

**BEFORE THE  
NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION**

EAGLE TRANSPORT CORPORATION,	)	
	)	
Petitioner,	)	EAGLE TRANSPORT
	)	CORPORATION’S MEMORANDUM
v.	)	IN SUPPORT OF PETITION FOR
	)	DECLARATORY RULING
N.C. Department of Environmental Quality,	)	
	)	
Respondent.	)	

Petitioner Eagle Transport Corporation (“Eagle”), through its undersigned counsel, submits this Memorandum in Support of its Petition for Declaratory Ruling that was filed today, pursuant to 15A N.C. Admin. Code § 21.0602(c). In Section I below, the indisputable, basic facts regarding the cause of the fuel spill that gives rise to this Petition are set forth. In Section II, the relevant post-accident events and correspondence with Respondent are addressed. In Section III, the relevant provisions of Part 2 of the N.C. Oil Pollution and Hazardous Substances Control Act (“OPHSCA”) are first addressed. That is followed by a discussion regarding why North Carolina’s Groundwater Classification and Standard Rules (“Groundwater Quality Rules”) do not provide a proper legal basis for Respondent naming Eagle as the responsible party for the corrective action prescribed in those rules in response to the spill.

I. The Indisputable, Basic Facts - Eagle Did Not Cause the Vehicular Accident or the Resulting Spill.

Eagle’s Petition is based upon the following indisputable, basic facts:

Around 1:30 pm, on January 28, 2020, Mr. Darrell Jonas was at the wheel driving an Eagle tanker truck carrying fuel headed north on Highway 16, in Lincoln County, outside Denver, North

Carolina. The truck was equipped with a drive cam, which provided a split video screen showing both Mr. Jonas sitting in the cab, and his view out the front windshield of the truck, with audio. The tragic last moments of Mr. Jonas' life were captured on that drive cam and are submitted via thumb drive with this memorandum.

As the drive cam reflects, Highway 16 is four lanes with a median at the point where the accident took place. Mr. Jonas was driving in the far right hand lane. As he approached the intersection with Saint James Church Road on his right, there was a turn lane off Highway 16. He passed several cars that were in that turn lane as he approached the intersection. Just immediately before Mr. Jonas reached the intersection, a car turned right onto Highway 16 from Saint James Church Road, right in his path.

As the drive cam reflects, Mr. Jonas did not have time to react to avoid a collision. As reflected in the highway patrol accident report (the "Accident Report") a copy of which is attached as Exhibit A, as a result of the collision the tanker truck overturned, coming to rest on its side in Highway 16.

Mr. Jonas did not survive the accident. According to the accident report, the driver of the other vehicle, Ms. Karen Hally, was determined to have been at fault for failing to yield. She was charged with misdemeanor death by motor vehicle. *See* Accident Report.

Both diesel fuel and gasoline leaked from the overturned tanker truck as a result of the accident, as reflected in a subsequent Initial Assessment Report prepared by Shield Engineering at Eagle's expense (the "Initial Assessment Report") that was submitted to Respondent (copy attached as Exhibit B).

## II. Post-Spill Events.

As Shield's Initial Assessment Report documents, at Eagle's direction, the spill was immediately reported that day to Respondent and other authorities, and customary emergency response was undertaken. *See* Initial Assessment, Sec. 1.2- Emergency Response. The local fire department responded by applying aqueous firefighting foam to the overturned tanker truck. A fire nevertheless erupted and was then contained. *See* Initial Assessment Report, Sec. 1.1- 1.2.

The next day, on January 29, 2020, representatives of various parties, including Eagle, Respondent and Shield Engineering, met on site to assess the situation. *See* Initial Assessment, Sec. 1.3.

That same day, Respondent's (UST Section, Division of Waste Management) incident manager issued a first Notice of Regulatory Requirements ("NORR") to Eagle. (Copy attached as Exhibit C). Without explanation or any statutory reference, and despite the fact that Eagle's driver did not cause the accident or spill, that NORR indicated Respondent had already determined that Eagle was the responsible party for assessment, collection and removal of the discharge and restoring the affected area (collectively "corrective action"). The NORR directed Eagle to prepare and submit an initial assessment report, pursuant to the Groundwater Quality Rules applicable to a discharge from a non-underground storage tank source, citing 15A N.C. Admin. Code § 2L.0504.

Eagle voluntarily and at considerable expense responded by meeting the requirements of the initial assessment rule, and through Shield Engineering, submitted the requested Initial Assessment Report on April 21, 2020. (Exhibit B). As that report indicates, the scope of work included excavating soils containing free product fuel and temporarily storing it in on-site roll-off containers. *See* Initial Assessment, Sec. 1.3. That report also included a work plan for additional

soil removal requested by the N.C. Dept. of Transportation (“DOT”), whose right-of-way was impacted by the spill. At this time, Eagle through counsel also initiated a discussion with Respondent regarding the legal basis for the determination that Eagle was a responsible party for the spill.

On May 13, 2020, upon review of that Initial Assessment Report, Respondent’s incident manager issued a second NORR to Eagle (the “Second NORR,” copy attached as Exhibit D). Again, without explanation, and despite the fact that Eagle’s driver did not cause the accident or spill, the Second NORR reiterated Respondent’s determination that Eagle is responsible for assessment, collection and removal of the discharge, and restoring the affected area. The Second NORR indicated that Eagle, as the alleged responsible party, must comply with the assessment and cleanup requirements of OPHSCA (only referencing the General Statutes where OPHSCA are codified) and the corrective action provision of the Groundwater Quality Rules.

Neither in that Second NORR nor in any other communication has anyone with Respondent explained in writing how Eagle could be responsible for an unlawful discharge under OPHSCA when its driver did not cause the accident or spill.

The Second NORR also indicated that any potentially contaminated media containing PFAS (per- and polyfluoroalkyl substances) must be properly tested and disposed of. The only possible source of PFAS would be the fire retardant used by the fire department after the accident.

The second NORR indicated that failure by Eagle to comply with these requirements could result in civil penalties or the use of other enforcement mechanisms.

On May 26, 2020, Eagle’s undersigned counsel provided Respondent with an analysis supporting Eagle’s position that it was not a responsible party for the spill. Eagle also offered to

finance the disposal of the soils stockpiled on site, in exchange for an agreement that it had no further liability for corrective action. Eagle's counsel indicated, absent a resolution, it would petition the Environmental Management Commission (the "EMC" or "Commission") for declaratory relief. *See* Dunn letter to Osborne, May 26, 2020 (copy attached as Exhibit E). While Respondent through counsel orally indicated it disagreed with Eagle's position, no written response was ever received.

Despite no response, Eagle thereafter did what it had offered to do anyway and financed the proper removal and disposal of the soils stockpiled on site. *See* David Stoner email to Bullock of Respondent, June 29, 2020 (copy attached as Exhibit F). Eagle then proceeded to file its Petition with the EMC.<sup>1</sup>

## II. Legal Discussion.

### A. The Third-Party Exception to an Unlawful Discharge in Part 2 of OPHSCA Applies to Eagle.

#### 1. G.S. § 143-215.83- Discharges.

The analysis of Eagle's legal responsibilities in response to the spill starts with OPHSCA, the applicable statute. The purpose of OPHSCA is to protect the land and waters of the State from oil or hazardous substance pollution. N.C. Gen. Stat. § 143-215.76. More specifically, Part 2 of OPHSCA, entitled "Oil Discharge Controls," applies. Part 2 begins with G.S. § 143-215.83, entitled "Discharges," which first provides in subsection (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

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<sup>1</sup> Eagle has not initiated any further corrective action in response to the Second NORR. It has also not implemented the soil removal work DOT requested as indicated in the Initial Assessment Report.

or upon any waters . . . or land within this State, or into any sewer, surface water drain or other waters that drain into waters of the State, regardless of the fault of the person having control over the oil or other hazardous substance, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

*Id.* at § 143-215.83(a).

That is followed by “Excepted Discharges” in subsection (b). The “excepted discharge” that applies to Eagle is the “third-party” exception. The relevant language for that exception in subsection (b) reads:

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 [OPHSCA] proves that a discharge was caused by . . .

d. An act or omission of a third party, whether any such act or omission was or was not negligent.

*Id.* at § 143-215.83(b)(2) d.

This third party exception to unlawful discharges clearly applies to Eagle since the spill resulted from a vehicular accident caused by Ms. Hally, a third-party driver who failed to yield and pulled out in front of Eagle’s truck. The spill was clearly caused by the act or omission of a third-party. Any potential PFAS contamination resulting from the firefighting foam used by the local fire department after the accident, referenced in the Second NORR, also clearly resulted from the act or omission of a third party.

1. The remainder of Part 2 of OPHSCA contains various provisions regarding responses to unlawful discharges. The relevant ones are addressed below. There is nothing in the relevant provisions of Part 2 of OPHSCA that negates the third-party exception, and the remainder

of Part 2 of OPHSCA must be construed and applied in a way that does not render the third-party exception to an unlawful discharge, or any other excepted discharges in G.S. § 143-215.83(b), meaningless. *See e.g., Winkler v. North Carolina State Board of Plumbing*, \_\_ N.C. \_\_, 843 S.E.2d 207 (2020)(statutes should be construed so that none of their provisions are rendered useless); *Housekeepers, Inc. v. Richmond Ambulance Authority*, 642 F.3d 466, 472 (4<sup>th</sup> Cir. 2011)(In interpreting a statute, a court should strive to give effect to every word that [the legislature] has used to avoid surplusage. This represents the court’s deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment).

## 2. G.S. § 143-215.84- Removal of Prohibited Discharges.

The next section in Part 2 of OPHSCA is G.S. § 143-215.84, entitled “Removal of **‘prohibited’** discharges.” (emphasis added). It provides in relevant part that “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 restore the area affected ....” (emphasis added). Since the third-party exception to an unlawful discharge in G.S. § 143-215.83(b) applies to Eagle, the requirements in G.S. § 143-215.84 regarding a **prohibited** discharge cannot be applied to Eagle. Otherwise, G.S. § 143-215.83(b) setting forth excepted discharges from what are unlawful would be rendered meaningless.

Subsection (b) in G.S. § 143-215.84 gives Respondent the authority to investigate and conduct remediation in response to a prohibited discharge. An Oil or Other Hazardous Substances Pollution Protection Fund (the “Protection Fund”) is established to provide financing for such purposes. N.C. Gen. § 143-215.87. OPHSCA thereby provides a means for Respondent to finance

any further corrective action in response to a spill like the one at issue if the party responsible under the law does not take the necessary action.

3. G.S. § 143-215.85- Notice.

The next section in Part 2 of OPHSCA is G.S. § 143-215.85, entitled “Notice.” It requires in subsection (a) that the person having control over oil or hazardous substances immediately give authorities notice of a prohibited discharge, and what measures have been taken or are proposed to contain and remove the discharge. Again, the spill in this case is excepted from what is deemed unlawful and therefore not prohibited, at least as applied to Eagle. *See* N.C. Gen. Stat. § 143-215.83(b)(2)d. Subsection (b) of G.S. § 143-215.85 applies specifically to petroleum discharges, and requires any person who owns, or controls petroleum discharged into the environment to immediately take measures to collect and remove the discharge *in accordance with the requirements of this Article [i.e., OPHSCA]*. (emphasis added). Again, under OPHSCA, the spill in this case is excepted from what is deemed unlawful as applied to Eagle. Therefore, Eagle is not required to take the specified measures. *See* N.C. Gen. Stat. § 143-215.83(b)(2)d.

