

STATE OF NORTH CAROLINA

COUNTY OF NASH
EAGLE TRANSPORT
CORPORATION,

Petitioner,

v.

N.C. ENVIRONMENTAL
MANAGEMENT COMMISSION,

Respondent.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-CVS-185**PETITIONER'S BRIEF IN SUPPORT
OF ITS PETITION
FOR JUDICIAL REVIEW****INTRODUCTION AND BACKGROUND**

This proceeding arises from a tragic highway accident involving one of Petitioner Eagle Transport Corporation's fuel tanker trucks driven by the late Mr. Darrell R. Jonas. Mr. Jonas was unable to avoid a collision when a car failed to yield while turning at an intersection and pulled out in front of his truck. Accident Report (R pp 66-67); Eagle drive cam video.¹ Mr. Jonas lost his life in the accident when his truck overturned, and caught fire. The other driver, Ms. Karen S. Hally, was cited for misdemeanor death by vehicle, and pled guilty. Accident Report (R pp 66-67); N.C. Uniform Citation to Karen S. Hally (copy attached as Exhibit A).² Ms. Hally's

¹ The drive cam video from Mr. Jonas' cab captures the events in front of his truck leading to the accident. A copy is on a thumb drive submitted as part of the Record.

² Ms. Hally's plea was entered on April 9, 2021, after the Record in this matter was filed. This Court can take judicial notice of her plea. In any event, the cause of the accident is not in dispute.

insurance carrier accepted civil liability for the accident. Affidavit of Randall R. Adams (R pp 125-27).

After Eagle's tanker truck overturned, petroleum from the tanker spilled onto the highway and right-of-way. While some petroleum was consumed by the fire, other petroleum flowed into nearby storm drainage ditches and portions of a nearby creek. Shield Initial Assessment Report and Work Plan for Soil Removal, April 21, 2020 (R pp 71-72, 87-88). Eagle's agents reported the spill to environmental authorities, and Eagle contracted for immediate spill containment efforts. *Id.* (R p 72).

Eagle then retained Shield Engineering to complete the initial response and abatement actions applicable to petroleum spills, in response to a notice it received from the North Carolina Department of Environmental Quality ("DEQ"). DEQ Notice of Regulatory Requirements to Eagle Transport, January 29, 2020 (R pp 90-91).³

DEQ then issued another notice to Eagle, holding it responsible for the much more costly next task of completing a comprehensive environmental site assessment

³ Shield Engineering's work is documented in its Initial Assessment and Work Plan for Soil Removal report, April 21, 2020 (R p 68-89). Impacted soils were excavated and temporarily stored on site, and further environmental sampling was conducted. Eagle subsequently financed the proper disposal of the excavated soils. David Stoner (Shield) email to Scott Bullock (DEQ), June 29, 2020 (R p 97).

in response to the petroleum discharge. DEQ Notice of Regulatory Requirements, May 13, 2020 (R pp 93-94).⁴

Eagle responded by seeking declaratory relief from Respondent, the North Carolina Environmental Management Commission (the “EMC”). Eagle petitioned the EMC for a declaratory ruling that, under the oil discharge provisions of the N.C. Oil Pollution and Hazardous Substances Control Act (“OPHSCA”), it was not responsible for any further efforts to remove the petroleum and restore the affected area. Eagle Petition [to EMC] for a Declaratory Ruling (R pp 1-7).⁵ Eagle contended before the EMC that it had no such responsibility since a statutory exception to what the General Assembly declared to be an unlawful discharge applied to Eagle, because it could prove the accident and discharge was caused by an act of a third party, Ms. Hally. *Id.* (R p 1). DEQ opposed Eagle’s petition before the EMC.

⁴ A comprehensive site assessment involves conducting the environmental assessment necessary to delineate the vertical and horizontal extent of contamination, and identifying receptors of concern and contaminant exposure scenarios. 15A N.C. Admin. Code § 2L.0106(g) (2021). After such an assessment, a responsible party must prepare and implement a corrective action plan. *Id.* at §§ 2L.0106(c)(4), 2L.0106(h).

