

South Carolina ExxonMobil UST Class Action Proof of Claims Procedures

Claimants who have filed a Claim Form on or before the Bar Date may file with the Orangeburg County Clerk of Court's office such proof as claimant desires in support of the following requirements. Methods of proof set forth below are not exclusive methods of proving the requirements in question. *Attached to these procedures is a sample of the types of information that might be filed to support a hypothetical claim.* **The failure to file proof of a claim will result in the claim not being considered for payment.**

These procedures and standards shall govern the claimant's obligations in the submission and support of proof associated with claims of property contamination and damage.

These procedures are intended to create a process through which claimants may prove their entitlement to payment from the settlement fund in a relatively simple, inexpensive and uncomplicated manner that nevertheless complies with the essential elements of class membership and proof of associated loss. To that end, the rules of evidence shall apply but shall be relaxed in the interest of justice as determined by this Court or the Special Referee.

Glossary of Terms

These procedures reference various terms whose meaning may not be clear to you. The following is a definition of some of these terms. These definitions are not intended to limit the meaning of a term but rather to make it more understandable to you. If you have any questions about these terms or others not defined, you should ask your counsel or class counsel for assistance.

- "Exxon" means Exxon, Esso, Humble, Standard Oil of New Jersey, or any of its predecessors or successors. This does **not** include Mobil or any of its predecessors.
- "Contamination" means the presence in measurable concentrations on claimant's real property of chemicals or other substances associated with the operation of a service station, including constituents of gasoline, oil, or any other product used as a part of normal service station operations.
- "Interest in real property" usually means owning all or a part of land about which you are making a claim. It may also mean having some other type of ownership interest in that land. You may own all or part of land that is or used to be an Exxon service station. You may also own all or part of land that adjoins a current or former Exxon service station. You should consult with your attorney or with class counsel if you are uncertain of whether you have an interest in real property that is covered in this class action.
- "Evidence of ownership" is some proof that you own the property about which you are making a claim. This is usually a deed you have for this property. You may be the sole owner or you may share ownership with others.
- "DHEC records" means records which the Department of Health & Environmental control may have concerning the property about which you are making a claim. These records are usually in the Columbia office and may include such things as soil and groundwater monitoring data that shows the level of contaminants present when the readings were taken, the number and type of underground tanks that may have been reported to DHEC for the property as well as other information that might be useful in supporting a claim.

- “Special warranty” or “baseline deeds”, mean those deeds that sometimes were given for contaminated property by Exxon when it sold the property. These deeds contain some type of information in them about the state of the contamination when the property was transferred.
- “Service station operations” means any type of activity performed at a station during the period in question. Examples of such activity would be fuel storage and dispensing, oil replacement and waste oil storage, vehicle lubrication as well as any other activity associated with the operation and maintenance of vehicles which involved petroleum products.
- “Claimant averments” means statements made under oath usually in the form of affidavits by you or by others who have first hand knowledge about the matters stated. This might include some of the following: the approximate dates Exxon or its predecessors operated a service station on the property or on property adjoining yours; leak or spill incidents that occurred, the discovery of the contamination or similar types of information.
- “Remediation” means a practice or series of practices designed to remove contaminants from the soil or groundwater.
- “Adjoining property” means any real property that is sufficiently close to the current or former Exxon service station that the claimant has a basis to believe has been damaged by the contamination from that service station. It may be physically located next to the current or former station or it may be some distance away so long as there is a basis to believe that contamination from the current or former station is impacting the property.
- “Suitably qualified expert” means one who would be qualified, in the sole judgment of the Special Referee, by experience or training to offer expert opinions in a South Carolina court of general jurisdiction.

I. Class Membership

! *Property Ownership*

- Claimants must establish that they were members of the defined class.
- Membership may be established by proof of an “interest in real property” that falls within the class definition such as
 - land that is currently, or formerly was, an Exxon service station;
 - “adjoining property” to a current or former Exxon station.
- Proof may include such “evidence of ownership” as certified copies of deeds or other instruments evidencing claimant’s ownership ‘interest in real property’ which falls within the class definition. Proof may also include any other evidence that the Special Referee or the Court finds adequate to determine a claimants membership in the class.