4. G.S. § 143-215.88 – Payment to State agencies or State-designation local agencies.

When money from the Protection Fund has been used to respond to a prohibited discharge, Respondent’s Secretary may make demand for reimbursement upon any person having control over the oil or hazardous substance, *unless the Commission determines that any of the “Excepted Discharges” in G.S. 143-215.83(b) apply*. N.C. Gen. Stat. § 143-215.88 (emphasis added). It then provides that any person having control of oil or other hazardous substances discharged to the land or waters of the State *in violation of the provisions of this Part* and any other person *causing or contributing to the discharge of oil or other hazardous substances* shall be directly liable to the



State for the necessary expenses of oil or other hazardous substances cleanup projects and activities arising from such discharge. *Id.* (emphasis added).

These provisions reflect a clear legislative intent that a person must be responsible for an unlawful discharge in order to have such liability. If Respondent cannot collect funds it expends in response to an unlawful discharge from a party in Eagle's position, it cannot credibly assert authority to order Eagle to undertake corrective action.

5. G.S. § 143-215.88A- Enforcement procedures; civil penalties.

This Section provides that any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil ***in violation of this Part*** or fails to report a discharge as required by G.S. § 143-215.85 or who fails to comply with the requirements of G.S. 143-215.84(a)[Prohibited Discharges] or orders issued by the Commission as a result of violations thereof, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars (\$5,000) for every such violation. The application of this provision to discharges in violation of Part 2 is consistent with the third-party exception in the "Excepted Discharges" in G.S. § 143-215.83(b)(2)(d). If the discharge was caused by the act or omission of a third-party, a party in Eagle's position is not exposed to such penalties or other enforcement measures.

6. G.S. § 143-215.90- Liability for Damages to Public Resources.

This Section provides that any person who discharges oil or other hazardous substances ***in violation of this Article*** or violates any order or rule of the Commission adopted pursuant to this Article, or fails to perform any duty ***imposed by this Article***, or violates an order or other determination of the Commission made ***pursuant to the provisions of this Article***, including the

provisions of a discharge permit issued pursuant to G.S. § 143-215.1, and in the course thereof causes the death of, or injury to fish, animals, vegetation or other resources of the State or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Commission, shall be liable to pay the State damages. (emphasis added). The application of this provision also is consistent with the “Excepted Discharges” listed in G.S. §§ 143-215.83(b). An excepted discharge does not expose the person in Eagle’s position to such public resource damage liability.

7. G.S. § 143-215.93- Liability for damage caused.

This Section provides that 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. Gen. Stat. § 143-215.93 (emphasis added). If, as in Eagle’s case regarding the spill at issue, one of the exceptions to an unlawful discharge applies, the broad liability established in G.S. § 143-215.93 does not apply.

In sum, there must be a statutory basis for Respondent’s determination that Eagle is responsible for corrective action in response to the spill and there is no such basis. Respondent’s determination that Eagle is responsible for such corrective action is inconsistent with the third-party exception to an unlawful discharge in Part 2 of OPHSCA.

B. The Groundwater Quality Rules Are Not an Independent, Proper Basis for Respondent’s Determination That Eagle is a Responsible Party for the Corrective Action Prescribed in those Rule in Response to the Spill.

In the initial NORR and the Second NORR (the “NORRs”), Respondent directed Eagle to undertake corrective action as prescribed in the Groundwater Quality Rules. There are provisions in those rules identifying the “responsible party” for a discharge, who therefore must comply with

the corrective action requirements in those rules in response to a discharge. First, the corrective action rule provides that “any person conducting or controlling an activity that results in the discharge of a waste or hazardous substance or oil to the groundwaters of the State, or in proximity thereto, shall take action upon discovery to terminate and control the discharge, mitigate any hazards resulting from exposure to the pollutants and notify Respondent of the discharge.” 15A N.C. Admin. Code § 2L.0106(b). That rule then provides that any person conducting or controlling an activity that has not been permitted by Respondent and results in an increase in the concentration of a substance in excess of a standard, shall conduct an initial response as described in the rule and implement an approved corrective action plan for restoration of groundwater quality. *Id.* at § 2L.0106(c). Section .0500 of the Groundwater Quality Rules then addresses risk-based assessment and corrective action for petroleum releases from above-ground tanks and sources. Those rules state they apply to the owner and operator of the tank, stationary or mobile, from which a discharge or release occurred and to any person determined to be responsible for assessment and cleanup of a discharge or release from a non-UST petroleum source, including any person who has conducted or controlled an activity that results in the discharge or release of petroleum to the groundwaters of the State or in proximity thereto. *Id.* at § 2L.0503. These rules can be collectively referred to as the “Corrective Action Provisions” in the Groundwater Quality Rules.

Eagle anticipates Respondent will contend that these Corrective Action Provisions are unto themselves a proper legal basis for its determination that Eagle is responsible for the corrective action prescribed in those rules in response to the spill. If so, the argument is erroneous and must be rejected for the following reasons.

First, an administrative commission like the EMC is a creation of the legislature, and only exercises the authority granted to it by the General Assembly. Thus, in exercising its rule-making authority, a commission may only address by rule what the General Assembly directed it to address, and no more. As stated by our Supreme Court:

Administrative rules and regulations, to be valid, must be within the authority conferred upon the administrative agency [by the legislature]. The power to make regulations is not the power to legislate in the true sense, and under the guise of regulation legislation may not be enacted. The statute which is being administered may not be altered or added to by the exercise of a power to make regulations thereunder.

*Charlotte-Mecklenburg Hosp. Authority v. North Carolina Industrial Com’n*, 336 N.C. 200, 223-24, 443 S.E.2d 716, 730 (1994).

The legislative authorization for the Groundwater Quality Rules is in Article 21 (Water and Air Resources) of Chapter 143. There, the General Assembly authorized the EMC to adopt a series of classifications and standards for waters of the State. N.C. Gen. Stat. § 143-214.1; *see also* Groundwater Quality Rules, 15A NCAC § 2L.0101 (noting GS 143-214.1 as authority for those rules). It makes sense and was entirely proper for the General Assembly to authorize the EMC to address that technical subject via rule-making, to implement North Carolina’s water resource statutes.

The General Assembly did **not** authorize the EMC to also by rule determine what constitutes an “unlawful” discharge **or** the parties responsible for corrective action in response to an unpermitted or unlawful discharge. Instead, the General Assembly addressed those subjects in OPHSCA, as is appropriate given the inherent legal nature of that subject matter. It is the province of the legislature, not an executive commission, to determine what is unlawful conduct, and the party responsible for what the General Assembly determines is an unlawful discharge.

Thus, in addressing who are responsible parties for an unlawful discharge in the Corrective Action Provisions, under the guise of adopting classifications and standards for waters of the State, the EMC went too far and exceeded its authority. In doing so, the EMC was performing a legislative function, which as the Supreme Court stated in *Charlotte-Mecklenburg Hosp. Authority* is improper. *See id.* For that reason alone, the Corrective Action Provisions in the Groundwater Quality Rules are invalid to the extent they are used to determine who is responsible for complying with them. They are not a proper, legal basis for Respondent's issuance of the NORRs to Eagle for the spill.

That is, however, not the only legal flaw in Respondent's invoking the Corrective Action Provisions in the Groundwater Quality Rules as a basis for naming Eagle as a responsible party for this spill. Even if the General Assembly had directed the EMC to adopt rules regarding what is an unlawful discharge, and/or who is responsible for an unpermitted discharge, which it did not do, any resulting rules would have to be consistent with applicable statutory law. As the Supreme Court noted in *Charlotte-Mecklenburg Hosp. Authority*, the statute that is being administered (or any other statute) may not be altered or added to by the exercise of the power to make regulations. *Id.* The error is thus compounded by the fact that the Corrective Action Provisions in the Groundwater Quality Rules are not consistent with OPHSCA, because they do not account for the exceptions to unlawful discharges established by the General Assembly in Part 2 of OPHSCA, including the third-party exception that applies to Eagle with respect to this spill. The EMC therefore erroneously altered and added to the applicable statutes in Part 2 of OPHSCA in including the Corrective Action Provisions in the Groundwater Quality Rules.

For these reasons, any argument that the Corrective Action Provisions in the Groundwater Quality Rules provide an independent, legal basis for Respondent's naming Eagle as the responsible party for corrective action for this spill must be rejected.

IV. Conclusion.

For the reasons set forth above, pursuant to the third-party exception to an unlawful discharge as defined in OPHSCA, Eagle is not responsible under OPHSCA or the Groundwater Quality Rules for further corrective action in response to the spill. Accordingly, Eagle's Petition for Declaratory Relief should be granted.

This the 15th day of July, 2020.

**POYNER SPRUILL LLP**

By: /s/Keith H. Johnson  
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COUNSEL FOR PETITIONER,  
EAGLE TRANSPORT CORPORATION

**Certificate of Service**

I hereby certify that a copy of the foregoing Petition for Declaratory Ruling was served this day by U.S. Mail to Respondent's counsel listed below:

Jay Osborne, Esq.  
Assistant General Counsel  
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217 West Jones Street  
Raleigh, NC 27603  
[jay.osborne@ncdenr.gov](mailto:jay.osborne@ncdenr.gov)

This the 15th day of July, 2020.

By: /s/Keth Johnson  
Poyner Spruill LLP

DMV-349 (Rev. 1/09)

THIS REPORT IS FOR THE USE OF THE DIVISION OF MOTOR VEHICLES. THE DATA IS COLLECTED FOR STATISTICAL ANALYSIS AND SUBSEQUENT HIGHWAY SAFETY PROGRAMMING. DETERMINATIONS OF "FAULT" ARE THE RESPONSIBILITY OF INSURERS OR OF THE STATE'S COURTS.