In that second notice DEQ directed that, in completing such an assessment of petroleum impacts from the spill, Eagle also investigate whether there were any environmental impacts from the fire departments’ use of spray foam used to put out the fire. Such foam may contain “PFAS” chemicals. “PFAS” is the synonym for a group of man-made chemicals that are very persistent in the environment, called per- and polyfluoro alkyl substances. It is indisputable that Eagle had no control over the use of such spray foam by firefighters.

⁵ Eagle petitioned the EMC pursuant to G.S. 150B-4(a), in the N.C. Administrative Procedures Act. It provides that, upon a request from an aggrieved person, an agency shall issue a declaratory ruling regarding the applicability of a statute administered by the agency to a given state of facts.

The EMC declined for alleged good cause to issue the declaratory ruling Eagle requested, finding that no genuine controversy exists as to the application of the statutes at issue to the factual situation presented. EMC Order, p. 9 (R p 170). On that basis, the EMC denied Eagle's petition for a declaratory ruling. *Id.* (R p 170).

Pursuant G.S. 150B-51(b), Eagle seeks this Court's review of the EMC's Order.⁶ There are no findings of fact made by the EMC that this Court must review. The EMC accepted as true Eagle's contention that its driver, Mr. Jonas, did not cause the accident or resulting oil spill, which were caused by the other driver. EMC Order, ¶ 17 (R p 165).

This proceeding consequently presents a single, discrete issue of statutory construction regarding a single section of OPHSCA, as applied to the undisputed facts regarding the cause of the accident and resulting spill. As explained below, the EMC failed to follow the plain meaning of the relevant section in OPHSCA. The EMC's Order runs afoul of several basic rules of statutory construction, and thus, reflects legal error to Eagle's substantial prejudice.

Eagle asks this Court to enter an order reversing the EMC's Order, and providing Eagle with the declaratory relief it requested from the EMC.

⁶ This county is a proper venue for this proceeding, pursuant to G.S. 150B-45(a)(2), since Eagle's headquarters is located in Nash County.

STANDARD OF REVIEW

When the Court exercises judicial review of an agency’s final decision, “it acts in the capacity of an appellate court” and its standard of review depends upon the nature of the error asserted. *Semelka v. Univ. of N.C.*, 854 S.E.2d 34, 40 (N.C. Ct. App. 2020). The EMC’s interpretation of the relevant section in OPHSCA presents a pure question of law, which this Court reviews *de novo*. N.C. Gen. Stat. § 150B-51(b)(4); *see also, N.C. Reinsurance Facility v. Causey*, 265 N.C. App. 615, 620, 830 S.E.2d 850, 853 (2019) (“We review questions of law in cases appealed from administrative tribunals *de novo*.”). Under the *de novo* standard of review, the Court “considers the matter anew and freely substitutes its own judgment for the agency’s.” *N.C. Dept. of Env. & Nat. Res. v. Carroll*, 358 N.C. 649, 660, 599 S.E.2d 888, 895 (2004).

ARGUMENT

The EMC Committed Legal Error in Construing the Relevant Section of OPHSCA Addressing Discharges.

The EMC’s decision to deny Eagle’s petition is based upon G.S. 143-215.84(a). That statute is entitled “Removal of *prohibited* discharges.” N.C. Gen. Stat. § 143-215.84 (emphasis added). Subsection (a) provides:

[A]ny person having control over oil or other hazardous substances discharged⁷ *in violation of this Article* shall immediately undertake to collect and remove the discharge and to restore the area affected

Id. (emphasis added). The EMC concluded that Eagle, as the party allegedly having control over the oil⁸ discharged as a result of the traffic accident, is responsible for meeting all the requirements of this subsection in response to the spill, including the further assessment and remediation required after the initial spill response. EMC Order, ¶ 25 (R p 167).

As the title and express language of G.S. 143-215.84(a) indicate, it is only a *prohibited discharge, in violation of Article 21A*,⁹ that triggers this responsibility for the person in control of the oil or hazardous substance to undertake to collect and remove the discharge and restore the affected area. On this threshold point, the EMC agrees.

The narrow legal issue before this Court is whether the exceptions to an “unlawful discharge,” set forth in G.S. 143-215.83(b), must be considered in determining whether a discharge is “in violation of . . . Article [21A]” for purposes of

⁷ “Discharge” means, but is not “limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into waters of the State or upon land in . . . proximity to waters [such] that oil or other hazardous substances is reasonably likely to reach the waters . . . ,” subject to *de minimus* quantities. N.C. Gen. Stat. § 143-215.77(4).

