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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2021-000219

Administrative Law Court Case No. 18-ALJ-0443-CC

Colonial Pipeline Company Respondent,

v.

South Carolina Department of Revenue, Abbeville County, Anderson County,
Greenville County, Aiken County, Laurens County, and York County Appellants.

RECORD ON APPEAL – VOLUME 5 OF 7

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Docket No. 18-ALJ-17-0443-CC

Colonial Pipeline Company,)
)
Petitioner,)
v.)
)
South Carolina Department of)
Revenue,)
)
Respondent,)
)
Abbeville County, Anderson County,)
Greenville County, Aiken County,)
Laurens County and York County,)
)
Intervenors.)
-----)

HEARING

Tuesday, August 4, 2020
9:59 a.m. - 4:34 p.m.
Wednesday, August 5, 2020
10:00 a.m. - 11:19 a.m.

The Hearing held before the Honorable Ralph K. Anderson, III, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 4th and 5th days of August, 2020 before Amanda Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina.



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Stephanie Perez, Judicial Law Clerk
Katie Buckner, Staff Counsel



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EXHIBITS

(All Exhibits were marked prior to the hearing and provided to the Court. The Court's Exhibit List is incorporated herein by reference.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



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1 (All Exhibits were marked prior to the hearing.)

2 DAY ONE - TUESDAY, AUGUST 4, 2020

3 CALL TO ORDER:

4 COURT REPORTER: All rise.

5 THE COURT: Y'all be seated.

6 Everybody ready? You ready?

7 COURT REPORTER: Yes, sir.

8 THE COURT: This is a hearing in the matter of
9 Colonial Pipeline Company, Petitioner, versus
10 South Carolina Department of Revenue, Abbeville
11 County, Anderson County, Greenville County,
12 York County, and Laurens County, Respondents.
13 The docket number is 18-ALJ-17-0443-CC. All
14 right.

15 I think y'all know what the hearing is about,
16 so I don't need to go into all of that. Plus,
17 you know, I changed our rules. I don't know if
18 y'all read that. Used to, one of the
19 components of the rules was the judge had to
20 come in and tell everybody what the hearing is
21 about. I really got tired of that. And being
22 Chief Judge, you get to do things like setting
23 the rules. So, I changed them. So, we don't
24 have to do that anymore.

25 MR. MAYBANK: I -- I bet some of those ABL trials



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1 was an interesting discussion ---

2 **THE COURT:** Yeah.

3 **MR. MAYBANK:** --- of what it was about.

4 **THE COURT:** Huh?

5 **MR. MAYBANK:** I said, I bet in some of your ABL
6 trials there was an interesting discussion of
7 what ---

8 **THE COURT:** Yeah.

9 **MR. MAYBANK:** --- it was about.

10 **THE COURT:** Yeah. Well, my summaries would be kind
11 of brief anyway.

12 All right. Petitioner?

13 **PRELIMINARY MATTERS:**

14 **MR. MAYBANK:** Thank you, Your Honor. We'd like to
15 start by introducing exhibits. And we have
16 agreed to joint exhibits, a huge notebook, all
17 sides have agreed to go ahead and put those
18 into testimony -- into the record now.

19 There is one nuance on Exhibit 21, which is
20 the Williams Transco document and they've
21 agreed the -- to the authenticity of the
22 document, but not the relevance of it, so. So,
23 with that, we'll introduce that with that
24 stipulation.

25 Then, we also have -- they've agreed to



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1 Petitioner's Exhibits 1 through ---

2 **THE COURT:** All right. So, we're ---

3 **MR. MAYBANK:** --- 9 ---

4 **THE COURT:** The exhibits are marked?

5 **MR. MAYBANK:** They are. And ---

6 **THE COURT:** 1 through?

7 **MR. MAYBANK:** It's 1 through 21, I believe it is up
8 there.

9 **MR. ROURKE:** That's correct.

10 **MR. MAYBANK:** And so, we're actually going to put
11 the official -- probably at lunchtime, if
12 that's okay, we'll put the official stamps on
13 them.

14 **THE COURT:** All right.

15 **MR. MURRAY:** And then ---

16 **THE COURT:** So, then I'm not going to worry about
17 admitting them until then.

18 **MR. MAYBANK:** Right.

19 **THE COURT:** All right.

20 **MR. MAYBANK:** And ---

21 **COURT REPORTER:** I spoke with Jana and Jana said
22 since we got it on the thumb drive, and I'll
23 create the PDF bundle, we don't need the hard
24 copy.

25 **MR. MAYBANK:** Okay. All right.



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1 **COURT REPORTER:** So, we're good.

2 **MR. MAYBANK:** Okay.

3 **THE COURT:** But then I've got ---

4 **MR. MAYBANK:** And then ---

5 **THE COURT:** Excuse me. I've got the -- I've got the
6 flash drive on my computer. I hadn't logged
7 on. In my office.

8 **MR. MAYBANK:** Right.

9 **THE COURT:** And so, I can start accessing that as
10 soon as y'all are ready.

11 **MR. MAYBANK:** Right.

12 **THE COURT:** So.

13 **MR. MAYBANK:** That would be fine. And most of it's
14 just for purposes of appeal. We're not going
15 to go through hardly any of the exhibits today.
16 We'll go through some, but not many.

17 **THE COURT:** All right.

18 **MR. MAYBANK:** And we've also agreed to Petitioner's
19 Exhibits 1 through 9, which are in this black
20 notebook and so we will officially mark those
21 at lunchtime and put those into the records.

22 **THE COURT:** You said for purposes of appeal?

23 **MR. MAYBANK:** I got a feeling this one's going to be
24 appealed.

25 **THE COURT:** Who knows? Miracles happen.



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1 **MR. MAYBANK:** Sometimes you can split the
2 difference. You know, 50 percent of the
3 pipeline, the other 50, no.

4 **THE COURT:** Well, I think Cartin was involved, I
5 issued an order that was so freaking complex
6 that they're actually looking at settling the
7 thing.

8 **MR. CARTIN:** 101 pages, Your Honor. That remains
9 the longest order I've ever gotten from the
10 Administrative Law Court.

11 **THE COURT:** So, who knows, I might could do that and
12 encourage settlement.

13 **MR. MAYBANK:** Was that a DHEC matter or DOR matter?

14 **MR. CARTIN:** DOR. Yeah.

15 **MR. MAYBANK:** Good.

16 **THE COURT:** That's the longest I've done, only one.

17 **MR. MAYBANK:** All right. Your Honor, we have, just
18 for your scheduling, we have four witnesses.
19 Two of them are pretty short. Two of them are
20 a little bit more involved. So, the first two
21 witnesses, the first one is going to be
22 reasonably short; the second one is going to be
23 a little bit more involved. And the DOR has
24 one witness. The counties don't have any, so
25 we -- we should be certainly finished by



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1 tomorrow without a doubt. So, with -- with
2 that, I'll call our first witness, Mr. ---

3 **THE COURT:** Well ---

4 **MR. MAYBANK:** --- Fuqua.

5 **THE COURT:** Well, are you not letting them have a
6 shot at opening?

7 **MR. MAYBANK:** I'm sorry?

8 **MR. ANTLEY:** Openings.

9 **MR. MAYBANK:** You're so familiar with the case.
10 Would you like a two-minute opening?

11 **THE COURT:** Do y'all want to give ---

12 **MR. ANTLEY:** That's about how long mine would be. I
13 would like it if ---

14 **THE COURT:** Okay.

15 **MR. MAYBANK:** So, why don't we do a quick two-minute
16 one.

17 **THE COURT:** Okay.

18 **OPENING STATEMENT BY MR. MAYBANK:**

19 **MR. MAYBANK:** Your Honor, the case is involved --
20 what -- what the primary issues before you
21 today are twofold. First of all, is cathodic
22 protection, pipe coatings and a shutoff valve,
23 pollution control equipment under the statute.
24 The second issue is whether the unattended
25 pipelines, and that's Your Honor's description,



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1 and we'll get into that in detail, whether the
2 unattended pipelines are an industrial plant.
3 We are going to prove the industrial plant for
4 the entire facility. Our theory being since
5 you can't appeal the denial of summary
6 judgement, it's your previous, Your Honor, it's
7 not the law and the case and therefore, we're
8 not going to belabor it, but we're go into a
9 little bit of detail as to the entire facility
10 ---

11 **THE COURT:** That's ---

12 **MR. MAYBANK:** --- being an industrial plant ---

13 **THE COURT:** That's fine with me, by the way.

14 **MR. MAYBANK:** Right. And then we'll go into painful
15 detail on whether the pipeline is attended and
16 whether it's an industrial plant. But in our
17 mind, those are the two issues before the
18 Court. First of all, is the pipeline an
19 industrial plant and second of all, is cathodic
20 protection, pipeline coating and a shutoff
21 valve covered by the South Carolina Property
22 Tax Pollution Control Exemption statute.

23 **OPENING STATEMENT BY MR. ANTLEY:**

24 **MR. ANTLEY:** Good morning, Your Honor. Marcus
25 Antley, III, counsel for the Department.



1 Section 12-4-710 charges the Department with
2 determining any -- if any property qualifies
3 for exemption from local property taxes and
4 that includes the Pollution Control Exemption
5 under 12-37-220(A)(8). The Department does its
6 best to -- to make these decisions correctly
7 and we realize that these decisions impact both
8 the counties and the taxpayers.

9 Here, the taxpayer applied for the Pollution
10 Control -- Pollution Control Exemption. And at
11 the division level, the Department granted the
12 exemption for some property, but denied it for
13 others. The Department denied some property
14 because it did not believe the property's
15 purpose was to control pollution at the
16 division level. Yeah, at the division level,
17 the Department did not consider the element of
18 whether the property consisted of facilities or
19 equipment of industrial plants. The taxpayer
20 protested the -- the denial and in issuing its
21 department determination, the Department
22 realized that the taxpayer did not meet the
23 facilities or equipment of industrial plants
24 element of the exemption and determined that
25 the taxpayer did not qualify for the Pollution



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1 Control Exemption. Exemption statutes are
2 narrowly construed and taxate -- with taxation
3 being the rule and exemption being the
4 exception, and we have a South Carolina Supreme
5 Court case on point with a Pollution Control
6 Exemption, TNS Mills, and that case made it
7 clear that the burden is on the taxpayer to
8 show that it -- that it clearly meets the
9 conditions of the statute. Therefore, today,
10 the burden is on the taxpayer to prove that the
11 claimed property is facilities or equipment of
12 industrial plants. And that term, facilities
13 or equipment of industrial plants is narrowly
14 construed -- must be narrowly construed. As
15 the Department argued in its motion for summary
16 judgement, an industrial plant must have some
17 form of production or output. And this is
18 consistent with the exemption statute itself,
19 which uses -- refers to manufacturers and it
20 also refers to property that has a dual
21 production and pollution control purpose.
22 Consistent with unit valuation, where you look
23 at the operations as a whole, the Department
24 considers the -- the taxpayer's operations in
25 South Carolina as a whole. Those operations do



1 not constitute an industrial plant. All of the
2 taxpayer's property and equipment in South
3 Carolina, whether it's injecting lubricant,
4 pushing products or separating transmits,
5 they're all ancillary or support to its overall
6 purpose of transporting product, refined
7 petroleum products in this state. The
8 taxpayers of transportation company, any
9 production that might occurs is de minimis and
10 because the taxpayer simply transport products
11 in South Carolina, it does not have any
12 industrial plants in this state whose
13 facilities or equipment could qualify it for
14 the Pollution Control Exemption. Thank you.

15 **THE COURT:** All right.

16 **MR. MAYBANK:** And --

17 **MR. CARTIN:** I've got one ---

18 **MR. MAYBANK:** Oh, sorry.

19 **OPENING STATEMENT BY MR. CARTIN:**

20 **MR. CARTIN:** Your Honor, Walt Cartin for Aiken
21 County and Laurens County. My clients made me
22 swear up and down Mr. Jim Holly of Aiken
23 County, attorney, and Sandy Cruickshanks, the
24 Laurens County attorney, that I would apologize
25 to the Court, due to coronarius concerns, they



1 wanted to be here, but they decided not to. I
2 hope ---

3 **THE COURT:** No apologies needed for that.

4 **MR. CARTIN:** Absolutely. Your Honor, I won't add
5 anything to what Mr. Antley said, but just
6 stress that the reason why Aiken and Laurens
7 County are here may not be readily apparent.
8 The actual monetary value to the particular
9 counties for this particular exemption is
10 relatively low and normally would not justify
11 our participation in a case like this.
12 However, the principle that's at issue, the
13 construction of the pollution control exemption
14 is extremely important for these counties. The
15 counties have a very real concern that if a
16 broad construction is given to this exemption
17 in -- in this case and other cases, that it --
18 it will lead to a -- a result that will be
19 financially untenable for the counties and that
20 is inconsistent with South Carolina law. So,
21 we're here today just to make sure that the
22 record contains the information that the Court
23 needs to make the decision to narrowly construe
24 this exemption in accordance with the TNS Mills
25 case and the rest of South Carolina law.



1 **THE COURT:** Okay.

2 **OPENING STATEMENT BY MS. WOOTEN:**

3 **MS. WOOTEN:** Your Honor, if I might briefly. Kim
4 Wooten. I'm here on behalf of counties of
5 Abbeville, Anderson, Greenville and York. We
6 join in the arguments that have been made by
7 both the Department and the remaining counties
8 in the case. We also, at this time, Your
9 Honor, would renew our motion for summary
10 judgement, and I think Your Honor is familiar
11 with the grounds ---

12 **THE COURT:** Yeah.

13 **MS. WOOTEN:** --- that we had stated. Just to
14 mention, in addition to the industrial plant
15 ground, we contend that there was a failure to
16 exhaust the administrative remedies because
17 DHEC failed to rule on the issue that was
18 presented to them about the pollution control
19 equipment.

20 **THE COURT:** Okay, that's interesting. Worry about
21 that later. All right.

22 Mr. Luther, I don't know what he's done to be
23 placed in the corner back there, but ---

24 **MR. LUTHER:** They told me to sit back here and be
25 quiet.



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1 **THE COURT:** Okay. You're in time out?

2 **MR. LUTHER:** I'm in time out.

3 **THE COURT:** Okay.

4 **MR. MAYBANK:** Thank you, Your Honor. And just for
5 protocol, it's my understanding that the
6 lawyers actually doing the direct exam don't
7 have to wear a mask as does the witness, but
8 everybody -- at other times, everybody would
9 have their mask on?

10 **THE COURT:** Yeah.

11 **MR. MAYBANK:** Okay.

12 **THE COURT:** Generally, yeah.

13 **MR. MAYBANK:** All righty.

14 **PETITIONER'S CASE IN CHIEF:**

15 **COURT REPORTER:** State your name for the record,
16 please.

17 **MR. FUQUA:** James Keith Fuqua.

18 **COURT REPORTER:** Spell your last name.

19 **MR. FUQUA:** F-U-Q-U-A.

20 **COURT REPORTER:** Raise your right hand, please.

21 **MR. FUQUA:** (Witness complies.)

22 **COURT REPORTER:** Do you solemnly swear that the
23 testimony you're about to give in this matter
24 is the truth, the whole truth, and nothing but
25 the truth, so help you God?



1 MR. FUQUA: Yes, ma'am.

2 COURT REPORTER: Thank you.

3 MR. FUQUA: Sit down?

4 MR. MAYBANK: Yeah.

5 JAMES KEITH FUQUA, having been duly sworn, testifies
6 as follows:

7 MR. FUQUA - DIRECT EXAMINATION BY MR. MAYBANK:

8 Q: All right. Mr. Fuqua, where are you employed?

9 A: Colonial Pipeline Company.

10 Q: And how long have you been there?

11 A: About seven and a half years.

12 Q: And when did you start?

13 A: January of 2013.

14 Q: And what's your current title?

15 A: Director of Tax.

16 Q: What do your responsibilities include?

17 A: I'm responsible for all the corporate tax
18 compliance, credits and incentives in both
19 income tax and non-income tax.

20 Q: Okay. And what -- tell the Court briefly your
21 educational background.

22 A: I have a bachelor's degree in accounting and
23 some MBA -- MBA courses, but I didn't finish
24 the MBA.

25 Q: Okay. And do you have any specific training on



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1 property taxes?

2 A: I -- I've been to lots of different courses;
3 IAAO courses, IPT courses, Wichita Workshop for
4 Public Utilities 25 times.

5 Q: Okay.

6 A: And various other seminars.

7 Q: And where'd you work before Colonial?

8 A: I came to Colonial from Boardwalk Pipelines.

9 Q: And the -- your responsibilities there include
10 property taxes?

11 A: Yes. I was a manager over property tax there.

12 Q: Okay. And how about prior to Boardwalk?

13 A: I was a -- just prior to Boardwalk, I worked
14 for Ernst and Young as a consultant. And prior
15 to that I worked for UPS and Delta Airlines as
16 a property tax manager. And prior to that, I
17 worked for Texas Gas as a property tax -- I
18 forget, representative, I think is what they
19 called it in my early days.

20 Q: Okay. And did you work for Transco or
21 Williams?

22 A: Williams -- Transco bought Texas Gas about
23 three years before I left there, two or threes
24 years. And then, Williams ultimately bought
25 Texas Gas and Transco ---



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1 Q: Okay.

2 A: --- while I was there.

3 Q: And where are you -- where are you currently
4 located; where do you do your work?

5 A: Under normal times, in Alpharetta, Georgia.

6 Q: Working out of the home now?

7 A: Out of the house right now.

8 Q: Okay. All right. Who's in charge of filing
9 property tax returns for Colonial?

10 A: That falls under my responsibility.

11 Q: Okay. And how is Colonial classified for
12 property tax purposes?

13 A: It's as a pipeline company.

14 Q: Okay. You're not classified as a manufacturer
15 for property tax purposes?

16 A: No.

17 Q: Did Colonial file property tax returns in South
18 Carolina?

19 A: Yes.

20 Q: All right. And did you file returns in
21 property tax returns in 2018?

22 A: Yes.

23 Q: And did you file them in 2017?

24 A: Yes.

25 Q: And so that I don't have the ask the same



1 questions twice, well, did you file -- did you
2 claim that exact same -- was your business at
3 Colonial in South Carolina pretty much the same
4 in 2017 and 2018?

5 A: Yes.

6 Q: Okay. No major changes or anything?

7 A: No.

8 Q: Okay. Did you claim property tax exemptions in
9 2017 and 2018?

10 A: Yes.

11 Q: Were they -- were they the exact same
12 exemptions in 2017 and 2018?

13 A: The exact same property, the only difference
14 was a little more depreciation. Some of the
15 value went down in '18.

16 Q: Okay. And those properties had no -- again, so
17 I don't have to ask you the same question twice
18 for each year, those properties didn't undergo
19 any particular change in 2017 and 2018?

20 A: No.

21 Q: Okay. All right. So, to speed it up, I'm not
22 going to ask -- I'm going to ask you just the
23 question once then. What properties did you
24 contend were exempt in '17 and '18?

25 A: We had some wastewater control, stormwater



1 control, secondary containment, external
2 floating roofs, cathodic protection, pipeline
3 coatings and one automatic shutoff valve.

4 Q: Okay. And so, you claimed those as property
5 tax exemptions, correct?

6 A: Yes, sir.

7 Q: And what did you have to establish in order to
8 be entitled to property tax exemption in South
9 Carolina?

10 A: Well, as we understood the rules, we had to
11 determine if they were required by law, if they
12 were industrial plant, if they were used
13 primarily in our business, and I forget what --
14 -

15 Q: Designed for the prevention?

16 A: Designed for the prevention of -- of pollution
17 control.

18 Q: Okay. All right. So, do you -- did you
19 consider Colonial operations including the
20 pipeline to be an industrial plant?

21 A: Yes.

22 Q: Okay. In your opinion, were all of those items
23 designed to eliminate or abate water or air
24 pollution?

25 A: Yes.



OBJECTION BY MR. CARTIN:

MR. CARTIN: Objection, Your Honor. I think this is expert testimony. He can talk about what his understanding is, but when you characterize it as an opinion ---

MR. MAYBANK: I -- I ---

MR. CARTIN: --- given.

MR. MAYBANK: I agree, Your Honor. I'll ---

THE COURT: Okay.

Q: Okay. So, would you -- when you put them on the returns as exemptions, did you consider they were designed to eliminate or abate water/air pollution?

A: Yes.

Q: Okay. And were all seven required by federal law?

A: Yes.

Q: And were all seven used in the conduct of Colonial's pipeline business?

A: Yes, they were.

Q: All right. And did the DOR grant the exemptions?

A: They granted them on the first four that I mentioned, but not on the latter three.

Q: Okay. For both '17 and '18?



1 A: That's correct.

2 Q: All right. And specifically, did -- in '17 and
3 '18, the DOR granted the exemption for
4 wastewater pollution control?

5 A: Yes.

6 Q: Okay. In '17 and '18, did they grant it for
7 stormwater pollution control?

8 A: Yes.

9 Q: Did they grant it for secondary containment?

10 A: Yes, sir.

11 Q: Did they grant it for tank, internal and
12 external floating roofs?

13 A: Yes.

14 Q: All right. And let's pull up the property tax
15 return just real briefly, the 2018 property tax
16 return. And just real briefly, how do you --
17 in South Carolina, how do you actually claim a
18 pollution control exemption?

19 A: By attaching a Schedule X to the return.

20 Q: Okay. So, in your case, you attached the
21 Schedule X?

22 A: Yes.

23 Q: All right. All right. And so, where did it --
24 after you filed the return, what did it -- how
25 did the DOR respond?



1 A: Well, we went in and had a meeting and
2 discussed what we filed, but then, they didn't
3 initially respond. We -- they -- we didn't
4 actually get a denial for quite a while. But
5 they only granted the first pieces, so they
6 sent us a -- their proposed assessment.

7 Q: Proposed assessment?

8 A: And then, we appealed that.

9 Q: Okay. So, the proposed assessment granted it
10 for four items and denied it for three?

11 A: That's correct.

12 Q: And the exact same thing in 2017 and 2018?

13 A: Yes, same property.

14 Q: All right. And can you just briefly tell the
15 Court the sequence -- how do you file -- claim
16 property tax exemptions? What is the sequence
17 in South Carolina the taxpayer follows?

18 A: The taxpayer is to file a return with the state
19 by the 30th of April each year. Then, at some
20 point, an assessment is proposed and if you
21 disagree with the proposed assessment, then you
22 must appeal, which is kind of the sequence we
23 took.

24 Q: Okay. All right. And so, you -- did you
25 appeal the denial of the three items?



1 A: We did.

2 Q: Okay. In both 2017 and 2018?

3 A: Yes, sir.

4 Q: All right.

5 **MR. MAYBANK:** And let's turn to stipulated Exhibit
6 20 if we can quickly pull that up. That is the
7 2017-2018 Utility Appraisal Summary worksheets
8 located on pages 65 and 136 of Exhibit 20. Was
9 that it there, Jim? Okay.

10 **(Petitioner's Exhibit Number 20 was introduced into**
11 **the record.)**

12 Q: It's kind of hard to read, but who prepared
13 this worksheet?

14 A: This came from the Department of Revenue.

15 Q: Okay. And does it show the partial exemption
16 was granted?

17 A: It does.

18 Q: Okay.

19 A: But under the adjustments, the -- there's a
20 third line down, it says South Carolina
21 Pollution Control net.

22 Q: Okay.

23 A: There's an adjustment there.

24 Q: So, that -- so just to be precise, does that
25 line up with your Schedule X exemption request?



1 A: It -- for the four items ---

2 Q: Four items.

3 A: --- that were granted, yes.

4 Q: Okay. All right. Did you apply for the
5 pollution control exemption for all seven items
6 under the same pollution control statute?

7 A: Yes.

8 Q: All right. And so, all seven -- did you apply
9 for all seven under Section 27-37-220(A)(8)?

10 A: Yes.

11 Q: All right. And to your knowledge, is that the
12 only pollution control -- property tax
13 pollution control exemption statute?

14 A: To my knowledge, yes.

15 Q: Okay. Then -- so, there's no special exemption
16 statute for the items the DOR approved?

17 **OBJECTION BY MR. CARTIN:**

18 **MR. CARTIN:** Objection, Your Honor. I think he's
19 leading the witness. I -- I let him develop
20 the testimony a little bit, but now we're
21 getting into substantive matters and we're
22 leading the witness through ---

23 **MR. MAYBANK:** Okay.

24 **MR. CARTIN:** --- exact ---

25 **MR. MURRAY:** Well, I'll -- I'll ask it ---



1 Q: So, the DOR approved four and -- and denied
2 three. Is there a special statute for the four
3 items the DOR approved?

4 A: No. They're all under the same statute.

5 Q: Okay. And so, just to be 100 percent clear, is
6 there a different statute for cathodic
7 protection than there is for wastewater and
8 stormwater pollution control?

9 A: No.

10 Q: Okay. And under the pollution control statute,
11 did the DOR have to find that Colonial was an
12 industrial plant in order to grant the four
13 items?

14 A: Yes.

15 **OBJECTION BY MR. CARTIN:**

16 **MR. CARTIN:** Objection, Your Honor. This is a -- a
17 legal conclusion essentially about what DOR had
18 to find in order to qualify for the exemption.
19 I hate to be a broken record.

20 **THE COURT:** All right. Did -- say the question
21 again?

22 **MR. MAYBANK:** Did the DOR have to find Colonial was
23 an industrial plant in order to grant you the
24 four exemptions?

25 **THE COURT:** Now, what's your position on that, Mr.



1 Maybank?

2 **MR. MAYBANK:** Our position is they did have to find
3 it, of course.

4 **THE COURT:** I know, but what's your position on his
5 objection that it's a legal conclusion.

6 **MR. MAYBANK:** I'll -- I'll ask it a different way.

7 **THE COURT:** Okay.

8 Q: All right. So, in order to -- the DOR granted
9 four, correct?

10 A: Correct.

11 Q: And in order to grant you the four, was there
12 a requirement that you had to be an industrial
13 plant?

14 A: Yes.

15 Q: Okay. And so, just to real quickly go on it.
16 For stormwater pollution control, is that the
17 same -- is there a requirement you had to be an
18 industrial plant?

19 A: Yes.

20 Q: Okay. And for stormwater pollution control, is
21 there a requirement you had to be an industrial
22 plant?

23 A: Yes.

24 Q: All right. And for secondary containment, was
25 there a requirement you had to be an industrial



1 plant?

2 A: Yes.

3 Q: All right. And did the DOR find that you were
4 an industrial plant for purposes of secondary
5 containment?

6 A: Yes.

7 Q: And did they find you were an industrial plant
8 in order for internal-external floating roof?

9 A: Yes.

10 Q: And did they find you were an industrial plant
11 for purposes of cathodic protection and
12 pipeline coating?

13 A: No.

14 Q: Okay. All right. So, on what basis did they
15 deny -- well, back up a bit. So, they denied
16 the exemption for cathodic protection?

17 A: Yes.

18 Q: They denied the exemption for plant coatings --
19 pipe coatings?

20 A: Yes.

21 Q: And they denied it for the automatic shutoff
22 valve?

23 A: Yes.

24 Q: And what was the basis that they denied the
25 exemption?



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1 A: The letter we got said it was because it was
2 not industrial plant.

3 Q: Okay. Did the DOR ever tell you that cathodic
4 protection wasn't designed to mitigate or
5 prevent water or air pollution?

6 A: No.

7 Q: Did they ever tell you that it wasn't required
8 by state or federal government?

9 A: No.

10 Q: Did they ever tell you you didn't use it to
11 conduct of your business?

12 A: No.

13 Q: All right. Did they ever tell you for pipeline
14 coatings, that pipeline coatings weren't
15 designed to mitigate or prevent water or air
16 pollution?

17 A: No.

18 Q: Did they ever tell you pipeline coatings
19 weren't required by state or federal
20 government?

21 A: No.

22 Q: They ever tell you it wasn't -- pipeline
23 coatings weren't used in the conduct of your
24 business?

25 A: No.



1 Q: All right. On the automatic shutoff valve, did
2 the DOR ever tell you that the shutoff valve
3 was designed to mitigate or prevent water or
4 air pollution?

5 A: No.

6 Q: Did they ever tell you it wasn't required by
7 state or federal law?

8 A: No.

9 Q: Did they ever tell you it wasn't used in the
10 conduct of your business?

11 A: No.

12 Q: All right. Now, what's the dollar value of the
13 exemption claimed for pipeline cathodic
14 protection?

15 A: Cathodic protection was the -- the dollar value
16 of the property is about five million dollars.

17 Q: Okay. All right. Five million or does 3.9
18 sound closer?

19 A: No, it's five million.

20 Q: Okay. All right. And how did you calculate
21 the exemption amount? And to back up a little
22 bit, when you submitted your claim for the
23 pollution control, obviously you had to put a
24 dollar amount down.

25 A: Uh-huh.



1 Q: Okay. And how did you calculate that dollar
2 amount?

3 A: Well, the whole process was to -- we used an
4 outside firm to identify property over the last
5 12 years prior to that that -- that they felt
6 met the pollution control exemption and not go
7 back and take it as -- try to figure out the
8 historical pipeline that was 50 plus years old.
9 So, once they identified that through our AFEs,
10 which is authorization for expenditure system.
11 It's how they track the cost of projects at
12 Colonial. We track -- they identified those.
13 We created a schedule of those assets and went
14 to the fixed asset ledger and -- which had the
15 AFE code in it and pulled out the actual fixed
16 assets, and we claimed the -- the net book
17 value of those assets to take in account their
18 age.

19 Q: Okay. So, that's cathodic protection. How did
20 you calculate the exemption amount -- and to
21 back up a little bit, what was the exemption
22 amount you claimed for pipeline coating?

23 A: It was about 10.9 million in net book value.

24 Q: Okay. And how did you -- how did you calculate
25 that amount?



1 A: The same way.

2 Q: Okay.

3 A: Similar process.

4 Q: All right. The pipeline coating -- is the
5 pipeline already on the pipe or do you buy the
6 pipeline coating on brand new pipes?

7 A: I think you can do it both ways. I think
8 typically when we get ours, it's already been
9 coated, but.

10 Q: Okay. And so -- so, it's already been coated.
11 Was -- was the -- your exemption claim for
12 repairs or was it the actual coating -- new
13 coating?

14 A: It was for the repairs for the pipe itself ---

15 Q: Right.

16 A: --- that had coating that had gone bad.

17 Q: Okay. And so, we'll -- we're gonna get into,
18 the next couple of witnesses, into the repairs,
19 so we don't really need any details from you,
20 but -- but coating has to be repaired from time
21 to time?

22 A: Yes. So, it -- over time it breaks down and in
23 some cases, actually de-bonds from the pipe and
24 falls off and lets -- that's when we do these
25 re-coating projects.



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1 Q: Okay. And so, your exemption claim was for the
2 re-coating?

3 A: Yes.

4 Q: Okay. And prior -- in 27 [sic] and 2018, did
5 Colonial expense or capitalize those repairs
6 for pipeline coating?

7 A: Capitalized them.

8 Q: Okay. And how long has protective coating
9 repairs been going on at Colonial?

10 A: Since we started the pipeline, we have to --
11 it's required that we keep it coated.

12 Q: Okay. So, that would be in -- started in 19 --
13 -

14 A: I think we started building in 1960 and went
15 into service in 1962.

16 Q: Okay. And so, prior to 2017, was the pipeline
17 coating repairs included in your property tax
18 base?

19 A: Yes.

20 Q: Okay. So, you -- you capitalized them. Now,
21 what happens to an asset after you capitalize
22 it? How does it work its way into the property
23 tax base?

24 A: From that AFE record that it's been capitalized
25 and listed on the fixed asset listing, then



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1 each year we make a summary of those fixed
2 assets and -- and list the property that is in
3 each state, in each county. So, it's -- the
4 cost of it is in the fixed asset ledger.

5 Q: Okay. And so, you previously paid property
6 taxes on protective coatings?

7 A: Yes.

8 Q: Okay. And then, how did you calculate the
9 exemption for cathodic protection? You may
10 already -- already said that. Is that also
11 repair or is it new cathodic protection?

12 A: It can be both, but mostly a whole lot of this
13 is repairs and replacement.

14 Q: Okay. And did you capitalize or expense those?

15 A: Capitalized.

16 Q: Okay. And so, have you been paying property
17 taxes on cathodic protection in South Carolina?

18 A: Yes.

19 Q: All right. And how about the automatic shutoff
20 valve, how did you calculate that exemption
21 amount?

22 A: The net book value of that particular asset.

23 Q: Okay.

24 A: From the fixed asset ledger.

25 Q: And -- and you know roughly how old it was?



1 A: I believe, if I remember correctly, it was put
2 in in February of 2011.

3 Q: Okay. And so, you -- so, they exemption amount
4 was what you paid for it, plus deprec -- or
5 after the deprec- -- and then you depreciated
6 it?

