

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

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November 19, 2020



# The Oil Pollution and Hazardous Substance Control Act (OPHSCA)

“It is the purpose of this Article to promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products, oil by-products, and other hazardous substances.” N.C.G.S. § 143-215.76.



# There are two reasons why the Commission can refuse to issue a declaratory ruling:

- (1) As the transporter, Eagle is responsible for the cleanup whether they caused an accident or whether some other party did. There is no conflict between what OPHSCA says and what Eagle is being told to do.
- (2) Eagle's "given state of facts" exceeds what is necessary for ruling on their obligations under OPHSCA.



**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.



# N.C.G.S. 143-215.84

“ . . . 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.”



# 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.”



# 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. 143-215.83 “specifically shall include carriers”

- “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.”





N.C.G.S. 143-215.34 “specifically shall include carriers”

- “ . . . 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.”
- “ . . . any person ‘transporting oil . . . immediately prior to [it being]’ 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.”



# Eagle wants you to ignore that language . . .

“ . . . 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.”



# And focus on this language:

“ . . . 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.”



# OPHSCA's third-party exception does not absolve Eagle their obligations.

N.C.G.S. 154-215.83 (a): “It shall be unlawful . . . to discharge . . . oil or other hazardous substances . . . 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.”



# N.C.G.S. 143-215.85 applies regardless of whether the discharge is deemed unlawful.

“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.”



**N.C.G.S. § 143-215.83(b)(2)(d) does not absolve Eagle of responsibility – it protects them from penalties arising from the result of a third-party unlawful acts.**

**The discharge is still unlawful.**



# Under Eagle's argument there would be no Joint and Several Liability and no Criminal Penalties.

- **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
- **Criminal Penalties:** Any person who knowingly discharges or causes or permits the discharge of oil or other hazardous substances in violation of this Part.” N.C.G.S. § 143-215.88B



Eagle's "given state of facts" is inappropriate for a declaratory ruling.

To the extent Eagle continues to assert causation is a relevant fact, this petition is not properly before the Commission for two reasons:

1. DEQ did not base Eagle's responsibility on whether or not they caused the accident.
2. Causation is at issue in pending litigation.





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

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

- The indisputable answer to that question is YES.
- Whether someone else caused the accident is irrelevant.



# Causation is not a “given” fact.

- Causation is the subject of pending litigation. The driver was charged with causing an accident and that case is still pending.
- The fact that Eagle has produced evidence and asserts it can “prove” cause to the Commission highlights the extent to which causation continues to be at issue.



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

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

- Transporters would no longer have any responsibility to initiate cleanups.
- The Department would be forced to initiate cleanups while also conducting investigations to determine fault before it could assign responsibility.
- Regular motorists would be tasked with cleaning up spills and complying with OPHSCA.



# QUESTIONS?

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