⁸ “Oil” is defined in OPHSCA to include petroleum. N.C. Gen. Stat. § 143.215.77(8).

⁹ OPHSCA is codified as Article 21A in Chapter 143. N.C. Gen. Stat. §§ 143-215.73 *et seq.* The relevant part to oil discharge controls is Part 2. *Id.* at §§ 143-215.83 *et seq.*

enforcing G.S. 143-215.84(a). This issue involves construing just two subsections, (a)-(b), of the prior statute addressing discharges, G.S. 143-215.83.

G.S. 143-215.83 is entitled, “Discharges.” It has three subsections that in sequence address: (a) what are unlawful discharges, (b) excepted discharges from those deemed unlawful, and (c) discharge permits. N.C. Gen. Stat. § 143-215.83. G.S. 143-215.83 must be construed, if possible, to give meaning to all of its provisions. *E.g., Porsh Builders, Inc. v. City of Winston-Salem*, 302 N.C. 550, 556, 276 S.E.2d 443, 447 (1981). Also, parts of the same statute dealing with the same subject matter must be considered and interpreted as a whole. *E.g., Comm’r of Ins. v. N.C. Auto. Rate Admin. Office*, 294 N.C. 60, 66, 241 S.E.2d 324, 328 (1978).

Subsections (a) and (b) to G.S. 143-215.83 are the relevant provisions. In subsection (a), entitled “Unlawful Discharges,” the General Assembly declared it is unlawful (*i.e.*, prohibited), “except as otherwise provided in this Part [2 of Article 21A], for any person to discharge . . . oil or other hazardous substances into or upon any waters, tidal flats, beaches, or lands within this State, . . . regardless of the fault of the person having control over the oil . . . , or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.” N.C. Gen. Stat. § 143-215.83(a) (emphasis added). Subsection (a) thus reflects a broad declaration that discharges of oil or other hazardous substances to the environment in this State are unlawful, *but* there are recognized exceptions. Not every discharge is unlawful. Thus, based on the text of subsection (a) alone, the exceptions must be

considered to determine if a discharge was unlawful (*i.e.*, prohibited), in violation of Article 21A. The analysis does not stop with subsection (a).

The exceptions to an unlawful discharge are then set forth in subsection (b), entitled “Excepted Discharges.” N.C. Gen. Stat. § 143-215.83(b). The preface in subsection (b) is that “this section” shall not apply to discharges of oil or other hazardous substances under any of the circumstances listed in subsection (b). Of course, this “section” is G.S. 143-215.83, and includes the declaration of what is an unlawful discharge in subsection (a).

The key point is these exceptions to what the General Assembly deemed unlawful discharges must be applied throughout Part 2 of Article 21A, not just G.S. 143-215.83. Those exceptions apply to “discharges” as that term is used *throughout* Part 2, including in G.S. 143-215.84(a).

There are two types of exceptions to an unlawful discharge in subsection (b). The first is when the discharge is authorized by an existing rule. N.C. Gen. Stat. § 143-215.83(b)(1). Relatedly, subsection (c) provides that any person who desires or proposes to discharge oil or other hazardous substances onto the land or waters of the State shall first apply for and receive a permit for the discharge. N.C. Gen. Stat. § 143-215.83(c). This makes sense. A permitted discharge inherently cannot be unlawful.

The other exceptions to “this section,” *i.e.*, to what is an unlawful discharge, are any when *any person subject to liability under Article (21A)* proves the discharge was caused by forces beyond that person’s control. N.C. Gen. Stat. § 143-215.83(b)(2).

These exceptions are explicitly available to any person subject to liability under *any* provision in OPSHCA (Article 21A), not just persons who allegedly caused a discharge in violation of G.S. 143-215.83(a). Those forces are:

- 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. Gen. Stat. § 143-215.83(b)(2)a.-e. (herein referred to as the “(b)(2) Exceptions”).

The (b)(2) Exceptions include force majeure circumstances, as well as the act or omission of third parties.