7 A: Less depreciation. Yeah, net book value.

8 Q: Okay. Are you familiar with Williams Pipeline?

9 A: I am.

10 Q: And how are you familiar with them?

11 A: I worked there with them at one time.

12 **OBJECTION BY MR. CARTIN:**

13 **MR. CARTIN:** I think we'll just object to the
14 relevance of the discussion of other pipelines
15 and to the extent that -- kind of renewing our
16 objection to the relevance of it. But if they
17 want to make a proffer of it, I think the
18 Court's already ruled that discussion about
19 Transco or Williams is -- is irrelevant to the
20 matter, but they -- if they need to make a
21 proffer.

22 **MR. MAYBANK:** He -- he's correct, Your Honor.
23 That's where we're leading. And what does that
24 -- can we pull that exhibit up on -- on it?

25 **THE COURT:** So, is this all -- you're seeking to



1 offer this for -- as a proffer or for a ---

2 **MR. MAYBANK:** Yes, Your Honor.

3 **THE COURT:** Okay.

4 **MR. MAYBANK:** I was going to lay sort of he
5 groundwork that he was familiar with Williams
6 before pulling it up.

7 **THE COURT:** Let's just -- yeah. Let him lay the
8 groundwork and then, we'll get into the actual
9 ---

10 **MR. CARTIN:** Okay.

11 **THE COURT:** --- objection.

12 **MR. CARTIN:** Okay.

13 Q: So, you say you are familiar with -- with
14 Williams?

15 A: Yes.

16 Q: Okay. And how -- how are you familiar with
17 them?

18 A: As I said before, when I worked at Texas Gas,
19 Transcontinental Pipeline bought Texas Gas and
20 then a year or so later, Williams bought both
21 and -- so, I was actually employed by one --
22 one of their subsidiaries for a period of time.

23 Q: Okay. And could you describe the Williams
24 facility sort of in your own words, the
25 Williams facility in South Carolina? And I get



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1 confused; it's -- it's -- it's no longer
2 Transco, it's Williams, correct?

3 A: I think Williams is the parent company, but
4 they operate for FERC purposes as
5 Transcontinental Gas Pipeline.

6 Q: Okay. All right. And just in your own words,
7 will you describe the South Carolina facility?

8 A: Yeah. I looked at their FERC reports just to
9 make myself familiar with it. They have about
10 413, 14 miles of transmission pipeline. They
11 have a couple of compressor stations. I think
12 one is in Spartanburg and the other one is in
13 Anderson.

14 Q: Okay. And what do they transport?

15 A: Natural gas.

16 Q: Okay. Are their lines geographically close to
17 your lines?

18 A: Very close to ours, both -- both pipelines
19 start in Texas and go up -- go across the south
20 and up the seaboard to New York.

21 Q: Okay. And do they -- they go parallel to yours
22 or perpendicular to yours or?

23 A: They typically -- they run parallel in a lot of
24 places and some places we're separated by some
25 distance, but I -- I'm not familiar with how



1 close they are to our right-of-way everywhere.

2 I know we share right-of-way in some places.

3 Q: Right. Okay. And -- and would that -- would
4 you consider their pipeline to be similar to
5 Colonial's pipeline?

6 A: It -- it's very similar.

7 **MR. MAYBANK:** Okay. All right. And so, Your Honor,
8 we'll get into the contested part here.

9 Q: Let me start by asking a question. To your
10 knowledge, is the Williams facility -- has a
11 pollution control exemption?

12 A: Yes.

13 Q: Okay. Just ---

14 **OBJECTION BY MR. CARTIN:**

15 **MR. CARTIN:** Objection renewed.

16 **MR. ANTLEY:** And we'll join in that objection.

17 **THE COURT:** Do you want to take a position on that?

18 **MR. MAYBANK:** Yeah. It's -- it's -- it's a similar
19 pipeline. I mean, if a -- if a mere shipper of
20 gas is an industrial plant, that's what this
21 case is all about.

22 **THE COURT:** All right.

23 **MS. WOOTEN:** Your Honor ---

24 **MR. MAYBANK:** In fact, that reminds me, I -- I did
25 overlook -- could I ask him another background



1 question or two, Your Honor?

2 **THE COURT:** Yeah. Go ahead.

3 Q: Does Transco refine any gas at their facility?

4 A: No.

5 Q: Okay. Did they -- do they do -- to your
6 knowledge, do they process it anymore than you
7 do?

8 A: No.

9 Q: Okay.

10 **MR. MAYBANK:** That's -- that's all the ---

11 **THE COURT:** All right.

12 **MR. MAYBANK:** --- few questions I overlooked.

13 **THE COURT:** Give me your grounds.

14 **MR. ANTLEY:** Objection to relevance, Your Honor.
15 Whether any other -- whatever any other
16 pipeline or any other taxpayer in this state
17 does, does not determine whether or not
18 Colonial is what would qualify for this
19 exemption.

20 **MS. WOOTEN:** And, Your Honor, on behalf of -- of our
21 counties, I think this witness has also shown
22 that he really doesn't have any detailed
23 knowledge to show that these pipelines are very
24 similar. He couldn't state whether they were
25 actually parallel.



1 **THE COURT:** Well, he's an accountant. Isn't he in
2 the accounting field?

3 A: Yes, sir.

4 **MR. MAYBANK:** Correct.

5 **THE COURT:** Yeah.

6 **MS. WOOTEN:** I'm sorry, Your Honor. I can't ---

7 **THE COURT:** I'm sorry. I should -- he's in the
8 accounting field, so.

9 **MS. WOOTEN:** But -- right. Right.

10 **THE COURT:** Go ahead.

11 **MR. CARTIN:** Yes, sir. I would just say he doesn't
12 have any firsthand recent knowledge of where
13 the pipeline is or how it operates and -- and
14 again, to Mr. Antley's point, that's the more
15 important point that regardless of whether
16 they're similarly situated or not, this case is
17 about this property and these particular
18 locations.

19 **THE COURT:** Okay. So, I sustain the objection, Mr.
20 Maybank. I recognize sustaining it on direct
21 is one thing, allowing you to impeach on this
22 is a different story. So, I'll address that
23 down the road. But the -- at this point it's
24 ---

25 **MR. MAYBANK:** So, granted that, we would like to



1 make an offer of proof to put the document ---
2 **THE COURT:** Yep.
3 **MR. MAYBANK:** --- objected into the record.
4 **THE COURT:** Okay.
5 **MR. MAYBANK:** That's all the questions we have for
6 this witness, Your Honor.
7 **THE COURT:** Well, do you want to put it in now?
8 **MR. MAYBANK:** I think that would be the proper thing
9 is to an offer of ---
10 **THE COURT:** Okay.
11 **MR. MAYBANK:** --- proof to put it in the record.
12 **THE COURT:** And what exhibit is that?
13 **MR. MAYBANK:** That is Exhibit 21.
14 **MR. ROURKE:** 21. Yeah.
15 **MR. MAYBANK:** Exhibit 21.
16 **THE COURT:** It's admitted as offer of proof.
17 **MR. MAYBANK:** Thank you.
18 **(Petitioner's Exhibit Number 21 was admitted as an**
19 **Offer of Proof.)**
20 **MR. FUQUA - CROSS-EXAMINATION BY MR. ANTLEY:**
21 Q: Good morning, Mr. Fuqua.
22 A: Good morning.
23 Q: So, Colonial Pipeline is a transportation
24 company, correct?
25 A: Yes.



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1 Q: Okay. And it transports refined petroleum
2 products?

3 A: Yes.

4 Q: And -- and no customers pay Colonial to make a
5 product in South Carolina, correct?

6 A: Not to my knowledge.

7 Q: Okay. And Colonial does not sell any products
8 in South Carolina, correct?

9 A: They do not.

10 Q: Okay. And -- and you led Colonial's effort to
11 apply for the pollution control exemption; is
12 that correct?

13 A: That's correct.

14 Q: Okay. And, in fact, you hired Duff and Phelps
15 to help Colonial get the pollution control
16 exemption?

17 A: Yes.

18 Q: And Duff and Phelps is paid based on the amount
19 they save Colonial in property taxes?

20 A: Yes. It's a contingent fee arrangement.

21 Q: Okay. And Duff and Phelps was not sure
22 initially whether or not a pipeline would
23 qualify for the pollution control exemption
24 based on the industrial plant language of the
25 exemption?



1 A: They never told me that.

2 Q: If I can just show what's been -- Exhibit
3 Number 10.

4 **MR. WOOTEN:** Is that the stipulated exhibits or ---

5 **MR. ANTLEY:** Yes. Stipulated Exhibit Number 10.

6 **(Joint Exhibit Number 10 was introduced into the**
7 **record.)**

8 A: No. I'm not familiar.

9 Q: Does this look familiar?

10 A: It looks like some of the documents that they
11 sent back and forth, yes.

12 Q: Okay. And by they, you mean Duff and Phelps?

13 A: Duff and Phelps sent to me, yes.

14 Q: Okay. And -- and can you read that footnote?
15 Are you able to read that footnote?

16 A: Because of the use of industrial plants, D&P
17 reached out to Taylor Ingram, South Carolina
18 Utility Assessment Coordinator, to confirm
19 pipelines are subject to a pollution control
20 exemption.

21 Q: Okay.

22 A: I guess I never considered that to be that they
23 doubted it. But I guess -- it looks like they
24 claim they confirmed it.

25 Q: If they -- if they already knew that, would



1 they reach out to Taylor Ingram to ask?

2 A: I -- I don't know why they would reach out,
3 other -- other than maybe they had some doubts,
4 I guess.

5 Q: And did you receive anything from the
6 Department of Revenue that explicitly stated
7 that you were -- that Colonial Pipeline's
8 operations in South Carolina were an industrial
9 plant?

10 A: Not in that language, no.

11 Q: Okay. You mentioned cathodic protection, pipe
12 coatings and automatic shutoff valves. Those
13 aren't purely for pollution control purposes,
14 are they?

15 A: I'm not an expert on that, but I was -- I
16 believe they are.

17 Q: Purely?

18 A: Well, they -- that's the purpose they're on the
19 line for.

20 Q: Okay. Do you recall your deposition, which has
21 been admitted as, I believe it's ---

22 **MR. CARTIN: 19.**

23 **(Joint Exhibit Number 19 was introduced into the**
24 **record.)**

25 Q: 19, okay. Yes. Bear with me one moment.



1 Okay. So, if you'll look at line 3 on page 35.
2 I asked you, why didn't you think it was
3 granted for -- for those items. And, I
4 believe, we're referring to some of the same
5 assets that you requested here in South
6 Carolina. And you stated that the statute said
7 that the assets have to be only for pollution
8 control. Okay.

9 A: Okay.

10 Q: All right. Okay. So, in what's in, I believe
11 -- was it North Carolina? And correct me if
12 I'm -- if I'm saying any of this -- if you have
13 a different recollection. But in North
14 Carolina, these properties, these items were
15 denied because they were not purely pollution
16 control?

17 A: We didn't claim those items in North Carolina.

18 Q: None of the -- none of the seven items that you
19 ---

20 A: No. We only ended up claiming one item and we
21 had -- we had filed four test cases in North
22 Carolina. I think we withdrew three of them
23 because the -- we -- when we did the field
24 inspection, it wasn't what we thought it was on
25 the description on the asset ledger, so.



1 Q: And ---

2 **COURT REPORTER:** Description on the asset ledger?

3 A: On -- on the asset ledger.

4 **COURT REPORTER:** I'm sorry. Thank you.

5 Q: And so -- but you didn't -- and correct me if
6 I'm wrong. You did not apply because it had to
7 be purely pollution control? If I'm -- if I'm
8 reading that wrong.

9 A: Well, okay. What's it say up above that where
10 I -- I know I said it has to be pure -- what
11 state are we talking about?

12 **MR. MAYBANK:** Your Honor, I -- I would -- well,
13 never mind.

14 Q: Looks like the question -- excuse me. Sorry.
15 I was on the wrong -- 34. I'll go back. It
16 looks like it was Georgia. I'm sorry.

17 A: Okay. In Georgia, yes. That -- Georgia
18 required that -- that it's only purpose be
19 pollution control exemptions and we filed a --
20 I don't remember what we filed there, but we
21 filed a test asset there and they said no.

22 Q: Okay. But at least in Georgia, they did not
23 consider these assets to be purely pollution
24 control?

25 A: We didn't ask them about those particular



1 assets.

2 Q: Okay. Okay. Are you familiar with unit
3 valuation?

4 A: Very.

5 Q: Okay. And the purpose of unit valuation is to
6 value interdependent assets as a whole. Is
7 that -- is that a good description?

8 A: Yeah. It's -- it -- most states do unit
9 valuation on centrally assessed properties so
10 that counties don't have to be experts in how
11 it affects your property of that nature, so
12 it's easier to -- yeah. It's -- if the purpose
13 is to value the whole company and then bring
14 the value back to the state, that is their pro
15 rata share of that company. So, it's -- I
16 think it facilitates a central assessment of a
17 very -- of a complex property.

18 Q: Okay. And in a sect- -- for example, in the
19 context of unit valuation, a section of pipe,
20 that's more valuable as part of a pipeline
21 network than just a section of pipe that's
22 unconnected to a pipeline; is that correct?

23 A: Well, yes. Under the unit value concept, just
24 a piece of pipe is not capable of earning. In
25 the unit value concept you value the earnings



1 of a pipeline. And most -- most experts I've
2 known would argue that there's a capability to
3 earn is the most -- I mean, indicative
4 valuation of pipe. So, if it's just a piece of
5 pipe that's not connected to a system, it's
6 only worth what it cost to make it.

7 Q: Are you aware in South Carolina that the
8 assessment ratio for utilities and
9 manufacturers is 10.5 percent?

10 A: Yes.

11 Q: And -- and are you aware that transportation
12 companies are assessed at 9.5 percent?

13 A: Yes.

14 Q: Okay. And is -- is Colonial Pipeline assessed
15 at the 9.5 percent?

16 A: Yes.

17 Q: Okay. So, it's -- and that's because it's a
18 transportation company?

19 A: That's the way the state classifies us, yes.

20 Q: Okay. Is -- is the part of Colonial's property
21 in South Carolina that injects drag reducing
22 agent, is that assessed at 10.5 or 9.5 percent?

23 A: 9.5. All of our property is at 9.5.

24 Q: Okay. I'm just going to go piece by piece
25 first. Are Colonial's booster or pump stations



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1 in South Carolina, are those assessed at 10.5
2 or 9.5?

3 A: 9.5.

4 Q: Okay. And are the facilities or equipment that
5 process steam water, is that assessed at 10.5
6 or 9.5?

7 A: 9.5.

8 Q: Okay. And how about tank farms and delivery
9 stations, are that -- that process, the
10 transmix, are those assessed at 10.5 or 9.5?

11 A: 9.5.

12 Q: Okay. And -- and I think you said this
13 earlier, but I just want to confirm. All of
14 Colonial's property in South Carolina is taxed
15 at -- is asses- -- excuse me -- assessed at 9.5
16 percent?

17 A: Yes.

18 Q: Okay. The Department denied Colonial's
19 pollution control exemption for all property in
20 2019.

21 A: That's correct.

22 Q: Okay. And you're not aware of any other
23 pipeline, Transco, Williams Company, any other
24 pipeline, including those companies, receiving
25 the pollution control exemption in 2019 or



1 afterwards?

2 A: One of my good friends at Transco initially
3 received an exemption and then it was
4 withdrawn.

5 Q: So, they do not have an exemption ---

6 A: They do not now.

7 Q: --- for 2019? Okay. Thank you.

8 **MR. CARTIN:** Trey, can you bring up Exhibit 14?

9 **MR. ANTLEY:** 14, yes.

10 **MR. FUQUA - CROSS-EXAMINATION BY MR. CARTIN:**

11 Q: Morning, Mr. Fuqua. I'm ---

12 A: Good morning.

13 Q: --- Cartin. We met at your deposition.

14 A: Yes, sir.

15 Q: I just have a few quick questions for you.
16 Witness's choice. I'll give a choice of a hard
17 copy or we can just sort of look at the screen
18 here.

19 A: I'm -- I'm fine with looking at the screen.

20 Q: Fine with the screen, okay.

21 A: I got my glasses on.

22 **(Joint Exhibit Number 14 was introduced into the**
23 **record.)**

24 Q: Do you recognize this map?

25 A: Yes. I believe that is a map we had prepared



1 for -- I think it was supposed depict ---

2 Q: That is ---

3 A: --- zoning, if I remember correctly.

4 Q: Perfect. And this was prepared by Colonial's
5 GIS Department?

6 A: It was.

7 Q: Okay. And are there four maps, four or five
8 maps that were generated that are all part of
9 this?

10 A: I think it took four or five to cover the whole
11 state.

12 Q: Okay. And so, what's depicted on here is the
13 pipeline; is that little line running right
14 down through there? Then, you've got colors on
15 either side of that, correct?

16 A: That's what -- yes.

17 Q: Okay. Those colors indicate a particular type
18 of zoning for the parcel over which that
19 pipeline is laid; is that correct?

20 A: That's correct.

21 Q: All right. And if we look at the key there, I
22 believe the yellow means residential land use;
23 is that right?

24 A: That's too small for me to read.

25 **MR. CARTIN:** Let's see if I can pull it up there.



1 Let's look at -- if we can just pull up the key
2 here.

3 A: I can see it now.

4 Q: All right. Okay. Yellow means residential
5 land use, correct?

6 A: That's correct.

7 Q: Green means agriculture land use, correct?

8 A: Yes.

9 Q: Okay. And red means industrial land use
10 parcel; is that right?

11 A: That's correct.

12 **MR. CARTIN:** Okay. Now, if we can pull back on
13 that.

14 Q: You would agree with me that the overwhelming
15 majority of the pipeline is laid over
16 agriculturally zoned property; is that fair?

17 A: That's what the map says.

18 Q: Okay. And that actually very little of the
19 pipeline is laid over what is zoned as
20 industrial property; is that fair?

21 A: That's correct.

22 Q: Okay. You have what, approximately 102 miles
23 worth a pipeline in South Carolina?

24 A: I thought the mainline was 102 and then the
25 lateral line is -- I think there's two



1 mainlines.

2 Q: Okay.

3 A: So, I think, if someone could help me with
4 that, but I believe it's 102 miles for each of
5 the two mainlines and there's about 50 miles of
6 lateral line that goes down to -- toward
7 Augusta.

8 Q: Okay, perfect. And the maps that were provided
9 would depict all of that pipeline; is that
10 fair?

11 A: I believe so.

12 Q: Okay. And just to be really clear, the
13 cathodic protection, the automatic shutoff
14 valve and the pipe coatings would be all along
15 that pipeline; is that correct?

16 A: Yeah. They -- the valve is in one particular
17 location, but the other two are on all
18 pipelines.

19 Q: Okay, perfect. Thank you. Just a few more
20 questions about the pipeline itself. My
21 understanding is that cathodic protection, pipe
22 coatings and automatic shutoff valves are not
23 just pollution control property; is that fair?

24 A: I ---

25 Q: Let me re -- rephrase it. They have an



1 alternative purpose?

2 A: Well, they keep the pipe from leaking is what
3 they do.

4 Q: They protect the steel, right?

5 A: They protect the pipe, yes.

6 Q: Okay. They protect the -- Colonial's
7 investment in the asset; is that fair?

8 A: It does that too, yes.

9 Q: Okay. Keeps it from deteriorating because
10 corrosion is always sort of trying to take the
11 pipeline back to nature, right?

12 A: Yeah. I don't know if it keeps it from
13 deteriorating. It just slows it down.

14 Q: Okay.

15 **MR. CARTIN:** That's all I've got for this particular
16 witness.

17 **MR. FUQUA - CROSS-EXAMINATION BY MS. WOOTEN:**

18 Q: Mr. Fuqua, my name is Kim Wooten and I'm here
19 on behalf of four of the counties ---

20 A: Okay.

21 Q: --- in this case. We haven't met before. But
22 I just have a few follow-up questions for you.
23 What Colonial Pipeline does, in your own words
24 is, it is a transporter of refined petroleum
25 products, that's what you do; isn't that true?



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1 A: Yes. That's what the prime -- primary purpose
2 of the pipeline is.

3 Q: Okay. And Colonial for tax purposes -- and you
4 testified about this before in -- under Mr.
5 Maybank's questioning. For tax purposes, is
6 Colonial a manufacturer?

7 A: No.

8 Q: Okay. The NACIS code or NI -- NAICS, excuse
9 me, code is for transportation; is it not?

10 A: Yes. It's -- it's a special one for trans --
11 pipelines to transport the refined petroleum
12 product.

13 **COURT REPORTER:** I'm sorry. I ---

14 A: I'm sorry.

15 **COURT REPORTER:** When you turn that way ---

16 A: Okay.

17 **COURT REPORTER:** --- I can't hear you.

18 A: It's an NAICS code for pipelines that transport
19 refined petroleum products.

20 Q: Okay. And there are many NAICS codes, correct?

21 A: Thousands.

22 Q: And -- but the one that they've assigned to
23 your company is transportation?

24 A: Yes.

25 Q: Okay. And you said earlier that the state



1 classifies Colonial as a transportation
2 company, correct?

3 A: That's correct.

4 Q: Okay. And not only the state, but also it's
5 regulated under U.S. DOT regulations as a
6 transportation company; isn't that correct?

7 A: I think so, yes.

8 Q: Okay. I'm going to hand you, actually, an old-
9 school notebook that I'm going to let you take
10 a look at. This is our stipulated exhibits.

11 **MS. WOOTEN:** Is that okay, guys?

12 **MR. MAYBANK:** Sure.

13 **MS. WOOTEN:** Okay.

14 Q: And I'm going to keep my social distance over
15 here while I question you about this. Turn
16 with me, if you would, to Exhibit Number 2.

17 **(Joint Exhibit 2 was introduced into the record.)**

18 A: Okay. I think that's the one you gave me.

19 Q: Stipulated Exhibit Number 2. That is a ---

20 A: Yes.

21 Q: You got it. That's a color page from Colonial
22 Pipeline's website; is it not?

23 A: It is.

24 Q: Okay. And this particular page is from the
25 frequently asked questions; is it not?



1 A: Yes, it appears to be.

2 Q: Okay.

3 A: I see it highlighted.

4 Q: Okay. And on the website, Colonial states --
5 your company states that Colonial transports
6 various grades of gasoline, diesel fuel, home
7 heating oil, jet fuel and fuels for the U.S.
8 military. That's what your company says it
9 does.

10 A: Okay.

11 Q: Is that correct?

12 A: That's what it says here, yes.

13 Q: Did I read that correctly from your website?

14 A: Yes, ma'am.

15 Q: Okay. If you would, keep going to page -- to
16 Exhibit Number 3, please.

17 **(Joint Exhibit 3 was introduced into the record.)**

18 A: Okay.

19 Q: This is also a Page from Colonial's website; is
20 it not?

21 A: Yes.

22 Q: Okay. And if you look with me at the mission
23 statement at the bottom of the page, where it
24 says a major piece -- do you see there?

25 A: Oh, yes.



1 Q: Yeah.

2 A: Okay.

3 Q: It says a major piece of U.S. infrastructure,
4 Colonial's mission is to move energy to where
5 it ---

6 **THE COURT:** Wait a second. You're at Petitioner's -
7 --

8 **MS. WOOTEN:** I'm sorry.

9 **THE COURT:** This is stipulated exhibits.

10 **MS. WOOTEN:** These are stipulated exhibits, Your
11 Honor.

12 **THE COURT:** Is it Petitioner's or stipulated
13 exhibits?

14 **COURT REPORTER:** Joint.

15 **MS. WOOTEN:** These are joint ---

16 **THE COURT:** Joint.

17 **MS. WOOTEN:** --- stip -- I'm sorry. They're the
18 Joint Stipulated Exhibits.

19 **THE COURT:** All right. Is this in the flash drive
20 that I received?

21 **MS. WOOTEN:** It is.

22 **THE COURT:** All right.

23 **MS. WOOTEN:** I believe so. We ---

24 **MR. ROURKE:** It is, yes.

25 **MS. WOOTEN:** Yeah. I thought it was.



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1 **THE COURT:** All right. I'm in Petitioner's 3.
2 Where -- what ---
3 **MS. WOOTEN:** Petitioner's 3 is a -- about Colonial.
4 **THE COURT:** Is that what you meant ---
5 **MR. ANTLEY:** It's Joint. You're looking at
6 Stipulated.
7 **MS. WOOTEN:** Stipulated. I'm sorry. This is
8 Stipulated Exhibit 3.
9 **THE COURT:** Well, I thought I was in Stipulated.
10 I'm in Colonial Petitioner's Stipulated
11 Exhibits.
12 **MS. WOOTEN:** There should be one that is Joint
13 Stipulated Exhibits, Your Honor.
14 **THE COURT:** All right. I don't see a joint one.
15 **COURT REPORTER:** It's called Intervener.
16 **THE COURT:** Oh, Interveners. Okay.
17 **MS. WOOTEN:** I'm sorry. I didn't -- I didn't
18 prepare the flash drives. Thank you.
19 **THE COURT:** There you go. I'm there now.
20 **MS. WOOTEN:** I apologize, Your Honor.
21 **THE COURT:** Okay. Go ahead.
22 **Q:** All right. So, you're with me on Stipulated
23 Exhibit Number 3 ---
24 **A:** Right. You're at the bottom of ---
25 **Q:** --- Mr. Fuqua?



1 A: Yes.

2 Q: Yeah. And at the bottom ---

3 A: You're at the bottom. Okay.

4 Q: This is Colonial's About Colonial page,
5 correct?

6 A: Yes, ma'am.

7 Q: Okay. And what Colonial says it does is a
8 major piece of U.S. infrastructure, Colonial's
9 mission is to move energy to where it's need,
10 correct?

11 A: Uh-huh.

12 Q: Store it until it's needed to blend as it's
13 needed. This is accomplished by committing to
14 safe operations that enable the efficient,
15 reliable and responsible transportation of
16 fuels. Isn't that what Colonial says it does?

17 A: Yes, ma'am.

18 Q: It moves and it transports, correct?

19 A: It does, yes.

20 Q: Okay. Now, if you look with me at Stipulated
21 Exhibit Number 5.

22 **(Joint Exhibit 5 was introduced into the record.)**

23 A: Okay.

24 Q: This is a page from Resolve Environmental
25 Engineering. Who would that be?



1 A: I have no idea.

2 Q: Okay. We asked you about this deposition
3 exhibit or this exhibit in your deposition. Do
4 you recall that?

5 A: No, I don't.

6 Q: Okay.

7 A: It looks like this is a -- I'm looking at the
8 bottom of what it's called. It's a spill plant
9 is ---

10 Q: Okay. And tell me what that is.

11 A: We have witnesses that could tell you better
12 than I, but it's -- it's how we manage -- my
13 understanding is it's how we manage what
14 happens if we have a -- a spill at one of our
15 facilities. This one looks like it's the spill
16 plant from the Belton facility.

17 Q: Okay. And it's -- it's dated in March 2009,
18 correct? At the top.

19 A: Oh, okay. I -- I was seeing it at the bottom.
20 It was Feb -- it said February 2009. But,
21 yeah, at the top it says March.

22 Q: Okay. And this is a document that is prepared
23 for government entity; is that correct?

24 A: I -- I don't remember what it's ---

25 Q: Okay.



1 A: --- who -- who it's prepared for.

2 Q: Okay. That's fine. Are you familiar with the
3 Belton Junction facility?

4 A: Not very. I've never been there.

5 Q: Okay. Do -- are you familiar with even with
6 what it does?

7 A: Belton -- it's -- Belton Junction is a tank
8 farm.

9 Q: Okay. And as a tank farm, Colonial describes
10 the operations of Belton Junction as a tank
11 farm as follows in this document: Operations at
12 the facility are primarily related to the
13 transport of refining petroleum products, which
14 fall under U.S. DOT jurisdiction, correct?

15 A: That's correct.

16 Q: So, even these plant farms are or what did you
17 call it?

18 A: Tank farm.

19 Q: Tank farm. Even these tank farms fall under
20 U.S. DOT jurisdiction and are related primarily
21 to the transport of products, correct?

22 A: Yes.

23 Q: Okay. Go with me -- turn if you would to
24 Exhibit Number 6 under the Stipulated Exhibits.

25 **(Joint Exhibit 6 was introduced into the record.)**



1 A: Okay.

2 Q: Again, this is a -- a page out of the same
3 document. It appears it's the same date of
4 March 2009, correct?

5 A: Yeah. It looks like it's page 5 of that
6 document ---

7 Q: Okay.

8 A: --- where the other one was page 1, maybe.

9 Q: All right. And -- and again, we're talking
10 about the location activities at the Belton
11 Junction facility; do you see that?

12 A: I do.

13 Q: Okay. And this is a section of the SPCC that
14 we're -- we're talking about as -- as you see
15 at the top of the page, correct?

16 A: Yes.

17 Q: Okay. If you look down with me at Section
18 2.1.1.

19 A: Okay.

20 Q: The second paragraph.

21 A: Okay.

22 Q: It describes the facility as 20 U.S. DOT,
23 regulated pipeline breakout and/or relief
24 tanks. Do you see that?

25 A: Yes, ma'am.



1 Q: And then, if you go down to the third
2 paragraph, it says as described in the
3 following section, operations at the facility
4 are primarily related to the transport of
5 refined petroleum products, correct?

6 A: Correct.

7 Q: Okay. So, even though the facility includes 20
8 breakout and/or relief tanks that contain
9 gasoline, Colonial itself describes this part
10 of the facility as primarily related to the
11 transport of products; isn't that correct?

12 A: Yes, ma'am.

13 Q: Okay. If you look at Exhibit Number 7, please.
14 **(Joint Exhibit 7 was introduced into the record.)**

15 A: Okay.

16 Q: All right. Go to the third page of that
17 exhibit, please, sir.

18 A: Oh, counting the cover page?

19 Q: Yes, sir. I'm sorry.

20 A: The one that's labeled 9 out of 30 at the top?

21 Q: Yes, sir. Yes, sir. You're with me. All
22 right. At the top of that page, it's
23 referenced portable tanks. Can you tell me what
24 portable tanks are?

25 A: Well, it lists different kinds of portable



1 tanks, skid tanks, frac tanks, trailer mounted
2 tanks or other mobile containers are use
3 periodically for maintenance activities. I'm -
4 - I'm guessing that's what that is.

5 Q: Okay. You -- you don't know?

6 A: I really don't. I'm not familiar with it.
7 It's not my area of expertise.

8 Q: Okay. Whose area of expertise would that be?

9 A: I think one of our other witnesses, Robert,
10 would be better able to speak to that.

11 Q: Okay. When the company is talking about
12 portable tanks, the company says in the last
13 sentence of that paragraph, these tanks meet
14 the definition of transportation related and
15 are U.S. DOT regulated, correct?

16 A: Same section, last sentence.

17 Q: Yes, sir.

18 A: Yes, I see that.

19 Q: Okay. So, that's the same for the portable
20 tanks as well?

21 A: According to this document. Again, I'm not an
22 expert.

23 Q: Okay. Turn with me, if you would, to Exhibit
24 Number 8.

25 **(Joint Exhibit 8 was introduced into the record.)**



1 A: Okay.

2 Q: If you look at Plan Administration, it looks
3 like this is another ---

4 A: It looks like this is Spartanburg.

5 Q: Right. A different facility, correct?

6 A: Yes, ma'am.

7 Q: Okay. And this is talking about a pipeline
8 breakout facility; is that correct?

9 A: That's what it says in the first sentence up
10 there.

11 Q: Okay. Well, tell me what a pipeline breakout
12 facility is, sir.

13 A: My understanding is breakouts are just -- I
14 don't -- I'm not an expert again, but the --
15 they are -- there are tanks along the line ---

16 **THE COURT:** Ms. Wooten, we -- you've got him going
17 through documents. He keeps saying he's not an
18 expert, not familiar with the exhibits and the
19 exhibits speak for themselves. So, what am I
20 getting out of this? Are you impeaching him or
21 -- I mean, I'm just not sure for my purposes
22 what -- what you're offering this for.

23 **MS. WOOTEN:** Your Honor, just for the sake of
24 getting his testimony into the record about
25 what his own company is saying, whether he ---



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1 **THE COURT:** I mean, like I said, the documents speak
2 for themselves. They speak for -- these have
3 been admitted into the record, right?

4 **MS. WOOTEN:** Certainly, they have, Your Honor.

5 **THE COURT:** Okay.

6 **MS. WOOTEN:** I'm just -- and this is really my last
7 one.

8 **THE COURT:** Oh, okay. Well, then go ahead.

9 **MS. WOOTEN:** So, I'm not going to go through every
10 one of them, but I do -- I thought it was
11 important for our purposes to point out the
12 portions of these documents that are important
13 for us to get into the record.

14 **THE COURT:** Okay.