2  
No. of Units Involved

Form 1 of 1

☒ Supplemental Report☐ Non-Reportable

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46 Name of EMS A - LINCOLN COUNTY EMS

47 Injured Taken by EMS to A - CMC LINCOLN NC

(Treatment Facility and City or Town)

46 Name of EMS B - LINCOLN COUNTY EMS

47 Injured Taken by EMS to B - CMC MAIN

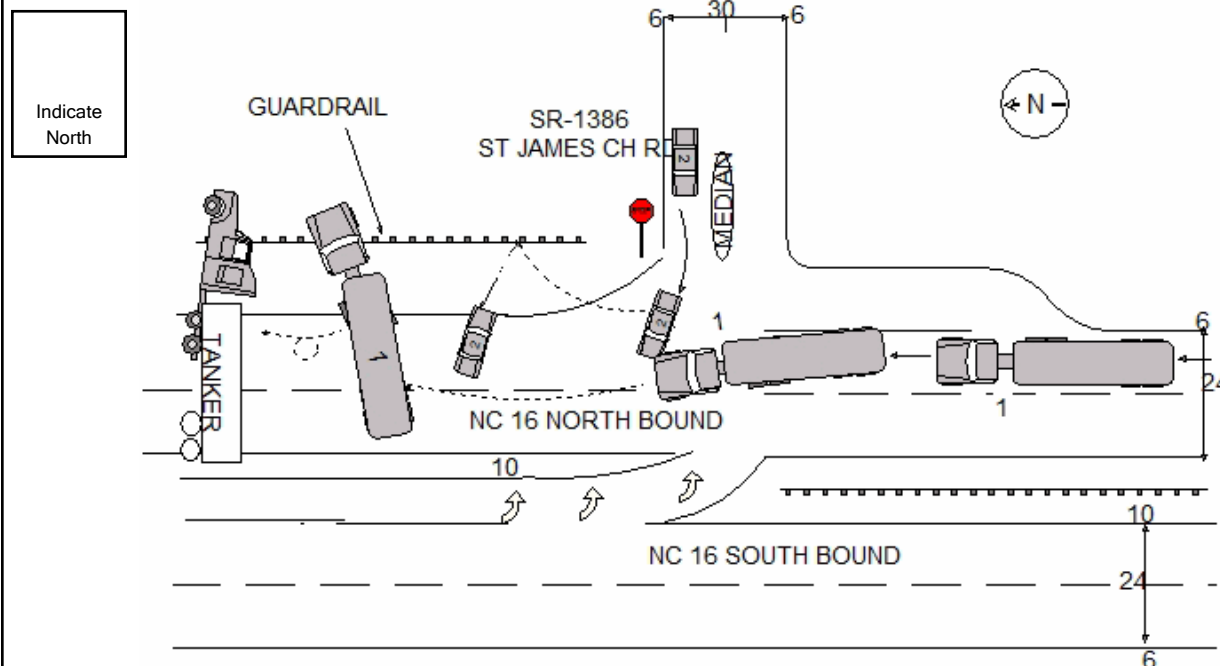
(Treatment Facility and City or Town)





48 POINTS OF INITIAL CONTACT (Write in Codes)	Unit # <u>1</u> <u>1,2,20</u> Unit # <u>2</u> <u>2,3,4,5</u>	<b>VEHICLE INFO</b>		Veh # <u>1</u>	Veh # <u>2</u>	<b>ROADWAY INFO</b>		<b>WORK ZONE RELATED</b>	
		60 Authorized Speed Limit		60	60	69 Road Feature		8	
<b>CRASH SEQUENCE (Unit 1 event)</b>	Unit # <u>1</u>	Unit # <u>2</u>	61 Estimate of Original Traveling Speed	60	25	70 Road Character		1	
49 Vehicle Maneuver/Action	4	7	62 Estimate of Speed at Impact	60	25	71 Road Classification		3	
50 Non-Motorist Action			63 Tire Impressions Before Impact (ft.)	0	0	72 Road Surface Type		4	
51 Non-Motorist Location Prior to Impact			64 Distance travelled After Impact (ft.)	212	43	73 Road Configuration		4	
52 Crash Sequence - First Event for this Unit	26	26	65 Emergency Vehicle Use			74 Access Control		3	
53 Crash Sequence - Second Event	1	1	66 Post Crash Fire (if 'Yes' check block)	<input type="checkbox"/>	<input type="checkbox"/>	75 Number of Lanes		4	
54 Crash Sequence - Third Event	42	42	67 School Bus - Contact Vehicle	<input type="checkbox"/>	<input type="checkbox"/>	76 Traffic Control Type		1	
55 Crash Sequence - Fourth Event	5		68 School Bus - Noncontact Vehicle	<input type="checkbox"/>	<input type="checkbox"/>	77 Traffic Control Oper		1	
56 Most Harmful Event for this Unit	5	26	<b>COMMERCIAL VEHICLE: Hazardous Material Involvement</b> Haz Mat Placard <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No From Placard indicate Unit <u>1</u> <input type="checkbox"/> Hazardous Cargo Released <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 4-digit placard number or name from diamond or hmv 1-digit number from bottom of diamond Carrying Haz Mat <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <u>1203</u>						
57 Distance/Direction of Object Struck	3	3							
58 Vehicle Underride/Override	3	3							
59 Vehicle Defects	0	0							
			<b>TRAILER INFO.</b> 82 Trailer Type Unit # <u>1</u> <u>8</u> Unit # <u>2</u> <u>0</u> 1st Trailer No. Axles <u>2</u> Width (inches) <u>86</u> Length (feet) <u>40</u> 2nd Trailer No. Axles Width (inches) Length (feet)						
			83 Unit # Overwidth Trailer and Overwidth Mobilehome Overwidth Permit #						

## 84 DIAGRAM



Unit # 1 was ☒ Traveling ☐ Parked Facing ☐ N ☐ S ☐ E ☐ W on NC 16

Unit # 2 was ☒ Traveling ☐ Parked Facing ☐ N ☐ S ☐ E ☒ W on NC 16

**85 NARRATIVE** (include pertinent unusual aspects which are not listed elsewhere on the form)  
 VEH#1 WAS TRAVELING NORTH ON NC 16. VEH#2 WAS TRAVELING WEST ON SR-1386 (ST JAMES CH RD). VEH#2 ATTEMPTED TO MAKE A RIGHT TURN ONTO NC 16. VEH#1 STRUCK THE FRONT OF VEH#2. VEH#2 TRAVELED OFF THE ROADWAY TO THE RIGHT AND STRUCK THE GUARD RAIL. VEH#1 CONTINUED NORTH AND TRAVELED OFF THE ROADWAY TO THE RIGHT AND STRUCK THE GUARD RAIL. VEH#1 THEN OVERTURNED. VEH#1 CAME TO REST IN THE MIDDLE OF NC 16 ON IT'S SIDE FACING EAST. VEH#2 CAME TO REST IN THE RIGHT LANE ON NC 16.

## ADDITIONAL PROPERTY DAMAGE

86 Type/Owner GUARD RAIL Owner Address 1330 E GASTON ST, LINCOLNTON NC 28092 State Property? ☒ Estimated Damage \$ 1500  
NC DOT (704) 740-2400

## WITNESSES

Name CHAD MCINTOSH Address DENVER FIRE DEPARTMENT, DENVER NC 28037 Phone No (704) 483-5115  
 Name \_\_\_\_\_ Address \_\_\_\_\_ Phone No. \_\_\_\_\_

## TRAFFIC VIOLATION(S)

Name KAREN STROUPE HALLY Charge(s) 002 - MISDEMEANOR DEATH BY MOTOR VEHICLE. GS 20.141.4(A2). / YIELD RIGHT O  
 Name \_\_\_\_\_ Address \_\_\_\_\_

Officer Name

TRP. R L NEAL

Officer Number

2623

Department

NC STATE HIGHWAY PATROL

NCNHP0000

Date of Report

01/28/2020



April 21, 2020

Via: E-mail; Graham, Dan <dan.graham@ncdenr.gov>

Mr. Dan Graham  
North Carolina Department of Environmental Quality  
610 East Center Avenue, Suite 301  
Mooresville, NC 28115

Subject: **Initial Assessment Report and Work Plan For Soil Removal  
NC -16 and St. James Church Road, Denver, NC  
NCDEQ Incident #91566  
Shield Project #4200030**

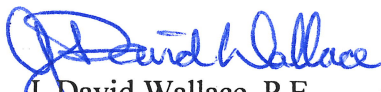
Dear Mr. Graham:

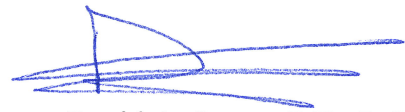
Shield Engineering, Inc. (Shield) is pleased to submit this Initial Assessment Report and Work Plan for Soil Removal at the Highway 16 and St. James Church Road site in Denver, NC. Included in this report are the following: The initial abatement activities completed after the initial spill; the results of the initial soil assessment in the areas downgradient from NC-16 to the culvert passing under NC-16 toward the southwest; and a Work Plan for Soil Removal.

The assessment activities were performed to be consistent with the North Carolina Department of Environmental Quality Notice of Regulatory Requirements (NORR) dated January 29, 2020, and in accordance with Shield's Assessment Work Plan dated February 13, 2020 and approved by the NCDEQ on February 14, 2020. The Work Plan for Soil Removal portion of the report is prepared as requested by the North Carolina Department of Transportation.

If you have any questions or comments, please contact us at (704) 394-6913.

Sincerely,  
**SHIELD ENGINEERING, INC.**

  
J. David Wallace, P.E.  
Senior Engineer

  
David A. Stoner, P.E., P.G.  
Sr. Principal

cc: Brian Leonhardt-North Carolina Department of Transportation at [BLeonhardt@ncdot.gov](mailto:BLeonhardt@ncdot.gov)  
Bree Bryant, Eric Hearl, Denise Labowski, and Diane Dreymla all by email



**INITIAL ASSESSMENT REPORT  
AND  
WORK PLAN FOR SOIL REMOVAL  
FOR  
DENVER SPILL SITE  
NC-16 & ST. JAMES CHURCH ROAD  
DENVER, NORTH CAROLINA**

**Prepared for:**

North Carolina Department of Environmental Quality  
610 East Center Avenue, Suite 301  
Mooresville, NC 28115


and


North Carolina Department of Transportation  
1710 E. Marion Street  
Shelby, NC 28152

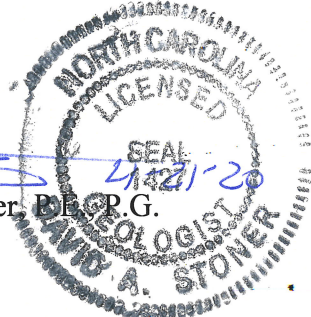
**By:**



Shield Engineering  
4301 Taggart Creek Road  
Charlotte, North Carolina

  
J. David Wallace, P.E.  
Senior Engineer

  
David A. Stoner, P.E., P.G.  
Sr. Principal

A circular professional engineer seal for the State of North Carolina. The outer ring contains the text 'NORTH CAROLINA' at the top and 'SEAL' at the bottom. Inside the ring, the word 'LICENSED' is at the top and 'ENGINEER' is at the bottom. In the center, the name 'DAVID A. STONER' is written. A handwritten date '4/21/20' is visible over the seal.

**NCDEQ Incident No. 91566  
Shield Project 4200030  
April 21, 2020**

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## **FIGURES**

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Figure 2	Site Map
Figure 3	Extent of Petroleum Contaminated Soil
Figure 4	Cross-Section A-A' through Embankment

## **TABLES**

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Table 2	Summary of Laboratory Analytical Data
Table 3	Comparison of OVA Readings and TPH-GRO
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## **APPENDICES**

Appendix A:	Police Report
Appendix B:	Safety Data Sheets and Fire Departments' Invoice
Appendix C:	Disposal Manifest
Appendix D:	Soil Boring Logs
Appendix E:	Laboratory Analytical Reports

## **1.0 BACKGROUND INFORMATION**

A vehicular accident with a subsequent gasoline and diesel spill occurred on January 28, 2020 on the northbound side of NC-16, at the intersection with St. James Church Road in Lincoln County, near Denver, North Carolina (the site or property: see Figure 1). The spill is located at the northeast quadrant of the intersection. The property is located within the North Carolina Department of Transportation (NCDOT) easement for NC-16, and the NCDOT is the owner of the property. Since the property is an NCDOT highway, the site should be classified as an Industrial/Commercial site. The National Response Center (NRC) and North Carolina Department of Environmental Quality (NCDEQ) were notified of the accident. The NRC Incident number is 126970. The NCDEQ Incident number is 91566.

