment located within drinking water supply areas on an annual basis for as long as the pipeline in operation contains any segments of pipe susceptible to longitudinal seam failure;
7. Provide spill response training for all first responders, including local, county and state emergency responders, and affected water suppliers whose water supply the Pegasus pipeline traverses on an annual basis for as long as the pipeline in operation contains any segments of pipe susceptible to longitudinal seam failure;
8. Maintain any additional enhanced training, inspection and operational improvements for as long as the pipeline in operation contains any segments of pipe susceptible to longitudinal seam failure;
9. Agree to abide by a “work plan” approved by the Water Users that includes the installation of remotely operated valves, shutdown and isolation procedure updates, and installation of leak detection systems as recommended in PHMSA advisory ADB-2014-04 as well as all improvements identified in prior Accufacts correspondence to the Defendants and PHMSA (included as Attachments E and I);
10. Agree to abide by an integrity management plan approved by the Water Users that includes additional aerial inspections, in-line inspections, and on-the-ground inspections, and a review of the adequacy of the number, location and time for closure of existing valves and its leak detection capability;
11. Agree to and support the inclusion of the emergency response plan for the Pegasus pipeline as a standing annex in the ADEM Comprehensive Emergency Management Plan;
10. Agree that a violation of the PHSMA’s Corrective Action Order constitutes violation of the Consent Decree;
11. Make the results of the 2010 and 2013 in-line inspection analysis “represented” in the Consent Decree available to any Water User, or their agents, who request it;
12. Agree to third-party monitoring of compliance with and enforcement of the Consent Decree by the Water Users, and the Defendants should be responsible for payment of all Water Users’ attorneys’ fees and costs in any action brought to enforce the Consent Decree; and
13. Make annual payments to the Water Users of a sufficient amount to be used for third-party monitoring of compliance with the Consent Decree.