15 **Q:** All right. For this facility, which is the
16 breakout facility, the company has described
17 that as primarily related to the transport of
18 refined petroleum products; is that correct?

19 **A:** Yes, ma'am.

20 **Q:** Okay. All right. If you would, turn with me
21 to page -- or Exhibit Number 16.

22 **(Joint Exhibit 16 was introduced into the record.)**

23 **A:** Okay.

24 **Q:** Are you familiar with the DHEC process that was
25 performed in connection with this particular



1 request?

2 A: Somewhat familiar. I -- I wasn't involved in
3 the process. I was given the results.

4 Q: Okay. Which person in this room do you think
5 would be involved in that?

6 A: Well, the Department of Revenue went to DHEC.

7 Q: Right. But is there a witness from your
8 company in this room that is more equipped to
9 testify about this?

10 A: Well, I -- I'm probably the one that received
11 this ---

12 Q: Oh.

13 A: --- from the Department. So, it's me if that's
14 what you mean.

15 Q: Okay. So, if you look at what DHEC has stated
16 in its -- in its August 27th, 2018 commentary
17 on your application, DHEC's opinion is that
18 interstate petroleum pipeline operations are
19 regulated exclusively by federal agencies
20 including U.S. DOT; is that correct?

21 A: I -- I haven't found it on the page yet, so.

22 Q: Oh, I'm sorry. In the first paragraph.

23 A: Okay. Okay.

24 Q: Are you with me?

25 A: I am now.



1 Q: Okay. DHEC has said that it lacks the
2 authority to permit pipeline operations or to
3 inspect or enforce any operational aspect of
4 the pipeline conveying petroleum products.
5 What I'm asking about is where DHEC states that
6 interstate petroleum pipeline operations are
7 regulated exclusively by federal agencies
8 including the U.S. DOT; is that correct in your
9 understanding?

10 A: Yes. We're regulated by federal agencies
11 including the U.S. DOT.

12 Q: Okay. One last question that I have for you.
13 You mentioned that your -- your pipeline or
14 your request for pollution control exemptions
15 in North Carolina were denied for various
16 reasons other than one particular piece of
17 equipment not at issue here.

18 A: I'm not sure I -- we applied for seven
19 different categories of pollution control.

20 Q: Right.

21 A: We've had -- some of them had multiple pieces
22 of equipment in them. Four of those categories
23 were approved and three were denied.

24 Q: Okay. And the three that were approve -- or
25 the one that were approved are not ones that



1 are at issue here today, correct?

2 A: No. We did not appeal that they were granted.

3 Q: Okay. And the reason that your North Carolina
4 application was not granted is because North
5 Carolina defines industrial plant as any plant,
6 mill or factory engaged in the business of
7 manufacturing; isn't that true? Isn't that
8 what North Carolina told you?

9 A: I actually had one item approved in North
10 Carolina.

11 Q: Yes, sir.

12 A: You're -- you're talking about North Carolina
13 ---

14 Q: But the ones that are denied, yes.

15 A: I didn't have any denied in North Carolina. I
16 had three that I withdrew.

17 Q: Okay. You withdrew them because North Carolina
18 defines industrial plant, that's what you
19 figured out, as any plant, mill or factory
20 engaged in the business of manufacturing.

21 A: That's not my recollection at all.

22 Q: Okay.

23 **MS. WOOTEN:** That's all I have.

24 A: Thank you.

25 **MR. MAYBANK:** Your Honor.



MR. FUQUA - REDIRECT EXAMINATION BY MR. MAYBANK:

Q: Mr. Antley asked about Duff and Phelps. Who was your contact at Duff and Phelps?

A: The primary person I dealt with is a lady named Kathy Tronsburg.

Q: Okay. And what were her credentials?

A: She was an engineer by trade. I think formerly had worked in a nuclear power plant and I had worked with her when I was at Boardwalk on pollution control exemptions in another state.

Q: And can you briefly describe her, her background on pollution control and taxation on pollution control?

OBJECTION BY MR. CARTIN:

MR. CARTIN: I have one objection, Your Honor. And it's a very limited narrow objection. I don't have any problem with him asking about who Duff and Phelps is and what the part -- the part they played in this, but it's really a request for a ruling on -- on limited admissibility of this information. I feel like I'm getting ready to go through an expert qualification for an expert who's actually not on the stand. Again, to provide context for the -- the actions the taxpayer took here, no problem at



1 all. They can talk about Duff and Phelps, but
2 I feel like I'm getting -- that they're
3 building in a backdoor expert witness opinion
4 here for a witness that actually isn't here
5 because we're getting ready to talk about her
6 credentials and I presume they're -- the
7 question's going to be well, they thought you
8 were entitled to the exemption, right? So,
9 that's -- this may be something that we can
10 handle in the order, but I -- I need to lodge
11 my objection now to the information to be able
12 preserve it, Your Honor.

13 **THE COURT:** All right. Response.

14 **MR. MAYBANK:** I haven't -- I wasn't going to ask
15 that question. I will ---

16 **THE COURT:** Well, then that pretty well ---

17 **MR. MAYBANK:** Mr. Antley ---

18 **THE COURT:** But -- but he's given you the idea,
19 right?

20 **MR. CARTIN:** It's a good idea. I've done it before.
21 I've got to object to it.

22 **MR. MAYBANK:** Mr. Antley opened the door, Your
23 Honor, to it. He -- he ---

24 **THE COURT:** I know he opened the door, but we've got
25 to decide is it a crack or is it opened. And



1 ---

2 **MR. MAYBANK:** Right.

3 **THE COURT:** So, what was -- how did he open it? Do
4 you remember?

5 **MR. MAYBANK:** He asked at length about Duff and
6 Phelps did the actual work-up of the pollution
7 control exemption for Colonial.

8 **THE COURT:** Yeah.

9 **MR. MAYBANK:** I -- I'm not getting ready to ask if
10 there was a ---

11 **THE COURT:** Well, here, let's go -- go ahead right
12 now.

13 **MR. MAYBANK:** Okay.

14 **THE COURT:** He just said to -- unless you've given
15 him some ideas, Mr. Cartin.

16 **MR. MAYBANK:** Right.

17 **THE COURT:** We're not there.

18 Q: So, Duff and Phelps assisted you in preparing
19 the pollution control exemption?

20 A: They did.

21 Q: Okay. And what was her experience in pollution
22 control then, just briefly tell us?

23 A: That's -- that's what she does for Duff and
24 Phelps. Her department ---

25 Q: Okay.



1 A: --- works with taxpayers on -- on pollution
2 control.

3 Q: Okay. And she had other clients in South
4 Carolina?

5 A: I ---

6 Q: That's all right.

7 A: I'm not sure I could answer that if she ---

8 Q: Okay.

9 A: --- does currently.

10 Q: All right. Let's -- let's pull up Exhibit 10.

11 **(Joint Exhibit 10 was referenced.)**

12 Q: Mr. Antley questioned you about Exhibit 10 and
13 so, Mr. Antley suggested that -- that she
14 called over there because she wasn't sure
15 whether pipelines qualified or not. What --
16 what is yours -- what was your response to Duff
17 and Phelps? That it qualified, correct?

18 A: They -- that's what they told me.

19 **OBJECTION BY MR. ANTLEY:**

20 **MR. ANTLEY:** Objection. He doesn't have any
21 firsthand knowledge of that. They're -- he's
22 asking what Duff and Phelps heard from the
23 Department of Revenue.

24 **MR. MAYBANK:** He asked that exact question earlier.

25 **MR. ANTLEY:** And there was no objection.



1 **THE COURT:** Well ---

2 **MR. MAYBANK:** Right. So, there's no objection. So,
3 I'm following up on your exact question.

4 **THE COURT:** That kind of hurt you on the last --
5 last time. The -- you asked about the
6 footnote.

7 **MR. ANTLEY:** Yes, which is admitted into evidence.

8 **THE COURT:** Then, you just said he has no knowledge.

9 **MR. ANTLEY:** Firsthand knowledge of what the
10 Department told Duff and Phelps.

11 **THE COURT:** Okay. Therein lies my problem. I don't
12 know whether he does or not at this point in
13 time. So, you can ask him ---

14 **MR. MAYBANK:** Right.

15 **THE COURT:** --- if he has knowledge.

16 **MR. MAYBANK:** Right.

17 Q: So, to your knowledge, did Duff and Phelps ever
18 contact the Department of Revenue?

19 A: Just based on the footnote they included on
20 that document.

21 Q: Okay. And they would have talked to Taylor?

22 A: Yes.

23 Q: Okay. And Duff and Phelps told you what the
24 Department of Revenue's response was ---

25 **OBJECTION BY MR. ANTLEY AND MS. WOOTEN:**



1 **MR. ANTLEY:** Objection, hearsay.

2 **MS. WOOTEN:** Leading.

3 A: It says a -- it says it on the document.

4 Q: Right. Well, let me get your -- what does the
5 document say?

6 A: It says because of the use of industrial plant,
7 Duff and Phelps reached to Taylor Ingram, South
8 Carolina Utility Assessment Coordinator, to
9 confirm pipelines are subject to the pollution
10 control exemption.

11 Q: Okay. All right. And did Duff and Phelps ever
12 tell you anything different?

13 A: No. That document was to convince me to file
14 in South Carolina, that it was okay to file.
15 So ---

16 Q: Okay.

17 A: That's -- that's what -- I took that as it was
18 okay to file in South Carolina.

19 Q: All right. And to your knowledge that -- that
20 document was based on a conversation which your
21 consultant had with the Department of Revenue,
22 correct?

23 A: That's what they said.

24 **OBJECTION BY MS. WOOTEN:**

25 **MS. WOOTEN:** Objection, hearsay.



1 A: That's what it says.

2 **THE COURT:** I overrule that.

3 Q: All right. Let me move on. So -- so, Trey and
4 the other lawyers asked you repeatedly, aren't
5 you just -- you just transport petroleum
6 products, you just ship fuel, you -- you don't
7 own the fuel, and you don't sell fuel. Doesn't
8 Transco just ship petroleum products?

9 A: They ship natural gas, yes.

10 Q: Okay. And doesn't -- they just -- they don't
11 own their natural gas?

12 **OBJECTION BY MR. CARTIN:**

13 **MR. CARTIN:** Objection, Your Honor, to the same --
14 objection to the relevance of anything about
15 Transco.

16 **THE COURT:** Mr. Maybank?

17 **MR. MAYBANK:** Again, they've opened the door. They
18 specifically brought out Transco when they made
19 an issue that whether owning fuel and selling
20 fuel is a -- detrimental to our case.

21 **THE COURT:** I -- I don't think they opened the door
22 on Transco. So, I'll sustain that objection.

23 **MR. MAYBANK:** All right.

24 Q: All right. So, you -- you were asked by
25 several witnesses ---



1 **THE COURT:** Wait a second. Now, let me -- let me
2 think about that though. All right. So ---

3 **MR. MAYBANK:** While you're noodling it, the
4 relevance is Transco does exactly what we do.
5 They -- they rule for 12 years Transco is an
6 industrial plant. I -- how could it not be
7 relevant on the issues they have brought up?
8 They just ship the fuel, they don't own the
9 fuel.

10 **THE COURT:** Well, I tell you the -- I'm going to
11 sustain it because he was being asked about
12 their position. If he was being asked about
13 the Department's position, that would open the
14 door. But when I say they, Colonial Pipelines.
15 So, I sustain the objection on a narrow ground,
16 all right. I tell y'all, y'all -- y'all are
17 dancing on a needle right now because, you
18 know, you may fall off it down the road, but
19 we'll see.

20 **MR. MAYBANK:** I'll move on, Your Honor.

21 **Q:** So, you were asked several times by two of the
22 lawyers about whether or not you had been
23 granted exemptions in other states for these
24 precise seven pollution control equipment
25 materials. Had you been granted exemptions for



1 any of these seven in other states?

2 A: Yes.

3 Q: Okay. And what states would those be?

4 A: Well, the particular three that have been
5 denied, we were -- we were granted those in
6 Texas, Alabama and -- who am I missing? And we
7 applied for those also in Virginia and Virginia
8 has sent us letter that tells us that they're
9 pollution control equipment, but they can't
10 decide who has jurisdiction to grant them for
11 a pipeline. So, we're still battling that as
12 much as we were when we did the deposition.

13 Q: Right. All right. So, Trey asked you, the DOR
14 never explicitly stated you were an industrial
15 plant, as you recall. Didn't they explicitly
16 state twice in the Department determination to
17 grant it to you?

18 A: Well, in -- my understanding that you have to
19 pass the four prong test.

20 Q: Right.

21 A: By anything -- the four things that were
22 granted ---

23 Q: Actually, I ---

24 A: Common sense ---

25 Q: I said the Department determination, I meant to



1 say proposed assessment. So, they twice gave
2 you a proposed assessment which granted it for
3 four of the items?

4 A: Yes, sir.

5 Q: And -- and didn't that explicitly say you were
6 an industrial plant?

7 A: I don't know that it says it on the document,
8 but that -- it implies that it is.

9 Q: Right.

10 A: It was ---

11 Q: Okay.

12 A: --- a trick in the test.

13 **MR. MAYBANK:** And then, if we'll pull up the little
14 zoning map real quickly.

15 **(Joint Exhibit 14 was introduced into the record.)**

16 Q: So, Mr. Cartin asked you about zoning. Does
17 your expertise include zoning?

18 A: No.

19 Q: Do you do any zoning at Colonial whatsoever?

20 A: None.

21 Q: All right. And who -- who at Colonial does do
22 responsibility over zoning?

23 A: There are -- I'm not sure which department
24 actually tracks it. I went to the GIS
25 department.



1 Q: Okay.

2 A: And I believe this was at a -- a response to a
3 request for information from the ---

4 Q: Right.

5 A: --- from opposing counsel.

6 Q: Is that -- and that map was prepared in the
7 last 18 months, was it not?

8 A: It was prepared shortly before we did the
9 deposition.

10 Q: Right. Okay. And so, you built your pipeline
11 in 1962?

12 A: Yes.

13 Q: Okay.

14 A: It went into service in '62.

15 Q: All right. Is that the zoning map for 1962?

16 A: No, that's more current.

17 Q: Okay. All right. Then, lastly, Ms. Wooten
18 asked you about the DHEC response. In fact,
19 then, the DHEC response, they said that
20 cathodic protection and pipeline coatings and
21 automatic shutoff valves were pollution control
22 equipment; did they not?

23 A: That's the way I read it.

24 Q: Okay.

25 **MR. MAYBANK:** That's all I have, Your Honor.



1 **THE COURT:** All right. On new matter raised.

2 **MR. ANTLEY:** I'm sorry, Your Honor?

3 **THE COURT:** This mask stuff doesn't work well.

4 **MS. WOOTEN:** I know, right.

5 **THE COURT:** On new matter raised.

6 **MR. ANTLEY:** Okay.

7 **THE COURT:** Because you're on re-cross.

8 **MR. ANTLEY:** Yes, Your Honor.

9 **MR. FUQUA - RECROSS-EXAMINATION BY MR. ANTLEY:**

10 Q: Okay. You were asked about other states. No
11 other state has the language about industrial
12 plants in their exemption statute; is that
13 right?

14 A: Not that I recall.

15 Q: Okay. And you were also asked about the
16 division decision and the Department
17 determination explicitly saying you were an
18 industrial plant, which I believe your response
19 was, there -- it was not explicit. But since
20 you were asked about the Department
21 determination, this is I believe Petitioner's
22 Exhibit Number 7.

23 **(Petitioner's Exhibit 7 was introduced into the**
24 **record.)**

25 **OBJECTION BY MR. MAYBANK:**



1 **MR. MAYBANK:** I would object. I'd said that
2 accidentally and with -- withdrew that. And
3 limited to proposed assessment.

4 **THE COURT:** Say that again. You accidentally ---

5 **MR. MAYBANK:** I ref- -- I did reference Department
6 determination, but I did it accidentally and
7 quickly corrected myself.

8 **THE COURT:** Oh, okay.

9 **MR. ANTLEY:** Then, within the context of the
10 Department explicitly stating whether or they
11 were an industrial plant, that was brought up.

12 **THE COURT:** Well, that's true, so.

13 **MR. ANTLEY:** So, I -- I'd like to ask -- I'd like to
14 show Petitioner's Exhibit 7, Petitioner's
15 Exhibit.

16 **THE COURT:** And he was asking about the -- the
17 staff's determination at that point. Is that
18 what you're going to be ---

19 **MR. ANTLEY:** He was -- he asking about the depart --
20 if the Department explicitly stated if they
21 were an industrial plant. So, that was the
22 umbrella question.

23 **THE COURT:** But then he pulled back ---

24 **MR. ANTLEY:** And he went down to the assessment
25 area.



1 **THE COURT:** Yeah, that's what I'm saying. He pulled
2 back and asked about the assessment. So, are
3 you asking now about the Department's
4 determination or the assessment?

5 **MR. ANTLEY:** The Department determination.

6 **THE COURT:** Well, he just said he didn't ask about
7 that and now you're -- you're wanting to go
8 into that still.

9 **MR. ANTLEY:** It's in response to the question ---

10 **THE COURT:** Okay.

11 **MR. ANTLEY:** --- about assessments.

12 **THE COURT:** All right. Go ahead.

13 Q: So, it -- you were asked about the assessment.
14 So, I just want to highlight -- see if I can
15 highlight one statement here. This section.
16 I don't know if you can see very well. But
17 that statement that beings with here. Just
18 make -- let me know if I'm reading this right.
19 Here the claim property fails to first element
20 because the claim property is not a facility or
21 equipment of an industrial plant. Did I read
22 that right?

23 A: Yes.

24 Q: Okay. Thank you.

25 **MR. CARTIN:** Just one question, Your Honor.



MR. FUQUA - RECROSS-EXAMINATION BY MR. CARTIN:

Q: Mr. Fuqua, you were Colonial Pipeline's 30(B)(6) witness to testify about those zoning maps, correct?

A: Yes, sir.

MR. CARTIN: Okay. That's it.

THE COURT: Ms. Wooten?

MS. WOOTEN: Nothing further, Your Honor.

THE COURT: You may step down.

MR. MAYBANK: We'll call our next witness, Your Honor. Buster Brown.

COURT REPORTER: I'm sorry, Lester?

MR. BROWN: Buster.

COURT REPORTER: Buster.

MR. BROWN: It's my nickname.

COURT REPORTER: B-U-S-T-E-R. And I'm sorry, your last name, Brown?

MR. BROWN: Brown.

COURT REPORTER: Raise your right hand, please.

MR. BROWN: (Witness complies.)

COURT REPORTER: Do you solemnly swear the testimony you're about to give in this matter is the truth, the whole truth, and nothing but the truth, so help you God?

MR. BROWN: I do.



1 **COURT REPORTER:** Thank you.

2 **THE COURT:** You have a unique nickname.

3 **MR. BROWN:** Yes, sir.

4 **BUSTER BROWN,** having been duly sworn, testifies as
5 follows:

6 **MR. BROWN - DIRECT EXAMINATION BY MR. MAYBANK:**

7 Q: All right. Where are you employed?

8 A: I'm employed with Colonial Pipeline Company.

9 Q: And how long have you been employed there?

10 A: I've been with Colonial for 31 years now.

11 Q: Okay. And what's your current title?

12 A: My current title is Director of Commercial
13 Affairs, Special Projects.

14 Q: Okay. And what are your titles prior to that?
15 I assume you've obviously had some raises and
16 promotions in the past 31 years.

17 A: Yes, sir. I've had nine positions in Colonial.
18 I started out in our field operations. Been an
19 operator out in the field and in our quality
20 assurance department. I've been in our
21 commercial affairs department previously to
22 this. I've also had responsibilities,
23 management roles, director role with both our
24 scheduling, our quality assurance, our
25 measurement, inventory and customer relations.



COLONIAL PIPELINE V. SC DOR, ET AL.

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1 Q: Okay. And where do you currently work?

2 A: I currently in our Alpharetta office.
3 Obviously, we're all tele-working right now.

4 Q: Okay. And your responsibilities include South
5 Carolina?

6 A: Roles and responsibilities across the entire
7 platform. Yes.

8 Q: Right.

9 A: And South Carolina.

10 Q: Okay.

11 A: Yep.

12 Q: And briefly, what's your educational
13 background?

14 A: Educational background, I'm a Bachelor of
15 Science, Chemical Engineering from University
16 of Arkansas. No disrespect to the -- to South
17 Carolina.

18 Q: None taken.

19 A: Yes, sir.

20 Q: All right. Let's go over to Colonial Pipeline,
21 the company. Let's start at the national level
22 first. Tell us a little bit, when did Colonial
23 go into business at a national level formation
24 and a brief history of the company.

25 A: Yeah. Colonial began operation 1962. So ---



1 Q: Why don't we get you to just quickly identify
2 that ---

3 **(Petitioner's Exhibit 8 was introduced into the**
4 **record.)**

5 A: Sure. Sure. So, if you look at our -- our map
6 here, if you look at the far left, Pasadena,
7 Texas is where our -- our pipeline starts and
8 it ends in New Jersey above what we call
9 Linden, New Jersey. And when we originally
10 were constructed in 1962, we operated a single
11 pipe actually that went from Pasadena all the
12 way to New Jersey. Then, in the late '80s, we
13 did a -- a major expansion on our system. We
14 added another, what we call a mainline that
15 runs from Greensboro -- excuse me -- from
16 Pasadena to Greensboro, North Carolina and then
17 from Greensboro, North Carolina, another
18 mainline from there up to Baltimore, Maryland
19 ---

20 Q: Okay.

21 A: --- area. And ---

22 Q: So, the -- the company as a whole started in
23 '62 or just South Carolina operations in '62?

24 A: Company as a whole including South Carolina
25 operations. So, we did have a pipe, basically



1 a single pipe. And you'll see how the -- the
2 map shows kind of a double pipe running on
3 there, so we -- again, we did that expansion
4 back in the late '70s, early -- early '80s.

5 Q: Is Colonial a public company?

6 A: We're a privately held company.

7 Q: Okay. So, you don't file 10Qs and 10Ks and
8 things of that nature?

9 A: I have no knowledge, sir.

10 Q: Okay. And now what, if it's not too
11 proprietary, what's your total capital
12 investment in -- in the United States today?

13 A: I believe we're booked at about 3.4 billion
14 dollars this ---

15 Q: In how many states do you do business?

16 A: We do 14 states that we are doing business in.

17 Q: Okay. And what federal agencies regulate
18 pipeline companies?

19 A: Well, a whole bunch obviously, but the primary
20 ones that regulate us are FERC, the Federal
21 Energy Regulatory Commission. They oversee our
22 rates, our rules, our practices as far as
23 shippers and customers. We have the PHMSA,
24 which is Pipeline -- Pipeline Hazardous
25 Materials and Safety Administration that



1 control the operation of our pipeline, the
2 physical assets of our pipeline. We certainly
3 have EPA monitoring our air admissions, quality
4 -- you know, environmental requirements. We've
5 got OSHA, you know. But the -- those -- those
6 are kind of the primary ---

7 Q: Major ones.

8 A: --- groups that -- yes, sir.

9 Q: Okay. And ---

10 A: Or it seems.

11 Q: And then, just to hopefully speed up the cross-
12 exam a little bit, you don't own the product
13 you ship; is that correct?

14 A: We don't. Our shippers are required in our
15 tariff to own title of the product as it moves
16 through our system.

17 Q: Okay. So, you don't own any of the oil,
18 petroleum, et cetera that flows through South
19 Carolina?

20 A: No, sir, we do not.

21 Q: So, you're -- you're purely a shipper of it, in
22 addition to the other things?

23 A: We -- we transport the fuel in addition to the
24 other services and things we offer to our
25 customers.



1 Q: Okay. And is -- is it subject to state and
2 federal environmental laws in South Carolina?

3 A: Yes.

4 Q: Okay. And who are your major competitors, say
5 nationally and in South Carolina?

6 A: Nationally, if you look at the configuration of
7 our pie, it -- we're subject to any other modes
8 of transportation; truck, rail, barge. All of
9 those are a competition to Colonial in the
10 transportation business. We also have
11 competition in some of the other services we're
12 providing, such as our storage and all of those
13 other things with other terminals and other
14 companies out there that are partaking in those
15 types of things, blending operations. All of
16 those things there's competition there. And
17 then, particularly in the state of South
18 Carolina, one pipeline that runs almost in the
19 exact same corridor as we do is Plantation
20 Pipeline owned by Kinder Morgan ---

21 Q: Okay.

22 A: --- Company. But again, other modes of
23 transportation in South Carolina, your -- your
24 ocean, your -- all -- all your coastline, ocean
25 going product that comes in through that outlet



1 is a competition to our -- our business here in
2 -- in South Carolina.

3 Q: Okay. You've already clearly answered it, but
4 let me explicitly, how do you make a buck?
5 What -- what do you get paid for in South
6 Carolina?

7 A: Well, primarily we get paid for transporting
8 barrels from point A to point B. Like we said,
9 that's our primary business. We also have
10 ancillary services that we provide, storage and
11 other things that we get paid for that are --
12 we're using assets in South Carolina to provide
13 -- to provide those services. But yes, mainly
14 moving barrels ---

15 Q: Okay.

16 A: ---- from point A to point B on our system.

17 Q: And so I don't I have to ask you the same
18 question twice, did -- was your business
19 operation in 2017 virtually identical to your
20 business operation in 2018?

21 A: Yes, I believe so.

22 Q: Okay. All right. And what products do you
23 ship to and through South Carolina?

24 A: To and through South Carolina, so on our system
25 we transport refined petroleum products. We



1 transport gasolines, jet fuels, diesel, heating
2 oil, military fuels. We -- we also ship
3 certain types of blendstocks and other products
4 on our system.

5 Q: Okay. And are these all liquids?

6 A: All refined, liquid petroleum products. Yes,
7 sir.

8 Q: Okay. And are any of them flammable?

9 A: They're all flammable.

10 Q: All right. Would they be considered pollution
11 if they escaped?

12 A: Most definitely.

13 Q: All right. All right. So, let's talk more
14 about Colonial, South Carolina's operations. I
15 think you've already hit this, but tell us when
16 you started in South Carolina?

17 A: Well, again, back in 1962 when the pipeline
18 began operating and ---

19 Q: And so, you built pipeline 1 in '62?

20 A: Correct.

21 Q: And when did you build pipeline two?

22 A: Late '70s. I think it began operational in the
23 early '80s.

24 Q: Okay. And then you have -- do you have three
25 pipelines, 1, 2 and 29?



1 A: In -- running through South Carolina, we have
2 three pipelines that are running through it.
3 Our lines 1 and 2 -- I don't know if we can put
4 the map up again. But our lines 1 and 2 are we
5 call our mainlines. And then, leaving our
6 Belton Junction, we have line 29 that goes down
7 to North Augusta.

8 Q: All right. And do you know when line 29 was
9 built?

10 A: I do not.

11 Q: Okay. All right. At a high level, describe
12 Colonial's operations in South Carolina
13 starting with -- with the pipeline and -- and
14 we'll pull up the -- the fact sheet that might
15 help you a little bit here. Sort of high
16 level, tell us a about just South Carolina's
17 operations in 2017 and 2018.

18 **(Petitioner's Exhibit Number 9 was introduced into**
19 **the record.)**

20 A: Sure. So, we've got our -- in South Carolina,
21 we've got our two mainlines, line 1, which we
22 typically refer to as our gasoline mainline.
23 It -- it transports primarily gasoline on line
24 1.

25 Line 2 is our other mainline going from



1 Pasadena to Greensboro that ships distillate
2 fuels. That's where we ship a lot of our --
3 that's where we ship our ultra low sulfur
4 diesel jet fuel and most of our military fuel
5 on that -- on that particular line.

6 Then we've got our tank farm facilities in
7 South Carolina. We've got both Belton
8 Junction, Spartanburg Junction, Charlotte
9 Junction just right across the border, so to
10 speak.

11 But then, we've got -- coming out of Belton,
12 we have what we call line 29. That is a multi-
13 products line. It ships all of the products
14 that we ship on Colonial; gasoline, diesel,
15 ultra low sulfur diesel, and jet fuel. All of
16 those ship on line 29. And that goes from
17 Belton Junction down to our North Augusta
18 delivery facility there.

19 Q: Okay. So, how many miles of pipeline do you
20 have just in South Carolina?

21 A: In South Carolina, we have about 515 miles of
22 pipeline. Each of our line 1 and 2 is about 101
23 miles each, just slightly over. Our line 29 is
24 about 75 miles in length. We have an old
25 abandoned line, I believe it was called line



1 21. It's been abandoned for quite some time.
2 I think of -- it is part of the 515. I think
3 maybe about 80 or 90 miles of that. And then,
4 we've got -- when we leave our -- our
5 locations, our tank farms and our North Augusta
6 facility, we have what's called delivery lines
7 that go directly to each truck terminal that we
8 -- we're servicing. And I think we have about
9 15 miles of -- of those -- of those pipes.

10 Q: Okay. All right. So, we have 515 miles of
11 pipeline and how many tank farms?

12 A: We have two tank farms in South Carolina.

13 Q: And how many booster stations?

14 A: Got three -- three facilities on our lines 1
15 and 2; Anderson, Simpsonville and Gaffney. On
16 Simpsonville in particular, it is only on line
17 2. And then, at our -- at our tank farms
18 themselves, we -- we have a pump station that
19 services line 29 putting product into line 29.
20 And then at both Belton and Spartanburg, there
21 are pumping systems that pump out to those
22 delivery lines that we ---

23 Q: Okay.

24 A: --- we were -- we talked about.

25 Q: How many delivery facilities do you have?



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1 A: Well, delivery facilities, we've got the North
2 Augusta delivery facility. Sometimes we don't
3 really refer to our tank facilities as a
4 delivery facility, but they have these local
5 deliveries to terminals that are just across
6 the street, so to speak.

7 Q: Okay.

8 A: Right.

9 Q: And is -- does Colonial own those dual
10 deliveries right across the street where trucks
11 fill up?

12 A: We do not own those terminals. No, we do not.

13 Q: Okay. You just service them?

14 A: Yes, sir. We -- we deliver product to them.

15 Q: And how many counties are you in in South
16 Carolina?

17 A: I believe it's 11 counties ---

18 Q: All right.

19 A: --- that we pass through.

20 Q: All right. So, just to real quickly, of the
21 pipelines, two -- how many are mainline miles?
22 Be about 200?

23 A: Yeah. About 202.

24 Q: Okay.

25 A: A little bit over 202, I believe.



1 Q: And how big are those pipes?

2 A: Our gas line, line 1, is 40-inch diameter and
3 our -- our line 2, oil line is 36-inch
4 diameter.

5 Q: Okay. And how big is ---

6 A: And then ---

7 Q: --- the stub -- stub line?

8 A: Our stub line, line 29, is a 16-inch diameter
9 line.

10 Q: And why do you call it a stub line?

11 A: Just a terminology that we use to -- sometimes
12 we call things mainlines and sometimes we call
13 them stub lines. It's ---

14 Q: Okay.

15 A: --- just a terminology.

16 Q: All right. And where does lines 1 and 2 start
17 and end?

18 A: Lines 1 and 2 start in ---

19 Q: Lines 1 and 2.

20 A: 1 and 2 start in Pasadena, Texas and terminate
21 in Greensboro, North Carolina.

22 Q: All right. How about line 29?

23 A: Line 29 comes out of our Belton Junction tank
24 farm and terminates at North Augusta.

25 Q: Okay. And -- and by line, what do they ship?



1 What does line 1 ship?

2 A: Line 1 is our gasoline line. Again, shipping
3 all of our gasoline types of BOBs, and
4 blendstocks that are gasoline type. And then,
5 our line 2 ships out distillates, which include
6 diesel, jet fuel, heating oil and any type of
7 distillate blendstock that we may be shipping.

8 Q: Okay. And what does line 29 ship?

9 A: 29 is an all products line. So, it's shipping
10 all of our gasoline types, our diesel, and our
11 jet fuel. We do not ship heating oil. South
12 Carolina doesn't have a big need for -- for
13 heating oil.

14 Q: And on a national basis, how much fuel do you
15 distribute over your pipelines?

16 A: National basis, we deliver about -- a little
17 over 2.6 million barrels a day of product. So,
18 over a hundred -- 100 million gallons a day.

19 Q: Okay. And how about in South Carolina?

20 A: South Carolina, we do -- I believe it's about
21 180, 185, somewhere in that range, thousand
22 barrels per day.

23 Q: Okay.

24 A: Um, go ahead.

25 Q: And are your pipes above or below ground?



1 A: Pipes are below ground, obviously, for a safety
2 reason. We'd love to have them above ground
3 because they'd be a lot easier to keep up with
4 and look at. But, you know, just having a
5 piece of 40-inch diameter pipe laying on the
6 ground would ---

7 Q: Right.

8 A: --- would not be very advisable.

9 Q: Okay. So, all three lines are -- are below
10 ground?

11 A: Yes, sir.

12 Q: All right. And how deep are they below ground?

13 A: It varies as the pipe goes. I think we -- we
14 typically like to see four to five foot,
15 somewhere in that range as being adequate
16 coverage over the pipe.