Eagle invoked d. above in the (b)(2) Exceptions— that the spill resulted from the act or omission of a third party, namely the other driver, Ms. Hally, who caused the accident and resulting discharge. If the (b)(2) Exceptions are applicable to determining if a discharge was unlawful for purposes of enforcing G.S. 143-215.84(a), it is indisputable this third-party exception in (b)(2)d. applies for Eagle. There is no dispute regarding Ms. Hally’s responsibility for causing the accident and spill. For purposes of its decision, the EMC assumed Eagle’s driver, Mr. Jonas, was not responsible for causing the accident or the resulting discharge. EMC Order, ¶ 17 (R pp 165–66).

The EMC adopted DEQ's interpretation that the exceptions in G.S. 143-215.83(b) to an unlawful discharge can only be invoked and applied to any person cited for violating G.S. 143-215.83(a), *i.e.*, for causing the discharge. For instance, according to the EMC, if DEQ had cited Ms. Hally, the other driver who caused this accident and spill, she could have invoked and attempted to prove any of the (b)(2) Exceptions as a defense to liability for the spill.

According to the EMC, however, those same (b)(2) Exceptions to an unlawful discharge (including the third party exception Eagle invoked) are not available to any person or company like Eagle who is cited for responsibility to respond to a discharge because they were allegedly in control of the oil prior to the discharge under G.S. 143-215.84(a). In its key conclusion, the EMC states, "The applicability of Section 143-215.84(a) does not depend on the 'person . . . having control over the oil' causing the discharge; instead, it only requires the presence of a discharge [*caused by anybody*] made 'in violation of this Article.'" EMC Order, ¶ 25 (R p 167). According to the EMC, for purposes of enforcing G.S. 143-215.84(a) against the party in control of the oil or other hazardous substance, the only question is whether *any* person caused an unlawful discharge.

Under this flawed interpretation, G.S. 143-215.84(a) reflects the harshest possible regulatory scheme, imposing *absolute* liability on any person in control of the oil or other hazardous substance. Under this reasoning, there would be *no* force majeure or third-party defenses available for a person subject to liability under G.S. 143-215.84(a), even in cases where the costs to respond to the discharge and

restore the affected area could run into the millions of dollars, and the discharge was caused by events beyond their control.¹⁰

The EMC's conclusion is contrary to the plain meaning of 143-215.83(a)-(b) for at least three reasons explained below.

First, for purposes of enforcing G.S. 143-215.84(a), the EMC' simply ignores the "except as otherwise provided in this Part" qualifier to the General Assembly's declaration that discharges of oil or hazardous substances are unlawful in G.S. 143-215.83(a). Every clause in G.S. 143-215.83(a) must be given meaning, *Porsh Builders, Inc.*, 302 N.C. at 556, 276 S.E.2d at 447, including this "except for" language. The General Assembly clearly stated not *all* discharges are unlawful for purposes of Part 2 of Article 21A, which includes G.S. 143-215.84(a). The inquiry therefore to determine if a discharge was unlawful, or "prohibited" to use the adjective in the title of G.S. 143-215.84, resulting in a "violation" as that term is commonly understood and used in G.S. 143-215.84(a), does not end with subsection (a) of G.S. 143-215.83. The exceptions must also be considered. Further, *all* of the exceptions, set forth in

¹⁰ If this interpretation of G.S. 143-215.84(a) was to withstand judicial review, it would distinguish OPHCA from all similar federal and State acts that apply to discharges or releases of hazardous substances. Those acts all apply strict liability, with the same or similar force majeure and third-party exceptions in G.S. 143-215.83(b)(2) available as defenses for a potentially responsible party. See N.C. Inactive Hazardous Sites Act, N.C. Gen. Stat. § 130A-310; the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a)-(b).

The EMC's interpretation of G.S. 143-215.84(a), if upheld, would also put the acts of transporting, storing or using oil or hazardous substances – which countless parties do every day across this state – on par legally with ultra-hazardous activities like using explosives for blasting, subject to absolute liability for any harm caused. See *Trull v. Ca. -Va. Well Co.*, 264 N.C. 687, 691, 142 S.E.2d 622, 624 (1965).

subsection (b) of G.S. 143-215.83, must be considered. By the plain meaning of subsection (a), if any of the exceptions in subsection (b) apply, the discharge is “excepted” from what the General Assembly deemed to be unlawful.