### **1.1 ACCIDENT EVENTS**

An Eagle Transport Corporation (Eagle) tanker truck was traveling along the northbound side of NC-16 while another vehicle was attempting to merge onto the northbound NC-16 from St. James Church Road resulting in a collision. The merging vehicle struck the front of the Eagle tanker truck. As a result of the impact, the tanker truck struck the guardrail along the right shoulder of northbound NC-16 and overturned. The driver of the Eagle truck, Mr. Darrell Jonas, tragically died in the accident. According to the accident report, the driver of the other vehicle was determined to have been at fault for the accident and was charged with misdemeanor death by motor vehicle. The Police Report for the accident is attached in Appendix A.

The tanker truck was carrying both diesel and gasoline. After the accident both diesel fuel and gasoline began leaking from the tanker truck. This leaking fuel from the tanker flowed away from the accident site following two different pathways. One pathway consisted of sheet-flow of the fuel down the highway embankment beyond the shoulder (labeled “Approximate Spill Source Area” in Figure 2). This fuel flowed into a drainage swale at the toe of the highway embankment (labeled “Primary Drainage Feature” in Figure 2). The second pathway was for the fuel to flow along a concrete gutter adjacent to the highway shoulder into catch basins and storm drains. These storm drains discharged the fuel downslope from the highway and the fuel ended up in two separate drainage swales at the toe of the embankment (labeled the “Primary Drainage Feature” and the “Secondary Drainage Feature” in Figure 2).

The primary drainage feature flowed toward the northwest and the secondary drainage feature flowed toward the southeast. Both of these drainage swales were graded toward a reinforced concrete pipe (RCP) that conveys the cumulated flow under NC-16, toward the southwest (see Figure 2).

Local Fire Departments (FDs) and Emergency Medical Services (EMS) were called out to the accident. Work by FDs and EMS included removing the truck driver and reducing the fire hazards from the overturned tanker. The FDs sprayed aqueous firefighting foam (AFFF) over the truck and the site. However, as the FDs disconnected the battery(ies) to the truck, a spark occurred and the released fuel caught on fire. The site burned sporadically for several hours.

## **1.2 EMERGENCY RESPONSE**

At the time, Shield Engineering, Inc.'s Risk Management Group (Shield) received a call from Eagle regarding the overturned truck that required immediate emergency clean up. First Call Environmental (First Call) was called out to respond for environmental remediation purposes. The release and incident were reported to the NRC, the United States Environmental Protection Agency (EPA), and the NCDEQ. First Call arrived and noted a release of petroleum from the dome lids of the tanker and a damaged compartment. This damaged compartment caused both diesel fuel and gasoline to be released. First Call placed adsorbents and boom(s) to soak and recover leaking petroleum along the highway, the storm drains, and the related culverts which outfall towards the drainage features at the base of the slopes.

The FDs sprayed AFFF over the truck and the site. Shield, First Call, and the NCDEQ were all told at various times by the FDs on January 28, 2020 and January 29, 2020 that the AFFF did not contain PFAS (per- and polyfluoroalkyl substances). Safety Data Sheets (SDS) for the AFFF and an invoice from the FDs are attached in Appendix B.

In spite of the AFFF that had been applied to the accident scene, a fire started and continued to flare up for several hours. The resulting flare-ups extended the fire out towards the nearby brush and woods along the shoulder embankment in the spill source area where the petroleum had been flowing during the initial spill. The FDs used AFFF to contain and extinguish the fires. Once the fires were completely extinguished, the FDs came back in to tap the compartments of the tanker and transfer the remaining product into another Eagle Transport tanker on standby. Afterwards, the

tanker was righted, tires were replaced for transport and the truck was removed from the scene. The FDs washed down the affected highway and the NCDOT applied sands and salt to the road due to lowering temperatures that evening. Once the tanker was offsite, the roads were reopened.

### **1.3 INITIAL ABATEMENT ACTIVITIES**

On January 29, 2020, Eagle personnel, FD personnel, NCDEQ personnel, NCDOT personnel, Shield personnel, First Call personnel, and Carolina Emergency Response personnel (CERT subcontracted by First Call) were onsite to assess the impact of the collision. Efforts by First Call were made to clear a path down the embankment to provide access to the drainage features at the toe of the embankment.

Boom(s) were placed strategically along the shoulder of the road, within pipes that lead to the two aforementioned drainage features (i.e., primary and secondary: see Figure 2) and across these stormwater drainage features at the toe of the embankment. As discussed above, the two drainage features met at an RCP culvert where a creek began, and the RCP culvert passes underneath NC-16. Boom(s) were also placed strategically along these drainage features and the creek to collect residual petroleum which had not burned up and had infiltrated the ground surface at the top of the embankment and traveled down towards the creek. Boom(s) were also placed in the RCP culvert that passes under NC-16. The RCP culvert is located approximately 830 feet northwest from the initial spill area (see Figure 2). The RCP culvert conveys stormwater underneath NC-16 towards an outfall located on the southbound side of NC-16 where a natural beaver dam is located.

Free product petroleum was found in the two drainage features and in the creek on the north side of NC-16. No observable free product petroleum was found on the south side of NC-16. Representatives from NCDEQ stated that the fire burned up most of the petroleum. First Call subcontracted CERT to assist with assessments and cleanups along the south side of NC-16. CERT was ready with a vacuum tanker, but no free product was recovered using the vacuum tanker. Some sheens were observed on the south side of NC-16, but these were believed to be natural biological sheens. CERT and First Call did place absorbent pads and boom(s) at various locations along the creek on the south side of NC-16, should petroleum migrate that far. Thus, the petroleum spill was believed to be contained on the north side of NC-16. CERT subsequently disposed of one roll-off box of sorbent boom and pads to Richland County Landfill in South Carolina. The disposal manifest for this roll-off box is attached in Appendix C.

Discussions by Shield with the NCDOT and the NCDEQ ensued to determine what soil should be excavated and how to safely do so without damaging the integrity of NC-16. It was decided that the free product petroleum contaminated soil along the primary drainage feature downslope of the tanker spill area could be safely excavated as an initial abatement measure at this time. The NCDOT requested a Work Plan for further excavation of any additionally impacted soil on either the embankment of the highway and/or along the drainage features. The NCDOT further requested that the area be restored to the condition it was in prior to the spill.

First Call was tasked with excavating the free product petroleum impacted soil along the primary drainage feature immediately downslope of the tanker spill location. This excavation work proceeded through January 31, 2020. The excavated soil was placed into five covered roll-off boxes on site, which remain on site pending proper authorization for disposal. Gravel was brought in and placed along the north side of the primary drainage feature to provide access to the primary drainage feature. The access to the primary drainage feature was made from the wide shoulder, just north of the intersection of NC-16 and St. James Church Road.

Shield's discussions with Eagle's representatives and the NCDEQ resulted in Shield's preparation of an Assessment Work Plan. The Assessment Work Plan detailed soil sampling and analytical procedures to provide data on the extent of the petroleum impacted soil remaining along the northside of NC-16. The Assessment Work Plan was submitted to the NCDEQ on February 13, 2020 and approved by the NCDEQ on February 14, 2020. The assessment is now complete and described in Section 2.0.



## **2.0 ASSESSMENT ACTIVITIES**

### **2.1 FIELD ASSESSMENT**

Based on the approved Assessment Work Plan a series of 55 soil boring points were established in the field. A global positioning system (GPS) unit, accompanied with the Mapit Geographic Information System Ltd. software was used to pinpoint the main source areas, notable spill points, heavily impacted areas, and planned boring locations. Soil boring points were flagged and labeled in the field. These points were used to create the attached Figures 2 and 3. The boring points were proposed in a grid-like pattern around the initial spill location along the embankment, then flagged at points along the two drainage features, approximately 75 feet apart, going downgradient toward the RCP culvert that passes underneath NC-16.

Direct-push drilling and hand augers were planned for use to sample soil along the embankment, both on the upslope and downslope sides of the drainage features and within the drainage features. Hand augured boreholes were to be completed wherever access was infeasible for the Geo-Probe drill rig.

The drilling company South Atlantic Environmental Drilling and Construction Company (SAEDACCO) was contracted to utilize their Geo-Probe drill rig for those proposed borings accessible to the rig. The Geo-Probe drill rig used 5-foot drop tubes to collect samples from ground surface down to clean detections as determined by an Organic Vapor Analyzer (OVA), when possible. Stainless-steel hand augers were used by Shield personnel to sample the remaining boring locations that the drill rig was unable to access. Delays for SAEDACCO occurred due to numerous heavy rainfall events, and guardrail obstructions (i.e., due to the tanker accident) that made the proposed boring locations close to the highway initially inaccessible to the drill rig. SAEDACCO's Geo-Probe rig was later able to traverse along the top of the embankment and collect soil samples at the uppermost source concentration points. Additional gravel was also needed so that the Geo-Probe rig could further traverse toward the northwest along the primary drainage feature toward the RCP culvert. Four background borings and soil samples were collected using the Geo-probe drill rig from the area at the eastern quadrant of the NC-16 and St. James Church Road intersection.

Rain days, the presence of rip-rap rocks, and surface water within the drainage features also slowed down the hand augering and soil sampling. Acquiring soil samples along the smaller secondary drainage feature was particularly difficult due to the steeper embankment, dense briars and heavy vegetation, and over- abundant rip-rap rock lining the drainage feature. Extra borings were done when necessary primarily if rip-rap rock obstructions were met while boring.

Borings were continued until either refusal was reached due generally to the rip-rap rock, the soil showed “clean” with the OVA, or until groundwater was reached. Most soil samples had to be carried out of the drainage features and embankment areas due to the tough terrain and lack of truck access. The locations and identification of the soil borings are shown on Figure 2.

The soil borings were screened continuously with the OVA. Soil samples were selected for analyses by reviewing the OVA readings and choosing intervals with a range of OVA readings at varying depths to provide a detailed spectrum of data through the affected stratum. The OVA field readings ranged from 0 to 13,900 parts per million (ppm) (see Table 1). Boring Logs were drafted from field notes and are shown in Appendix D. Most of the Boring Logs provide OVA readings, soil classification and sample times. The Boring Logs and OVA readings are summarized in Table 1.

Due to shallow refusal and additional assessment, several additional soil borings were completed from the original 55 borings laid out in the field. Therefore, a total of 59 soil borings were completed by either the Geo-probe drill rig or hand-augering during these assessment activities. A total of 273 OVA readings were measured in the field from soil samples collected from the borings and 71 soil samples were submitted to the analytical laboratory for analyses of TPH-GRO and TPH-DRO.

## **2.2 LABORATORY ANALYSES**

Per the Assessment Work Plan, Shield requested analyses of Total Petroleum Hydrocarbons (TPH) Gasoline Range Organics (GRO) and Diesel Range Organics (DRO) from Pace Analytical Services (Pace), a North Carolina certified laboratory, for the selected soil samples. These analyses were chosen due to the knowledge that gasoline and diesel were the known fuels released from the spill. The laboratory analytical reports provided by Pace are included in Appendix E. The results from Pace showed that TPH-GRO and TPH-DRO constituents were present within the soil to varying

degrees. The TPH-GRO results ranged from none detected up to 5,200 milligrams per kilogram (mg/kg) and TPH-DRO results ranged from none detected up to 6,740 mg/kg.

The TPH-GRO and TPH-DRO results were compared to their respective OVA readings. Together these data did not provide a good correlation between the TPH concentrations and the OVA readings for either gasoline or diesel. The lack of correlation is attributed to the mix of diesel fuel and gasoline, as well as the burning of the petroleum in the fire. Diesel fuel is not as volatile and therefore is not as readily detected using an OVA meter. Flash fires would also tend to burn off the more volatile components of gasoline and diesel fuel and make the petroleum less detectable with the OVA meter.