17 Q: Okay. Switching gears, let's describe -- let's
18 discuss the tank farms. Can you describe the
19 tank farms?

20 A: Sure. Again, we have two tank farms. Belton
21 Junction is ---

22 Q: And -- and to interrupt you. Are those
23 pictures of the tank farms there?

24 A: Yes. I believe they are.

25 Q: Okay.



1 A: That's apparently Spartan -- Spartanburg right
2 there.

3 Q: All right. So, tell us about the tank farms.

4 A: Yeah. So, we have two tank farms; Belton
5 Junction and Spartanburg Junction is how we
6 call them. They're our names for them. Both
7 the tank farms have just under half a million
8 barrels of storage. Belton has 20 tanks. I
9 believe Spartanburg has 22 tanks. And they --
10 they obviously take barrels off of our mainline
11 and we deliver those products into the tankage
12 that allows us to stage the barrels, so that we
13 can deliver it out to the terminals at a lower
14 rate. The terminals couldn't begin to accept
15 fuel at our -- at our mainline capacity rates.

16 Q: Okay. So, you have two tank farms. Did you
17 say one's in Belton and where is the second
18 one?

19 A: Spartanburg.

20 Q: Spartanburg.

21 A: Yes, sir.

22 Q: All right. The Belton facility, how large a
23 facility is that in terms of acres?

24 A: Acres, I believe it's 130 acres.

25 Q: All right. And -- and it has -- it's comprised



1 of what, a breakout and a delivery facility?
2 What's at Belton?

3 A: Yeah. It has the breakout tankage, and from
4 that tankage we can deliver locally. There's
5 a couple of truck terminals again right across
6 the fence there at Belton Junction. And then,
7 it also puts product into our line 29 that's
8 going down to North Augusta.

9 Q: All right. And how -- how often is -- are
10 employees at Belton?

11 A: Belton's staffed 24/7.

12 Q: All right. And so -- and how many tank --
13 tanks are there, did you mention?

14 A: Belton, 20 tanks.

15 Q: Okay. And that's a working capacity of how
16 many barrels?

17 A: I believe four -- 488 to just ---

18 Q: Okay.

19 A: --- under 500,000.

20 Q: All right. And -- and what's shipped through
21 Belton?

22 A: All -- all gasoline products. We -- the only
23 gasoline -- primary gasoline we do not ship
24 through Belton is reformulated blendstocks.
25 Those go up to the northeast. It's a EPA



1 requirement for reformulated. The whole area
2 in South Carolina is conventional gasolines.
3 So, we don't ship re -- reformulated gasolines
4 through -- through the Belton tank farm and to
5 the local deliveries. So, it's primarily
6 conventional gasolines. Our ultra low sulfur
7 diesel, which is used for all of our on-road
8 and off-road diesel now and jet fuel.

9 Q: Okay. So, Belton has -- how many tanks for
10 gasoline?

11 A: Twelve, I believe, for gasoline; seven
12 distillate and one for transmix ---

13 Q: Okay.

14 A: --- handling.

15 Q: All right. And -- and so gasoline, would it be
16 289,000 barrels per day or per year in Belton?

17 A: I'm sorry. Repeat that.

18 Q: How -- how much gasoline goes through Belton
19 per year or per day, whichever statistic you
20 remember, and I think we have ---

21 A: I think our -- I think our total volume there
22 is just under 140,000 barrels per day.

23 Q: Okay.

24 A: I do not know the exact gas, diesel, jet fuel
25 breakdowns, but ---



1 Q: That's fine.

2 A: --- I'll say -- I'll say typically for our
3 system, we're 55 percent gas, 45 percent
4 distillate.

5 Q: All right. And then, we've talked about
6 Belton, then let's turn to Spartanburg. What
7 is the -- first of all, how big is Spartanburg
8 in terms of acreage?

9 A: I think that's a 75 -- about 75 acres there.

10 Q: Okay. And what is -- what is it comprised of?
11 What facilities are at Spartanburg?

12 A: Well, again, at Spartanburg, we do not have any
13 stub lines leaving Spartanburg, so Spartanburg
14 is a -- is a tank facility and then it delivers
15 directly to terminals through our delivery
16 lines. All of those terminals are fairly close
17 to -- to the -- the Spartanburg tank facility.

18 Q: Okay. And how many tanks does the Spartanburg
19 tank facility have?

20 A: 22 tanks. I think we've got 13 in gas, 6 -- 6
21 in distillate and a couple of tanks, three
22 tanks out of service right now.

23 Q: Okay. And -- and what's the -- what's the
24 working capacity per day in Spartanburg?

25 A: Again, just under a half a million barrels



1 there too.

2 Q: Okay. So, of the -- of those tanks, can you
3 break down in Spartanburg the number of tanks
4 for gas, the number of tanks for distil -- I
5 think you already answered that. I'm sorry,
6 I'll go through. All right. What lines go
7 through the booster stations?

8 A: Well again, booster stations, so we've got the
9 three booster stations. Anderson booster
10 station has both lines 1 and 2, equipment for
11 both 1 and 2. We've got Simpsonville, which
12 only has equipment on line 2. And we've got
13 Gaffney, which ---

14 Q: Okay.

15 A: --- is -- has equipment both on line 1 and 2.

16 Q: Okay. So, you have three booster stations, one
17 in Anderson, one in Simpsonville, one in
18 Gaffney?

19 A: Yes, sir.

20 Q: Okay. All right. Describe the -- the mainline
21 booster stations.

22 A: A booster station is a -- a place obviously
23 where we're bringing product through pumps and
24 increasing the pressure on it to -- to push the
25 product down the pipe. Each station on -- for



1 each line will have anywhere from 15 to 20,000
2 horsepower units, usually three 5,000
3 horsepower or 4,000 -- or four 5,000
4 horsepower. So, the product is flowing through
5 those stations. Those pumps are running as
6 needed to boost pressure up and to increase the
7 flow rate on the pipe.

8 Q: Okay. So, is that -- is that what they do then
9 is to increase the pressure on the pipe? Is
10 that what they're designed for?

11 A: Yes. They're -- they're taking that product
12 and pushing it down the pipeline.

13 Q: Okay. Does Colonial -- switching -- moving on.
14 Does Colonial provide storage facilities for
15 its customers?

16 A: Yes, we do. We have storage services that we
17 offer to our customers. We have term, short-
18 term storage, long-term storage, but those are
19 our system storage and we're able -- able to
20 utilize tank capacity that's available to us to
21 -- to move -- to store those barrels for ---

22 Q: And where -- where are your storage facilities?

23 A: We -- we're able to use almost all of our --
24 really all of our tank farms on our system for
25 some portion of our storage capabilities.



1 Q: Okay. You have dedicated storage in Belton and
2 Spartanburg?

3 A: Well, on our -- on our system we don't use the
4 term dedicated storage. So, a shell, so to
5 speak, that tank is not dedicated to storage or
6 this; it's a little bit of -- it's basically
7 both. We're able to do the storage within our
8 existing assets.

9 Q: Okay.

10 A: And we manage that on -- on how we -- how we
11 deal with that and are able to work through.

12 Q: And -- and do you charge your customers for
13 storage?

14 A: Yes, we do.

15 Q: Okay. Even though they own the product, do you
16 charge them to store it in -- in the storage
17 tanks?

18 A: Yes. So, the storage allows them to sit on
19 product for some period of time, not take
20 delivery, so to speak.

21 Q: Okay.

22 A: And just hold it for market conditions or
23 operational issues, or whatever may arise for
24 them.

25 Q: We read three or four months ago that -- well,



1 the U.S. was running out of -- or the world was
2 running out of storage. Were y'all jammed up
3 with storage at that time?

4 A: Yes, sir. A lot of our system was very highly
5 utilized during that time period.

6 Q: Okay. All right, let's turn to delivery lines.
7 Do you have delivery lines?

8 A: Yes, sir. At all of our locations, both the
9 tank farms, Belton, and Spartanburg and then,
10 also at North Augusta. At the end of the
11 pipeline, we have one pipe coming into that
12 facility, and then we've got headers that take
13 it out to multiple terminals. And so once it
14 breaks that one pipe, it goes into these
15 individual delivery lines to the terminals.

16 Q: Okay.

17 A: So, that's -- that's what we do.

18 Q: How many delivery lines does Belton have?

19 A: Belton has, I believe -- was it six or four?
20 Yeah., four. It's got two -- two terminals
21 across the fence row there, so a separate gas
22 and a separate distillate ---

23 Q: And how ---

24 A: --- delivery line to each of those two, two
25 terminals.



1 Q: And how many delivery lines does Spartanburg
2 have?

3 A: Spartanburg was eight, I believe ---

4 Q: 13?

5 A: Was it more? I'm sorry. I apologize. Yeah.
6 There's six terminals, I believe, at
7 Spartanburg, right? That we deliver to. So,
8 that would 12 -- 12 or 13 delivery lines there.

9 Q: Okay. And how many delivery lines does North
10 Augusta have?

11 A: North Augusta, I believe we have eight delivery
12 lines. And then we have one additional line
13 that's going to a terminal that's a little bit
14 further away, and that's a single, a single
15 line.

16 Q: Okay.

17 A: Going to that terminal.

18 Q: And what is a delivery line? What is a --
19 what's the difference in a delivery line and
20 any other line?

21 A: Again, it's just a term that we use.
22 Typically, the -- the delivery line is -- it's
23 -- it's that last bit of pipe that goes
24 directly to a single terminal.

25 Q: And that single terminal is -- is -- is the



1 truck terminals that Colonial doesn't own?

2 A: Correct.

3 Q: Right. Okay. All right. Does -- do the
4 pipelines require machinery to operate? That
5 -- pure gravity flow, I suppose.

6 A: Well, again, the pumps, motors, valves, control
7 valves, instrumentation. Yes, all of those
8 things.

9 Q: Okay. So, where do you need -- how often do
10 you have to have a pump booster station?

11 A: Typically, for -- for our mainlines, our larger
12 lines, we're probably looking in that 40 to 50
13 mile range where we need a -- a booster. Of
14 course, it depends on elevation changes and --
15 and hydraulics of the pipeline. On a lot of
16 the stub lines, those lines are able to go a
17 fairly good distance. For instance, our North
18 Augusta line there goes 75 miles with -- with
19 just one pump station at the very beginning of
20 it. So, again, hydraulics, elevation changes
21 and things all play into the design.

22 Q: Okay. And any other equipment at the booster
23 stations that you haven't mentioned to us?

24 A: Well, I'm sure there is. We've got our overall
25 control systems and things in place there.



1 We've got our transmix sump tanks, all of our
2 process control equipment, and we've got online
3 equipment to help us monitor the pipe. We --
4 we will have gravity detection and some --
5 mainly at our tank farm facilities, we'll have
6 OID. But yeah, just the general process
7 oversight equipment and things to operate the
8 pump station itself safely.

9 Q: Okay.

10 **THE COURT:** What does gravity detection mean?

11 A: Gravity is the -- the density of the fuel. And
12 so, we monitor the gravity and that tells us
13 what type of fuel is -- is there in the pipe.

14 **THE COURT:** All right.

15 A: So, for instance, regular gasoline and premium
16 gasoline will have a different gravity. And
17 so, we can tell when it's regular gasoline
18 versus premium based on gravity changes.

19 Q: All right. How many employees -- does Colonial
20 have employees in South Carolina?

21 A: Yes, we do. Yes, sir.

22 Q: And if you'll describe employees in South
23 Carolina.

24 A: We've got what I guess I'll call our operations
25 core. We've got about 32 people associated with



1 our operations here in South Carolina. We've
2 got an operation manager for the area. And
3 then each of our two major facilities there has
4 lead operators. And under the lead operators,
5 we have senior operators and operators, six
6 senior, I think eight current operators. And
7 then one operator who, poor guy, I think he's
8 still in training because normally you get
9 promoted to operator A. So, he's -- he's still
10 new apparently. But -- so, we've got that
11 group that's -- that's operating the pipeline
12 in the -- in the system and then, we've got our
13 -- our technicians. We've got two lead
14 technicians at each -- each facility along with
15 two senior technicians, and then, five, what
16 I'll call regular technicians. We've got also
17 support on our right-of-way. We've got three
18 individuals that are doing right-of-way, so
19 they're going up and down the pipe constantly
20 with 811 calls and -- and all of those things
21 ensuring the safety of our pipe and monitoring
22 that. And we've got our -- our planner, who is
23 really supporting our technicians and being
24 sure that they've got the equipment and things
25 in place that they need. And then, of course,



1 an admin there.

2 Q: Okay.

3 A: And so, that's kind of our -- what I'll call
4 our core operations. And then, we've got our
5 support operations or sometimes we refer to
6 them as operation services.

7 Q: And let me -- before you get to support ---

8 A: Yes, sir.

9 Q: --- where are those employees physically
10 located?

11 A: The ---

12 Q: That you just went over.

13 A: The 32?

14 Q: Uh-huh.

15 A: They're -- they're basically based in Belton,
16 Spartanburg, and Charlotte. We -- we have a
17 lot of overlap between our facilities where
18 people are working multiple locations and
19 moving, moving about quite a bit.

20 Q: All right. So, tell us about your support
21 personnel.

22 A: Support personnel, got basically 12 in the
23 immediate area here. We've got our senior
24 project manager, who -- who's kind of dealing
25 with the big projects. Got a -- one field



1 project manager, six project inspectors. And
2 so, what you have with a project inspector is
3 they tend to be, what I'll call our -- our on-
4 the-ground construction person. They're on the
5 site right there. A lot of the work that
6 Colonial does and a lot of the resources we use
7 are contractors. And we're bringing in a lot
8 of external resources. And so, a lot of our
9 efforts are really managing those resources and
10 make -- being sure that -- that they're doing
11 the work that we need them to do. We've got
12 our typical corrosion technicians, two of those
13 in the area who are constantly up and down the
14 pipe monitoring, ensuring corrosion is being
15 managed correctly. Our environmental
16 specialists going through and being sure we're
17 in compliance with -- with our environmental
18 side. And then, last but not least, is our
19 safety person, personnel, who -- who is really
20 kind of touring the facilities, being sure that
21 things are being done correctly.

22 Q: All right. And does -- the South Carolina
23 facility supported by your operations in, in
24 Georgia?

25 A: Of course, yes. Our -- our corporate office



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1 really has support functions for -- for
2 everything, I'll say going on with the
3 pipeline. We've got ---

4 Q: Let me stop you. Where is the corporate
5 office?

6 A: The corporate office is in Alpharetta, Georgia.

7 Q: Okay. All right. And so, what do they --
8 what's the corporate office do?

9 A: The corporate office, we have what's -- what we
10 refer to as our central district, our office
11 operations. Under that -- under that umbrella,
12 we have our -- our scheduling function who is
13 scheduling the product through the pipelines,
14 through the tank farms, working with our
15 customers. We've got quality assurance,
16 ensuring the product quality of the product
17 moving through the system. Measurement, all of
18 the metering equipment that we have at these
19 tank farms and the delivery facilities,
20 everything going on there. We've got our
21 control center, who actually operates lines 1
22 and 2, and line 29 from the Alpharetta office
23 with -- of course, they're communicating with
24 our field operations and things, but they're --
25 they're actually starting pumps and controlling



1 pressures and flow rates all from our
2 Alpharetta office. We've got our engineering
3 support functions there. We've got additional
4 environmental. We've got additional corrosion,
5 system integrity teams there. We've got all of
6 our additional safety, compliance, legal, tax.
7 So, all of those support systems and everything
8 are in place in our -- in our corporate office
9 there ---

10 Q: Okay.

11 A: --- to support ---

12 Q: Back office ---

13 A: Yeah.

14 Q: --- operations?

15 A: Yes, sir.

16 Q: All right. And how many employees do you have
17 in Atlanta?

18 A: Got about 350, I believe is our count.

19 Q: Okay. And would virtually all of them have
20 some responsibilities for South Carolina
21 operations?

22 A: Well, I think everyone I think touches. You
23 know, some involvement and -- and operation in
24 South Carolina in -- in all of our states
25 really.



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1 Q: And so do they supervise -- are they sort of on
2 top of all 11 states or, or a group of states?

3 A: We have three districts, field -- field
4 districts. South Carolina is in our southeast
5 district. We have a northeast district that
6 basically starts north of Greensboro. North of
7 North Carolina is our northeast. Our
8 southeast, I believe we -- we move the lines
9 every now and again, but I believe it's Alabama
10 through North Carolina. And then, south of
11 Alabama and the Gulf Coast would be our Gulf
12 Coast district.

13 Q: Okay.

14 A: So, that's our big field operation districts.

15 Q: All right. And so, tell us about your
16 independent contractors. Do you use
17 independent contractors in South Carolina?

18 A: Yes. We use quite a few contractors to do most
19 -- most all of our major construction, our
20 system integrity work, both on tanks and pipes
21 and things. An absolute majority of that work
22 is being done through contractors.

23 Q: Okay. All right. And switching -- switching
24 gears a little bit. Does Colonial transport
25 gasoline from refineries?



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1 A: Yes, sir. We -- we support about 30 refineries
2 in the Gulf Coast. We do have a couple of
3 refineries that are connected to us up in the
4 New Jersey area, Philadelphia-New Jersey area.
5 But yes, we -- so, we -- we take quite a bit of
6 product from the Gulf Coast.

7 Q: Okay.

8 A: From the refiners directly.

9 Q: And -- and would all of that product from the
10 30 refineries come through South Carolina at
11 some point?

12 A: Well, unless it's been delivered upstream. But
13 a large majority does pass through South
14 Carolina on -- on lines 1 and 2.

15 Q: All right. And do you transport for non-
16 refineries?

17 A: Sure. We -- we -- we have two -- I believe,
18 the counts lately has been about 250 companies
19 that ship product on Colonial. They are
20 shippers of product. So, what you see from the
21 refineries is you've got a refinery producing
22 product, a company will go buy that product,
23 and actually ship that on Colonial.

24 Q: Okay.

25 A: So, we're -- we're dealing with, yes, 250



1 shippers on Colonial.

2 Q: All right. And obviously, it all comes from a
3 refinery somewhere in the journey?

4 A: Yeah. Refiners and blenders, and importers.
5 So, you -- you know, we think of a refinery as
6 this -- this equipment in stacks, but it -- a
7 blender could go out and buy a bunch of
8 blendstocks and just blend them up in a single
9 tank. And in fact, Colonial, offers services
10 to where we -- we blend a product for -- for
11 our shippers who -- who want to do that. And
12 a lot of the other competitors and things that
13 we have do those same types of things in
14 terminals and operations.

15 Q: Okay.

16 A: And so -- so, yeah. The -- or someone could
17 import barrels from, you know, India or -- or
18 Europe and bring barrels into the U.S. and we
19 would ship those for them.

20 Q: And do refineries and non-refineries, do they
21 ship the exact same product or is it different?

22 A: On Colonial, they're -- they're different.
23 They must meet a specification for each product
24 that they ship. So, there is quite a bit of --
25 more similarities than not.



1 Q: Okay. And the shippers always own the product,
2 correct?

3 A: Yes. Shippers are required to have a title of
4 the product as it moves through Colonial.

5 Q: And do shippers always get the exact same
6 product downstream that they put into the
7 pipeline?

8 A: No. And -- and the reason that is is
9 Colonial's a fungible system. So again, we're
10 taking fuel from 30 refiners. And in broad
11 terms, let's say all 30 refiners are making
12 ultra low sulfur diesel. So, we're taking that
13 ultra low sulfur diesel from 30 -- 30 refiners
14 and we're actually co-mingling that fuel
15 together. So, we mix it all together and all
16 of the fuel is required to meet a
17 specification, a fungible specification. So,
18 when you look at product moving through our
19 system, we're taking all of this supply, co-
20 mingling it and then, delivering it out. So,
21 you don't get the same molecule, but you get a
22 fuel meeting the specification that it needs to
23 meet.

24 Q: Okay. So, what is a fungible system? And
25 y'all -- y'all do a good job of describing it



1 on -- if you'll identify that document on the
2 screen.

3 **(Joint Exhibit 2 was referenced.)**

4 **MR. MAYBANK:** That's a fact sheet.

5 **MR. ANTLEY:** That's stipulated Exhibit 2.

6 **MR. MAYBANK:** Okay.

7 A: Is that from our website or a ---

8 Q: What is that from?

9 A: I'm not sure.

10 **MR. ROURKE:** Frequently asked questions.

11 Q: Yeah. That's from the -- from your fact. So,
12 why don't you -- why don't you just quickly
13 read to us. You -- you have a good description
14 of a fungible system on there. See it right
15 there?

16 A: Fungible products ---

17 Q: Uh-huh.

18 A: --- shipped on Colonial are generic products.
19 So again, they meet a single generic
20 description, specification. And shippers will
21 receive the equivalent product but may not get
22 back the actual product shipped, the exact
23 molecules there. Segregated products are
24 branded products or blendstock materials. And
25 then, on the segregated shipments, receive the



1 same product that they inject into the system.
2 So, what we do is we do not co-mingle the
3 segregated with other segregateds. And we try
4 to keep those apart.

5 Q: So, y'all -- y'all sell fungible and you sell
6 segregated, correct?

7 A: We move fungible ---

8 Q: Right.

9 A: --- and we move segregated ---

10 Q: Right.

11 A: --- products.

12 Q: Correct.

13 A: Correct. Yes, sir.

14 Q: All right. And is there a cost differential
15 between the two?

16 A: From Colonial's point of view, segregated
17 shipments have a facility's fee associated with
18 them, so they're slightly more expensive to
19 move than -- than the fungible products.

20 Q: All right. And what percentage of them are
21 fungible in South Carolina?

22 A: Well, moving through South Carolina, again, on
23 lines 1 and 2 and 29, well -- well over 90
24 percent, a huge majority are -- are fungible
25 products.



1 Q: Okay. And do you move products through the
2 system -- when you move your fungible products
3 through the system, do they ever come in
4 contact with each other? And let's get you to
5 identify this diagram here.

6 A: Sure. So, Colonial ships every product on our
7 system on a five-day cycle. So, if you look at
8 our -- if you look at this diagram here, it's
9 basically showing the major categories of
10 product that we ship in the pipe. And so if
11 you think of the left-side of the pipe as being
12 day one and the backside of the pipe being day
13 five, every five days we ship all products.
14 So, as you end up -- as you stop shipping
15 premium gasoline, you immediately follow it
16 with regular gasoline and they butt up next to
17 each other. And so, the pipe just keeps
18 following and you just keep switching product
19 types. And so, every five days, we're shipping
20 all of these products on our system.

21 Q: And I think you -- but the company does a good
22 job of your website. Would you mind reading
23 that into the record there?

24 A: Sure. "Different product batches are pushed
25 through the system abutting each other. The



1 stream is always in a turbulent flow condition
2 which minimize mixing. Products are sequenced
3 in the pipeline according to their
4 characteristics. For example, regular unleaded
5 gasoline may be shipped next to a batch of
6 premium unleaded gasoline. When the flow of
7 product is 'cut' or diverted for delivery or
8 into a storage tank, the 'cut' is made to
9 protect the entire premium gasoline batch, thus
10 allowing some premium to be added to the
11 regular unleaded gasoline. Similar steps are
12 taken to protect distillate products such as
13 jet fuel, ultra low sulfur diesel and home
14 heating oil." When p -- "when products with
15 incompatible characteristics come in contact
16 with each other, the resulting interface is
17 defined as transmix. Transmix is stored
18 separately and re-processed into a useful
19 product."

20 Q: Okay. And this -- this is a fact on your
21 website, correct?

22 A: Yes, sir.

23 Q: All right. And so, it is a good thing or a bad
24 thing when diesel comes into contact with
25 gasoline?



1 A: That's -- those two products are incompatible
2 with each other. If diesel gets into gasoline,
3 it destroys the octane and endpoint and will
4 cause your car not to run well. And if
5 gasoline gets into diesel fuel, it creates
6 number one, a safety issue with the diesel fuel
7 of potentially exploding, and number two, it --
8 it will damage your diesel engine if you run
9 gas -- gasoline through.

10 Q: Okay. And so -- so your website says when two
11 products come into each other, it's called
12 transmix; is that correct?

13 A: If -- if the two products are incompatible, for
14 instance premium gasoline and regular gasoline,
15 charact- -- their characteristics are very
16 similar except for primarily octane. And so
17 for regular gasoline, the octane is 87, premium
18 93. So, the interface there that you see
19 between the premium and the regular gasoline,
20 that's actually cut into regular gasoline. So,
21 the premium gasoline stays pure, so to speak;
22 does -- is not contaminated and the interface
23 material, the -- the gasoline interface
24 material goes into the regular gasoline and
25 it's fine. The octane may actually be improved



1 a little bit on the regular gasoline. When you
2 look at jet fuel and ultra low sulfur diesel,
3 jet fuel is a -- what I'll refer to as a
4 pristine fuel. We don't want any contamination
5 in jet fuel. Any contamination can lead to
6 engine problems with the -- with the jet
7 engines. So, that interface material between
8 a jet fuel and ultra low sulfur diesel, number
9 one, ultra low sulfur diesel has a
10 specification of sulfur at 15 ppm; whereas jet
11 fuel has a specification of 3,000 parts per
12 million of sulfur. So, if I put any jet fuel
13 into ultra low sulfur diesel, I'm contaminating
14 the sulfur of -- of the ultra low sulfur
15 diesel. So, in that case, that interface
16 between those two is completely incompatible.
17 I can't put it in one or the other. So, that's
18 the term we use for transmix, when we -- when
19 we have this interface material that's
20 incompatible with either the front product or
21 the back product, then we -- we call that --
22 refer to that as transmix and we're -- we're
23 really required to isolate that product and be
24 sure it doesn't contaminate.

25 Q: Okay. So, you have shipments that come through



1 every five days?

2 A: Yes, sir.

3 Q: And every shipment produces some transmix?

4 A: Well, again, over our five-day period, we're
5 going to have both interface that we're cutting
6 to handle and we're going to have transmix that
7 we're isolating and -- to handle.

8 Q: All right. And -- and how much transmix would
9 you have every five days then?

10 A: Well, on -- so, on our system wide as a whole,
11 we've got transmix being generated at -- at
12 many facilities, many pipelines. But if you
13 look at lines 1 and 2 in particular, line 1 --
14 on our line 1, the interface size we typically
15 see about a 15,000 barrel interface between
16 products on line 1. So, both ---

17 Q: And that's every five days, correct?

18 A: Well, that's -- that's on the head and the tail
19 of every single product. So, multiple times
20 over a five-day period. On our distillate
21 line, we -- we've got our interfaces between
22 heating oil, jet fuel and diesel. And so,
23 we're dealing with those every five days and
24 our -- on line 2, on our distillate line, the
25 -- the typical interface size there is



1 somewhere in the 12, up to 15, 16,000 barrels,
2 especially when we're dealing with ultra low
3 sulfur diesel because that ppm level of sulfur
4 is so low we really have to take protective
5 cuts on that to be sure that we're protecting
6 diesel from heating oil and jet fuel. So --
7 so, again ---

8 Q: How about line 29? How much would be in line
9 29?

10 A: On line 29, now this is a very typical look at
11 line 29 if you take out heating oil. We're not
12 shipping heating oil down to North Augusta, but
13 we are shipping all the other products. So,
14 we're dealing with that interface material on
15 our North Augusta lines, every five days of
16 both gas to gas interfaces and then, gas to oil
17 transmix, and heating oil -- excuse me -- ultra
18 low sulfur diesel to jet fuel transmix.

19 Q: Now, what factors go into how much transmix is
20 created?

21 A: The -- the factors are the size of the pipeline
22 itself, the diameter of the pipeline. A 40-
23 inch diameter is going to produce a lot more
24 transmix than a -- than a 16-inch diameter
25 pipe. The distance of the pipe. The number of



1 pump stations that the -- that are on the pipe
2 itself. The -- the flow of the pipe; does it
3 start and stop a lot. So, just the general
4 operation of the pipeline and -- and also, the
5 types of products that you move. You might
6 have certain products that are very -- they --
7 they don't co-mingle well with each other and
8 then, you have some products that diffuse very
9 quickly into each other. And so, that --
10 there's some play into that.

11 **THE COURT:** Why are the pumps -- why are the pump
12 stations affected?

13 A: The pump station is affected just due to the 90
14 degree elbows and the -- all of the turns and
15 pumps. It just helps spread it out as it's
16 flowing through there.

17 **THE COURT:** All right.

18 A: It just takes a while for -- for that product
19 to purge out, so it just kind of mixes it up
20 and continues to -- to do it. A typical -- a
21 typical estimate would be a pump station would
22 increase your interface size by about five
23 percent.

24 **THE COURT:** Each time ---

25 A: Each time it goes through there. That's --



1 that's why our mainline, lines 1 and 2
2 interfaces are so large. Those -- those --
3 15,000 barrels is -- is very large. I mean,
4 you've got -- you've got mixing for that --
5 that product mix is 10 to 15 minutes of pipe
6 time of that product moving by. So, if -- if
7 you're at the end of the line looking at this
8 interface and cutting it out, I mean, you're --
9 you're -- you've got a 15 to 20-minute
10 interface material coming in.

11 **THE COURT:** So, is turbulence your friend or foe?

12 A: Turbulence is a must.

13 **THE COURT:** Yeah.

14 A: It is a friend. If you don't have turbulence,
15 you enter laminar flow and laminar would result
16 in tremendous mixing.

17 **THE COURT:** Okay.

18 A: You would actually have the products flowing on
19 top of each other.

20 **THE COURT:** All right.

21 A: And that -- that -- that is a definite no-no.

22 **THE COURT:** Okay.

23 Q: And the length of the -- is the length of the
24 pipeline a factor?

25 A: Yes. Yes. The -- the length -- again, length,



1 diameter, number of pumps, those -- those tend
2 to be the major contributors and then the type
3 of products that are being shipped.

4 Q: Okay. And that's what I was turning to. What
5 is -- how does a product affect it?

6 A: In general, the way to think about it is the
7 bigger the gravity difference, the more mixing.
8 And that -- that's the general way ---

9 Q: And ---

10 A: --- to think about it.

11 Q: So, what's -- what's the two biggest gravity
12 differences then?

13 A: Gasoline and -- and diesel.

14 Q: Okay. All right. So, obviously transmix
15 occurs in South Carolina.

16 A: Correct.

17 Q: But where in South Carolina?

18 A: Transmix occurs in both our pipelines, but we
19 also get transmix from general operations,
20 operating the tank farm as we're displacing
21 manifolds and piping and things of that nature.
22 So, we'll have inner -- we'll have mixtures of
23 materials that we're isolating. So, the -- the
24 transmix is getting generated from multiple
25 sources. Numb -- primarily, number one, the



1 biggest one is the pipeline. Number two is our
2 facilities, operating our facilities, primarily
3 our tank farm facilities. And number three is
4 maintenance. So, as we're doing maintenance --
5 so, at -- at our pump stations and maintenance
6 in our -- our tank farms and things, all of
7 that maintenance activity, drain-ups and things
8 that we do, will generate transmix also.

9 Q: And -- and how does -- how does a tank farm
10 generate transmix?

11 A: Well, again, as we -- so as we're opening in
12 and delivering product from our mainline, lines
13 1 and 2 into the tank farm, we've got metering
14 equipment. You've got your manifolding, your
15 control valve, your -- your delivery manifolds.
16 So, you've got all of this piping, tank, valve,
17 all of that has to be displaced and as -- as
18 you open in, even though your -- say your last
19 product was jet fuel and now you're beginning
20 to deliver ultra low sulfur diesel into the
21 tank farm, you've got to take that manifold and
22 that mixture that occurs when you first start
23 that delivery and isolate that product. And
24 that's how transmix can get generated at a --
25 at a facility, at a -- at a tank farm.



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1 Q: Okay. So, is transmix a term of art in the
2 industry or is just a Colonial Pipeline term?

3 A: It's a -- it's a term in the industry. It's a
4 broad term. Trans -- transmix is used in
5 regulations and -- and all of that. So, it's
6 a -- it's a very common term.

7 Q: In your industry?

8 A: Yes.

9 Q: All right. All right. So, do you have to deal
10 with the transmix or you just simply ship it on
11 to your customers?

12 A: We deal with the transmix for our customers.
13 Most -- our customers really don't have a -- a
14 capability capacity to be able to do that and
15 that's services that we're offering to them to
16 deal with that transmix and -- and ---

17 Q: So, you have to deal with it?

18 A: Yes. We are dealing with it, yes.

19 Q: And is -- is some transmix more out of spec --
20 product spec than others?

21 A: Well, again, the quality of the transmix
22 depends on what types of products are in it.

23 Q: Mixed.

24 A: Are in it and mixed, yes.

25 Q: Okay. All right. And let's turn to how do you



1 deal with it. So, what's the -- how you deal
2 with in South Carolina. So, what's the first
3 step -- and to back up a bit, you have to deal
4 with it in part because it doesn't meet your
5 customer's spec; is that accurate?

