

DEQ'S RESPONSE TO EAGLE TRANSPORT CORPORATION'S PETITION FOR DECLARATORY RULING

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The Superior Court's Order

“On remand, after completing any further deliberations that Respondent [EMC] deems appropriate, Respondent [EMC] shall issue a binding ruling on the merits of Petitioner’s petition for a declaratory ruling.”

**N.C.G.S. § 143-215.84 and
N.C.G.S. § 143-215.85 are clear:**
if you are a transporter of oil and that
oil is discharged from your truck, you
are responsible for cleaning up the
discharge.

A Bright-Line Rule Makes Sense

A bright-line rule better fulfills the legislative purpose stated in N.C.G.S. § 143-215.76 to protect human health and the environment.

Timely and competent cleanup by the party with the resources to perform the cleanup.

Eagle profits from transporting the oil and created the risk by putting the oil on the road.

Ruling in favor of Eagle would completely change how oil spills are cleaned up:

- The Department would be required to determine fault before it could assign responsibility. If the parties involved in an accident sue each other, this could take years to resolve.
- Regular motorists would be tasked with cleaning up spills and complying with OPHSCA.
- Transporters would no longer have any responsibility to initiate cleanups absent a showing of fault.

Recovery from Other Parties

§ 143-215.89: (a) Any person liable for costs of cleanup of oil or other hazardous substances under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil or other hazardous substances into the waters of the State, including any amount recoverable by the State as necessary expenses.

N.C.G.S. § 143-215.94: an action can “be brought against . . . the persons having control over the oil . . . or causing or contributing to the discharge.”

**N.C.G.S. § 143-215.83(b)(2)(d) does
not absolve Eagle of responsibility
for cleanup.**

**It protects Eagle from civil
penalties, criminal penalties, and
third-party damages claims.**

N.C.G.S. § 143-215.77(5) defines “having control over oil or other hazardous substances”

“ . . . any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers . . . of such oil or other hazardous substances.”

N.C.G.S. § 143-215.84

(a) Person Discharging. – Except as provided in subsection (a2) of this section, **any person having control over oil or other hazardous substances** discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge...

Liability based on Causation

N.C.G.S. § 143-215.90(a): “Any person who discharges oil or other hazardous substances in violation of this Article . . . and in the course thereof causes the death of, or injury to fish, animals, vegetation or other resources of the State . . . shall be liable to pay the State damages.”

Joint and Several Liability: an action can “be brought against . . . the persons having control over the oil . . . or causing or contributing to the discharge.” N.C.G.S. § 143-215.94

Exceptions to Liability . . .

N.C.G.S. § 143-215.93: “Any person having control over oil or other hazardous substances which enters the waters of the State in violation of this Part shall be strictly liable, without regard to fault, for damages to persons or property, public or private, caused by such entry, subject to the exceptions enumerated in G.S. 143-215.83(b).”

N.C.G.S. § 143-215.88: “the Secretary . . . shall make demand for payment upon the person having control over the oil or other hazardous substances discharged to the land or waters of the State, unless the Commission shall determine that the discharge occurred due to any of the reasons stated in G.S. 143-215.83(b).”

N.C.G.S. 143-215.85

“A person who owns or has control over petroleum that is discharged into the environment shall immediately take measures to collect and remove the discharge, report the discharge to the Department within 24 hours of the discharge, and begin to restore the area affected by the discharge in accordance with the requirements of this Article.”

§ 143-215.83. Discharges.

(a) Unlawful Discharges. – It shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil or other hazardous substances into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the oil or other hazardous substances, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

(b) Excepted Discharges. – This section shall not apply to discharges of oil or other hazardous substances in the following circumstances:

- (1) When the discharge was authorized by an existing rule of the Commission.
- (2) When any person subject to liability under this Article proves that a discharge was caused by any of the following:
 - a. An act of God.
 - b. An act of war or sabotage.
 - c. Negligence on the part of the United States government or the State of North Carolina or its political subdivisions.
 - d. An act or omission of a third party, whether any such act or omission was or was not negligent.
 - e. Any act or omission by or at the direction of a law-enforcement officer or fireman.

(c) Permits. – Any person who desires or proposes to discharge oil or other hazardous substances onto the land or into the waters of this State shall first make application for and secure the permit required by G.S. 143-215.1. Application shall be made pursuant to the rules adopted by the Commission. Any permit granted pursuant to this subsection may contain such terms and conditions as the Commission shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein.

N.C.G.S. § 143-215.83(b)

(b) Excepted Discharges. – **This section** shall not apply to discharges of oil or other hazardous substances in the following circumstances:

(2) When any person subject to liability under this Article proves that a discharge was caused by any of the following:

- a. An act of God.
- b. An act of war or sabotage.
- c. Negligence on the part of the United States government or the State of North Carolina or its political subdivisions.
- d. An act or omission of a third party, whether any such act or omission was or was not negligent.
- e. Any act or omission by or at the direction of a law-enforcement officer or fireman.

N.C.G.S. 143-215.84

(a) Person Discharging. – Except as provided in subsection (a2) of this section, **any person having control over oil or other hazardous substances discharged in violation of this Article** shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge...

Under N.C.G.S. 143-215.84 and -215.85
the question is:

**Was Eagle the carrier of the oil
immediately prior to its discharge?**

- The undisputed answer to that question is YES.

DEQ applies OPHSCA in this way because it is right and
it works.

QUESTIONS?