Elevated TPH-GRO and TPH-DRO concentrations correlated more closely to the general proximity of the source area(s) and the flow patterns of the spilled fuel. Results from the borings taken at the origin of the secondary drainage feature show comparable concentrations to what was observed near the initial tanker spill area and the primary drainage feature. This secondary drainage feature may not have burned, and this area was not remediated at all by any initial excavation, as completed in the primary drainage feature. The analytical TPH-GRO and TPH-DRO results with their respective OVA readings are shown in Table 2 and are also shown on Figure 2.

Of the 71 TPH-GRO analytical results, 55 of these results were non-detects, another eight (8) of these results were below the NCDEQ Action Level of 50 mg/kg, and the remaining eight (8) exceeded this Action Level (see Table 3). Similarly, 51 of the 71 TPH-DRO analytical results were non-detects, another 17 were below the NCDEQ Action Level of 100 mg/kg and the remaining three (3) exceeded this Action Level (see Table 4). Both Tables 3 and 4 exhibit the same OVA readings and laboratory data shown in Table 2, ranked from the smallest to the largest values for TPH-GRO and TPH-DRO, respectively.

### **2.3 APPROXIMATE LIMITS OF CONTAMINATED SOIL**

In order to provide field personnel a tool to enable appropriate decisions to be made during the proposed excavation, in terms of what soils should be removed from the site and what soils can remain, it is necessary to develop a criterion based on the OVA readings and the analytical data to provide a basis for making this decision in the field.

A review of both sets of TPH data (i.e., GRO and DRO) did not exhibit any significant correlation with the OVA readings. However, by grouping the OVA data and comparing these data groups with the TPH-GRO results an overall pattern is discernible. For example, whenever the TPH-GRO values are above the NCDEQ Action Level of 50 mg/kg the corresponding OVA data ranges from 424.3 up to 2200 ppm (see Table 3). Whenever the TPH-GRO is non-detect the OVA data ranges from 0.0 up to 492 ppm (excluding two OVA reading outliers of 1079 and 5200 ppm) (see Table 3). Unfortunately, there is an overlap of these two OVA data ranges. For example, if an OVA value of 400 ppm was used as a trigger for soil excavation in the field, this limit would result in the unnecessary excavation at six of the 63 soil sample locations below the NCDEQ Action Level (i.e., B-4, B-16 [2 depths], B-21, B-41, and B-47) (see highlighted rows in Table 3 with TPH-GRO below 50 mg/kg). An inspection of the available data from each of these five borings will readily show that all of these locations will require excavation based on other TPH-GRO analytical data for these borings (except for B-4). In the case of Boring B-4, the highest TPH-GRO analytical result was 46.9 mg/kg which is very close to the NCDEQ Action Level of 50 mg/kg, so some portion of this boring area is likely above the Action Level, plus excavation of soils will be proposed around this boring, therefore it would more than likely be excavated as part of the removal of adjacent contaminated soils.

Similarly, by grouping the OVA data and comparing these data groups with the TPH-DRO results an overall pattern is also discernible for the diesel component. For example, whenever the TPH-DRO values are above the NCDEQ Action Level of 100 mg/kg the corresponding OVA data ranges from 719 up to 5200 ppm (see Table 4). Whenever the TPH-DRO is non-detect, the OVA data ranges from 0.0 up to 529 ppm (see Table 4). In this particular case there is no overlap of these two OVA data ranges. For example, if the same OVA value of 400 ppm was used as a trigger for soil excavation in the field, this limit would result in the unnecessary excavation at eleven of the 68 soil sample locations below the NCDEQ TPH-DRO Action Level at nine (9) sampling locations (i.e., B-4, B-5, B-16 [2 depths], B-21, B-41, B-43[Creek], B-44[S and N], and B-47[2 depths]) (see highlighted rows in Table 4 with TPH-DRO below 100 mg/kg). In the case of Boring B-43, the TPH-DRO analytical result was 99.9 mg/kg which is very close to the NCDEQ Action Level of 100 mg/kg, so some portion of this boring area is likely above the Action Level.

The use of an OVA reading of 400 ppm during the excavation will result in those soils that have either diesel or gasoline fuel at concentrations exceeding the NCDEQ Action Levels to be removed

from the site. As indicated above with this criterion of 400 ppm, some other soils not exceeding the Action Levels may also be removed. During any excavation project it is difficult to separate “clean” soils from “dirty” soils, therefore just by the nature of excavation some soils with gasoline or diesel close to the NCDEQ Action Levels will also likely be excavated as well (e.g., B-43). Those borings listed above are all near or within the areas exhibiting elevated TPH-GRO results and/or have to be excavated due to the presence of fuel in the soil. The NCDEQ has established Action Levels of 50 mg/kg for TPH-GRO and 100 mg/kg for TPH-DRO. Correlated to an OVA “threshold level” of 400 ppm, approximate soil areas and approximate depths of contaminated soil above the NCDEQ Action Levels were established and are shown on the Extent of Petroleum Contaminated Soil Map on Figure 3.

### 3.0 WORK PLAN FOR SOIL REMOVAL

#### 3.1 SOIL EXCAVATION

As discussed above, Figure 3 exhibits a depiction of the approximate areas and approximate depths where soil contamination exists above the NCDEQ Action Levels based on the recommended “threshold level” of 400 ppm for OVA readings during excavation. Those areas should be targeted for excavation depths that are determined safe for the structural integrity of NC-16. The approximate areas with approximate depths where soil contamination exists above the NCDEQ Action Levels are shaded and shown on Figure 3.

During the assessment of the Spill Source Area on the roadway embankment two soil borings (i.e., B-3 and B-16: see Figure 3) exhibited elevated OVA readings above 400 ppm to depths of about 9 and 10 feet below ground surface, respectively (see Table 1). Upon acquiring the NCDOT plans and cross-sections for this intersection, the depth of fill material in the vicinity of Soil Boring B-16 was found to be approximately 10 feet. Therefore, it appears that the fuel after flowing off the prepared roadway surface, (in addition to flowing down the slope), also vertically penetrated the fill material down to the top of the residuum or native soil (see Figure 4). Thus, the fill material was not as dense as expected.

Because of the structural importance of the embankment for the highway, the soil possibly being not as dense as expected, and the fact that the penetration depth and fill thickness are similar, Shield recommends that at least two 40-foot deep geotechnical borings in the vicinity of Soil Boring B-16 be completed before any excavation occurs on the embankment. During the drilling of these borings, standard penetration tests should be conducted, and Shelby tubes should be used to collect undisturbed samples of embankment soils to run additional soil tests, such as triaxial tests. These data will enable the geotechnical engineers to complete a slope stability analysis in order to assess the feasibility of cutting into the embankment to remove contaminated soils, and the maximum allowable slope of that proposed cut. Prior to any cutting into the embankment it is expected that NCDOT will require approval for these proposed geotechnical borings and tests. Subsequently NCDOT would review the slope stability analysis prior to assessing what would be permitted in terms of embankment penetration.

An NCDOT Encroachment Agreement will need to be prepared and then approved by the NCDOT. In order to maintain the integrity of the road, soil adjacent to NC-16 might be capable of being excavated to depths no greater than those commensurate with a 1:1 slope (or a 45 degree slope) of soil to remain (i.e., provisional, depending upon the recommended geotechnical borings and possibly triaxial tests with slope stability analysis). These areas should then be backfilled, compacted to NCDOT standards, and revegetated.

Bids should be obtained from contractors to excavate the targeted areas of soil contamination as shown on Figure 3, noting the above constraints next to the roadway. Contractors should propose how they plan to excavate and temporarily store the soil. The soil is being pre-approved for disposal at Waste Management's Emelle, Alabama, Subtitle C landfill, contingent on specific tests required for a soil profile. This landfill was chosen because it was one of the few landfills that would accept the soils with AFFF present. After excavation, the chosen contractor should temporarily stage the soil in a manner so that it will not leach contamination into other areas, sample and prepare soil profiles as required by Waste Management, and then transport the soil to Waste Management's Emelle, Alabama, Subtitle C landfill for disposal.

### **3.2 CONFIRMATORY SAMPLING**

During excavation, an OVA meter (preferably the same brand and model number as used during the assessment phase of work) should be used to screen when the extent of excavation is below 400 ppm. As various locations reach the 400 ppm OVA readings, or lower, confirmation samples should be collected for analyses. The NCDEQ Incident Manager has requested that samples be collected at 30-foot intervals within the excavation.

The soil samples should be collected from 0-6" below the base of the excavation. The samples should be analyzed by a NC certified laboratory for TPH-GRO and TPH-DRO, with extra samples collected for the "Risk-Based Analyses" volatile organic compounds (VOCs) by EPA Method 8260, semi-VOCs by EPA Method 8270, and Massachusetts Department of Environmental Protection (MADEP) volatile petroleum hydrocarbons and extractable petroleum hydrocarbons. These extra samples should be held at the laboratory at 4° centigrade and the Risk-Based Analyses should be performed if the TPH-GRO and TPH-DRO exceed the NCDEQ Action Levels.

### **3.3 RESTORATION OF SPILL AREA**

Some pockets of contaminated soil will remain at this site in locations where excavation to the full extent necessary will not be possible due to limitations on the NC-16 embankment excavation and/or shallow water table. When these pockets are below or adjacent to areas that are being excavated, a bioremediation enhancing fluid such as Biorem 2000™ or Micro-Bac® could be sprayed over the remaining impacted soil if the NCDEQ agrees with this approach.

Thereafter, as portions of excavations are completed, and samples collected, the open areas should be backfilled, compacted, and revegetated as required by the NCDOT utilizing seeding guidelines typically used for North Carolina Erosion and Sediment Control Plans. The drainage features will need rip-rap rock restoration as well. Upon completion of the excavation the NCDOT will verify that the site meets its standards.



## **4.0 SUMMARY AND CONCLUSIONS**

A vehicular accident with a tanker truck carrying diesel and gasoline occurred on January 28, 2020 on the northbound side of NC-16, at the intersection with St. James Church Road in Lincoln County, near Denver, North Carolina. The driver of the Eagle truck, Mr. Darrell Jonas tragically died in the accident. According to the accident report, the driver of the other vehicle was determined to have been at fault for the accident and was charged with misdemeanor death by motor vehicle. The resulting fuel spill located at the northeast quadrant of the intersection discharged fuel that both flowed along the road gutters into catch basins and also flowed down the nearby embankment. For both flow paths the fuel was subsequently discharged into drainage features at the toe of the roadway embankment. Sorbent boom(s) and a fire appeared to have kept the petroleum discharge on the north side of NC-16. The property is located within the NCDOT easement for NC-16, and the NCDOT is the owner of the property. As a highway site, it should be classified as Industrial/Commercial.

Soon afterward, free product contaminated soils were removed from the primary drainage feature that flows northwest toward an RCP culvert. These soils were placed in five roll-off containers at the site and covered. Sorbent boom(s) were strategically installed and left in place.

An Assessment Work Plan was drafted and submitted to the NCDEQ for approval. This work plan was implemented in late February and early March 2020. A total of 59 soil borings were completed at the site and 71 soil samples were submitted to the analytical laboratory for TPH-GRO and TPH-DRO analyses. These results were reviewed with the corresponding field OVA readings in order to determine an appropriate OVA reading that could be utilized during proposed excavation in order to make field decisions during the excavation of remaining contaminated soils. Based on the data review an OVA reading of 400 ppm was selected and is recommended as the threshold level for soil excavation, while also considering the structural integrity of NC-16. Figure 3 shows the approximate lateral extent and approximate depths of contaminated soil.