6 A: Correct, correct.

7 Q: Okay.

8 A: If we had that in the product, it would be off
9 specification and noone would be happy.

10 Q: All right. And so, what's the first step in
11 dealing with the transmix?

12 A: First step is really trying to isolate the
13 product. All right. We've got to -- we've got
14 to be sure that we're able to isolate the
15 product so we've got -- at our tank farms, we
16 have -- we'll have a tank dedicated to be able
17 to, to deliver that, that material into. At
18 our North Augusta delivery facility, we have a
19 -- a tank there that we actually cut to when
20 that interface transmix material gets to that
21 facility.

22 Q: And to back up a bit, I guess the first thing
23 you have to do is identify there's transmix,
24 correct?

25 A: Well, certainly, yes. We're monitoring the



1 pipe. We're monitoring -- we're -- we're
2 metering product in and out of the pipe. We're
3 -- we're watching where product is in the pipe.
4 We're using this online gravity equipment and
5 what we call optical interface detectors to be
6 able to distinguish where product changes are
7 when we go from regular gasoline to -- to a
8 premium gasoline. So, all that's being done
9 through equipment and our -- and we're
10 monitoring that through our control center and
11 through our local operations.

12 Q: Okay. So, you have several different ways of
13 identifying when one product starts and the
14 other ends.

15 A: Yes.

16 Q: Transmix has been created. And so, those are
17 -- those are timing, gravity and visually; is
18 that what you testified?

19 A: Yes. We've got -- well, number one, we can
20 actually go out to the facility and manually
21 sample.

22 Q: Right.

23 A: And we do over site testing and things to
24 ensure product quality and all of those things.
25 So, we're -- we're -- we're out there pulling



1 samples of this product, running it on test
2 equipment, ensuring that it meets product
3 quality, so we can manually do that. And then
4 we have the equipment, both the gravity
5 equipment and the optical interface detectors
6 that help us watch the product as it's moving
7 through the pipe, kind of getting that real
8 time look at the gravity and the optical ---

9 Q: Okay.

10 A: --- properties of the quality of the product.

11 Q: So, the first step is -- is the timing. Are --
12 are shipments random or regular?

13 A: Well, again, we're -- we're on a regular
14 rotation of shipments.

15 Q: Five day?

16 A: A five-day frequency of all products.

17 Q: Okay. So, you know -- you know from that when
18 transmix is on its way, so to speak?

19 A: Correct. Correct. We're doing pipe -- as we
20 monitor the pipeline, we're doing what's called
21 batch tracking. So we're tracking that --
22 we're tracking that movement as it's moving
23 through the pipe and at any point in time, we
24 should be able to tell you exactly what product
25 is -- is exactly where in the pipe.



1 Q: Okay. All right. And how does -- how does
2 gravity testing work?

3 A: Gravity is just a measurement of the density of
4 the product. There are certain types or piece
5 of equipment that -- that are online, so as
6 product is flowing by, it's -- it's measuring
7 the density, the gravity of the product.

8 Q: Okay. So -- so diesel would have a different
9 density than gasoline, correct?

10 A: Correct. The -- the term that's used the --
11 the way it's measured in the industry is API
12 gravity. API gravity is -- is really just a
13 number system that was created many, many years
14 ago. The API gravity of a -- of diesels is
15 typically in the upper 30s, kerosine is in the
16 40s and gasoline's usually in the 60s.

17 Q: Okay.

18 A: And then, just to give you a comparison, the
19 API gravity of water is 10. So, water is
20 actually heavier than -- than petroleum.

21 Q: That's why it goes to the bottom then.

22 A: Yes, sir.

23 Q: Okay.

24 A: And that's why it will settle.

25 Q: And so do you have that gravity tester in South



1 Carolina?

2 A: Yes, we do.

3 Q: Okay.

4 A: We have them at our tank farm facilities, and
5 then we also have them at our North Augusta
6 delivery facility there.

7 Q: Okay. So, what is your visual -- you say ---

8 A: Oh, and -- and let me -- let me add, any time
9 measurement is conducted, right? Anytime
10 barrels are flowing into or out of our system,
11 our tanks, our pipes, we're -- we're doing
12 measurement on that. And any time we're doing
13 measurement, we need gravity and temperature
14 and pressure to be able to accurately measure
15 the product flowing through the pipe. And so,
16 we've got our -- our meters, our provers, all
17 the equipment associated with that -- with that
18 measurement.

19 Q: Okay. And all that's ---

20 **THE COURT:** Can I ---

21 Q: --- is also in South Carolina?

22 A: Yes. At all -- all of our facilities.

23 **THE COURT:** Can I ask you a question ---

24 **MR. MAYBANK:** Sure.

25 **THE COURT:** --- just for curiosity? All right.



1 Diesel fuel has higher -- lower gravity, but
2 higher density, right?

3 A: It is heavier.

4 **THE COURT:** Heavier.

5 A: The API -- the API number is actually inverse,
6 so the higher, the lighter; the lower, the
7 heavier.

8 **THE COURT:** I gotcha, I figured that out. But
9 gasoline is the highest ---

10 A: Gasoline is higher, correct.

11 **THE COURT:** Jet fuel is the lesser gravity, but more
12 flammable, flammable, right?

13 A: It -- it is not more flammable.

14 **THE COURT:** Oh, maybe that's why ---

15 A: No.

16 **THE COURT:** There's the problem. I've always
17 misunderstood.

18 A: It -- it has a -- as you go down in weight, you
19 know, as you ---

20 **THE COURT:** I would assume a product ---

21 A: As you get heavier, your energy density ---

22 **THE COURT:** Yeah.

23 A: --- is higher and so that's why they say jet
24 fuel burns so well. Like in the 9-11 issue,
25 you know, the jet fuel was in there and they



1 said it burnt so intense because it has a very
2 high energy density. If it had been gasoline,
3 it would've just blown up, right? It'd been
4 one explosion because of the volatility of the
5 gasoline, but the jet fuel itself is not quite
6 as volatile, but it has a higher -- a much
7 higher energy density and so it burns slower
8 and hotter, so to speak.

9 **THE COURT:** Okay.

10 **Q:** All right. You were just getting to tell us
11 about optical interface detectors, and what do
12 they do?

13 **A:** So, with a lot of the products we move, the
14 gravity difference between the products is very
15 small. Like sometimes between a regular
16 gasoline and a premium gasoline, there may be
17 almost no gravity difference between the two
18 products. We have found over the years a way
19 to look at optical -- the optical
20 characteristics of the products, and what we
21 find is is they exhibit differences. So, even
22 though the gravity of the product may be
23 similar, you will see a change in the optical
24 characteristics. So, basically, the optical
25 interface detectors really just shoot up a



1 laser into the product, bounces back, we record
2 that, and it gives you a reading of just a --
3 it's really a number. It's -- it's not
4 anything more than just a kind of amount of
5 interference being kicked back. And so, we've
6 -- we've just found that those pieces of
7 equipment offer us a very -- kind of a
8 secondary look at that interface in addition to
9 gravity that really helps us being able to
10 distinguish between the products.

11 Q: Okay. And is it -- is it literally just a
12 color or a lot more sophisticated than that?

13 A: It -- it's really not, so to speak, color. It
14 -- it -- it's -- it's more of a refraction,
15 amount of refraction that occurs in the
16 product. For instance, jet fuel is -- is a
17 very low number because it's almost clear. Jet
18 fuel is -- is almost a water -- you know, it
19 looks like water. Very high quality jet fuel
20 looks -- looks that way. Whereas diesel always
21 kind of has a yellow tea-ish ---

22 Q: Right.

23 A: --- type of look to it. So -- but it's not
24 just on colors. It's more of that refraction,
25 so it's ---



1 Q: Okay. All right. And do you have those OID
2 sensors in South Carolina, correct?

3 A: Yes, sir. We -- we've utilized them on -- on
4 most all of our delivery facilities and our
5 mainline facilities, our truck -- terminals,
6 our junctions.

7 Q: Is that at your tank farms too?

8 A: Our junction points, yeah. I'm sorry, tank
9 farms, yeah.

10 Q: All right. And how sensitive are the
11 instruments, collectively?

12 A: Well, when you say sensitive, they're --
13 they're very accurate. I mean, they're
14 measuring down to tenths of a degree. API and
15 again, the OID is just very super sensitive to
16 any changes in product. And -- and they're
17 fairly real time. I mean, the response time on
18 those is in seconds, so.

19 Q: So, you'll know when one shipment's ended and
20 another is started?

21 A: Yes.

22 Q: Okay. And within seconds or minutes or?

23 A: Yeah. Seconds really. The response time is
24 very good on the gravitometers and the OID.
25 It's ---



1 Q: All right.

2 A: --- you know, it doesn't -- doesn't take a long
3 to -- for it to spit out the number, so to
4 speak -- give you the results.

5 Q: So, how often is transmix created when the
6 shipment shifts from one type of product to
7 another?

8 A: Well, again, that -- that's occurring every
9 time when we're going from certain products.
10 So, we have to deal with that mixture every --
11 every time.

12 Q: Okay. And so, every five days you get a
13 different shipment, correct?

14 A: Yeah. Every five days, we're dealing with it
15 multiple times, as you can see, you know, on
16 our ---

17 Q: All right. And so, let's get into the
18 specifics of how you deal with it. What is
19 step one, isolating it?

20 A: Correct. We're isolating it. We're -- we're
21 able to ---

22 Q: And how do you isolate it?

23 A: We're able to cut it out into tankage. So,
24 we're -- we're able to deliver it to -- to
25 tankage. And then, from that tankage, we've



1 got options on -- on how we deal with that. We
2 can either -- one option is to -- to actually
3 blend the transmix back into the other
4 products.

5 Q: And -- and before we get to that, let's finish
6 up on the isolation and maybe you have. You
7 just pump the transmix out, correct?

8 A: We deliver it into the tanks and then, yes,
9 we're able to pump it out. We can either load
10 it to trucks or we have injection equipment
11 that puts it back into the line.

12 Q: Okay. All right. And so, when you pump it
13 out, do all of these equipment we've just been
14 over tells you when you can stop because you've
15 gotten all the transmix out, correct?

16 A: Right.

17 Q: All right.

18 A: Yeah. The start and stop, we know when to cut
19 it to put all of that interface material into
20 tanks to isolate it.

21 Q: And -- and do you isolate it just in central
22 locations or all, the whole system? Where do
23 you isolate it?

24 A: At all of our facilities we have some ability
25 to isolate the -- the product, especially for



1 maintenance and things of that nature. Again,
2 both at our tank farms and at our delivery
3 facilities, particularly end of the line
4 delivery facilities, like in North Augusta,
5 we're going to have -- we're going to have the
6 ability to cut that transmix out and isolate
7 it.

8 Q: Okay. So, step one is to isolate it. What's
9 step two?

10 A: So, again, on the -- once we get it isolated,
11 then we have options on how -- how to deal with
12 it. One thing we can do is load it out on
13 trucks. We actually enter into contractual
14 agreements with parties to come in to remove
15 the transmix through trucks and to take it off
16 and to reprocess it. And then another option
17 would be we have injection equipment --
18 injection pumps that will pump the -- the
19 transmix back into the mainline or back into
20 the stub line, the delivery line. When we do
21 that, we have to be very careful on the amount
22 that we do. There's regulations that -- that
23 control the amount of volume that we can do
24 there and so we're -- we're doing that
25 carefully and being sure that the



1 specifications of the product are not being
2 impacted.

3 Q: Okay. So, just in summary, just to kind of
4 speed it up a bit. You have three options; you
5 can sell it as is, you -- like gasoline to
6 premium, you can just sell that as is if you
7 wanted to, correct?

8 A: Yes. That's interface, really. That -- again,
9 that's where one -- you have a gain of one
10 product and a loss of another product.

11 Q: Okay. Second option would be you could sell it
12 to a transmix processor?

13 A: Correct.

14 Q: And then, the third is you can inject it back
15 into the system?

16 A: Right.

17 Q: All right. So, tell me how you -- tell us how
18 you transmix it back into the system.

19 A: Well, we have injection pumps. These pumps are
20 looking at the flow rate of the product going
21 -- going by and they're injecting the transmix
22 at a very low rate to again ensure the product
23 quality is being maintained.

24 Q: And is -- is there any type of transmix that's
25 injected back in the line most often or most



1 common?

2 A: Well, in general, the -- the transmix that we
3 are able to do that with is the oil to gas, and
4 sometimes we'll place the jet fuel ultra low
5 sulfur diesel in that tank. It's based on the
6 size of our transmix tanks and -- and our
7 capacity. For instance, at North Augusta, our
8 ultra low sulfur diesel jet fuel movements,
9 that's transmix volume becomes so large that we
10 have gone into an agreement with one of the
11 terminal parties there to accept delivery and
12 isolate it for us. And then, we have a
13 contractual agreement to go in and truck those
14 barrels out.

15 Q: Okay. All right. And do the tank farms have
16 to deal with transmix?

17 A: Again, yes. The tank farms are dealing with
18 transmix. A lot of the tank farm transmix --
19 number one is generated with that maintenance
20 and general operations, but number two, that
21 transmix is -- is being generated with an ultra
22 low sulfur diesel jet fuel.

23 Q: Okay.

24 A: And at Belton, in particular, that is -- that
25 is one of their primary drivers is ultra low



1 sulfur diesel jet fuel interface that they're
2 dealing with.

3 Q: Does the line 29 have to deal with transmix?

4 A: Correct. Again, on -- line 29 is experiencing
5 both the gas oil interfaces and the ultra low
6 sulfur diesel jet fuel interfaces that are --
7 are transmix.

8 Q: Do the pump stations generated transmix?

9 A: Pump stations are generating transmix primarily
10 when we're doing work associated with anything
11 there. So, any -- any time we're in there
12 doing drain-ups, doing maintenance, all of
13 that, we're generating transmix at those
14 stations.

15 Q: And how often does that happen?

16 A: Well, they're -- they're there quite often. I
17 mean, we're generating small -- small amounts
18 of transmix there, you know, on an ongoing
19 basis as they're going in and doing work.

20 Q: Okay. All right. Switching gears, what is
21 DRA?

22 A: DRA is referred to as Drag Reducing Agent. It
23 is a -- it's an additive that is used by the
24 pipelines that helps increase the flow rate of
25 the pipeline. It reduces the friction --



1 internal frictions of the -- of the product and
2 it's allow -- allows for higher flow rates.

3 Q: Okay. It allows higher flow rates due to the
4 reduction of friction?

5 A: Correct.

6 Q: Okay. And are there many kinds of DRA or just
7 one major DRA?

8 A: There are multiple manufacturers of DRA. It's
9 kind of the same element ---

10 Q: Right.

11 A: --- but there's different types of DRA.
12 There's certain DRAs that are specifically
13 designed for -- for heavy crude oils. There's
14 certain -- so ---

15 Q: Right.

16 A: Colonial uses one DRA provider.

17 Q: Okay.

18 A: But there are -- there are different suppliers
19 out there.

20 Q: And do you add DRA in South Carolina?

21 A: We do. We add it at -- at -- a majority of our
22 -- our booster facilities. Our pump stations,
23 we're adding it. We also utilize it on line 29
24 extensively to help us increase our flow rate
25 on line 29. Our -- our line 29 has been



1 allocated. It's at capacity for quite some
2 time now, and so we're using DRA to help
3 enhance the flow rate on line 29.

4 Q: And do you use it for all products?

5 A: It can -- it cannot be allowed in jet fuel.
6 So, we have to be sure that we don't inject the
7 drag reducing agent in jet fuel.

8 Q: And how is the DRA added in South Carolina?
9 How mechanically do you do it?

10 A: Well, again it -- it has its own, so to speak,
11 operation skid. It's got -- it's at tank, an
12 injection pump. We've got a feed control.
13 It's -- it's got to know the flow on the pipe
14 and things. And it's measuring that and it's
15 targeting certain levels of injection based on
16 our feedback from the control center on what
17 levels of drag reduction they're looking for.
18 And so, it's got it's on control systems and
19 everything in place with the injection skid.

20 Q: And it is -- is it at just the pump stations or
21 the tank farms or throughout the lines, where
22 you're adding it?

23 A: Yeah. It's -- at our pump stations for sure
24 and then, at our tank farms where we have stub
25 lines, we utilize DRA. For instance,



1 Spartanburg, our delivery line is there, we do
2 not use any DRA on the delivery lines leaving
3 Spartanburg, but on line 29 leaving Belton, we
4 do use the drag reducer.

5 Q: And how big is the tank that holds the DRA?

6 A: I think they vary probably around 5,000 gallons
7 is a normal type of size that we use.

8 Q: Is it added ---

9 **THE COURT:** Mr. Maybank, how much longer are you
10 going to be?

11 **MR. MAYBANK:** We are actually winding down. I have
12 -- I was thinking the exact same question. I
13 have a page and a half of Q&A. So, the only --
14 the only last subject is sting.

15 **THE COURT:** All right.

16 **MR. MAYBANK:** It's perfectly fine with me if y'all
17 want a break now.

18 **THE COURT:** Yeah. It would sting me not to.

19 **MR. MAYBANK:** And what time would like us back?

20 **THE COURT:** Well, it's 12:30 now. Is 1:30 too
21 quick?

22 **MR. MAYBANK:** It'd be a little quick because it
23 sometimes ---

24 **THE COURT:** Yeah. What about 1:45?

25 **MR. MAYBANK:** That'd be fine.



1 **MR. CARTIN:** Fine.

2 **THE COURT:** All right. Thank y'all.

3 **MR. MAYBANK:** All right.

4 (Off the record from 12:29 p.m. until 1:48 p.m.)

5 **COURT REPORTER:** All right.

6 **THE COURT:** Y'all be seated. Thank you.

7 (Off the record discussion.)

8 **THE COURT:** Go ahead.

9 **MR. MAYBANK:** Go ahead and start, Your Honor?

10 **THE COURT:** (Nods head.)

11 **MR. MAYBANK:** I'm not 100 percent sure where I
12 ended, so let me -- it may be slightly
13 repetitive.

14 **Q:** Where is DRA added in South Carolina?

15 **A:** We add DRA at our pump stations and then we
16 also add it at the beginning of our stub line
17 on line 29 going down toward, toward North
18 Augusta.

19 **Q:** And how is it added? Let's start with where is
20 the DRA kept?

21 **A:** The DRA has its own what I'll call skid. It
22 its got the tank that holds the DRA. The
23 injection equipment controls the equipment and
24 all of the -- the equipment needed to, to
25 control the injection and put it in the pipe.



1 **THE COURT:** I think the last thing you asked about
2 was the size of the D- ---

3 **MR. MAYBANK:** Yeah, we're almost through with DRA.

4 **THE COURT:** --- DRA ---

5 Q: How much DRA is added per year?

6 A: In our system we did over a million barrels.
7 Excuse me, million gallons last year.

8 Q: In South Carolina?

9 A: No, not in South Carolina obviously that would
10 be a smaller -- just our total system.

11 Q: Okay.

12 A: I don't know the exact South Carolina numbers.

13 Q: Okay. And where is it added, is it added at
14 intervals or 24/7 or?

15 A: It's added all the time basically when needed
16 which is a majority of the time especially on
17 line 29 so it's all the -- all the time except
18 for jet fuel. The DRA cannot be injected into
19 jet fuel.

20 Q: Okay, moving on. What is sting?

21 A: Sting is a term we use in our industry where we
22 -- it removes the water off of tanks. It's
23 just a term that's used to remove the water off
24 of products tank.

25 Q: And do you have sting in South Carolina?



1 A: Yes. At all our tank farms we do stinging to
2 remove any water out of -- out of the product
3 before it's delivered.

4 Q: And how does water get in the product?

5 A: Water typically is introduced really -- the
6 majority of our water is introduced at the
7 refinery level and at -- can be introduced at
8 facilities, tank farm facilities through --
9 through hatches. Depends on the type of tank.
10 They are tanks called external floaters which
11 actually are open to the environment. Rain
12 comes down and if you -- if your drain doesn't
13 work well, if the seals on the tank aren't
14 working well, you can get water contamination
15 in the product. But for Colonial a lot of our
16 water comes from our sources.

17 Q: And how about plain old condensation, do you
18 get that?

19 A: You get a little bit of condensation on the
20 product, yeah, like, you know, in a -- I mean
21 in a tank may -- you'll see condensation on the
22 inside of the tank like you would, you know.

23 Q: Okay. And do you have to deal with sting or
24 can you just leave it in?

25 A: We -- we remove it. It's our job to try to get



1 the most water we can off of that product prior
2 to delivery.

3 Q: And how do you remove it?

4 A: Through the stinging process, right, which is,
5 you know, the -- the -- you basically have a --
6 -

7 Q: Let me let me drop back a minute. How do you
8 know you have sting, how do you identify it?

9 A: We have the stinging equipment, right. It's
10 basically a little a little piece of pipe that
11 comes off the bottom of the tank or a line
12 connected to the tank and it comes up --
13 typically you'll go through a sight glass and
14 so when you begin to sting the tank to remove
15 the water you can visually see the water, and
16 then you will visually -- you can visually
17 notice when the water changes to product and
18 then you know you've removed the water off the
19 tank.

20 Q: Okay. And how many -- does every tank have a
21 sting valve or just some or how often do you
22 have sting valves so to speak, observations?

23 A: Never say all, but most of our tanks do.

24 Q: Okay.

25 A: They are a few isolated tanks where we might



1 not have a sting system on it but most of our
2 products tanks all have stinging system.

3 Q: Okay. And so once you identify it, do you look
4 for sting every day or every week or every
5 month, how often do you look for it?

6 A: Each time -- each time we take a delivery into
7 the tank we provide settling time for that
8 product to settle, if possible, we don't have
9 to pump it out immediately but we provide the
10 settling time and then our operations are --
11 are to go out and manually check for the water
12 upon that. And so they're doing that really
13 every day, every -- every shift on going out,
14 settling, being sure that water is stung off
15 the tank.

16 Q: All right. So what do you what do you do when
17 you discover you have sting, how do you remove
18 it?

19 A: Well again, it's that process going out there,
20 watching it, removing, the sting is sting water
21 or water off the tank is put into a separate
22 tank to -- for disposal and treatment ---

23 Q: So water is heavier than all the petroleum
24 products?

25 A: Correct. Correct. It settles to the bottom of



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1 the tank.

2 Q: Right. All you have to do is drain it, nothing
3 more fancier than that?

4 A: Just drain it off.

5 Q: Okay. And I'm -- and what do you do with the
6 sting?

7 A: That water is basically treated as waste. It
8 goes to a hazardous waste material company to
9 deal with it.

10 Q: Okay.

11 **MR. MAYBANK:** All right, that's all I have, Your
12 Honor.

13 **MR. BROWN - CROSS-EXAMINATION BY MR. ANTLEY:**

14 Q: Good afternoon, Mr. Brown. So your role at
15 Colonial has nothing to do with South Carolina
16 property taxes, right?

17 A: No, I'm in operations.

18 Q: Okay. So that -- you're familiar with the
19 overall operations of Colonial?

20 A: Yes, sir.

21 Q: Okay. Now, you said earlier Colonial's
22 pipeline is underground, is that right?

23 A: A large majority of it is underground, correct.

24 Q: And Colonial has 515 miles of pipeline in South
25 Carolina?



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1 A: In South Carolina, yes, sir.

2 Q: And you said one section goes as far as 75
3 miles without a single pump station?

4 A: Correct. Our -- our line 29 from Belton
5 Junction to North Augusta only has -- only has
6 the origination pump station there.

7 Q: So most of Colonial's property in South
8 Carolina wouldn't look like those photos we saw
9 of tanks while you were testifying?

10 A: I'm sorry could you repeat that.

11 Q: Most of the property -- most of Colonial's
12 property inside of South Carolina would not
13 look like the pictures we saw of those tanks
14 when you were testifying in the beginning?

15 A: Well, the property for our delivery facilities,
16 tank farm facilities, and then our right --
17 rights of way for the pipeline, right.

18 Q: But there's 515 miles of pipe with -- don't
19 look like that?

20 A: Right. The rights of way look different than
21 our tank facilities.

22 Q: Okay. And you named various types of property
23 but none of that property in South Carolina is
24 called a plant, I think, with Colonial's, I
25 guess, lingo?



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1 A: Our lingo basically -- we call them junctions
2 because we have major activities going on
3 there. It -- it's more of a -- really, a lot
4 of our labels are more from a scheduling point
5 of view to communicate to our customers where
6 product is, so we call our tank farm facilities
7 junctions. Again, our main lines are stub
8 lines things of that nature.

9 Q: But no property in South Carolina -- Colonial
10 doesn't refer to any property in South Carolina
11 as a plant?

12 A: No, not that I'm aware of.

13 Q: You also named a number of job titles none of
14 those were plant manager, I believe, is that
15 right?

16 A: No, operations.

17 Q: Okay. Colonial does not refine any petroleum
18 products in South Carolina, is that right?

19 A: Correct. We do not refine we do not operate a
20 refinery in South Carolina.

21 Q: And Colonial does not blend unfinished
22 blendstocks to make finished fuel in South
23 Carolina?

24 A: As far as, again, blending, we do transmix
25 injection, which is a form of blending, to --



1 to take that product and put it back into a
2 marketable state.

3 Q: But with blendstocks not transmix, when -- I
4 believe you -- if it wasn't today, I think
5 during your deposition testimony, you testified
6 that there are times where Colonial takes
7 blendstocks, separate products, and mixes them
8 together?

9 A: Correct. We have services that we provide that
10 do that.

11 Q: But that does not occur in South Carolina?

12 A: That does not occur in South Carolina.

13 Q: And less than 10 percent of the product that --
14 well, I'm sorry. The blendstock products, that
15 constitutes a very small portion of what
16 Colonial does, is that right?

17 A: Correct. Our -- our overall blendstock
18 shipments is a small portion compared to our
19 total shipments on our system.

20 Q: And it's less than 10 percent of the product
21 that Colonial transports?

22 A: I'd have to look at those numbers. We do quite
23 a bit of blendstock shipments, especially in
24 the Gulf Coast area where we offer those
25 services, so I don't know those percentages.



1 I'm a little leery about that. So I'd have to
2 -- I'd have to double check that but it is a
3 small portion, it's not significant.

4 Q: You're ---

5 A: I mean it, it could be in that 10 percent
6 range. I'm not exactly sure.

7 Q: Do you remember during your deposition stating
8 that it was less than 10 percent?

9 A: I may have. Again, it's -- it's not the
10 largest volume and certainly compared to the
11 total volume that we ship.

12 Q: You stated that well over 90 percent this was
13 today you testified that well over 90 percent
14 of products moved in South Carolina are
15 fungible, is that right?

16 A: Correct, correct.

17 Q: And you don't have to separate fungible
18 products that they mix, right, because it's the
19 same product essentially?

20 A: If they meet the same specification.

21 Q: Yes.

22 A: So regular CBOB gasoline that we ship,
23 dimensional blendstock, could be commingled
24 with conventional blendstock. But then a
25 premium blendstock, conventional premium



1 blendstock, we would keep separate. So we do
2 have many gas segregations of fungible
3 products, right, but we do have to keep those
4 -- those categories of gasoline separate from
5 each other.

6 Q: And sometimes when -- when you talked about
7 higher octane and lower octane mixing, you
8 don't have to separate that out, you just can
9 sell it as the lower octane?

10 A: Again, yes. We can handle interfaces and deal
11 with those going into one product or the other
12 depending on the quality.

13 Q: And with transmix, that's primarily separated
14 into sellable products at tank farms and
15 delivery facilities, is that right?

16 A: We're isolating that product at tank farms and
17 our delivery facilities. We're isolating it
18 and then re-injecting it to create marketable
19 product at very low rates.

20 Q: So if -- if those products are mixed, do you
21 separate them into two separate sellable
22 products or maybe more than two separable ---

23 A: We separate it and then we're -- we typically
24 have limited products that we can re-inject
25 that product back into.



1 Q: And that primarily occurred in the tank farms
2 and the delivery facilities?

3 A: Correct. And --vand at the injection pump
4 stations ---

5 Q: Pump stations.

6 A: --- with maintenance and activities associated
7 with that.

8 Q: But, for example, that 75 mile stretch without
9 pumps, without a pump station, that wouldn't be
10 separated in transmix, would it?

11 A: No. The separation itself, the physical
12 separation occurs at the North Augusta -- North
13 Augusta delivery.

14 Q: Okay. You mentioned that one -- and I didn't
15 get the number. One out of how many tanks is
16 for transmix at the Belton tank farm?

17 A: We have one primary tank for the transmix at
18 Belton.

19 Q: And out of ---

20 A: One large tank.

21 Q: --- out of how many total tanks?

22 A: Out of the 20.

23 Q: Out of 20, okay. I didn't hear about any tanks
24 for transmix at the Spartanburg Junction. Are
25 there any tanks for transmix at the Spartanburg



1 Junction?

2 A: We only have the smaller sump tanks and things
3 that -- that deal with it there. We do not
4 have a large product tank dedicated to
5 transmix. We do not deliver jet fuel into
6 Spartanburg. Our shippers aren't taking any
7 jet fuel there, so we don't have to worry about
8 ultra low sulphur diesel jet fuel issue at
9 Spartanburg.

10 Q: Okay. So at Spartanburg there's no large tank
11 dedicated to transmix?

12 A: No, not like at Belton.

13 Q: Okay. And transmix, just to clarify again, the
14 transmix, that's the consequence of moving
15 multiple products via the same pipeline, is
16 that right?

17 A: Yes, it's the mixing of those products.

18 Q: Okay. In all of ---

19 A: Well again, it's moving it through the pipe and
20 then there's other causes that create transmix
21 like maintenance, manifold washes, purging,
22 things of that nature. So it is pipeline and
23 other operational issues that create that.

24 Q: But if you only had one product, it wouldn't be
25 created even during maintenance, would it?



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1 A: No. No, in general, right. I mean if we were
2 a natural gas pipeline, you know, natural gas
3 is natural gas, there's no other product they
4 move.

5 Q: Okay. So all of Colonial's property in South
6 Carolina supports its primary purpose of
7 transporting refined petroleum products?

8 A: Supports, yeah. Supports the shipment of
9 product, yes, along with the other services we
10 provide, yes.

11 Q: Thank you.

12 **MR. BROWN - CROSS-EXAMINATION BY MR. CARTIN:**

13 Q: I might make this last a long time just so I
14 don't have to wear a mask for a little bit. I
15 won't do that to you. Just a couple quick
16 questions for you, Mr. Brown. I want to try to
17 bring to human scale the pipeline. You heard
18 testimony earlier today about where the
19 pipelines -- were you here in the courtroom for
20 that?

21 A: Yes, sir.

22 Q: Okay. And we could agree that the pipeline in
23 some instances runs through an open field, is
24 that correct?

25 A: Yes.



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1 Q: Okay. So I want you to image this room is an
2 open field. The pipeline itself would be what
3 five feet, six feet underneath the ground?

4 A: Hopefully somewhere in that range.

5 Q: Right. I mean something's gone wrong it's
6 much, much different than that. But if we
7 looked around every which way, we wouldn't see
8 the pipeline, would we?

9 A: You'd see pipeline markers.

10 Q: Okay. But not the actual pipeline itself?

11 A: No. The rights of way, the pipeline markers,
12 the other equipment that we have associated
13 with that, right.

14 Q: Okay. And so if we had a pipeline running
15 right here, if we had a booster station right
16 here at the witness stand, which I'm sure it
17 would be bigger than that, the next nearest
18 booster station would be what, 45 miles that
19 way?

20 A: 40, 50 miles approximately.

21 Q: Okay. Maybe 75 miles in one instance I think
22 you said?

23 A: That was on the stub line, a small line. Lines
24 1 and 2 are typically going to be 40 to 50, but
25 yes, on some of the smaller stub lines that we



1 have, they could -- they can be further apart.

2 Q: Okay.

3 **THE COURT:** He's actually ---

4 A: Or closer together, but.

5 **THE COURT:** He's actually tricking you because he's
6 pointing west.

7 **MR. CARTIN:** But, Your Honor, you're not supposed to
8 tell the witness that.

9 A: I do not know north, south, east, west, I can
10 guarantee you that.

11 Q: Well so -- so here's my question. You also
12 mentioned at any given time you've got a five
13 day flow of product in the pipeline. Do you
14 recall that testimony?

15 A: Every five days we ship that rotation of
16 product that we call a cycle.

17 Q: Okay.

18 A: Now in our system we have much more volume than
19 just five days.

20 Q: Okay. So -- but what I want to understand
21 though is, say this is the refinery right here,
22 okay. Pipeline runs out of the refinery. At
23 one point you're going to put in, let's say
24 high octane gasoline, okay.