! *Contamination*

- Claimants must establish that the property was contaminated during the period that the claimant contends the loss occurred.

- Proof of “contamination” may be through the following types of documentation:
 - “DHEC records” which state the level of “contamination” during the period of the claimant’s ownership interest or otherwise indicate that the property was contaminated.
 - Class documentation from records obtained as a result of the class action, such as Exxon station files, deposition testimony and other such other documentation that may demonstrate “contamination”.
 - Deeds which by their nature establish the existence of “contamination” on the property, such as “special warranty” deeds or “baseline deeds” referencing the contaminated state of the property.
 - Sampling data of soil or groundwater from present or former sites or adjoining sites or sites adjoining present or former service station sites.
 - Any other evidence that establishes to the satisfaction of the Special Referee or the Court that the claimant’s property was contaminated.

! *Causation*

- Claimant shall furnish proof that the “contamination” for which a claim is made was caused by Exxon’s “service station operations” as defined in the class definition.
- This proof may include:
 - “DHEC records” such as where DHEC has found Exxon the responsible party;
 - class documentation as described above;
 - “claimant averments” based on their personal knowledge;
 - deeds; or
 - such other documentation establishing or tending to establish that Exxon’s “service station operations” were a cause, in fact, of the property damage claimant is asserting.
 - any other evidence that establishes to the satisfaction of the Special Referee or the Court that the claimant’s property was contaminated by Exxon’s “service station operations”.

II. Damages

! *Costs of “Remediation”*

- Claimant may provide proof of the cost to remediate its real property so that:
 - the contaminants present are not more than the South Carolina risk-based corrective action (RBCA) standards, if applicable, which absent an actual determination from DHEC shall be assumed to be drinking water at the limits of the applicable property lines or
 - such other drinking water standards as may be applicable in the absence of South Carolina DHEC standards for such contaminants.
 - The cost of remediation recoverable shall be limited to the fair market value of the property in an uncontaminated state.

- The proof may include:
 - estimates for “remediation” costs from experts suitably qualified to make such estimates;
 - through the submission of the documentation of costs actually incurred to remediate or partially remediate such property;
 - costs required to be spent by any local, state or federal agency or government as a result of the “contamination”;
 - other costs which are or could be incurred as a result of the “remediation” of the property.
 - any other evidence that establishes to the satisfaction of the Special Referee or the Court that the claimant’s property has incurred or will incur costs to remediate it to the standard set forth above. contaminated.

! *Devaluation of Property*

- Claimant may provide proof that the value of the real property was diminished due to the presence of the “contamination”.
- The measure of claimant’s damages shall be the difference between its diminished value as a result of such “contamination” and the value it would have had in an uncontaminated state.
- Proof of such loss in value may be by:
 - the submission of an appraisal by a “suitably qualified expert” setting forth these values and the loss associated with the “contamination”,
 - contracts reflecting a reduced sales price due to such “contamination”, proof of a lost sale due to such “contamination”, or
 - any combination of evidence supporting a loss in value caused by the “contamination”.
 - any other evidence that establishes to the satisfaction of the Special Referee or the Court that the claimant’s property has suffered a loss in value due to the “contamination”.

! *Other Losses*

- documented actual losses incurred as a result of “contamination” such as loss of business during testing and clean up activities, professional fees, costs for prior testing and/or assessment of the property, or other out-of-pocket expenses incurred as a result of the “contamination”.

- *Maximum recovery*

The maximum amount that may be recovered on a claim is the uncontaminated fair market value of the property that is the subject of the claim.

III. ExxonMobil Non-Adversarial Statement of Defenses and their Factual Basis

! ExxonMobil may file with the Court, with copies to Class Counsel and any other identified claimant or their counsel not later than 30 days after the Bar Date, a non-adversarial statement of facts present with regard to a claim under which the law of South Carolina does not allow recovery.