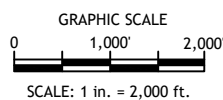
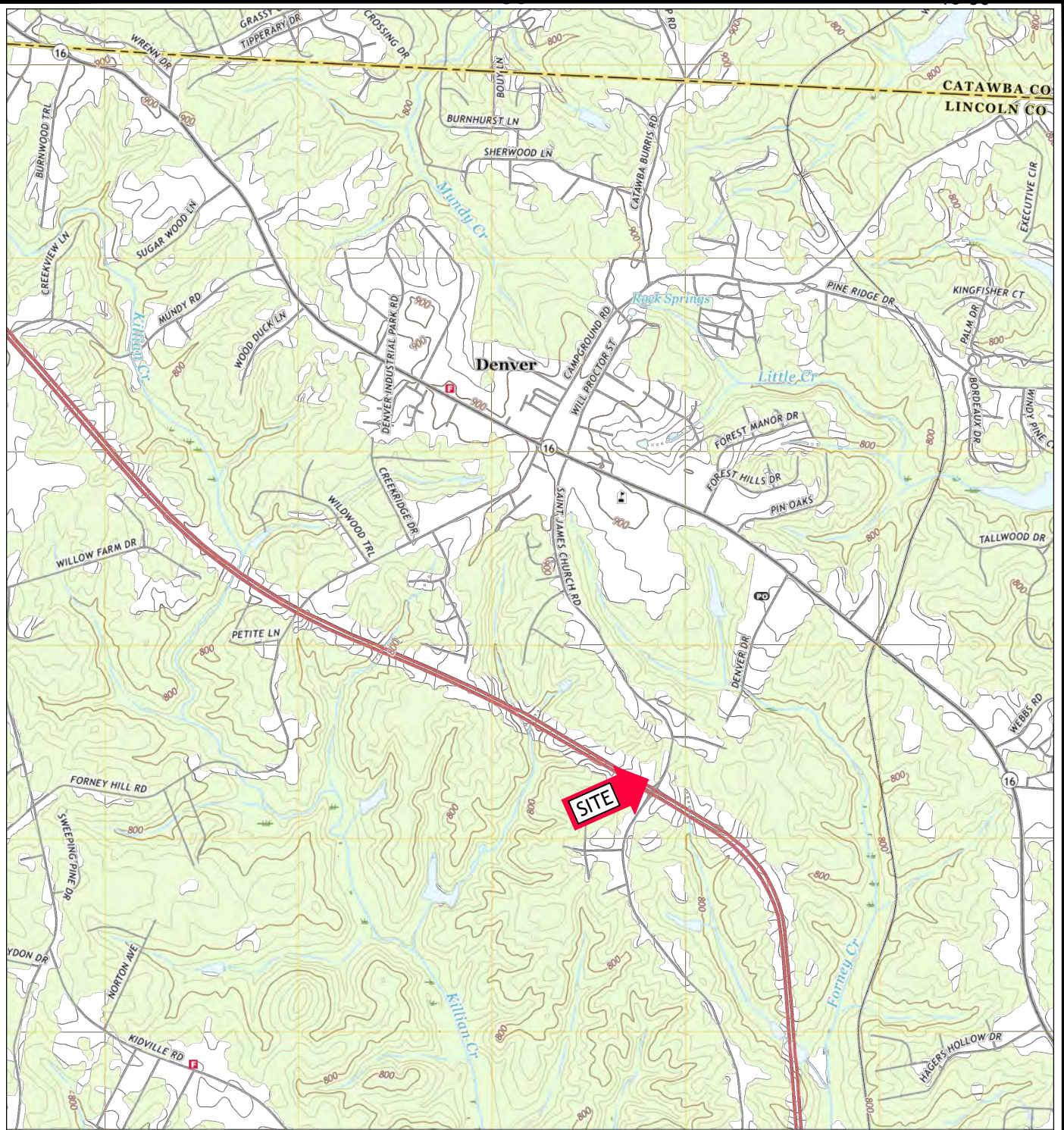
The depth of the contaminated soils below the top of the embankment at the spill source area was greater than expected and it correlated with the depth of fill material used for the construction of NC-16. The depth of fuel penetration into the embankment soils as the fuel flowed down the slope

raises a possible concern regarding the density of the fill material, and the feasibility of cutting into the embankment slope to remove contaminated soils. Therefore, Shield recommends at least two 40-foot geotechnical borings with standard penetration tests, and Shelby Tubes of undisturbed embankment soils collected in order to perform a slope stability analysis. The purpose of this recommended analysis is to determine how much of the soil embankment could be safely cut away without endangering NC-16. An NCDOT Encroachment Agreement will need to be prepared and then approved by the NCDOT.

Bids should be obtained from contractors to excavate the targeted areas of soil contamination as shown on Figure 3, noting the above constraints next to the roadway. Contractors should propose how they plan to excavate and temporarily store the soil. The soil is being pre-approved for disposal at Waste Management's Emelle, Alabama, Subtitle C landfill, contingent on specific tests required for a soil profile. This landfill was chosen because it was one of the few landfills that would accept the soils with AFFF present. After excavation, the chosen contractor should temporarily stage the soil in a manner that it will not leach contamination into other areas, sample and prepare soil profiles as required by Waste Management, and then transport the soil to Waste Management's Emelle, Alabama, Subtitle C landfill for disposal.

Once the soils are removed from the embankment, that are permissible for removal, and along the primary and secondary drainage features, then confirmatory soil sampling shall be carried out within all excavated areas with samples collected at 30-foot spacing, as requested by the NCDEQ. In those areas where known contaminated soils are left in place, a bioremediation enhancing fluid such as Biorem 2000™ or Micro-Bac® could be sprayed within the base of the excavation, prior to backfilling, pending NCDEQ approval of this approach. Then these areas should be restored with compacted clean fill. The newly placed clean backfill soils should be compacted to NCDOT standards and revegetated, with rip-rap rock replaced using North Carolina guidance as per the Erosion and Sediment Control Manual and matching the pre-spill conditions at the site.

## FIGURES



**SHIELD**  
ENGINEERING, INC.

4301 TAGGART CREEK ROAD  
CHARLOTTE, NC 28208  
704-394-6913  
704-394-6968 fax  
www.shieldengineering.com

## SITE LOCATION MAP

DENVER SPILL SITE  
EAGLE TRANSPORT CORPORATION  
DENVER, LINCOLN COUNTY, NORTH CAROLINA  
SHIELD #4200030-01

DATE : 03/27/20

DRAWN BY : KJC

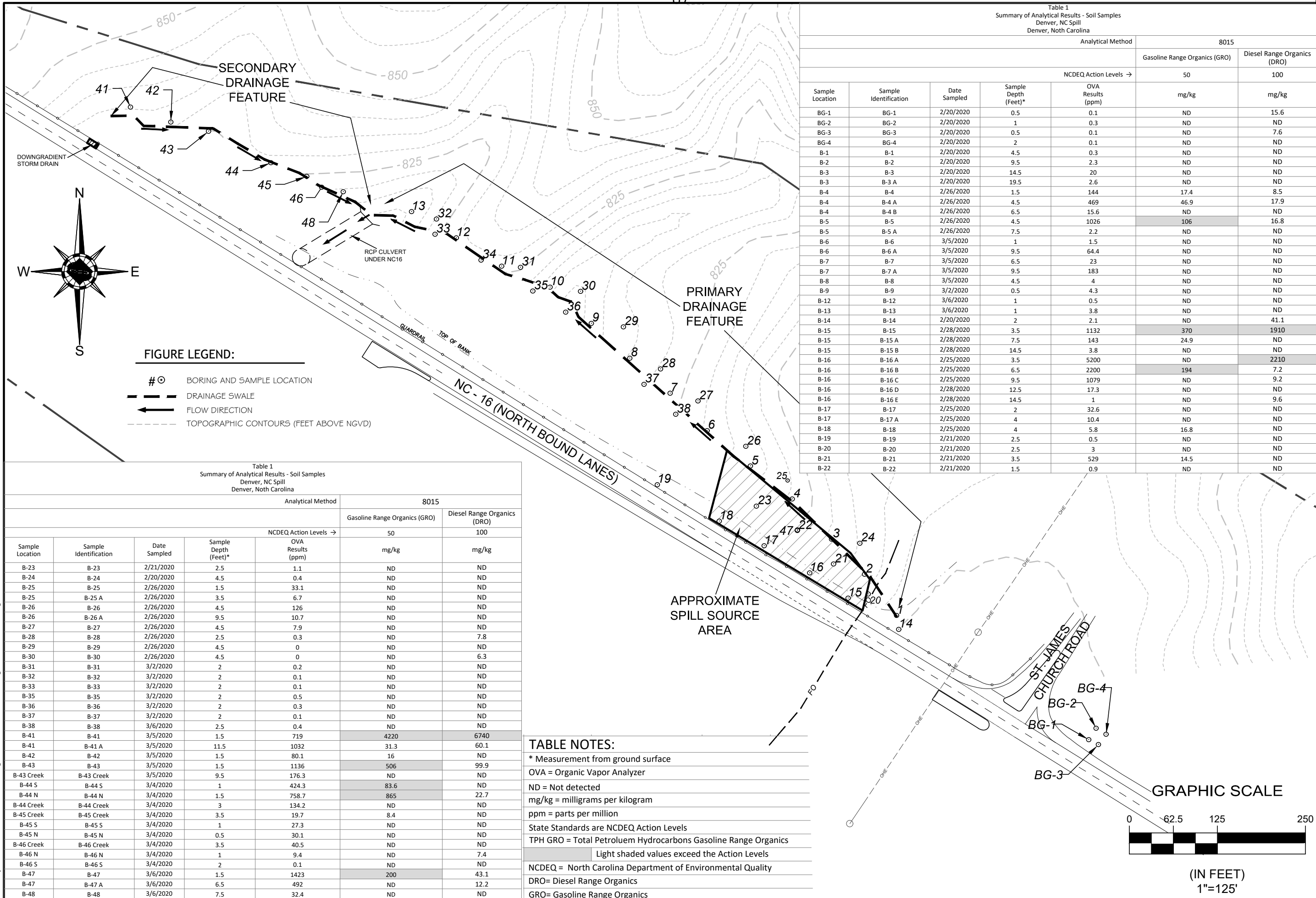
SCALE : AS SHOWN

FIGURE : 1

SOURCE: NATIONAL GEOGRAPHIC USGSTOPO, 7.5 MINUTE MAP  
SERIES, DENVER QUADRANGLE, NORTH CAROLINA.



H:\Projects\2020\4200030-01 Eagle Denver, NC\Drawings\SITE MAP.dwg, 4/2/2020 4:55 PM, Cad User



**SHIELD ENGINEERING, INC.**  
4301 TAGGART CREEK ROAD  
CHARLOTTE, NC 28208  
704-394-6913  
704-394-6968 fax  
www.shieldengineering.com

The drawings, specifications and other documents prepared by Shield Engineering for this project are instruments of Shield Engineering for use solely with respect to this project and, unless otherwise provided, Shield shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including copyright.