25 A: Correct.



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1 Q: For five days you're going to be pumping that
2 into the pipe, is that what that means ---

3 A: Well ---

4 Q: --- before you stop and then put a different
5 product in?

6 A: So from -- from that one supplier ---

7 Q: Uh-huh.

8 A: --- all right, we'll pump their product --
9 let's say that one product on day one.

10 Q: Okay.

11 A: On day six, we're going to come back and get
12 that same product.

13 Q: Okay.

14 A: And so we're doing that for 30 people on 12 to
15 15 products.

16 Q: Okay.

17 A: And so for all of our suppliers onto our system
18 they can count on us coming to get product from
19 them, that one product, every five days.

20 Q: Okay.

21 A: On the terminal side, the delivery side, same
22 thing. We're going to deliver you that product
23 day one and day six. So we're -- we're going
24 to deliver you product, that same product,
25 every five days. And that's that cycle, that



1 frequency that we talked about there.

2 Q: Okay. So if -- let's say just for refinery A
3 here, we got refinery A. And it's going to
4 open up the flood gates and send that diesel
5 fuel out and it's going to go for what, a 24-
6 hour period?

7 A: Well from a refinery, we probably would lift a
8 total refinery production over five -- there
9 are five days worth of production. We would
10 lift that in likely five to six hours.

11 Q: Okay. All right.

12 A: I mean our rates are very high, flow rates are
13 very high.

14 Q: So five or six hours, right?

15 A: Yeah.

16 Q: So when you push another project behind it, you
17 said there were 15 minutes of flow associated
18 with transmix, is that right?

19 A: Right. So as the pipe is moving, that
20 interface material, if I'm at the delivery end,
21 it's gonna take 15 minutes to deliver that
22 total interface, that 15,000 barrels of
23 interface, it's gonna take that much time, from
24 the very first of it to the very end of it, to
25 deliver it into that tankage.



1 Q: But it would take five or six hours to deliver
2 the actual product itself before you got to the
3 transmix, is that right?

4 A: Well, depending on the batch size, right.

5 Q: Okay.

6 A: The batch itself is, you know, this size or
7 transmix is -- is obviously much smaller than
8 that with the interface mixture.

9 Q: So let's take it -- say it took -- we're going
10 to do math here and I went to law school to
11 avoid math, so this could get ugly. We're
12 going to do for six hours times 60 minutes. I
13 get 360 minutes, does that sound right?

14 A: I believe that's correct math.

15 Q: Then I'll take 15 minutes divided by 360
16 minutes that's .04. So of any section of
17 pipeline, is that to say that four percent only
18 in that pipeline is transmix?

19 A: No. No, that's -- that's not a one to one
20 calculation. Again, there's many variables
21 that determine the amount of transmix in the
22 pipe. And then to compare that against the
23 other volume, again, it's not apples to apples.
24 It depends on the number of products that we're
25 pumping, the number of interfaces we're dealing



1 with, the size of those interfaces. So ---

2 Q: So it could be lower?

3 A: It could be higher or it could be lower.

4 Q: Okay.

5 A: Depending on the line, depending on the
6 operation.

7 Q: Is it fair to say that in any event at any time
8 in the pipeline, you've probably got less than
9 six percent of transmix at any given time in
10 the entire South Carolina pipeline?

11 A: I -- to be honest with you, I've never
12 calculated it in the fashion that you're trying
13 to calculate it. I I don't know that number.

14 Q: Okay. It's a minuscule amount compared to the
15 rest of the product that's going through, is
16 that fair?

17 A: I don't know what the term -- I don't know how
18 you define minuscule.

19 Q: Minor compared to the part?

20 A: It -- it is a portion. Again, I haven't
21 calculated percentages or anything, but the
22 majority of the product we move is finished
23 products and our transmix is a small -- smaller
24 portion of that, that we're dealing with, for
25 sure.



1 Q: All right. Back to our pipeline in the field.
2 There'd be DRA flowing through the pipeline no
3 doubt, correct?

4 A: Yes, sir.

5 Q: Okay. But that doesn't mean there'd be a
6 station every 30 feet injecting DRA into it,
7 correct?

8 A: No, DRA is -- the DRA is a drag reducing agent,
9 right, that -- the effectiveness of the DRA is
10 destroyed when it flows through a pump, and it
11 will degrade over time in a pipe. So your
12 issue with DRAs, you don't have to inject it
13 multiple times typically, you only have to do
14 it one time at the pump station itself,
15 downstream of the pump station.

16 Q: Perfect. So DRA is only getting pumped every
17 40 or 50 miles depending on where the pump
18 station is?

19 A: Depending on where the pump station is that's
20 where the DRA is put in.

21 Q: Perfect. There are other common modes of
22 transporting petroleum products that compete
23 with Colonial, is that fair?

24 A: Oh, definitely.

25 Q: Okay. So you would compete with companies that



1 run barges, is that right?

2 A: Barges, yes.

3 Q: Trucks, correct?

4 A: Trucks.

5 Q: Railcars, right?

6 A: Yes, sir.

7 Q: And other pipelines like Colonial, is that
8 fair?

9 A: Yes, sir.

10 Q: Okay. And those transportation companies do
11 generally the same thing as Colonial, is that
12 correct?

13 A: Well, they may be a -- they're transporting
14 product which is our primary business, right.

15 Q: Right.

16 A: I assume that's what they do, they may have
17 other kind of businesses, but.

18 Q: But, yes?

19 A: Yes.

20 Q: Okay. And my understanding is -- there was a
21 little bit of testimony about this, but I just
22 want to make it absolutely clear. In your
23 deposition I thought you said tank farms, pump
24 stations, and delivery facilities are the only
25 place where you would do anything with



1 transmix; is that correct?

2 A: Where ---

3 Q: Where you handle transmix separately from ---

4 A: --- could you say that again?

5 Q: --- the rest of it?

6 A: Say that again. Where ---

7 Q: Tank farms, pump stations, and delivery
8 facilities are pretty much the only place where
9 you would actually handle transmix separate
10 from what's running through the pipeline?

11 A: Right. Those are the only places we could
12 physically get our hands on it, so to speak.

13 Q: Perfect, thank you. And I think you said right
14 now you've got 44 employees, is that right?

15 A: 44 that was the 32 plus the 12.

16 Q: Yep.

17 A: Yeah, 32 core, 12. Yes. Yes, sir.

18 Q: Perfect.

19 A: Uh-huh.

20 Q: What percentage of those are working remotely
21 now, do you know?

22 A: I -- I do not exactly know the work schedules
23 and how they're managing that right now.

24 Q: Okay. Some of them are working remotely, you
25 would imagine?



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1 A: Actually -- I don't believe so, but -- but I do
2 not know that answer exactly.

3 Q: Let's imagine they're all at work at the same
4 time.

5 A: Certainly our operators. Anyone working on the
6 pipeline, our technicians, and our operators
7 are -- cannot work remotely.

8 Q: Okay.

9 A: I mean they've got to be physically there.

10 Q: Understood. You got 515 miles of pipeline,
11 right?

12 A: Correct.

13 Q: If we took all 44 of those employees and laid
14 them out across that 515 miles of pipeline at
15 even intervals how far apart would each
16 employee be?

17 A: I'm not good at math. I can do it with a
18 calculator.

19 Q: See if this sounds right. 515 miles divided by
20 44 employees would equal 11.7 miles apart for
21 each employee. Does that sound about right?

22 A: If your math is correct.

23 Q: If my calculator's correct. I can't -- I
24 probably would not venture to do that longhand.
25 So if that math is correct, then your



1 employees, I -- I just want to make it clear,
2 they're not going to the pipeline every day
3 with a lunch pail, all in one place, working at
4 a single location. Is that a fair
5 characterization?

6 A: Well, we certainly have a group that is working
7 at facilities. Our tank farm facilities are
8 manned, you know, so we -- we have operators
9 and things that are at those facilities and a
10 lot of that other support fun- -- support
11 people are out on the pipe, out on the right-
12 of-way, out on those places and doing -- moving
13 up and down that pipe. So you may have one
14 person that -- that goes, looks at, accesses or
15 whatever, many spots on our pipelines during a
16 day. A technician may go to all of our
17 locations during a certain period of time
18 working on equipment and things so those --
19 those groups of people are moving around,
20 they're just not sitting like you sit at one
21 place. They've got responsibilities across
22 that 515 miles of pipe.

23 Q: Right. So at any given time, the vast majority
24 of the pipeline probably doesn't have somebody
25 physically with it though, right?



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1 A: Well, of course -- 515 miles, correct. But --
2 but the issue is, I think, we're -- we
3 constantly got contractors, we're doing
4 surveillance. You've got our control center
5 that's monitoring that pipeline 24/7 and
6 operating that pipeline, so even though we may
7 not have a person sitting there with their eye
8 on it, we've got equipment and processes in
9 place that are tracking and keeping up with
10 that pipeline and being sure it's operating
11 safely and doing the things that we need it to
12 do.

13 Q: Gotcha. So most of that's done in Atlanta,
14 Georgia, or in Alpharetta, Georgia, wherever
15 your headquarters is, right?

16 A: Right. We've got a combination of both out in
17 the field and in the Atlantic Control Center,
18 correct.

19 Q: So, if something goes wrong in the pipeline in
20 the middle of our field, a sensor goes off in
21 Alpharetta, is that right?

22 A: Yeah. We'd get warnings and things there and
23 we would also potentially have some notices and
24 things to our local operations here,
25 technicians and things like that, to respond.



1 Q: All right. Are there portions of the pipeline
2 that require more attention than others?

3 A: I think all of the pipeline requires attention.
4 I'm not -- I'm not sure how I would classify
5 that in all -- all parts of the pipe are
6 important.

7 Q: Well, I guess this is too far into the weeds.
8 This is more for my mental interest in your
9 operations, so I'll set that aside for a sec.
10 You'd agree that cathodic protection pipe
11 coatings and automatic shutoff valves are all
12 part of the overall process to ensure the
13 integrity of the pipe, right?

14 A: Correct.

15 Q: And the pipeline is a big asset for Colonial,
16 right?

17 A: Yes.

18 Q: So those three components protect that asset,
19 is that correct?

20 A: They are required, correct.

21 Q: Are you aware of any pipeline in America that
22 operates without cathodic protection, pipe
23 coatings, or automatic shutoff valves, any
24 petroleum pipeline?

25 A: I'm not aware.



1 Q: Okay. Thank you.

2 **MS. WOOTEN:** Your Honor, may I give this to the
3 witness?

4 **THE COURT:** (Nods head.)

5 **MS. WOOTEN:** I'm just gonna hand you this book of
6 Exhibits.

7 A: Yes, ma'am.

8 **MR. BROWN - CROSS-EXAMINATION BY MS. WOOTEN:**

9 Q: All right, sir, my name is Kim Wooten. I
10 represent four of the counties involved in this
11 lawsuit and I would like to just follow up with
12 a few questions about the testimony you've
13 given today and what you gave in your
14 deposition previously, okay.

15 A: Yes, ma'am.

16 Q: All right. Mr. Maybank had asked you about
17 which federal or other regulatory authorities
18 that you have to deal with at Colonial, is that
19 correct?

20 A: Yes.

21 Q: Okay. One that you did not mention is U.S.
22 DOT. Is that one of the main regulatory
23 authorities that your company has to deal with?

24 A: Yes. My understanding is PHMSA is a part of
25 DOT but, yes, we definitely DOT regulations.



1 Q: Being PHMSA is P-H-M-S-A, right?

2 A: I believe so, yes. May be an E in there
3 somewhere.

4 Q: So when you that PHMSA, PHMSA is actually a
5 part of the DOT, is it not?

6 A: I believe it to be, yes.

7 Q: All right. And what PHMSA does, see if you
8 agree with me, is -- PHMSA is, by the way,
9 responsible for regulating and ensuring the
10 movement of hazardous materials on a pipeline,
11 correct?

12 A: Correct, yes, the operation of the pipeline.

13 Q: Okay. And what does the office of pipeline
14 safety that you deal with, which is a part of
15 PHMSA, which is a part of DOT?

16 A: I don't deal them but I know that I know that
17 name.

18 Q: Okay. What does the office of pipeline safety
19 do?

20 A: I'm not aware of -- they're -- they're kind of
21 in that cloud of overseeing pipeline operations
22 to me. I'm -- I'm not aware of the specific
23 roles that they do versus PHMSA. I'm not aware
24 of that detail.

25 Q: Okay. Well, is part of the responsibility of



1 PHMSA, or part of what you understand PHMSA to
2 do, is ensuring safety in the design,
3 construction, operation, maintenance, and spill
4 response planning of natural gas and hazardous
5 liquid transportation pipelines?

6 A: Yes, my ---

7 Q: What you do.

8 A: My understanding is that they control how we
9 operate our pipeline and the requirements to
10 operate and to -- to design, build, operate the
11 pipe.

12 Q: Okay. And the federal government has taken
13 upon itself to make an office of pipeline
14 safety just for those things, isn't that true?

15 A: I believe that to be the case, yes.

16 Q: As part of U.S. Department of Transportation,
17 correct?

18 A: I think that's where that falls.

19 Q: Okay. All right. Earlier -- if you would,
20 turn to stipulated Exhibit Number 6.

21 **(Joint Exhibit 6 was referenced.)**

22 Q: And I had asked Mr. Fuqua about these exhibits
23 and this wasn't sort of in his, you know, his
24 purview, but could you tell me what these
25 documents are a part of, Exhibit Number 6?



1 A: Well, their titled spill prevention control and
2 counter measures plan.

3 Q: Okay. And ---

4 A: I ---

5 Q: Okay. And is that part of -- do you deal with
6 your SPCC plans?

7 A: I do not.

8 Q: Okay. Who -- who in this room would be the
9 person to ask about the SPCC plans?

10 A: Robert.

11 Q: Okay. All right. Someone that's coming up
12 next?

13 A: Yes, ma'am.

14 Q: Okay.

15 A: I do believe so.

16 Q: All right. Do you know what the SPCC plans
17 provide for?

18 A: Other than the name itself, no.

19 Q: Okay. We talked an awful lot in your direct
20 examination about transmix, and I want to be
21 sure that there's no confusion in my mind about
22 what it is. As I understand transmix, transmix
23 is actually a fluid, mixture of a fluid that
24 does not meet specifications for a sellable
25 product?



1 A: Yes, ma'am.

2 Q: Okay. All right. So my understanding also is
3 that if Colonial chose to do this, each fluid
4 can be transported separately. You don't have
5 to have transmix in these pipelines if you
6 don't want to.

7 A: That would make an assumption that we were not
8 able move multiple products.

9 Q: Right. But if you wanted to move each product
10 by itself you could do that?

11 A: No, ma'am, not under the current design.

12 Q: Okay. There could be a design where you could
13 do that?

14 A: If every product had a separate pipeline we
15 could, but ---

16 Q: Right.

17 A: --- yes.

18 Q: But it's not designed that way because Colonial
19 chooses for it not to be that way?

20 A: It was chosen not to be that way at some point
21 in time back in the '60s, yes, ma'am.

22 Q: Right. By Colonial, that's Colonial's choice?

23 A: Yes.

24 Q: Okay. If Colonial had chosen to do it that way
25 separately there wouldn't be any problem with



1 transmix?

2 A: If the products, all of the products, could be
3 shipped separately, there would be no
4 commingling in transport.

5 Q: Okay. And we also -- so all equipment that
6 goes along with what you've been testifying to,
7 the things at the pump stations, et cetera that
8 goes along with transmix, that's all stuff that
9 is there because Colonial chooses to do it a
10 certain way?

11 A: It is based on our design and how we operate.

12 Q: All right. Now DRA, you were talking about the
13 drag resistance agent.

14 A: Yes.

15 Q: And as I understand it, that is done, the drag
16 resistant agent is put in the pipes so that
17 Colonial can transport the product faster?

18 A: It helps us increase our volume, our velocity
19 of volume. It also -- so that -- that is
20 primary use for it, yes.

21 Q: And that helps the business revenue, profit,
22 all those things?

23 A: Correct. Helps meet our shipper's demand.

24 Q: That's what it's for?

25 A: We particularly use it on allocated lines where



1 our demand, our shippers are asking us to ship
2 more than where we -- what we physically can
3 ship and so we use the DRA to increase that
4 velocity.

5 Q: Okay. I believe that's all I have for you.
6 Thank you.

7 **MR. MAYBANK:** A few quick ones.

8 **MR. BROWN - REDIRECT EXAMINATION BY MR. MAYBANK:**

9 Q: Trey asked at length about blended stock and
10 whether you do or don't do to it in South
11 Carolina. You do re-grade stock in South
12 Carolina, don't you?

13 A: Yes. The re-grading -- when we're dealing
14 with interfaces and things, that's another term
15 for re-grading.

16 Q: Uh-huh.

17 A: When we're calling, you know, interface
18 material one product or the other, we are re-
19 grading it as one product or the other.

20 Q: Okay.

21 A: Correct.

22 Q: Just give us an example of re-grading of a
23 product that you do in South Carolina?

24 A: Well, for instance, if we're delivering product
25 off our main line and we've got product in our



1 manifold, let's say that we've got regular
2 gasoline in our manifold and we're delivering
3 in premium gasoline, then as we're bringing in
4 that product we'll actually take premium
5 gasoline, deliver it into the regular gasoline
6 tank to protect the product and we will re-
7 grade that premium gasoline as regular
8 gasoline.

9 Q: Okay. And that's done at your shipper's
10 request?

11 A: That's done at our process to ensure for our
12 shippers the quality of the product, correct.

13 Q: Okay. Mr. Cartin painted an image of 515 miles
14 of lonely line that -- that nobody was paying
15 much attention to. Alpharetta works 24/7,
16 doesn't it?

17 A: Yes, sir, it does.

18 Q: And does it work 24/7 365?

19 A: Yes, sir.

20 Q: And is there somebody on Christmas day that's
21 monitoring the South Carolina pipeline?

22 A: Yes, sir.

23 Q: And it's actually not 515 miles it's 110 miles
24 or so of pipes right next to each other,
25 correct?



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1 A: Yes. Two of the pipes run in very close
2 proximity to each other.

3 Q: Okay. Then the last question was, you have
4 transmix because you don't build a separate
5 pipe for each product. How much would it cost
6 to construct -- and how long is your line from
7 Alpharetta to the very end of the line, is that
8 1,200 miles, 1,400 miles, do you know?

9 A: From Pasadena to New York Harbor, I believe, is
10 2,200 -- I ---

11 Q: Yeah.

12 A: We have 5,500 miles of pipeline.

13 Q: Okay. So if you wanted -- how much would it
14 cost to build a separate 5,500 mile pipeline
15 for each product? If you built one for
16 aviation fuel, one for diesel, one for
17 kerosene, one for heating oil, one for gas, one
18 for premium gas, so that's six lines. Do you
19 know what it would cost to build six lines of
20 2,500 miles long? Billions of dollars?

21 A: Billions, yes.

22 Q: All right.

23 A: Billions.

24 **MR. MAYBANK:** That's all I have your honor.

25 **MR. ANTLEY:** I think I have just one question.



MR. BROWN - RECROSS-EXAMINATION BY MR. ANTLEY:

Q: You were just asked about re-grading. So that you're not changing a product, the product has already been changed, you're just putting a label, a new label on it now instead of being 92 octane it's 87 and you just change that label and label as 87?

A: Correct. So we're -- we're re-labeling that. We're designating that and there's certain regulatory guidelines on how to do that through the EPA.

Q: But you're not processing it, you're just changing its label, is that correct?

A: Well, it -- it depends on how it got generated and what we're doing with it, right. We may be doing that at shipper request, we may be doing that at an operational request. So, I don't know how you're defining the term processing it, but we -- we are doing things intentionally and operationally to ensure that.

Q: I guess to just make sure it's clear, so these two, this higher octane mixes with a lower octane ---

A: Yes.

Q: --- that just happens naturally in the pipe as



1 it's going along, is that correct?

2 A: It can, yes. Or a shipper could tell us to do
3 that, right.

4 Q: Okay.

5 A: So we -- we can execute different types of
6 orders for our customers on -- on how we move
7 the product and what they want us to do with
8 the product. So we do have that, we have that
9 element of product that we're dealing with with
10 interfacing mixtures. And then we have an
11 element of product where shippers ask us to re-
12 grade and do things. That's those other
13 services and things that we offer.

14 Q: Okay. But once the product's mixed, then the
15 only thing you do is you change the label and
16 now it's the lower octane?

17 A: Correct. There may be additional testing and
18 things that we do to ensure the product
19 specification and things of that nature, but
20 yes.

21 Q: Okay. Thank you.

22 **THE COURT:** Mr. Antley's one question made it to the
23 great grandchildren and turned out to be the
24 same question as the as the parent. Go ahead.

25 **MR. ANTLEY:** Nothing further, your honor.



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1 **MR. WOOTEN:** Nothing further, your honor.

2 **THE COURT:** Okay. You may step down.

3 **MR. BROWN:** Yes, sir.

4 **MR. MAYBANK:** All right. Our next witness is going
5 to be pretty short. And then the final witness
6 will be a fair amount longer, but we'll call to
7 the stand Mr. Robert Hughes.

8 **COURT REPORTER:** H-U-G-H-E-S?

9 **MR. HUGHES:** H-U-G-H-E-S.

10 **COURT REPORTER:** Raise your right hand.

11 **MR. HUGHES:** (Witness complies.)

12 **COURT REPORTER:** Do you solemnly swear the testimony
13 you're about to give in this matter is the
14 truth, the whole truth, and nothing but the
15 truth, so help you God?

16 **MR. HUGHES:** I do.

17 **COURT REPORTER:** Thank you.

18 **MR. HUGHES - DIRECT EXAMINATION BY MR. MAYBANK:**

19 Q: All right. And where are you employed?

20 A: At Colonial Pipeline.

21 Q: And how long have you been -- and what's your
22 current title?

23 A: Manager Environmental.

24 Q: Okay. And how long have you been employed at
25 Colonial?



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1 A: I began in 2008 and worked there through 2012
2 and left and came back 2014 and been there
3 since that time.

4 Q: Okay. And what was your title in 2012. I
5 assume you started a little lower in the chain?

6 A: Right. I was environmental programs
7 specialist. And then in 2014 when I came back,
8 I was environmental compliance specialist and
9 advanced to environmental compliance manager.
10 And then two years ago, became manager with the
11 environmental department.

12 Q: Did you work for any other pipeline companys
13 prior to 2012?

14 A: No, sir. I mostly worked within the aviation
15 environmental industry ---

16 Q: Okay.

17 A: --- within the industry, as well as a
18 consultant.

19 Q: All right. And so what other environmental
20 jobs did you have just real briefly?

21 A: Delta Airlines, I was senior project manger in
22 environmental services. I was the
23 environmental engineer for Hartsfield-Jackson
24 Atlanta International Airport. And as
25 consultant, couple different companies, CDM,



1 which is now CDM Smith, and Gresham Smith and
2 Partners.

3 Q: And what's your educational background?

4 A: I have a Bachelors of Science in Geology from
5 the University of Louisville, a Bachelors of
6 Civil Engineering from University of Kentucky.

7 Q: Okay. And do you have any other environmental
8 permits or licenses or things of that nature?

9 A: I'm a registered professional engineer in
10 environmental engineering in the state of
11 Georgia currently, and I have annual
12 educational requirements for that. And in
13 addition to that I'm also trained as
14 environmental unit leader and deputy planning
15 section chief in the Incident Command System.

16 Q: Okay. All right. Now obviously you know
17 Colonial applied for pollution control
18 exemption in '17 and '18?

19 A: Yes, sir.

20 Q: Okay. And what's your knowledge, what happened
21 with those?

22 A: I'm aware that DOR approved some and the
23 rejected others of those seven categories.

24 Q: All right. So let -- let's go over today with
25 you just the ones that were previously approved



1 by the DOR. What were those -- what would the
2 devices at the DOR approved, just at a high
3 level?

4 A: So at high level there were -- the four
5 categories that were approved were wastewater,
6 pollution control devices, stormwater pollution
7 control devices, secondary containment systems
8 and air pollution control devices.

9 MR. BROWN: Pardon me, I left my mask.

10 MR. HUGHES: I thought that might be yours.

11 MR. MAYBANK: And did you want to leave for the day?

12 MR. BROWN: It's up to you.

13 MR. MAYBANK: We would have one witness that we just
14 as soon hit the road, so with the Court's
15 permission and y'all's permission we'd like to
16 excuse him.

17 MR. CARTIN: No objection.

18 MR. ANTLEY: No objection

19 MS. WOOTEN: No objection.

20 THE COURT: You're excused.

21 MR. MAYBANK: All right.

22 MR. BROWN: Thank y'all very much.

23 Q: And so in a high level, those are -- what kind
24 of pollution are those designed to prevent,
25 those four devices?



1 A: So ---

2 Q: Some water and some air?

3 A: Yes.

4 Q: Okay. And so why don't we start with the
5 water. Describe the assets that -- that deal
6 with water. And so let's start with wastewater
7 pollution equipment, and so we're talking
8 about, again, exclusively the equipment that
9 was originally approved in 27 [sic] and 2018 in
10 South Carolina?

11 A: Okay.

12 Q: And I so that I don't have to ask you the same
13 question twice, those are -- as far as you
14 know, those are identical equipment 2017 and
15 2018?

16 A: Yes, that's correct. Both years they were ---

17 Q: Okay. So let's start with the wastewater
18 pollution control equipment, if you'll describe
19 it.

20 A: Okay. So there were two facilities where
21 upgrades to drains were conducted, and that was
22 at Gaffney, there were approximately 20 valve
23 upgrades at that facility. And then at
24 Simpsonville, there were approximately 14 valve
25 upgrades there.



1 Q: Okay. So describe the stormwater pollution
2 equipment which Colonial claimed is exempt,
3 stormwater now.

4 A: Stormwater. At Belton, during the previous
5 years, we upgraded the dike drains to the
6 secondary containment berms to allow increased
7 flow to ensure that area would be drained
8 quickly should there be a significant rain
9 event.

10 Q: Okay. And then describe secondary containment
11 facilities which the DOR approved in '17 and
12 '18 initially.

13 A: So at North Augusta, that was a sump
14 replacement, it was original equipment that was
15 replaced with a hundred barrel sump.

16 Q: Okay. And what's a sump?

17 A: So a sump is a -- it's essentially a submerged
18 tank that has pipe and pumping connectivity to
19 other tanks as well as other pipelines. And so
20 it gives you the ability to -- to move product
21 around in the system whether it's into -- re-
22 directed into a tank or back into the main
23 lines. And in the event of an emergency, you
24 could connect to a vac truck or a tank truck
25 and remove product.



1 Q: Okay. And tell us -- let's turn to air
2 pollution. Describe the tank internal and
3 external floating roofs.

4 A: So there were -- there were upgrades done at
5 Spartanburg which included the replacement of
6 the internal floating roof on tank 630. And on
7 tank 651 there were removal and replacement of
8 the seals on the external floating roof on that
9 one.

10 Q: Okay. And then you kind of hit this, so real
11 quickly tell us where the assets are located --
12 starting, where is the wastewater pollution
13 equipment?

14 A: So that was at Gaffney where there were 20
15 replacements and Simpsonville where there were
16 14.

17 Q: Okay. And how about stormwater pollution
18 control, where was that?

19 A: That was at Belton.

20 Q: All right. And how about secondary
21 containment?

22 A: At North Augusta.

23 Q: And how about internal/external floating roofs?

24 A: That was at Spartanburg.

25 Q: All right. And then so let's turn to how they



1 -- or do each of those four devices abate or
2 prevent pollution?

3 A: They do. They have the potential to mitigate.

4 Q: Okay. So let's start with wastewater pollution
5 control. Tell us how each -- how it abates or
6 prevents or mitigates pollution?

7 A: So drain valves allow us to drain a localized
8 area either of a manifold or some portion of
9 pipe. It allows us to capture that product in
10 a safe manner and recover it and put it back
11 into the system versus having to open break a
12 pipe and a flange and have to deal with product
13 flowing out and creating unsafe conditions.

14 Q: Okay. And what kind of product are we talking
15 about petroleum?

16 A: Yes, petroleum products and commodities that we
17 ship.

18 Q: And so specifically, it's a little confusing,
19 how does how does that prevent or abate the
20 escape of petroleum?

21 A: Well, it allows us to handle it in a
22 proceduralized manner versus again breaking
23 open a pipe and having to deal with buckets and
24 drip pads and containers. When the system is
25 designed with drain valves, that provides a



1 level of safety and reduces the chance that
2 we're going to have a release to the
3 environment.

4 Q: Okay. All right. So tell us how the
5 stormwater abates or eliminates or prevents
6 pollution?

7 A: So those -- those drain valves, those work in
8 conjunction with the secondary containment
9 systems on site, and we maintain those drain
10 valves in a closed manner in a normal
11 operation. And that allows us to capture rain
12 water and visually inspect it and potentially
13 sample it prior to the release to the
14 environment so that we can ensure that there's
15 nothing leaving the site other than stormwater.

16 Q: Okay. And nothing leaving, would that be plain
17 old rain water or would that be polluted rain
18 water or what are you worrying about leaving?

19 A: Generally any form of pollution. In a couple
20 facilities they actually have permits that
21 contemplate the discharge of pollutants up to
22 a certain criteria. And then other sites, they
23 were deemed not meet -- up to permit.

24 Q: Okay. All right. And you may have already
25 answered this, how does secondary containment



1 prevent or abate pollution?

2 A: So secondary containment allows us to capture,
3 should there be a release of product, whether
4 it's around the tank or a piece of piping or a
5 system that is within that containment and
6 allows us to control it in that area and
7 recover it near the source versus it getting
8 into other reaches of the facility or even
9 offsite.

10 Q: And what's a secondary containment built out
11 of?

12 A: For our larger systems, they're generally
13 earthen material that it could bury, from
14 concrete systems, HDPE liner systems, there's
15 a variety of different methods that you can
16 utilize for secondary containment. And one
17 other way that we use our sump is that
18 secondary containment to -- to mitigate
19 overfills. If we have an excess of product
20 coming into a facility we can send it into the
21 sump to avoid overflow of the tank ---

22 Q: Okay.

23 A: --- so it provides some level up to the -- the
24 volume of the sump to provide that overflow
25 protection.



1 Q: All right. And tell us about the tank
2 internal/external floating roofs, how do they
3 abate or prevent pollution?

4 A: So they directly mitigate most of the air
5 emissions coming off the surface of the product
6 because the tanks literally float on top of the
7 product for an internal floating roof. Those
8 are generally very light weight systems. Often
9 the ones that we use are honeycomb aluminum.
10 They're very light. They make contact with the
11 product surface and so they eliminate that
12 emission source from that product air
13 interface.

14 And then similarly external floating roofs do
15 so in a similar manner but they're quite
16 different in design.

17 Q: Okay. All right. Is that equipment required
18 by state or federal law?

19 A: Yes, all of those systems.

20 Q: Okay. So would all four of them be required by
21 federal law?

22 A: Yes, in some manner whether it's PHMSA or EPA
23 or even to the state level of South Carolina
24 DHEC ---

25 Q: Okay.



1 A: --- monitors those systems.

2 Q: And so why don't we start with wastewater
3 pollution control. What federal law requires
4 wastewater pollution control?

5 A: So generally that -- that falls under the PHMSA
6 49 CFR 195 requirements.

7 Q: Okay. And how about stormwater pollution
8 control what -- what federal law requires that?

9 A: So there's a few different ones. With regard
10 to the upgrades, that also follows under 49 CFR
11 195. Federally it also falls under the NPDES
12 requirements, which I believe start at 40 CFR
13 122.

14 Q: Okay.

15 A: And sequential, there's about 8 or 10 titles
16 that are ---

17 Q: Does any state law require it?

18 A: Yes, they do. South Carolina has delegated
19 authority for -- for stormwater management in
20 the state, and so they also have water quality
21 standards. I think it's Title 48.

22 Q: Okay. So South Carolina water quality
23 standards require it, stormwater pollution
24 control?

25 A: Yes. They require that you not discharge



1 pollutants to waters of the state and if you do
2 discharge through a point source then you're
3 required to get a permit.

4 Q: Okay. How about secondary containment, what
5 state or federal law requires secondary
6 containment?

7 A: So for a sump that would be under 49 CFR 195.

8 Q: All right. And how about tanks internal and
9 external floating roofs?

10 A: So those are -- there's a couple of different
11 regulations for that. Again, PHMSA 49 CFR 195,
12 but also EPA 40 CFR 63, and I think the state's
13 equivalence is around Title 61 and 62.

14 Q: Okay. And were you're required to get a state
15 or federal permit to install any of this
16 equipment?

17 A: Yes.

18 Q: All right. And what permits were required and
19 -- and tell us which entity, state or federal
20 entity, issued the permit? Let's start with
21 the wastewater pollution control, were you
22 required to get a permit to install that and
23 who issued it?