Second, the EMC’s ruling is also contradicted by the fact that the (b)(2) Exceptions to responsibility for an unlawful discharge are explicitly available to “any person subject to liability *under this Article*,” *i.e.*, any provision in OPHSCA. N.C. Gen. Stat. § 143-215.83(b)(2) (emphasis added). That includes someone like Eagle who is subject to liability pursuant to G.S. 143-215.84(a), the very next statute in Article 21A, for allegedly having control of the oil immediately prior to discharge. The EMC rewrites that provision to make the (b)(2) Exceptions available only to a person subject to liability for causing an unlawful discharge under G.S. 143-215.83(a). The General Assembly, however, plainly did not limit the availability of the (b)(2) Exceptions to just persons accused of causing a discharge.¹¹

Third, the EMC’s conclusion also leads to an absurd result. While it does not address it specifically in its Order, the EMC must agree that if a discharge were authorized by one of its existing rules (or a permit), it would be an excepted discharge from what is deemed unlawful. The first circumstance for an excepted discharge is that it was authorized or permitted, per G.S. 143-215.83(b)(1). Following the EMC’s

¹¹ The EMC notes that Eagle is not subject to civil or criminal penalties for causing an unlawful discharge. EMC Order, ¶ 27 (R pp 167–68). That does not immunize Eagle from civil penalty exposure under OPHSCA. The EMC fails to note that Eagle is subject to civil penalties for failing to comply with G.S. 143-215.84(a). N.C. Gen. Stat. § 143-215.88A. In fact, both the notices Eagle received from DEQ state that failure to comply with the notice may result in assessment of civil penalties or the use of other enforcement actions. (R pp 91, 94).

interpretation and that line of reasoning, the exception for an authorized discharge in subsection (b)(1) is recognized for purposes of enforcing G.S. 143-215.84(a), but the (b)(2) Exceptions are not. That is an untenable interpretation, contrary to the structure and language of subsection (b). There, the General Assembly made no such distinction between the (b)(1) and (b)(2) exceptions to what it deemed unlawful discharges. To the contrary, the General Assembly provided that “this section” (G.S. 143-215.83) shall not apply to discharges of oil or other hazardous substances under *any* of the circumstances constituting an excepted discharge set forth in subsection (b). *See e.g., Bryant v. Bowers*, 182 N.C. App. 338, 340, 641 S.E.2d 855, 857 (2007) (statutory construction should avoid the creation of absurd results).¹²

CONCLUSION

Clear and unambiguous statutory language must be given its plain meaning. *See e.g., In re Proposed Assessments v. Jefferson-Pilot Life Ins. Co.*, 161 N.C. App. 558,

¹² The EMC concluded that applying the plain meaning of G.S. 143-215.83(a)-(b), for purposes of determining if there was an unlawful discharge and enforcing G.S. 143-215.84(a), would render meaningless the term “having control over oil or other hazardous substances” as used in G.S. 143-215.84(a). EMC Order, ¶ 40 (R p 170). That is not so. The question is whether the exceptions to an unlawful discharge set forth in G.S. 143-215.83(b) must be considered in determining if there was an unlawful, i.e., prohibited discharge, in violation of OPHSCA, for purposes of enforcing G.S. 143-215.84(a) against the party having such control.

The EMC further erred by leaving undisturbed DEQ’s direction that Eagle must also investigate whether the fire departments’ use of spray foam to put out the fire resulted in any PFAS contamination. Eagle had no control over the use or discharge of spray foam by fire fighters. It therefore cannot be liable under any applicable provision of OPHSCA, including G.S. 143-215.84(a), for any resulting contamination. Moreover, the (b)(2) Exception for when a discharge is caused by an act or omission of a fireman would squarely apply to Eagle regarding any impacts from the use of spray foam as a fire suppressant. N.C. Gen. Stat. § 143-215.83(b)(2)e.

560, 589 S.E.2d 179, 181 (2003). The EMC failed to do so in its interpretation of G.S. 143-215.83(a)-(b). Under the plain meaning of G.S. 143-215.83(a)-(b), when they are read as a whole, including the explicit language relating them to one another, the (b)(2) Exceptions to an unlawful discharge set forth in G.S. 143-215.83(b)(2) are relevant to whether an unlawful discharge has occurred, and thus, are available to a person like Eagle who is cited for responsibility for a prohibited discharge under G.S. 143-215.84(a).