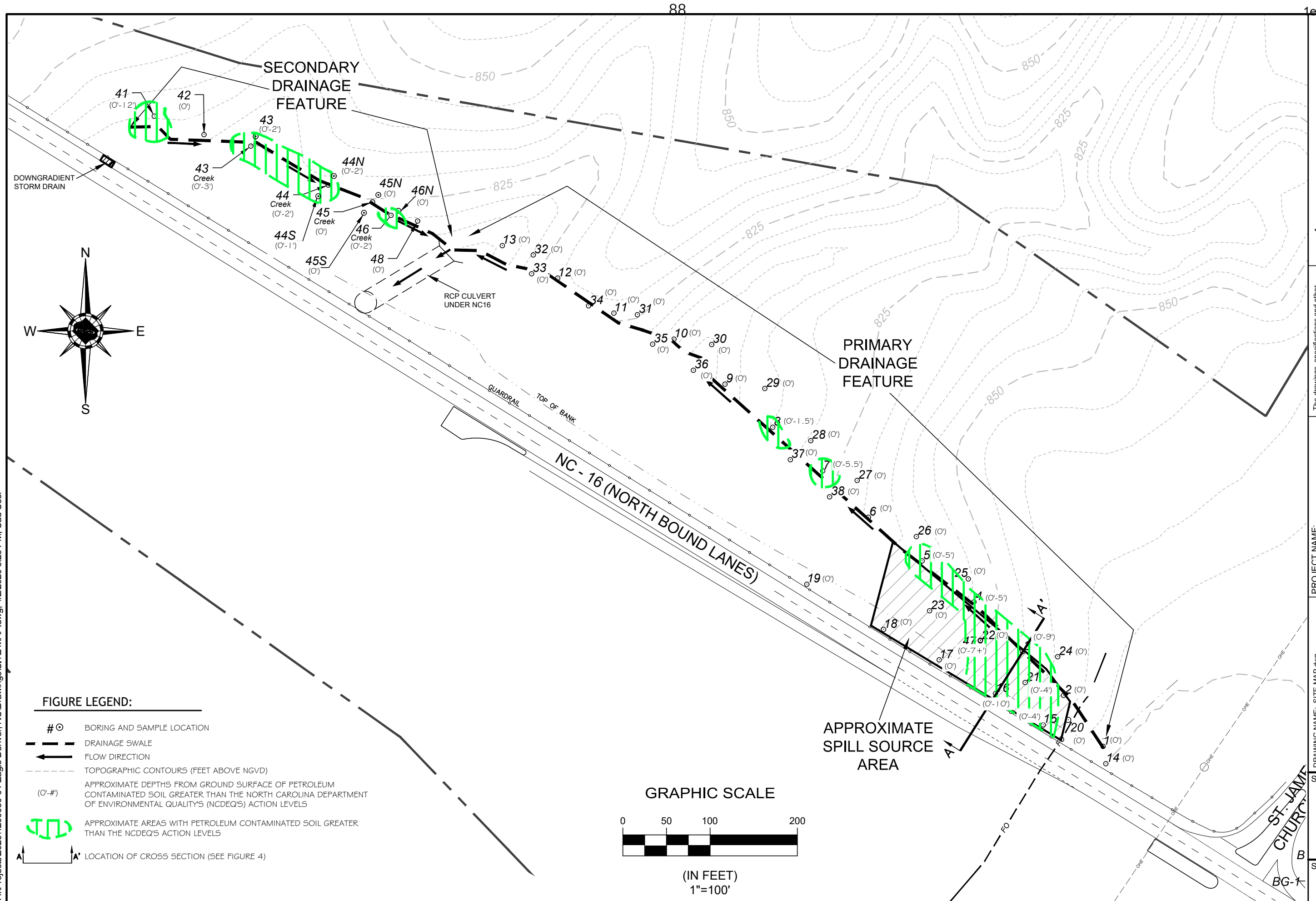
**PROJECT NAME:**  
DENVER SPILL SITE  
NC 16  
DENVER, LINCOLN COUNTY, NC

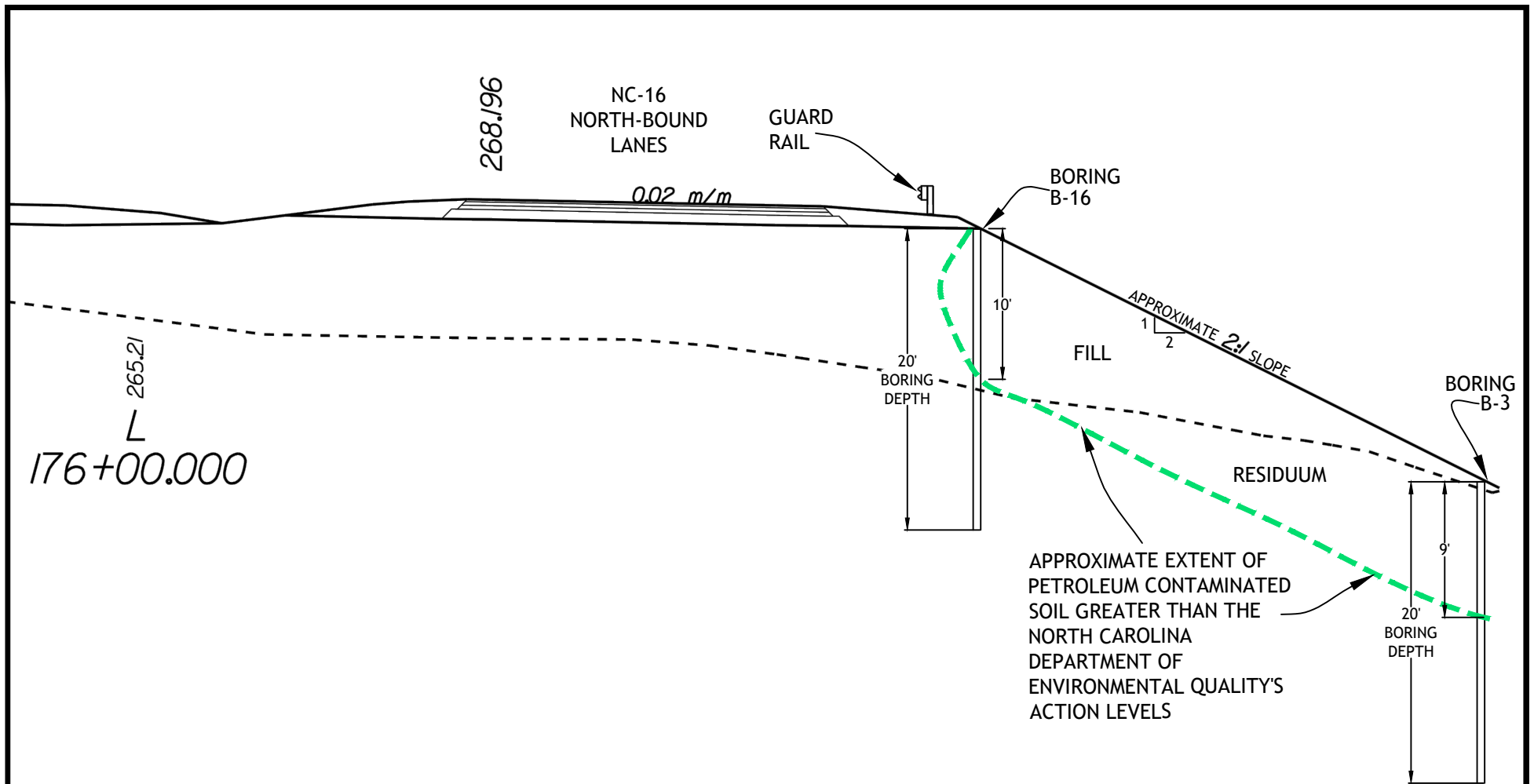
**CUSTOMER NAME:**  
EAGLE TRANSPORT CORPORATION  
300 WESLEYAN BOULEVARD, SUITE 202  
ROCKY MOUNT, NC 27804

**DRAWING NAME:** SITE MAP.dwg  
**DRAWN BY:** KJC  
**FILE NUMBER:** 4200030-01  
**CHECKED BY:** DAS  
**SCALE:** 1"=125'  
**DATE:** 04/01/20

**SHEET TITLE:**  
SITE MAP

**SHEET:**  
2

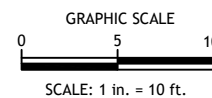




# LEGEND:

176+00.000	NCDOT STATION IDENTIFICATION
268.196	METRIC ELEVATION (METERS ABOVE NGVD)
0.02 m/m	ROADWAY GRADE

SOURCE: BASE MAP TITLED "176+00\_xsection.PDF" FROM NCDOT



**SHIELD**  
ENGINEERING, INC.

4301 TAGGART CREEK ROAD  
CHARLOTTE, NC 28208  
704-394-6913  
704-394-6968 fax  
www.shieldengineering.com

## CROSS-SECTION A-A' THROUGH EMBANKMENT

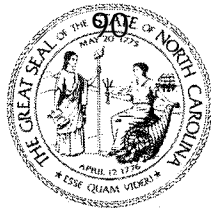
**DENVER SPILL SITE**  
EAGLE TRANSPORT CORPORATION  
DENVER, LINCOLN COUNTY, NORTH CAROLINA  
SHIELD # 4200030-01

DATE : 04/02/20

DRAWN BY : KJC

SCALE : 1"=10'

FIGURE : 4



NORTH CAROLINA  
Environmental Quality

1e-40

Bree

ROY COOPER  
Governor

MICHAEL S. REGAN  
Secretary

MICHAEL SCOTT  
Director

January 29, 2020

Eagle Transport  
300 S. Wesleyan Blvd., Ste. 202  
Rocky Mount, North Carolina 27804  
Attention: Lance Collette

Re: Notice of Regulatory Requirements  
15A NCAC 2L .0504 and 2L .0505  
Risk-based Assessment and Corrective Action for  
Petroleum Aboveground Storage Tanks and  
Other Petroleum Sources

Eagle Transport Spill  
New Hwy 16 Southbound @ St. James Church Road  
Lincoln County  
Incident Number: 91566  
Risk Classification: Pending

Dear Mr. Collette:

Information received by this regional office of the Underground Storage Tank Section (UST Section), Division of Waste Management, on January 28, 2020, confirms a release or discharge of petroleum at the above-referenced location. Furthermore, this office has determined that you are the responsible party for the assessment and cleanup of the release or discharge.

As the responsible party, you must comply with the initial response and abatement action requirements of the Title 15A of the North Carolina Administrative Code (NCAC), Subchapter 2L .0504 and, if applicable, the assessment and reporting requirements of Title 15A NCAC 2L .0505, within the timeframes specified in the attached rules. (Be aware that if Title 15A NCAC 2L .0505 is applicable, you must comply with its requirements even if you do not receive formal notification from the UST Section.)

Initial abatement action requirements include the preparation and submittal of an Initial Assessment Report (IAR), in accordance with Title 15A NCAC 2L .0504 and the most recent version of the *Guidelines for Site Checks, Tank Closure, and Initial Response and Abatement for Non-UST Petroleum Releases*, within 90 days of discovery of the release.





Because a release or discharge has been confirmed, a Licensed Geologist or a Professional Engineer, certified by the State of North Carolina, is required to prepare and certify all reports submitted to the Department of Environmental Quality in accordance with Title 15A NCAC 2L .0103(e) and 2L .0111(b).