24 A: So we have a an operating license that's
25 registered through PHMSA and that requires that



1 we -- we have valves installed in certain
2 places in order to perform maintenance to block
3 lines in and things of that nature.

4 Q: Okay. And do you know what year that
5 certificate was issued?

6 A: So the PHMSA regs came out in 1969 and they've
7 been amended five or six times through the
8 years. '98, 2015 I think were some of the most
9 recent amendments.

10 Q: Do you know when it was issued for the South
11 Carolina facility?

12 A: I'm -- the operator license is for the
13 national asset and so it -- those regulations,
14 having come in in 1969, would've effective us
15 ---

16 Q: Right.

17 A: --- at that point.

18 Q: All right. And how about stormwater pollution
19 control, were you required to get a permit for
20 that and who issued it?

21 **OBJECTION BY MR. CARTIN:**

22 **MR. CARTIN:** Your Honor, I'll just raise a really
23 quick relevancy objection to the actual permits
24 themselves. I think the law requires,
25 exemption requires that certain pollution



1 control property be required by state or
2 federal law. He's already testified the state
3 and federal laws require these. I don't know
4 why we need to go through the permits
5 themselves. What they show, I think -- you
6 know, might be a little ---

7 **MR. MAYBANK:** Well, if they'll stipulate they're
8 required by state and federal law, I'll finish
9 up.

10 **THE COURT:** Well, I think you've made that point
11 already.

12 **MR. MAYBANK:** I made the point but, when they file
13 their wily appeal, are they going to debate
14 that point.

15 **THE COURT:** Well, I guess we'll first have to decide
16 if it's going to be a wily appeal.

17 **MR. CARTIN:** That will be an honorable and well
18 thought out appeal, certainly.

19 **MR. MAYBANK:** I'm confident it will be a very
20 cunning and clever appeal.

21 **THE COURT:** Well, just ---

22 **MR. MAYBANK:** I don't think they -- if they'll
23 stipulate to it, I'll move on.

24 **MR. CARTIN:** Well, I think -- I mean I think the
25 testimony stands for itself. He's already --



1 he's already testified what he believes
2 regulates them, his understanding that it
3 requires it. My objection is simply instead of
4 going through all the permits that say we got
5 a permit for putting this in, I don't ---

6 **THE COURT:** Well ---

7 **MR. CARTIN:** --- you've got the proper avenue.

8 **THE COURT:** Well, to cut through to chase on that
9 one, will you stipulate that they had to have
10 permits to put it in or do you -- or is your
11 objection the relevance ---

12 **MR. CARTIN:** It's an objection to the relevance
13 because all the stormwater stuff is, you know,
14 the Court's already rules that we're not
15 talking about ---

16 **THE COURT:** Yeah.

17 **MR. CARTIN:** --- these parts. I don't know why
18 we're even talking about it now. I haven't
19 heard a word about cathodic protection,
20 automatic shutoff valves, or ---

21 **THE COURT:** I've been waiting for us to get to that.

22 **MR. MAYBANK:** Well now, he's the next witness. So,
23 as I mentioned when we briefly started, the
24 reason we're putting up is since you can't
25 appeal the denial for summary judgment, I don't



1 think your order is the law of the case and I
2 think it would -- if they appeal the final
3 order, they've got every right to raise these
4 issues.

5 **THE COURT:** Well, no, but summary judgement has
6 precluded consideration of that, so they could
7 appeal that. And then if the court reversed me
8 on that, it would come back for a hearing at
9 that level.

10 **MR. CARTIN:** I think y'all've won that so I don't
11 know why we need this witness ---

12 **THE COURT:** Yeah, I ---

13 **MR. CARTIN:** --- to testify about ---

14 **THE COURT:** As a result in summary judgement that
15 matter has been taken care of.

16 **MR. MAYBANK:** Okay. All right. That was just --
17 that's just our concern that they were going to
18 bring it up on appeal ---

19 **THE COURT:** Well, they may bring it up on appeal,
20 but it would be that I made -- I issued the
21 summary judgment decision ---

22 **MR. MAYBANK:** Okay.

23 **THE COURT:** --- directly and therefore it should be
24 remanded back to the Court for reconsideration.

25 **MR. MAYBANK:** Okay.



1 **MR. CARTIN:** That's what my wily appeal would say.

2 **MS. WOOTEN:** And my clever one.

3 **MR. MAYBANK:** All right. So I'll just have a few
4 quick questions since we won't get into the
5 permits then.

6 Q: Just to quickly repeat, all of the equipment
7 you've mentioned is required by federal law?

8 A: Yes.

9 Q: And all of it's designed to abate or prevent
10 water/air pollution?

11 A: That's correct.

12 Q: And they were all used in the conduct of
13 Colonial's Business?

14 A: Yes.

15 **MR. MAYBANK:** That's all we have for this witness,
16 Your Honor.

17 **THE COURT:** Do you have any wily cross examination?

18 **MR. ANTLEY:** I don't think it's wily, but just a
19 little bit.

20 **MR. HUGHES - CROSS-EXAMINATION BY MR. ANTLEY:**

21 Q: So you were aware about the 2017-2018 pollution
22 control exemption applications, right, you
23 stated that?

24 A: Yes, that's correct.

25 Q: Did you know about the department denying the



1 pollution control exemptions for all property
2 for 2019?

3 A: Before testimony, yes, I was aware of that, but
4 not currently, not at that time.

5 Q: Okay. And your role at Colonial has nothing to
6 do with South Carolina property taxes, right?

7 A: That is correct.

8 Q: Okay. Thank you.

9 **MR. HUGHES - CROSS-EXAMINATION BY MS. WOOTEN:**

10 Q: Hi, Mr. Hughes, how are you?

11 A: I'm great.

12 Q: Good. Could you get that notebook in front of
13 you, the little white one on the top. There
14 you go. I'm not going to use it right this
15 second but in a minute. I had some questions
16 about something that apparently you're the
17 witness to ask. It's your lucky day. Okay.
18 So let me ask you first about the P-H-M-S-A.
19 You referred to this as PHMSA, PHMSA?

20 A: PHSMA.

21 Q: PHSMA?

22 A: No, PHMSA.

23 Q: PHMSA, there you go. The PHMSA regulations,
24 again, those are part of DOT's regulations,
25 correct?



1 A: Yes.

2 Q: And PHMSA is responsible for regulating and
3 ensuring the safe and secure movement of
4 hazardous materials to industry and consumers
5 by all modes of transportation including
6 pipelines, isn't that true?

7 A: I believe that is their charge, yes.

8 Q: All right. And in connection with that,
9 PHMSA's office of hazardous materials safety
10 develops the regulations and standards for
11 handling shipments of hazardous materials all
12 over the country, isn't that true?

13 A: That is true.

14 Q: All right. And it's also PHMSA that ensures
15 the safety in the design, construction,
16 operation, maintenance, and spill response
17 planning for all pipelines, isn't that true?

18 A: For the portions that are regulated by PHMSA,
19 that is true.

20 Q: Okay.

21 A: There are portions of the facilities that are
22 regulated by U.S. EPA, by South Carolina DHEC
23 and they may override PHMSA requirements. They
24 may not be applicable with certain components
25 within our facilities.



1 Q: Right. What components of your facilities in
2 South Carolina are not regulated by PHMSA?

3 A: So there are the non-transportation related
4 items.

5 Q: Which is what?

6 A: So earlier I heard you reference the SPCC plans
7 ---

8 Q: Right.

9 A: --- and things of that nature. That plan is
10 specifically developed and are -- and are
11 identified as those things that are
12 transportation related that are not included in
13 the plan but it -- and then it identifies items
14 that are included in the plan because they're
15 regulated by U.S. EPA.

16 Q: And which ones on this pipeline are not
17 included in the plan; that's what I want to
18 know?

19 A: So there are various things like waste
20 containers, emergency generators, sting water
21 tanks, anything that is no longer a commodity
22 under shipping papers.

23 Q: How about cathodic protection?

24 A: That is not my area. I'm not ---

25 Q: So you don't know if that's regulated or not by



1 PHMSA?

2 A: That's someone else's purview. There are --
3 for SPCC regulated facilities, there are
4 expectations of the EPA to protect those
5 assets, and so that's one method of protecting
6 assets.

7 Q: Protecting your company's assets?

8 A: Protecting the regulated, SPCC regulated
9 assets.

10 Q: Which is the pipeline?

11 A: No.

12 Q: Which is what?

13 A: The non-transportation component.

14 Q: I see what you're saying. So you're saying
15 that those are the things that EPA, as opposed
16 to PHMSA, would regulate?

17 A: Right. They're -- right. The SPCC plans go
18 into some detail, but then I believe -- it's
19 likely in the first chapter, but there's a
20 memorandum of understanding between U.S. EPA
21 and PHMSA about where applicability -- where
22 the PHMSA is and where applicability for EPA
23 exists.

24 Q: Right. And what does that memo say about that?

25 A: It identifies sort of the purview of the



1 regulatory requirements for PHMSA, what they
2 regulate, breakout tanks, some onshore, some
3 offshore.

4 Q: Breakout tanks is regulated by PHMSA through
5 the Department of Transportation?

6 A: Uh-huh.

7 Q: Okay. So are the -- well, let's just look at
8 the exhibits because you're the one apparently
9 that knows about these. Look at Exhibit Number
10 6 with me.

11 **(Joint Exhibit Number 6 was referenced.)**

12 Q: This is part of the SPCC plan ---

13 A: Uh-huh.

14 Q: --- submitted for the Belton Junction Facility
15 where a bunch of this equipment is we've been
16 talking about, right?

17 A: Uh-huh.

18 Q: Okay. And it says, does it not, under
19 paragraph 2.1.1 that this facility, talking
20 about Belton, in the second paragraph, includes
21 20 U.S. DOT regulated pipeline breakout and/or
22 relief tanks, correct?

23 A: Yes, it does state that.

24 Q: Okay. So in accordance with this plan the
25 entire Belton facility is U.S. DOT regulated.



1 A: No, it is not.

2 Q: Okay. According to this memo, that's what this
3 memo says, isn't it?

4 A: No. This is only a piece of that plan. That
5 is a multi-page plan and it ident- -- it
6 identifies the general nature of the facility
7 as PHMSA regulated. There are non-
8 transportation elements that are at that
9 facility that are regulated under this plan
10 that somewhere subsequent to this page and
11 later pages it identifies and carves out what
12 is non-transportation related.

13 Q: Understood. However, this paragraph right here
14 relates to this facility, including the 20 U.S.
15 DOT regulated breakout and/or relief tanks,
16 isn't that what it's for? Isn't that what it
17 says? That's regulated by U.S. DOT in
18 accordance with your own document?

19 A: Right.

20 Q: Okay.

21 A: And in other subsections there are components
22 that says these are the assets that are
23 regulated under U.S. EPA for pollution
24 prevention.

25 Q: Understood. I'm just talking about what it's



1 -- what these breakout and/or relief tanks that
2 we've been looking at pictures of ---

3 A: Uh-huh.

4 Q: --- okay, those are regulated by the U.S. DOT,
5 correct?

6 A: Yes.

7 Q: Okay. Now, go to the next paragraph. You
8 have, as described in the following sections,
9 operations at the facility, talking about the
10 Belton Junction Facility, correct?

11 A: Yes.

12 Q: Are primarily related to the transport of
13 refined petroleum products, isn't that true?

14 A: Yes.

15 Q: And it says ---

16 A: But that focuses on the word primarily.

17 Q: Okay. Well, that -- that's your emphasis, not
18 the emphasis in the document, right?

19 A: It says primarily in the document.

20 Q: I understand that.

21 A: Oh.

22 Q: Then it says, which fall under U.S. DOT
23 jurisdiction, is that what it says?

24 A: Yes.

25 Q: Okay. Go to Exhibit 7.



1 (Joint Exhibit 7 was referenced.)

2 Q: Which is also a part of the SPCC plan. Do you
3 see that?

4 A: Uh-huh. Yes, ma'am.

5 Q: Okay. There are bulk storage containers at the
6 bottom that says non-SPCC regulated, do you see
7 that?

8 A: Yes, ma'am.

9 Q: All right and those are related to what?

10 A: So those would be the U.S. DOT jurisdictional
11 tanks that are identified and kind of carved
12 out of the applicability of this plan. So
13 that's what that whole section is referring to.

14 Q: Okay. And the portable tanks, if you look at
15 the second page ---

16 A: Uh-huh.

17 Q: --- that are also in those pictures we've been
18 looking at, correct?

19 A: Those are transient. They may or may not be
20 there at any given time.

21 Q: But it -- but it's one of the pieces of
22 equipment we've been talking about?

23 A: Yes.

24 Q: Your portable tanks?

25 A: Yes.



1 Q: Right, okay. And if you look at the
2 description of those portable tanks on the
3 second page of that Exhibit, those also meet
4 the definition of transportation related and
5 are U.S. DOT regulated, are they not?

6 A: So those are activity based. When they're
7 connected to the PHMSA regulated system, they
8 do fall under PHMSA jurisdiction. If they're
9 not connected and they -- and they remain
10 mobile or portable or they're being used to
11 store waste, then they're not considered part
12 of the pipeline system so then they become
13 subject to the SPCC rules under the ---

14 Q: Okay. So everything that's part of the
15 pipeline ---

16 A: So it's new lines.

17 Q: I gotcha.

18 A: Right.

19 Q: So everything that's part of the pipeline
20 system is DOT regulated?

21 A: Yes.

22 Q: Okay. Let's go look at Spartanburg, Exhibit 8.

23 **(Joint Exhibit Number 8 was referenced.)**

24 Q: That's another facility we've been talking
25 about with all this equipment ---



1 A: Yes.

2 Q: --- that y'all operate. And if you look at --
3 under paragraph one, under plan administration,
4 the second sentence says that operations at the
5 facility are primarily related to the transport
6 of refined petroleum products, which fall under
7 U.S. DOT jurisdiction. That is true about the
8 Spartanburg facility, isn't it?

9 A: Yes.

10 Q: You also mentioned that the operating license
11 for your pipeline is done through PHMSA, is
12 that correct?

13 A: Yes.

14 Q: And that, again, is a U.S. DOT agency?

15 A: Yes.

16 Q: That's all I have.

17 **MR. MAYBANK:** That's it probably, Your Honor.

18 **THE COURT:** You may step down.

19 **MR. MAYBANK:** All right. Our final witness is Mr.
20 Stanley.

21 **THE COURT:** Hold on a second. Do y'all need a
22 break? All right.

23 **MR. MAYBANK:** He's gonna be a little long. Did you
24 want to take a break now or ---

25 **MR. CARTIN:** could we take a brief bathroom break,



1 Your Honor?

2 **THE COURT:** Okay. We'll take a ten minute break.

3 (Off the record from 3:01 p.m. until 3:12 p.m.)

4 **COURT REPORTER:** All rise.

5 **THE COURT:** Y'all be seated.

6 **COURT REPORTER:** State your name for the record,
7 please.

8 **MR. STANLEY:** Joshua Stanley.

9 **COURT REPORTER:** S-T-A-N-L-E-Y?

10 **MR. STANLEY:** L-E-Y, correct.

11 **COURT REPORTER:** Raise your right hand, please.

12 **MR. STANLEY:** (Witness complies.)

13 **COURT REPORTER:** Do you solemnly swear the testimony
14 you're about to give in this matter is the
15 truth, the whole truth and nothing but the
16 truth, so help you God?

17 **MR. STANLEY:** I do.

18 **COURT REPORTER:** Thank you.

19 **MR. STANLEY - DIRECT EXAMINATION BY MR. MAYBANK:**

20 Q: All right. And where are you currently
21 employed?

22 A: Colonial Pipeline Company.

23 Q: And what's your title?

24 A: Manager of Corrosion Prevention.

25 Q: All right. And how long have you worked at



1 Colonial?

2 A: How long -- I've been at Colonial since 2007.

3 Q: 2007. And what is your what is your titles
4 before your current title; were you promoted,
5 I assume, along the way?

6 A: I was a corrosion technician, or corrosion
7 technologist they called it at the time, for
8 about three years. I was an area corrosion
9 manager for the Northeast District for a few
10 years. And I've been at the corporate office
11 in the title that I'm in now since 2014.

12 Q: Okay. And describe your education?

13 A: I have a Bachelor's of Science in Commerce and
14 Engineering Sciences from Drexel University.

15 Q: All right. And do you have any -- any
16 environment- --other environmental
17 certifications or training relating purely to
18 the environment?

19 A: I have certifications related to corrosion
20 correction and I think cathodic protection.

21 Q: Okay. And who issued those?

22 A: I'm a NACE certified cathodic protection
23 specialist and I'm a NACE certified senior
24 corrosion technologist and NACE certified
25 coating inspector.



1 Q: And what is -- who is NACE?

2 A: NACE is the National Association for Corrosion
3 Engineers and that's ---

4 Q: Okay.

5 A: --- an international organization.

6 Q: All right. And what are your responsibilities
7 at Colonial today?

8 A: I manage the corrosion prevention program, and
9 that's part of our asset integrity department.
10 So I'm responsible for all of the equipment,
11 all of the surveys that we perform to meet the
12 regulations per 49 CFR 195 sub part H.

13 Q: And your responsibilities include South
14 Carolina?

15 A: Yes.

16 Q: All right. And where did you -- did you have
17 any other environmental jobs before you joined
18 Colonial?

19 A: I worked in consulting at a engineering
20 consulting company for corrosion for nine
21 years, and I worked at a natural gas
22 transmission company for two years.

23 Q: Okay. All right. I'm going to ask you a
24 number of questions then, if you'll confine
25 your answers to things that existed in 2017 and



1 2018, which is the subject of the appeal for
2 our case. All right. So let's go over the
3 assets for which the DOR denied the property
4 tax exemption. Let's start with pipeline
5 cathodic protection, and I'm going to get you
6 to -- to read. The Feds do a very good job of
7 it, so if you'll briefly describe pipeline
8 cathodic protection. And I'm gonna ask you to
9 read the U.S. DOT pipeline and hazardous safety
10 administration fact sheet on cathodic
11 protection and how do they describe it. Let's
12 first get you to identify what that document
13 is.

14 A: This is a fact sheet for cathodic protections.

15 **MR. ANTLEY:** Exhibit 3.

16 **MR. ROURKE:** Petitioner's 3.

17 **MS. WOOTEN:** Thank you.

18 **(Petitioner's Exhibit Number 3 was introduced into**
19 **the record.)**

20 Q: Go ahead.

21 A: Is that -- is that enough. Is that what you
22 needed?

23 Q: Yeah, but -- so that's a federal agency that
24 has issued this document?

25 A: This was issued by -- by PHMSA, correct.



1 Q: Okay. So if you'll read the relevant portions
2 of that, I thought they did a particularly good
3 job of explaining it.

4 A: Virtually all hazardous liquid and natural gas
5 transmission pipe in service today is made from
6 steel. This steel - when not otherwise
7 protected and exposed to oxygen and/or water -
8 can corrode. Corrosion can result in small
9 holes in the pipe, or a loss of pressure-
10 carrying capacity.

11 Corrosion is the electro-chemical reaction of
12 metallic material with its environment. Pipe
13 environments include soil, water, air and even
14 contents of the pipe itself.

15 In all electrolytes, electrolyte is ground,
16 rain water or river or sea water or moisture in
17 the air or a transported product, metal atoms
18 from the pipe go into solution as electrically
19 charged ions. The movement of the ions cause
20 a flow of electrical current from the metal
21 pipe to the electrolyte. This process causes
22 loss of metal from the metal surface, and is
23 commonly recognized as rust.

24 Cathodic protection systems help prevent
25 corrosion from -- from occurring on the



1 exterior pipes by substituting a new source of
2 electrons, commonly referred to as a
3 sacrificial anode or impressed current anode.
4 Both systems operate by imparting a direct
5 current onto the buried pipeline using a device
6 -- devices called rectifiers. As long as the
7 current is sufficient, corrosion is prevented,
8 or at least mitigated and held in check.

9 In most cases, coatings on the exterior of
10 the pipe are used in conjunction with cathodic
11 protection. Coatings have a high dielectric
12 strength, which prevents the flow of electrons
13 to the pipe's surroundings, thus interrupting
14 the electro-chemical reaction of the metal with
15 its environment.

16 Cathodic protection protects buried pipelines,
17 ship hulls, underground tanks, offshore
18 platforms and other metal surfaces which may
19 come in contact with the ground or with water.
20 It is not used to prevent atmospheric
21 corrosion or corrosion that may occur inside
22 the pipe due to its contents. Other corrosion-
23 control measures are used in these cases.

24 Gas pipelines installed after July 31, 1971,
25 and hazardous liquid interstate pipelines



1 installed after March 31, 1970, must be
2 properly coated and have cathodic protection.
3 Effective dates for other categories of
4 pipelines apply.

5 Cathodic protection is required on any
6 pipeline installed before these dates if the
7 pipeline is coated, or where areas of active
8 corrosion are present if the line is bare or
9 ineffectively coated.

10 Performance of cathodic protection systems
11 must be monitored regularly with tests
12 performed at least once per year. Records must
13 be maintained for the life of the pipeline.

14 Where cathodic protection systems utilize
15 rectifiers, each rectifier must be checked six
16 times a year, with a maximum interval between
17 checks of two and a half months.

18 Q: Okay. And is that, what you just read, is that
19 accurate and consistent with Colonial Pipeline
20 ---

21 A: Yes, it is.

22 Q: --- in South Carolina?

23 A: Yes, it is.

24 Q: And are we talking, just to be 100 percent
25 sure, are they talking the same rectifiers and



1 anodes as a -- as are installed in the Colonia
2 Pipeline system?

3 A: Yes.

4 Q: All right. Now where are cathodic protection
5 systems installed? And to backup one second,
6 so those are -- are those the same cathodic
7 protection that was denied for a property tax
8 exemption in South Carolina?

9 A: Yes.

10 Q: All right. Now where is cathodic protection
11 systems installed in South Carolina?

12 A: It's installed alongside the pipeline and the
13 entire pipeline corridor.

14 Q: Okay. And does it prevent, eliminate, treat or
15 abate water or air pollution?

16 A: Yes.

17 Q: And how does it do that?

18 A: Cathodic protection systems prevent corrosion
19 from occurring and prevent an unintended loss
20 of product.

21 Q: Okay. So specifically what pollution does it
22 prevent or abate?

23 A: Gasoline, diesel fuel, fuel oil, jet fuel,
24 kerosene, all the products that Colonial
25 carries.



1 Q: Okay. And how does it prevent pollution from
2 them?

3 A: It prevents it from entering the environment by
4 ---

5 Q: Okay.

6 A: --- by preventing the corrosion process for
7 happening.

8 Q: All right. And so if the -- what would happen
9 if you didn't use cathodic protection?

10 A: Steel naturally corrodes, so inevitably the
11 pipeline would -- would corrode and you'd have
12 a through wall and product would release to the
13 environment.

14 Q: Okay. All right. Is it required by state or
15 federal law?

16 A: Yes.

17 Q: And what, what state or federal law requires
18 cathodic protection?

19 A: Federal Regulation 49 CFR 195, sub part H.

20 Q: All right. Is it required by any industry
21 safety standards or best practices?

22 A: Yes. The Federal Code of Regulation references
23 NACE's standard, which is a -- which is SP0169
24 which talks about corrosion control and
25 cathodic protection coatings.



1 Q: So for purposes of the court reporter, NACE is
2 spelled N-A-C-E, correct?

3 A: That's correct.

4 Q: All right. And were these cathodic protection
5 devices in place in 2017 and 2018?

6 A: Yes.

7 Q: And do you know when they were originally
8 installed?

9 A: Cathodic protection was installed -- it's been
10 installed for a long time. Back in 1962 when
11 the pipe was, was installed, it had cathodic
12 protection at a very limited capacity. Since
13 then, we've installed more systems as the
14 coating degraded over time.

15 Q: Okay. All right. And we'll get into the
16 details, but are you -- do you undergo
17 inspections to ensure cathodic protection is in
18 place and working?

19 A: There are various inspections that we're
20 required to perform. One is a cathodic
21 protection survey that's performed at test
22 stations that are installed along the pipeline
23 corridor.

24 Q: And we'll -- we'll get into those in a minute.
25 But you are -- you do regularly inspect them?



1 A: Yes.

2 Q: So if you pull -- let's turn then to pipeline
3 coatings. So let's -- we'll start again there.
4 I thought the Feds did a great job of
5 describing it. I'll get you to read the DOT
6 PMSA description of pipeline coatings. And if
7 you'll first identify that document?

8 A: This is from the U.S. Department of
9 Transportation, Pipeline and Hazardous Material
10 Safety Administration, and it talks about a
11 fact sheet on pipeline coatings.

12 Q: All right. Go ahead and read the relevant
13 portions.

14 A: Pipelines are usually buried underground to
15 protect them from damage, and keep them from
16 interfering with the movement of traffic.
17 Underground, the exterior of the pipe is
18 exposed to conditions that can lead to
19 corrosion. It should be noted that the
20 interior of the pipelines can also be attacked
21 by corrosion products, such as hydrogen
22 sulfides, CO2, water, that might be contained
23 in products transported in the pipeline.

24 The earliest pipelines were buried without
25 any external coatings. To prevent corrosion,



1 pipeline manufacturers and operators began
2 applying coatings to the exterior of the pipe
3 at the time it was being installed. This
4 required the exterior surface of the pipe to be
5 cleaned, usually by wire brush, and then
6 application of a coating to the surface. These
7 early pipe coatings were tape wraps and coal
8 tars.

9 These coatings are susceptible to disbonding,
10 however, the pipeline operators eventually
11 determine that coatings alone would not provide
12 complete corrosion protection.

13 Disbonding refers to a condition in which the
14 pipe coating becomes separated from the
15 exterior pipe wall. This allows water to come
16 in contact with the pipe wall, setting up
17 conditions that can lead to corrosion. Pipe
18 coatings can also be damaged by equipment and
19 by rocks left in the back fill during
20 installation, as well as by subsequent
21 excavation activities.

22 To enhance protection, operators began
23 installing cathodic protection systems. By
24 taking periodic measurements of pipe-to-soil
25 electrical potentials along the pipeline,



1 cathodic protection systems can detect
2 disbondment, and the operator can make the
3 necessary repairs to the pipe coating.

4 Today pipe coatings are applied by the pipe
5 manufacturer at the time the pipe is
6 manufactured. This has obvious advantages.
7 The coating can be applied in a consistent
8 manner, the exterior of the pipe is clean, and
9 the application conditions can be controlled
10 better. Exterior pipe coatings still need to
11 be applied during construction in the field at
12 the girth welds when pipe sections are joined.

13 The most widely used pipe coating today is
14 fusion bonded epoxy, otherwise known as FBE.
15 FBE is applied to hot rotating pipe that is
16 electrostatically charged. FBE is resistant to
17 high temperature, can withstand high stress,
18 and provides good protection against corrosion.

19 Q: All right. And does that accurately describe
20 what Colonial deals with in South Carolina
21 Colonial's pipes?

22 A: Yes, it does.

23 Q: And are we talking about the exact same coating
24 in that document as we are in our case today?

25 A: Yes. The -- the document references coal tar



1 ---

2 Q: Uh-huh.

3 A: --- which is a asphalt based coating. Colonial
4 has three of -- on the main lines, it has
5 asphalt enamel, which was installed in 1962.
6 And then it has a coal tar on the 1978 vintage
7 pipe, along with a extruded polyethylene.

8 Q: Okay. And -- but when Colonial buys pipe, is
9 it -- is the coating already installed?

10 A: Yes, it is, if we use fusion bonded epoxy.

11 Q: Okay. All right. And so, but you -- do you
12 have to ever repair them?

13 A: We do.

14 Q: Okay. Did you ever have to replace a coating?

15 A: Yes.

16 Q: All right. And how often do you have to repair
17 or replace? Is it an annual thing or ---

18 A: So ---

19 Q: --- every five years or?

20 A: It's a continuous monitoring process. We take
21 readings on the pipeline on a regular basis and
22 when the readings determine that the pipe has
23 disbonded, then we need -- then we make the
24 appropriate repairs.

25 Q: Okay. But my question is, does that



1 practically never happen or happens ---

2 A: It happens quite a bit on the old coatings.
3 They have a -- they have a 25 year average
4 design life and that has obviously been
5 exceeded by now so that the coating degradation
6 is a -- is a common problem.

7 Q: Okay. And does the coating prevent, eliminate,
8 treat or abate water or air pollution?

9 A: Yes.

10 Q: And how does it do that?

11 A: It isolates the pipeline wall from the
12 environment and, and minimizes and mitigates
13 the corrosion process from happening.

14 Q: Okay. And to repeat your earlier testimony, if
15 you didn't have pipeline coating, what would
16 happen to the pipeline?

17 A: The pipeline would be allowed to corrode and --
18 and would create -- would generate through
19 holes.

20 Q: Okay. And once it's corroded what would
21 happen, full of petroleum?

22 A: Once it's corroded it would release petroleum
23 into the environment.

24 Q: All right. And specifically what pollution
25 does it prevent or abate, water or air?



1 A: Both.

2 Q: Both?

3 A: Yes.

4 Q: Okay. And is it required by any state or
5 federal law?

6 A: Yes.

7 Q: All right. What federal law requires it?

8 A: 49 CFR 195, sub part H.

9 Q: Okay. Is there a state statute on pipeline
10 control -- pipeline coating?

11 A: A state statute?

12 Q: Yeah.

13 A: There are states but not in South Carolina.

14 Q: Okay. Is it required by the industry safety
15 standards or best practices?

16 A: NACE standard practice 0169.

17 Q: Okay. All right, let's switch gears to the
18 automatic shutoff valve. Briefly describe it.
19 And we'll have a picture -- a picture of it for
20 you here, but briefly describe it.

21 A: An automatic shutoff valve is, is simply a way
22 to isolate product in a pipeline.

23 Q: And how does it do so?

24 A: It has -- it can be controlled by our operators
25 in Alpharetta and it blocks the product flow.



1 And during a release it prevents product from
2 draining down to the point of the release, so
3 it minimizes the -- the amount of product that
4 would enter the environment.

5 Q: All right. Where is it located?

6 A: In Gaffney.

7 Q: Okay. And that's what we applied for in the
8 pollution control exemption for?

9 A: Yes.

10 Q: All right. Do you know when it was installed?

11 A: 2011.

12 Q: All right. And does it eliminate, prevent,
13 treat, or abate water/air pollution?

14 A: Yes.

15 Q: And how does it do that?

16 A: It -- it minimizes the amount of product that
17 would release into the environment, so it
18 isolates the Gaffney station and a section of
19 pipeline so it won't allow product to drain
20 out.

21 Q: Give us give us an example or two when you
22 would actually use it?

23 A: We would use it -- we would use it for
24 maintenance work if we had to isolate a station
25 from maintenance. And we would use it if we



1 had a release upstream of Gaffney, we could --
2 we could activate the isolation valve and
3 prevent product from draining towards the
4 release so it minimized the product.

5 Q: So a release would be where you actually had a
6 hole in the pipe and pollution was -- I mean
7 petroleum was pouring out of it, as one example
8 of release?

9 A: That's correct. Petroleum would -- the pipe
10 has a lot of elevation changes. Petroleum
11 wants to drain downhill, so isolation valves
12 prevent that product from draining and emptying
13 the pipeline ---

14 Q: It just basically allows you to shut the
15 pipeline off, correct?

16 A: Yes.

17 Q: And you can shut it off from Alpharetta?

18 A: Yes.

19 Q: All right. And what would be the negatives if
20 you didn't have an automatic shutoff valve?

21 A: If we had a release, the impact would be much
22 greater.

23 Q: Okay. Does any state or federal law require
24 it?

25 A: Yes.



1 Q: What federal law?

2 A: 49 CFR 195.

3 Q: Okay. Do you do inspections to make sure the
4 valve is working, in place and working?

5 A: We have required inspections. We have to
6 inspect the valve annually and operate the
7 valve to ensure that it works.

8 Q: Okay. So the Feds require you to look at it
9 annually?

10 A: Yes.

11 Q: All right. Do you use pipeline -- cathodic
12 protection pipeline coatings and automatic
13 shutoff valves in the other ten or so states
14 you do business?

15 A: Yes, we do.

16 Q: Okay. In which states?

17 A: All of them.

18 Q: All right. And are they required by state or
19 federal law in other states?

20 A: Yes.

21 Q: Are they required by federal law in every
22 state, would that be accurate?

23 A: Yes.

24 Q: All right. So let me quickly go back. These
25 devices over our -- our statute, are -- is



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1 cathodic protection devices, pipeline coatings,
2 and automatic shutoff valves required by
3 federal law?

4 A: Yes.

5 Q: Are they designed to abate or prevent water or
6 air pollution?

7 A: Yes.

8 Q: Are they used in the conduct of Colonial's
9 business?

10 A: Yes.

11 Q: All right. Switching gears let's talk about
12 the maintenance of the pipeline. We've heard
13 it a couple of times today, but briefly tell us
14 how many pipeline does Colonial have in South
15 Carolina?