For these reasons, the EMC's Order should be reversed, granting to Eagle the declaratory relief that it sought from the EMC – that it has no further responsibility to remove the petroleum and restore the area affected by the spill under G.S. 143-215.84(a) or any other provision of OPHSCA, or to further investigate the impacts of the fire departments' use of spray foam potentially containing PFAS to put out the fire after the accident and petroleum spill. Accordingly, Eagle is not subject to civil penalties or other enforcement mechanisms under OPHSCA for failing to do so.

This the 13th day of May, 2021.

POYNER SPRUILL LLP

By: Keith H. Johnson
H. Glenn Dunn
NC State Bar No. 7697
Keith H. Johnson
NC State Bar No. 17885
P.O. Box 1801
Raleigh, NC 27602-1801
Telephone: (919) 783-1013
Facsimile: (919) 783-1075
hgdunn@poynerspruill.com
kjohnson@poynerspruill.com

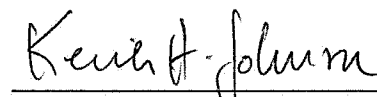
**COUNSEL FOR PETITIONER,
EAGLE TRANSPORT
CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petitioner's Brief In Support of Its
Petition for Judicial Review was served this day by email to :

Phillip Reynolds, Esq.
Special Deputy Attorney General
N.C. Department of Justice
PReynolds@ncdoj.gov
Counsel for the EMC

This the 13th day of May, 2021.