! ExxonMobil must do so on a claim-by-claim basis.

! Such statement must be limited to the following form (where a statute of limitations defense is used as an example): “The claim is barred because claimant’s claim accrued before _____ and the applicable statute of limitation, _____, operates to bar such claim. The factual basis of the accrual is _____.”

! Any argumentative statements made in support of ExxonMobil’s factual statement shall result in the Court’s or the Special Referee’s disregarding of the asserted defense.

! ExxonMobil shall not otherwise participate in the claims process or offer argument on any position at any time.

Sample Proof of Claims Information

The following is an example of the type of information that might be used to support a claim. *This sample is only intended to be for class member guidance. It is not intended to, nor does it require, the Special Referee or the Court to allow a claim simply because this type of information is used to support a claim.* The type of supporting information for your claim will vary depending upon the facts related to your site.

Sample Claim

In this example, the class members are multiple the owners of land where Humble

Oil, Esso and Exxon operated a station between 1953 and 1987. The land is located in the center of a small South Carolina town. In 1987, Exxon shut the station down and removed some of its tanks. In 1989, the owners discovered contamination after having soil and groundwater tests of the property because someone wanted to purchase it. The purchasers decided against buying the land when they learned that it was contaminated.

Proof of Class membership(These elements establish that you are a member of the class.)

Property Ownership: The owners intended to submit a certified copy of their deed to this property showing they owned it during the period it was used by Exxon and when the contamination was discovered.

Contamination: The owners intend to submit a copy of the 1989 tests they got from the firm that did the tests. They also plan to submit copies of the DHEC records where DHEC has tested the soil and groundwater and found petroleum products present. They also plan to submit copies of Exxon records which they got from Class Counsel that discuss the contamination on the site.

Exxon was the cause of the contamination: The owners plan to submit an affidavit(a written document that is sworn to before a notary) from one of them that states that in all the years there has been a gas station on the property, Exxon has been the only operator and that they are unaware of any other sources for the contamination on their property. They have also called class counsel who provided them with copies of Exxon records related to this site. In these records Exxon admits the contamination came from Exxon service station operations.

Proof of Damages (These elements establish that you have suffered losses as a result of the contamination.)

Costs of Remediation (“cleaning up”): The owners have obtained an estimate on the cost of remediation from an environmental firm who does that type of work. The estimate is \$200,000.00 to do the clean up to DHEC’s RBCA standards, and the clean up will take two years. The site will be unusable for 6 months while a certain type of cleanup is performed. They intend to submit this quote as a part of their proof of damages.

Devaluation of property: The owners have an appraisal that states 1) the value of their property with the present level of contamination and 2) the value assuming it had never been contaminated. The appraiser sent them an appraisal that listed its present value is -\$150,000.00 and its value uncontaminated would be \$375,000.00. The owners plan to submit this appraisal as part of their proof of damages.

Other losses: The owners have also incurred other losses because the

property is contaminated.

Testing costs: The cost of the 1989 testing was \$1500.00. Additionally, it was necessary to tear up part of the parking lot and a mailbox to conduct the testing. The replacement cost for the parking lot and mail box were \$6,400.00. The owners plan to submit the cancelled check for this testing, the final testing report, a cancelled check to a paving contractor and a credit card receipt to Lowe's showing the purchase of a replacement mailbox to prove these damages.

Costs of remediation, appraisal and lost value of sale reports: These reports costs the owners \$1200.00 and \$1800.00 and \$300.00, respectively and they plan to furnish copies of proof that these were paid.

Loss of business during the remediation: The owners have been told by the remediation firm that they will not be able to conduct their business which is presently a car wash during a 6 month portion of the cleanup. They intend to submit an affidavit of one of the owners stating the average income of the business over the past few years of its operation is \$15,000.00 and setting forth the value , using these averages of a loss of 6 months: \$7,000.00.