Please note that before you sell, transfer, or request a "No Further Action" determination for a property that has not been remediated to below "unrestricted use" standards, you must file a Notice of Contaminated Site or Notice of Residual Petroleum with the Register of Deeds in the county where the property is located (North Carolina General Statutes 143B-279.9, and 143B-279.10 or 143B-279.11).

Failure to comply with the State's rules in the manner and time specified may result in the assessment of civil penalties and/or the use of other enforcement mechanisms.

If you have any questions regarding the actions that must be taken or the rules mentioned in this letter, please contact me at the address or telephone number listed below.

Sincerely,



Dan Graham  
Hydrogeologist  
Mooresville Regional Office  
UST Section, Division of Waste Management, NCDEQ

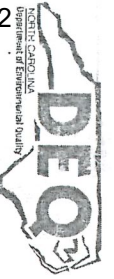
Enclosures: Title 15A NCAC 2L .0504 and 2L .0505

cc: Ed Watson- DWR, MRO  
Lincoln County Health Department  
Tony Murtaugh-Shield Engineering

Mooresville Regional Office | 610 E Center Ave | Suite 301 | Mooresville, NC 28115 | (704) 663-1699

Eagletransportspill.iarreq





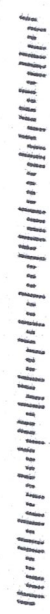
1e-42

Division of Waste Management - UST

North Carolina Department  
Of Environmental Quality  
Moorestville Regional Office  
610 East Center Avenue, Suite 301  
Moorestville, NC 28115

Eagle Transport  
300 S. Wesleyan Boulevard, Suite 202  
Rocky Mount, North Carolina 27804  
Attention: Lance Collette

27804\$4215 C023



May 13, 2020

Eagle Transport  
300 S. Wesleyan Blvd., Ste. 202  
Rocky Mount, North Carolina 27804  
Attention: Lance Collette

Re: Notice of Regulatory Requirements

G.S. 143-215.75 et seq. Oil Pollution and Hazardous  
Substance Control Act of 1978  
Unlawful Petroleum Release

15A NCAC 2L .0106(c) and (g)  
Corrective Action

Eagle Transport Spill  
New Hwy 16 Southbound @ St. James Church Road  
Lincoln County  
Incident Number: 95770  
Risk Classification: Pending

Dear Mr. Collette:

Information received by the UST Section, Division of Waste Management, Mooresville Regional Office in the Initial Assessment Report dated April 2, 2020 has been reviewed. Information in the report confirms a release or discharge of petroleum product as the result of a vehicle accident at the above-referenced location. This office has determined that you are responsible for the assessment, collection, and removal of the release or discharge and restoring the area affected by the discharge.

As a responsible party, you must comply with assessment and cleanup requirements of G.S. 143-215.75 et seq. and Title 15A NCAC 2L .0106(c)(3) and 2L .0106(g). A Comprehensive Site Assessment (CSA) Report prepared in accordance with these requirements and the most recent version of the *UST Section Guidelines for the Investigation and Remediation of Contamination from Non-UST Petroleum Releases* must be received by this office within 90 days of the date of this notice.

Also, any petroleum contaminated media that is potentially contaminated with PFAS must be tested, managed, and disposed of properly. If the PFAS contaminated media is not tested for PFAS, then assume the media is contaminated with PFAS constituents and properly manage and dispose of in a lined landfill.

You must submit a summary of the CSA Report to the local Health Director and the local Chief Administrative Officer in accordance with 15A NCAC 2L .0114. The summary should be submitted to these persons no later than five working days after submittal of the CSA Report to this office. Failure to comply in the manner and time specified, may result in the assessment of civil penalties and /or the use of other enforcement mechanisms.



Because a release or discharge has been confirmed, a Licensed Geologist or a Professional Engineer, certified by the State of North Carolina, is required to prepare and certify all reports submitted to the Department of Environmental Quality in accordance with Title 15A NCAC 2L .0103(e) and 2L .0111(b).

If you have any questions regarding the actions that must be taken or the rules mentioned in this letter, please contact me at the address or telephone number listed below.

Sincerely,

A handwritten signature in blue ink that reads "Dan Graham". The signature is fluid and cursive, with the first name "Dan" and last name "Graham" clearly distinguishable.

Dan Graham  
Hydrogeologist  
Mooresville Regional Office  
UST Section, Division of Waste Management, NCDEQ

cc: Lincoln County Health Department  
Dave Stoner-Shield Engineering

Mooresville Regional Office | 610 East Center Avenue | Suite 301 | Mooresville, NC 28115 | (704) 663-1699

Poyner Spruill<sup>LLP</sup>

May 26, 2020

**VIA EMAIL**

H. Glenn Dunn  
*Partner*  
D: 919.783.2842  
F: 919.783.1075  
hdunn@poynerspruill.com

**FOR SETTLEMENT PURPOSES ONLY**

Jay Osborne  
Legal Department  
NC Department of Environmental Quality  
Raleigh, North Carolina

RE: Notice of Regulatory Requirements ("NORR") issued by the Department of Environmental Quality ("DEQ") dated May 13, 2020

Dear Jay:

We have concluded it is necessary to respond in writing to DEQ's Notice of Regulatory Requirements dated May 13, 2020 which states unequivocally DEQ's position that Eagle Transport is responsible for assessment, collection and removal of the discharge caused by the accident on Highway 16 in Lincoln County, N.C. As we have discussed several times, we are strongly of the opinion that the exception to an unlawful discharge set out in G.S. 143-215.83(b) clearly applies to Eagle because the discharge was unquestionably caused by the driver who pulled out in front of the Eagle truck. Furthermore, we are of the opinion this third party defense applies throughout OPHSCA, most importantly to G.S. 143-215.84 which establishes responsibility for collection and removal of waste from a discharge and restoration of the area affected. The key legal points supporting our opinion are stated in the accompanying legal analysis, so I will not repeat them.

In view of our opinion, Eagle does not believe it is responsible for the discharge or for the actions demanded by the captioned NORR, and therefore does not plan to perform any further response actions at the site and will seek a legal determination on this matter if necessary. As you know, Eagle has already responded to the discharge, and the cost of doing so to date is over \$225,000.00. This response was done immediately to control and limit any impacts from the discharge, and should be seen as voluntary. The soil that was collected is secured in roll-off containers at the site so the site no longer poses a significant health or safety threat. Any longer-term environmental issues at the site that the measures demanded by the NORR might address



Poyner Spruill<sup>LLP</sup>

Jay Osborne  
May 26, 2020  
Page 2

can be undertaken by DEQ pursuant to its authority under G.S. 143-215.84(b) using the fund established pursuant to G.S. 143-215.87. In fact, the existence of these statutory powers underscores the General Assembly's anticipation that there would be cases where there is not a party legally responsible for, and financially capable of, performing a complete response, such as this case, and made provisions for DEQ to do so.

Eagle would prefer not to seek legal recourse and we still want to discuss the possible resolution of this matter. Removing and disposing of the waste in the roll off-containers will cost approximately \$35,000. Eagle proposes to pay for the disposal of that soil if DEQ will agree that no further response is required. We don't think this will have a substantial effect on responses to future discharges because there will seldom be a case where the third party defense is so clearly applicable. Furthermore, such a settlement will not be a formal precedent, whereas a declaratory ruling or contested case confirming our opinion will set a formal and notorious precedent.

The settlement offer herein is made for purposes of resolving a dispute and is protected from admission under applicable rules of evidence.

I am free to talk with you and Michael any time next Wednesday, at least at this point, so let me know what time is best for you .

Yours very truly,



**H. Glenn Dunn**  
*Partner*

Enclosure

cc: Dan Graham (with enclosure)

**Johnson, Keith**

---

**From:** David Stoner <dstoner@shieldengineering.com>  
**Sent:** Monday, June 29, 2020 5:53 PM  
**To:** Bullock, Scott  
**Cc:** Graham, Dan; 'Bree.Bryant@EagleTransportCorp.com';  
'eric.hearl@eagletransportcorp.com'  
**Subject:** Denver, NC Tanker Spill MRO  
**Attachments:** Disposal Manifest From CERT.pdf; Waste Manifests - Denver Spill Site.pdf

Dear Mr. Bullock,

Regarding the Eagle Transport Corporation Incident on Highway 16 in Denver, NC which occurred on January 28, 2020, we just completed the soil disposal from the initial abatement action. So to answer your questions below:

- Yes soil was excavated.
- The soil was initially placed in lined and covered roll-off boxes on site adjacent to St. James Church Road and Highway 16, Denver, NC. The soil was then transported to two Waste Management permitted lined landfills.
- Soil was only briefly stockpiled on plastic adjacent to the roll-off boxes as it was emptied from the roll-off boxes and then loaded into transport trucks.
- 1.28 tons of soil and debris were taken to Waste Management's Richland County Landfill in Elgin, South Carolina. See the first attachment "Disposal Manifest from CERT". The balance of the excavated soil was taken to Chemical Waste Management, Inc.'s landfill in Emelle, Alabama. See the second attachment "Waste Manifests – Denver Spill Site". CERT, a subcontractor to the primary cleanup contractor-First Call Environmental solely managed the disposal of the first 1.28 tons of material and we do not know who their contact is at the Richland County Landfill. Our contact at Chemical Waste Management Inc.'s landfill is Allean Larkin, [alarkin@wm.com](mailto:alarkin@wm.com), Chemical Waste Management, Inc., 36964 Alabama Highway 17 North, Emelle, AL 35459, Telephone #205-652-8133.
- The site's surfaces have been addressed per the request of the "Keep Lincoln County Beautiful" organization; the roll-off boxes have been removed from the site; the site's vegetation has rebounded extremely well since the incident; and there are sorbent boom(s) still in place as stop gap measures to protect the surface water drainage features.

Thank you,  
David

David A. Stoner, P.G., P.E.  
Sr. Principal/Vice President  
Shield Engineering, Inc.'s Risk Management Group  
4301 Taggart Creek Rd.  
Charlotte, NC 28208  
ph. (704) 394-6913  
fax (704) 394-6968  
e-mail [DStoner@ShieldEngineering.com](mailto:DStoner@ShieldEngineering.com)

*Shield Engineering's Action Environmental Group is now Shield Engineering's Risk Management Group with additional expertise and service lines!*



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**From:** Bullock, Scott <[scott.bullock@ncdenr.gov](mailto:scott.bullock@ncdenr.gov)>  
**Sent:** Tuesday, February 4, 2020 2:22 PM  
**To:** David Stoner <[dstoner@shieldengineering.com](mailto:dstoner@shieldengineering.com)>  
**Cc:** Jackson, Vance <[vance.jackson@ncdenr.gov](mailto:vance.jackson@ncdenr.gov)>; Taraban, Ron <[ron.taraban@ncdenr.gov](mailto:ron.taraban@ncdenr.gov)>  
**Subject:** FW: [External] RE: Two Tanker Spills MRO

Hi David:

Please note Amy's explanation below and a link to a fact sheet for PFAS. Note, before any contaminated soil is transported and disposed at a permitted facility, it is required to be properly characterized. I have the following questions:

- Has any soil been excavated at the site?
- If soil has been excavated what is the disposition of the soil (stockpiled, sent to a permitted facility, etc.)?
- If stockpiled, where is the soil being stockpiled?
- If sent to a permitted facility, what is the name of the permitted facility and contact information?

Thanks,

Scott Bullock, LG  
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