Keith H. Johnson

NORTH CAROLINA UNIFORM CITATION - COURT COPY							
STATE OF NORTH CAROLINA <u>Lincoln</u> County District Court File No. 2020CR 700613						Citation No. 53081G1	
TO THE DEFENDANT NAMED BELOW: You have been charged with the misdemeanor(s) or infraction(s) specified below. Read this citation carefully.							
YOUR COURT DATE AND LOCATION							
Court Day Fri	Date 05/01/2020	Time 09:00AM	Court Location LINCOLNTON		Courtroom 0001	Interpreter	Agency Case Number
THE STATE OF NORTH CAROLINA VS.							
Drivers License No. 02567346	State NC	Source DL	Name Of Defendant HALLY, KAREN STROUPE			Race White	
CDL No.	Class C	Address 601 MFG ST			Gender Female		
Social Security No. xxx-xx-0823	City MAIDEN		State NC	Zip 28650	Date Of Birth 04/15/1950	Age 69	
CHARGING OFFICER INFORMATION							
Date 01/30/2020	Signature Of Officer Trp. R L NEAL		No. 2623	Law Enforcement Agency STATE HIGHWAY PATROL		Troop/Squad F	District/Zone 5
WHAT YOU ARE CHARGED WITH							
The officer named below has probable cause to believe that on or about <u>Tuesday</u> , the <u>28</u> day of <u>January</u> , <u>2020</u> at <u>01:37PM</u> in the county named above you did unlawfully and willfully							
OPERATE A MOTOR VEHICLE ON A STREET OR HIGHWAY UNINTENTIONALLY CAUSE THE DEATH OF DARREL RAY JONAS WHILE ENGAGED IN A VIOLATION OF (G.S. 20-155 A), APPLYING TO THE OPERATION AND USE OF A VEHICLE AND TO THE REGULATION OF TRAFFIC, IN THAT THE DEFENDANT UNLAWFULLY AND WILLFULLY DID DRIVE A VEHICLE ON N.C 16, (TYPE ELEMENTS OF TRAFFIC OFFENSE AND, IF ORDINANCE, SET OUT THE CAPTION). THIS VIOLATION WAS THE PROXIMATE CAUSE OF DEATH. (G.S. 20-141.4(A2))							
and on or about <u>Tuesday</u> , the <u>28</u> day of <u>January</u> , <u>2020</u> at <u>01:37PM</u> in the county named above you did unlawfully and willfully							
OPERATE A MOTOR VEHICLE ON A STREET OR HIGHWAY YIELD: BY FAILING TO YIELD THE RIGHT OF WAY. OR ENTER INTERSECTION AT SAME TIME: BY FAILING TO YIELD THE RIGHT OF WAY TO THE VEHICLE ON THE RIGHT WHEN BOTH VEHICLES APPROACHED OR ENTERED THE INTERSECTION AT THE SAME TIME. (G.S. 20-155(A))							
YOUR VEHICLE							
Vehicle License No. CMV4258	State NC	Trailer Type	CMV No.	Vehicle Type Passenger (2 or 4-Door Sedan)		Vehicle Make Ford	Year 2014
OTHER INFORMATION							
Area Open country	Weather Clear	Visibility Clear	Traffic Medium	Accident F-01	Speed A 25	On Highway No./Street NC 16	
<input checked="" type="checkbox"/> Injury or Serious Injury <input type="checkbox"/> Passengers Under 16	SHP Code 05	In Vicinity/City Of LINCOLNTON			At/Near Intersection ST JAMES CH RD		
WITNESSES				OFFICER COMMENTS			
Witness #1		Witness #2		Witness #3		MISS HALLY ATTEMPTED TO MAKE A RIGHT TURN ONTO NC 16 FROM SR-1386 (ST JAMES CH RD). HER VEHICLE AND A GAS TANKER COLLIDED, CAUSING THE TANKER TO OVER TURN. THE DRIVER DARRELL RAY JONAS WAS PRONOUNCED DEAD AT THE COLLISION SCENE. SEE FATAL PACKET	
COURT USE ONLY							
District Attorney APH		Attorney For Defendant At Time Of Trial Or Plea Al Reeder		<input type="checkbox"/> Appointed <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Waived		PRIOR CONVICTIONS No./Level: <u>0</u> <input checked="" type="checkbox"/> I (0) <input type="checkbox"/> II (1-4) <input type="checkbox"/> III (5+)	
PLEA: <input checked="" type="checkbox"/> guilty/resp. <input type="checkbox"/> guilty/resp. <input type="checkbox"/> not guilty/resp.	<input type="checkbox"/> no contest <input type="checkbox"/> no contest	Misdemeanor Death by Veh		VERDICT/ PENDING: <input checked="" type="checkbox"/> guilty/resp. <input type="checkbox"/> guilty/resp. <input type="checkbox"/> not guilty/resp.	Misdemeanor Death by Veh		M.C.L. <input checked="" type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 M.C.L. <input type="checkbox"/> A1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> VID
JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is ORDERED that the defendant: <input type="checkbox"/> pay costs and a fine/penalty of \$ _____ <input checked="" type="checkbox"/> be imprisoned for a term of <u>60</u> days in custody of the sheriff. Pretrial credit <u>0</u> days served. <input type="checkbox"/> The Court finds that a longer <input type="checkbox"/> shorter period of probation than specified in G.S. 15A-1343.2(d) is necessary. <input checked="" type="checkbox"/> Execution of sentence is suspended and the defendant is placed on unsupervised probation for <u>12</u> months, subject to the regular conditions of probation and the following: <input checked="" type="checkbox"/> (1) pay costs and a fine/penalty of \$ <u>50.00</u> <input type="checkbox"/> (2) not operate a motor vehicle until properly licensed by DMV. <input type="checkbox"/> (3) complete _____ hours of community service within _____ days and pay the fee. <input checked="" type="checkbox"/> (4) Other: <u>Waive show cause, monies due</u> 4-9-21							
It is ORDERED that this: <input type="checkbox"/> Judgment is continued upon payment of costs. <input type="checkbox"/> case be consolidated for judgment with _____ <input type="checkbox"/> sentence is to run at the expiration of the sentence in _____ <input type="checkbox"/> The Court finds just cause to waive costs as ordered on attached <input type="checkbox"/> AOC-CR-618 <input type="checkbox"/> Other: _____ <input type="checkbox"/> COMMITMENT It is ORDERED that the Clerk deliver two (2) certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal. <input type="checkbox"/> The defendant in open court gives notice of appeal to the Superior Court. <input type="checkbox"/> The current pretrial release order is modified as follows: _____							
Date 2-4-21	Signature Of District Court Judge [Signature]		I certify that this Judgment is a true copy.		Date 2-5-21	Signature Of Deputy Assistant/CSC [Signature]	