16 A: We have three main pipelines. Line 1 and line
17 2 are the main lines. And line 29 is our sub
18 line.

19 Q: All right. And are the pipelines monitored?

20 A: Yes, they are. They're monitored both
21 mechanically and visually.

22 Q: Okay. And does federal law require monitoring?

23 A: Yes.

24 Q: And how many how many times does the Feds say
25 you have to monitor it?



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1 A: We have to, depending on the type of monitoring
2 we -- depending on the type of monitoring, we
3 have to monitor for leaks. We have leak
4 protection in place to monitor the pipe on a 24
5 hours a day, 7 days a week. We also have to do
6 some sort of visual inspection out on the
7 right-of-way. Colonial chooses to use aerial
8 patrol, so a flight of a plane. And the
9 requirement is that we have to monitor the pipe
10 every -- or 26 times a year not to exceed three
11 weeks ---

12 Q: Okay.

13 A: --- intervals.

14 Q: So you say you have both a visual and a
15 mechanical monitoring?

16 A: Yes.

17 Q: And is that the entire pipeline or just test
18 stations?

19 A: That's the entire pipeline.

20 Q: All right. So let's start with visual
21 monitoring. Tell us about your visual
22 monitoring and why don't we start with airplane
23 flights then.

24 A: Okay. So as I mentioned, we monitor every two
25 weeks, we fly the pipeline corridor, and we



1 have to maintain a line of sight for the
2 fliers. So we have to mow the right-of-way, we
3 have to clear any canopy that may be growing
4 over the right-of-way restricting the flier ---

5 Q: Is this -- why don't we finish up with the
6 flying and then we'll come back to the mowing.

7 A: Okay.

8 Q: So what do they do when they fly?

9 A: So they're looking for encroachments, they're
10 looking for activity on the right-of-way that
11 has -- doesn't necessarily have a one call
12 ticket, a 8-1-1 call ticket associated with it,
13 and we're looking for dead vegetation, which is
14 sign of a slow product leak. A larger product
15 leak will be detected by our control center
16 leak detection, but very, very small leaks
17 cannot be detected that way so we rely on
18 people on the ground, visual inspection of the
19 -- of the aerial patrol to find those leaks.

20 Q: Okay. So they -- every two weeks or so they
21 fly down the entire line?

22 A: Yes.

23 Q: All right. Do they video it or anything like
24 that?

25 A: They -- we do video it. Not every flight, but



1 when we feel necessary and we need to update
2 what the right-of-way looks like, we'll video
3 it. When there's something that needs to be
4 addressed, when there's -- where there's action
5 on the right-of-way, a picture is taken and
6 that picture is sent to our local right-of-way
7 inspectors and they drive out to the site to
8 investigate and determine if any action is
9 needed.

10 Q: Okay. And do you have to put all of this data
11 down in a log for the airlines, airplanes?

12 A: This is -- yes, this is all logged.

13 Q: Okay. All right. And then you mentioned you
14 need to have line of sight and so you have to
15 trim the pipeline. If you could tell us about
16 that.

17 A: We mow the pipeline at least annually. We have
18 to maintain line of sight for the markers,
19 which means if you're standing at any marker on
20 the pipeline system you need to see the next
21 marker and the pipeline needs to be marked at
22 any bends in the pipeline, we call them PIs.
23 So they have to be identified. And we have
24 aerial markers also that -- for the-- that
25 keeps the plane flier on track and over the



1 pipeline when he's flying so he can positively
2 identify that he's in the right corridor.

3 Q: Okay. And is he flying at a real low altitude
4 I guess?

5 A: He's flying pretty low, yes.

6 Q: Okay. All right. And so how many markers or
7 types of markers and how many do you have on
8 the pipeline in South Carolina?

9 A: Wow, I don't know how many we have on the
10 pipeline, but line of sight might -- may
11 typically be every 500 to 1,000 feet ---

12 Q: Uh-huh.

13 A: --- for the entire pipeline corridor for every
14 pipeline. So the pipeline marker marks the
15 center of each pipeline. And it's typically
16 orange posts with a red and yellow sign which
17 identifies Colonial Pipeline contact
18 information, like I said, so somebody can
19 contact us if there's a problem.

20 Q: Okay. And so you have -- are those in the
21 middle of the pipeline or random, where are
22 those markers?

23 A: They're marked over the center of the pipeline.

24 Q: Okay. And then you mentioned you also have
25 mile markers?



1 A: We have mile -- we have mile markers which --
2 which are much larger and they're designed to
3 be seen from flying overhead. And it -- it's
4 what the aerial patrol or the flier would use
5 to identify a location.

6 Q: Okay. They obviously have numbers on them?

7 A: They do.

8 Q: So if the pilot saw dead vegetation, he'd know
9 where to flag it?

10 A: He would know -- he would know which mile
11 marker it's at and he would take a picture and
12 they would send all that information to local
13 right-of-way inspectors.

14 Q: Okay. And what else is the lawn mower crew
15 looking for; other than cutting the grass,
16 they're looking at the mile markers, what else
17 are they looking for?

18 A: They the mowing crews and the right-of-way
19 inspectors are all responsible for maintaining
20 the markers. Markers get knocked down all the
21 time so they have to maintain line of sight.
22 They're also looking for -- they're looking for
23 dead vegetation also. They're looking for
24 washouts. They're looking for places where the
25 pipeline may be exposed due to erosion.



1 Q: Okay.

2 **THE COURT:** Due to what?

3 A: Erosion.

4 **THE COURT:** All right.

5 Q: Erosion. All right. And is there any other
6 visual inspection of the pipeline, for example
7 right-of-way inspectors?

8 A: Right-of-way ins- -- well right-of-way
9 inspectors also are responsible for notifying
10 all the property owners in the corridor giving
11 them a fliers product information, letting the
12 property owners know that we have a pipeline
13 there and what to do if there's an emergency.
14 There's also an incentive program that
15 incentivizes the property owners to tell us
16 when activity is going on in the corridor. So
17 they're kind of our -- they're our eyes on the
18 ground and they're our interface with the
19 property owners.

20 Q: And the right-of-way inspectors have specific
21 responsibilities or just keep an eye on it?

22 A: They are specifically responsible for
23 addressing any -- really any issues on the
24 right-of-way. And they are responsible for
25 responding to one call tickets, 8-1-1 tickets.



1 Q: And what are 8-1-1 tickets?

2 A: When a contractor or a property owner or anyone
3 doing work anywhere near our right-of-way, the
4 first thing they're supposed to do is call 8-1-
5 1 and identify the work they're doing and the
6 coordinates of the work and the location so we
7 can mark our -- mark our pipeline so their work
8 can be safely done without hitting our pipeline
9 and affecting our pipeline operations.

10 Q: Okay. All right. And so tell us a little bit
11 -- you mentioned the right-of-way inspectors
12 go out and contact the neighbors. What is --
13 what -- can you describe the neighbors program
14 to us? First of all is that a federal law or
15 is that just good ---

16 A: That is a federal law that we have to have some
17 sort of public awareness material and education
18 to the property owners and that's something
19 that, when PHMSA inspects us, they ask
20 specifically for that. We have a department
21 who handles that, so I don't know the specifics
22 of the program, I just know that's the program
23 we have. And PHMSA ensures that we are -- we
24 do have a program that's -- that's robust
25 enough to notify -- so the people out there are



1 educated enough to know the pipeline's there.

2 Q: All right. And do you have to compile a
3 database of all of their names and addresses?

4 A: We have a database in our corporate office of
5 every property our pipeline runs through, and
6 contacts associated with the property.

7 Q: Okay. And what do you ask the neighbors to do?

8 A: We give them a number to call if there's any
9 concerns, if there's any activity, and if
10 anybody's doing anything suspicious on the
11 pipeline.

12 Q: Is there anything in it for the neighbor if
13 they do that?

14 A: There is. I don't know what the incentive is,
15 but there is. I believe it's a cash incentive.

16 Q: There's a financial reward?

17 A: (Nods head.)

18 Q: Okay. All right. And all that, all of that
19 visual inspection, you say that's required by
20 federal law?

21 A: Yes.

22 Q: And are you required to keep records of that?

23 A: Yes, we are.

24 Q: And does Johnny Fed, as we call the Feds, do
25 they ever look at that record?



1 A: Yes, they do.

2 Q: Okay. And how often does Johnny Fed come
3 around and poke his nose in it?

4 A: Typically every three years we have an
5 inspection, but it can be more frequent than
6 that.

7 Q: Okay. And is keeping, it's just -- merely
8 keeping the data base required by federal law?

9 A: Yes.

10 Q: All right. So let's turn to flooding and
11 erosion monitoring. Do you do flood and
12 erosion monitoring?

13 A: We do. We have a corporate integrity engineer
14 who is responsible for monitoring our -- the
15 waterways that our pipeline crosses. Rivers,
16 really any creek, river, or any waterway,
17 navigable waterways. And we also have a
18 fluvial geomorphologists who -- who we contract
19 out ---

20 Q: Let me stop you.

21 A: Okay.

22 Q: Could you spell that for her?

23 A: I don't think I can. Fluvial, F-L-U-V-I-A-L,
24 geomorphologist.

25 Q: Okay.



1 A: And their -- they specialize in erosion, river
2 bank erosion, scouring of our pipeline. We
3 have lot of problems with -- the pipe can
4 become exposed just due to normal bank erosion,
5 which is one of the reasons we take a lot of
6 videos and pictures of our right-of-way so we
7 can look at it over the years and see how, how
8 the river is carving it's -- a new path and
9 sometimes our pipeline gets exposed. So during
10 heavy flood events, hurricanes, we inspect
11 those lines that are affected at the rivers.

12 Q: In South Carolina, I know you're not the
13 geological expert, but do you cross rivers and
14 waterways in South Carolina?

15 A: We cross the Savannah River, the Saluda River
16 and there are several smaller rivers that we
17 cross through here in South Carolina.

18 Q: Okay. So for monitoring erosion and a -- so
19 you have a -- you have a central engineer and
20 you have the geologist. Where is this -- where
21 is the engineer who's in charge of flooding?

22 A: At the corporate office.

23 Q: Okay. In Alphretta?

24 A: Yes.

25 Q: All right. And then do you have the fluvial



1 geomorphologist, is that an employee or an
2 independent contractor?

3 A: That's a contractor. He is a specialist who
4 just deals with pipelines and river erosion,
5 yes.

6 Q: Okay. So what are -- what is her
7 responsibility, to go in after flooding and so
8 forth?

9 A: Our corporate engineer?

10 Q: No, the geo fluvial ---

11 A: Morphologist. So we need to understand the
12 risk associated with our pipeline and rivers,
13 and they study rivers. They can they can tell
14 us which rivers are higher risk than others.
15 They can tell us when the volumes or velocities
16 reach a certain level that we may need to take
17 action. So they're doing a lot of the analysis
18 so we can attack the riskiest segments on our
19 pipeline.

20 Q: Okay. All right.

21 **THE COURT:** What was the first word of that?

22 A: Fluvial.

23 **THE COURT:** Geomorphologist?

24 A: Fluvia.

25 **THE COURT:** Fluvial?



1 A: F-L-U-V-I-A-L.

2 **THE COURT:** All right. You had me going to the
3 dictionary for a second there. I thought you
4 were saying effluvial.

5 **MR. MAYBANK:** We're getting ready to get into
6 disbonding, and you'll word processor will not
7 allow you to type disbonding.

8 A: It will change it to disband every time.

9 Q: All right. So we've been over a visual
10 monitoring in some detail, let's turn to
11 mechanical monitoring. Do you also do
12 mechanical monitoring of the South Carolina
13 pipelines?

14 A: We do. For -- for a -- cathodic protection
15 monitoring, we do. We do inline inspection
16 monitoring. We do close interval survey. We
17 perform rectifier inspections out on the right-
18 of-way.

19 Q: Okay, we'll get to that. Do you mechanically
20 monitor the entire South Carolina pipeline?

21 A: Yes.

22 Q: All right. And where do you do these
23 mechanical monitorings from; where do they take
24 place?

25 A: On the pipeline corridor. It depends on the



1 survey. Annual surveys are performed at test
2 stations, which are spaced approximately a mile
3 along the pipeline corridor, so every mile.

4 Q: And then some of it's done by -- out of
5 Atlanta? Alphretta I mean?

6 A: Yes. So, so we have pressure monitors at our
7 stations and we have -- we have a leak
8 detection computational model that is looking
9 at pressure differentials and looking for leaks
10 continuously while the pipeline is operating.

11 Q: Okay. So that's what -- if you'll kind of
12 start over, tell us what the Atlanta office
13 does, as opposed to the on onsite monitoring.

14 A: The control room in the Atlanta office is
15 monitoring pipeline 24 hours a day, 7 days a
16 week, 365 days a year. And there's -- there's
17 always at least one person assigned to every
18 pipeline, and they are actually sitting in
19 front of the screen watching, monitoring the
20 pipeline all day every day.

21 Q: Okay.

22 A: If they take a break somebody covers them, so
23 constantly -- constant monitoring at the
24 office.

25 Q: And what are they monitoring? What machines



1 are sending them information?

2 A: There's pressure sensors at the stations. And
3 we don't have pressure sensors along the right-
4 of-way, but with hydraulic modeling you know
5 what the pressure is supposed to be, and you
6 can just monitor between the stations and you
7 can tell if there's a pressure loss anywhere
8 between the two stations.

9 Q: Okay.

10 A: So there's not a need to have a sensor every so
11 many feet, you can -- you really can monitor
12 the pressure and whether there's a leak.

13 Q: And so the pressure sensors, they're at the
14 tank farms, correct?

15 A: They're at the pump stations ---

16 Q: Pump stations, all right. And so let's turn to
17 the onsite mechanical monitoring. What all is
18 involved, if you'll tell us, what do you do
19 onsite to mechanically monitor?

20 A: Are you ---

21 Q: For example, annual inspection, PIGS and the
22 like ---

23 A: Okay. So ---

24 Q: --- if you'll give us that list.

25 A: So we have a series of integrity assessments



1 that are required by 49 CFR 195 to be performed
2 on the pipeline. We perform annual cathodic
3 protection surveys where we take a pipe-to-soil
4 measurement, which is bonus measurement, at
5 each test station along the corridor. A test
6 station is based about a mile apart and we're
7 looking to meet a certain cathodic protection
8 criteria that's established and the NACE SP0169
9 standard. The here are all of the test
10 stations that we have in South Carolina. It
11 was a ---

12 Q: Okay.

13 A: --- it was a lot of data, so, compressed into
14 South Carolina. A lot of test stations we have
15 out there. We also have close interval survey
16 that we perform on a five year basis. Annual
17 surveys are performed annually per CFR 195. We
18 have close interval surveys where we perform
19 the same pipe-to-soil measurement but we're
20 performing every two and a half feet along the
21 pipeline. So we walk the entire pipeline
22 corridor, take a measurement, and -- and we use
23 that data to identify whether we're meeting
24 that same cathodic protection criteria or not.
25 We perform rectifier inspections, so we have to



1 inspect or take a reading on each rectifier on
2 the pipeline system every -- every two months
3 not to exceed two and a half months.

4 Q: And we'll get to that.

5 A: Okay.

6 Q: But just to run through what you do: you
7 annually inspect the line, you annually inspect
8 the cathodic protection devices, you do a close
9 interval survey every five years, and then you
10 run PIGS ---

11 A: And we do ---

12 Q: --- through the lines?

13 A: And we do an inline inspection, so there's a
14 lot of inline inspection. We call them PIGS,
15 smart PIGS. A lot of technologies. We chose
16 a technology that meets the threat for that
17 line. There's inline -- we're required to
18 perform some sort of inspection tool inside,
19 put it through, actually through the pipeline
20 and measure -- measure the integrity of the
21 pipe wall every five years. Typically ---

22 Q: Okay. So let's let's turn to the annual
23 survey. So you've given us a good overview.
24 Tell us what you do on the annual survey. And
25 first of all, is it -- an annual survey to me



1 means you do it once a year. How often do you
2 do annual surveys?

3 A: We're required to perform the survey and
4 document it into our into our database at least
5 once each year, not to exceed -- once each
6 calendar year, not to exceed 15 months.

7 Q: Okay. And what is -- what do you do in the
8 annual survey?

9 A: We take a voltage reading where we have a probe
10 which is called a copper sulfate reference
11 electrode. We place that in the ground and we
12 make a metallic connection with a wire to the
13 pipeline itself and take a voltage measurement.

14 Q: And what do you measure then?

15 A: We're measuring the level of cathodic
16 protection, which we call polarization. It's
17 the amount of cathodic protection that the
18 pipeline sees.

19 Q: And where do you measure that?

20 A: We measure it directly over top of the
21 pipeline.

22 Q: Okay. And is it done at test stations or ...

23 A: The annual survey is performed at test stations
24 only.

25 Q: And what is that document there then?



1 A: Those are all the test stations that we have
2 installed on the -- on lines 1, 2 and 29.

3 Q: And that's -- the red color is all the lines?

4 A: That's correct, that's the red. And it's hard
5 to see, but the blue outline is the South
6 Carolina border, so that covers everything in
7 South Carolina.

8 Q: Okay. It looks to me like you got one
9 everywhere.

10 A: We do.

11 Q: Okay. All right. And so are there federal
12 standards regarding the required voltage when
13 you when you test it?

14 A: Yes, there is. There are three criteria listed
15 in NACE SP0169, so it needs to meet a 850
16 current applied criteria with IR considered,
17 that's one of the criteria. It needs to meet
18 100 millivolt polarization or we would need to
19 meet an instant off potential or a polarized
20 potential of 850 -- negative 850 millivolts.
21 So those are the three criteria we're looking
22 for when we take a reading.

23 Q: Okay. And if you get a bad reading, what does
24 that signify?

25 A: A bad reading could signify that we had a



1 rectifier that went down, we have a wire that's
2 -- connection to either the anode or the
3 pipeline that's broken; it could be the test
4 station we're using to take a reading could be
5 damaged, the wire could be damaged; or it could
6 mean that the coating, the coating has degraded
7 to a level where we can't meet the cathodic
8 protection level that we need to make sure that
9 the pipe is receiving adequate protection.

10 Q: Okay. And just for us laymen, how are on earth
11 does a electronic voltage tell you that the
12 coating is disbonding?

13 A: Cathodic protection in itself works pretty well
14 when used in conjunction with coatings, but
15 when the coating starts to disbond and go away,
16 cathodic protection can only do so much. It
17 can it can protect those bare areas that are in
18 contact with the electrolyte, but once that
19 contact area becomes so great, cathodic
20 protection can't polarize the pipe. It just --
21 because there's not enough current in the
22 ground to get to the pipe to polarize it. So
23 the cathodic protection, the voltage reading
24 starts to drop below what we would expect to
25 see for good cathodic protection.



1 Q: Okay. So a real low reading is a sign of
2 coating loss. You also get too high a reading
3 or are they all -- y'all just looking for too
4 low readings?

5 A: We can get too high of a reading. Yeah, so if
6 your reading is too high you can damage -- it
7 could have adverse effects on the pipeline. It
8 can cause cracking, hydrogen embrittlement, it
9 could even disbond the coating. So we want to
10 keep the -- it's a constant maintenance program
11 to keep the levels where they need to be. They
12 really can't be too high or too low.

13 Q: Okay. And does a coating come off and disbond
14 very often? I think you ---

15 A: Yes.

16 Q: --- already quickly hit that.

17 A: Yes, it does, on the on the main lines, on the
18 older coatings. The older the coating is
19 typically the easier it disbonds. And we see
20 that. We perform close interval survey and we
21 have a lot of history of data you can see the
22 pipeline, you can see the coating progressively
23 getting worse each survey we perform until we
24 perform some sort of remediation.

25 Q: So the first coating was put in 1962. When was



1 the second line put in?

2 A: 1978.

3 Q: All right. Does -- are they the same coatings
4 or has technology gotten better?

5 A: They're different. The technology got a little
6 bit better in 1978. The extruded polyethylene
7 is a much better coating than the asphalt
8 enamel. The coal tar, just due to the fact
9 that it's newer than the 1962 asphalt enamel,
10 has been in a little bit better shape. Most of
11 our maintenance right now is on the asphalt
12 enamel pipeline installed in '62.

13 Q: All right. And does federal law or the best
14 practice standards require you to take action
15 when you get a bad cathodic reading?

16 A: Yes, it is a requirement. And it's also a
17 requirement that when we identify we have we
18 have disbonded coating, we need to address it
19 as well.

20 Q: Okay. And do you know what that federal law
21 citation is?

22 A: It's in 49 CFR 195, subpart H.

23 Q: Okay. All right. And does NACE have a similar
24 one or it just follows the federal law?

25 A: The Federal Code references the NACE standard



1 for a lot of its practices ---

2 Q: Okay.

3 A: --- a lot of requirements.

4 Q: Now are you required to record a bad reading?

5 A: Yes. We have to record them in our data base.

6 Q: All right. Is that federal law?

7 A: Yes.

8 Q: All right. All right. Tell us what you do and
9 who does it. You get a bad reading and
10 discover it's not a break in the cathodic line
11 it's disbonding. What happens?

12 A: Our onsite local corrosion technicians perform
13 the surveys. When we identify that we have low
14 readings, few, a few more people get involved.
15 The local area corrosion manager, our corrosion
16 engineer at the corporate office, and I might
17 get involved. We have to assess the data. We
18 look at other data sets to see, to really
19 identify the problem. We may even perform some
20 followup surveys and testing to try to
21 understand the magnitude of the problem and we
22 implement a design.

23 Q: Okay. And so what do you do once you discover
24 that you've got disbonding; what happens?

25 A: We recoat the pipeline ---



1 Q: All right.

2 A: --- with a ---

3 Q: So what steps are involved? First you've gotta
4 evacuate [sic] it, I guess.

5 A: Yes. So, so you'll have to excavate the
6 pipeline because they are roughly, you know,
7 three to five feet. Sometimes they're even
8 deeper than that. So we have to excavate, we
9 have to take off the old coating. It usually
10 involves just hitting it with a hammer.
11 Sometimes when we -- well most of the time when
12 we excavate, the coating just falls off, and
13 then we have to prepare the pipe for the new
14 coating. So it involves abrasive blasting
15 technique to get the pipe very clean. It's
16 called a near white finish and it has an anchor
17 pattern so that the new coating can bond
18 properly and perform as designed on the pipe.
19 So we have to perform that work and then we
20 spray on the -- a liquid epoxy coating. It's
21 a two part epoxy coating that's sprayed in a in
22 a plural component spraying rig, which is a
23 pretty complex rig with a lot of, lot of
24 controls, very high pressure, and it heats up
25 the coatings so that it can be sprayed. And we



1 apply that on the pipeline.

2 Q: Okay. And then you let it dry obviously?

3 A: It takes a day to cure and then we back fill.
4 And the back fill process is -- a lot of times
5 we'll use a, what we call a rock shield, which
6 grabs the pipe so that when, if there's any
7 rocks that are back filled, it doesn't chip the
8 coating off.

9 Q: All right. And who -- prior to application,
10 who owns the coating; is that you or
11 independent contractors?

12 A: Colonial usually purchases the coating and we
13 hire the contractors to apply it.

14 Q: All right. So let's turn to the close interval
15 survey. It will be somewhat duplicable I know.
16 How often does Colonial do this?

17 A: Every -- we have a schedule of every five
18 years. So sometimes it's more, sometimes it's
19 less but it's every five years that we perform
20 the survey.

21 Q: Okay. And is that required by federal law?

22 A: The federal law mandates that we have to
23 perform some sort of evaluation and that is the
24 that's what we chose so ---

25 Q: Okay.



1 A: --- so we have to do something and this is --
2 this -- the close interval survey is pretty
3 much the industry standard way to evaluate your
4 cathodic protection.

5 Q: Okay. And so federal law says every five years
6 you gotta take a close look at it?

7 A: No, federal law does not, that's -- their law
8 tells us that we have to have a program in
9 place and that's the program that we put
10 together.

11 Q: Okay. All right. And what all is involved in
12 the close interval survey?

13 A: Close interval survey involves about a five man
14 crew. There's a inspector who is usually a
15 Colonial employee. Sometimes it's a contracted
16 employee that represents Colonial. There's
17 someone who operates the equipment, the volt
18 meter and the data logger that stores all the
19 equipment. There is somebody who has to locate
20 the line in front of the surveyor. There's
21 someone who has to drive the truck and meet the
22 crew at different parts along the system. And
23 there's someone who has to pull the wire after
24 the survey is complete. So the way the survey
25 works is we connect a very thin wire to a test



1 station and we take the copper sulfate
2 reference electrode and put it on the ground
3 every two and a half feet and take a reading.
4 So as you extend out, you may have up to a mile
5 of wire trailing behind you. So once you get
6 to the next test station, they break the wire,
7 reconnect, and someone has to come behind and
8 pull the wire up. So it's a five man process.
9 And in corridors like lines 1 and 2, we may
10 dispatch a couple of crews so they can each do
11 the line side by side, so we may have a couple
12 of crews at a time.

13 Q: Okay. So you walk the entire pipeline in
14 those?

15 A: Yes.

16 Q: All right. And you probe every two and a half
17 feet?

18 A: That's correct.

19 Q: And why would you -- why would you have all the
20 wire running a mile long if you're probing
21 every two and a half feet? Why would you just
22 keep pulling it up and putting it in?

23 A: So the voltage measurement requires that you
24 have a contact, physical contact to the pipe or
25 metallic contact plate. So you have to



1 maintain that metallic contact and the only way
2 to do it is by hooking a wire and trailing it
3 behind you.

4 Q: Okay.

5 A: And the probe is a ground reference that's
6 placed over the pipe and the electrolyte, so
7 that -- that's the circuit you're measuring.

8 Q: Okay. All right. And so you say five people,
9 or five or six people are involved in that?

10 A: Five people per crew.

11 Q: Okay. And what's the locator do? You say you
12 have a locator operator, wire puller, vehicle
13 driver, and inspector. What's the locator do?

14 A: When you're surveying you have to stay over top
15 of the center of the pipeline to get a good
16 survey. So it requires a person to hook up a
17 radio transmitter to the pipeline at a test
18 station and they walk and it -- it tells them
19 whether they're over the pipe or not. They
20 have a receiver in their hand that tells them
21 that. So they walk over, stay over the pipe
22 and the operator of the equipment follows
23 directly behind them.

24 Q: All right. And what does the operator do?

25 A: The operator is in charge of taking the actual



1 readings and marking all the features. So
2 while they're collecting data, they're also
3 documenting all the features that they come
4 across in the pipeline corridor. That way, if
5 we have to go back to that site, we have a
6 reference point. So creeks, pipe markers, road
7 crossings, bends in the pipe they're
8 documenting all that as they're taking readings
9 so you have kind of a blueprint of the survey
10 that they performed.

11 Q: Okay. And are they merely measuring voltage
12 levels or is it more sophisticated and
13 complicated than that?

14 A: It's voltage levels but there are a lot of
15 things out there that can interfere with the
16 survey. Mainly power lines, overhead power
17 lines, other utilities, other pipelines that
18 may also have cathodic protection. If your
19 ground's too dry you'll have -- you won't get
20 a good reading.

21 Q: Yeah.

22 A: They have to know when they're not getting a
23 good reading. And they can't just collect
24 data, they have to collect data that actually
25 is good data and means something. So the



1 person needs to understand what the readings
2 are saying so that when something's not right
3 they stop and correct it. Otherwise we have to
4 send them -- send them back weeks later to re-
5 survey segments because the data wasn't
6 acceptable.

7 Q: All right. And what's the vehicle driver do?

8 A: So the crews are walking the entire pipeline,
9 so the driver is someone who give -- who
10 continues to give the crew the supplies they
11 need, wire, reference cells break when they're
12 out there, you know, water and picking people
13 up and shuffling them along the pipeline as the
14 crew moves along the pipeline.

15 Q: All right. And what's the wire puller do?

16 A: Wire puller picks up all of the wire after the
17 survey is complete. If we leave it in the
18 ground it causes a lot of problems with
19 livestock and wild life. They can get tangled
20 up in it and it creates a big problem.

21 Q: All right. And what's the inspector do?

22 A: The inspector makes sure they're following
23 Colonial's procedures during the survey.
24 They're responsible for reviewing the data to
25 ensure that the data is -- was collected



1 properly and they're to ensure that the work
2 was done safely.

3 Q: All right. And is there a term of art fo what
4 you're surveying? Is it something more fancier
5 than voltage levels. I've seen pile
6 polarization, is that a term?

7 A: Yeah. So, what they're measuring, voltage but
8 polarization is measured in voltage ---

9 Q: Uh-huh.

10 A: --- so the technical term would be polarization
11 levels, cathodic protection levels, but it's
12 essentially voltage measurements.

13 Q: All right. And so is part of this they're also
14 inspecting the cathodic devices themselves?

15 A: They do inspect the rectifiers as they pass by
16 them and document the rectifiers on their log.
17 They're also looking for things like leaks. We
18 have found leaks with the crews walking over
19 the pipeline before. They're looking for
20 washouts, you know, erosion, any exposed pipe.
21 A lot of times we realize that there's an
22 excessive amount of growth over the pipeline
23 that maybe wasn't picked up, so we have to go
24 back and re-mow or re-trim. So they're -- they
25 do a lot more than just survey. They're the --



1 they're our eyes on the ground.

2 Q: Okay. All right. And do you do any inline
3 inspections?

4 A: Yes. We -- inline inspections are required,
5 per CFR 195, every five years. There are a lot
6 of different technologies we can use. There's
7 -- there's technology to find cracks in pipes
8 ---

9 Q: And let me let me interrupt you. So federal
10 law requires it every five -- at least every
11 five years ---

12 A: Correct.

13 Q: --- do you do it more often than that?

14 A: We may do it more often if there's different
15 technologies that we want to utilize if there's
16 multiple threats on a line. We may even stick
17 a couple of smart PIGS together to form -- and
18 take two data sets while in one, one pass. So,
19 yeah, at least every five years ---

20 Q: Okay.

21 A: --- we perform an assessment on the pipelines.

22 Q: Okay. Do you stagger it or do you do it once
23 every five years you go out there and do a huge
24 PIG test?

25 A: So we have to manage the workload that follows



1 when -- anytime you do an assessment on the
2 pipeline, there is a whole bunch of PHMSA
3 required work and excavations we have to do, so
4 we strategically may stagger which lines are --
5 when we run the tool through so we don't have
6 too many assessments at one time. So we may
7 not do line 1 the exact same time as line 2.
8 We may do line 1, two and half years later do
9 line 2, and then a year later do line 29. So
10 it all has to fit in with the scheduling as
11 well with the operations of the pipeline.

12 Q: And that's done through the entire line?

13 A: Yes.

14 Q: All right. And so how many different kind of
15 PIGS are there?

16 A: There are -- there's -- there is PIGS that --
17 ultrasonic, UT or ultrasonic thickness PIGS
18 that can identify cracks. There's ultrasonic
19 thickness PIGS that give us the wall --
20 remaining wall thickness on a pipeline, so it's
21 measuring for corrosion essentially. There's
22 -- there are acoustic tools called Smartball
23 which is listening for an actual leak, so it's
24 looking for a leak in the pipeline. There are
25 MFL, magnetic flux leakage tools which are --



1 which is a different technology looking for
2 corrosion on the pipeline. And there is a --
3 there's a geometry tool which tells us if
4 they're dense deformations, if there is
5 ovalities or if the pipe's out of round it'll,
6 it'll tell us that.

7 Q: And how big are the holes when you discover
8 'em? Obviously they run in all size, but what
9 would be the typical size hole that you
10 discover, would it be microscopic or ---

11 A: For corrosion it can be anything. It can be a
12 large corrosion cluster, it can be a single
13 pit. It just depends on the mechanism, the
14 corrosion mechanism. General galvanic
15 corrosion, which is the corrosion that happens
16 when you just put a piece of steel in the
17 ground, walk away and come back, that's usually
18 more clustered in areas where an area is -- it
19 has a lot of small pits. There can be other
20 forms of corrosion, interference related, that
21 can be just one single deep pit. So it's --
22 and we have to -- we have to know what our
23 threats are so we can use can use the right
24 tool, and that's what the asset integrity
25 department does. We -- we're always assessing



1 that, looking at the data from the previous run
2 and determining the right tool for the next
3 run.

4 Q: So we discussed at length replacing the
5 coating, do you ever have to replace a pipe,
6 the entire pipe?

7 A: Yes.

8 Q: Okay.

9 A: There are -- one of the ways to remediate a pit
10 is to weld a sleeve. It's basically a pipe
11 over a pipe, but sometimes we elect to do a
12 cut-out.

13 Q: Okay.

14 A: Cut-out's a lot more complex because it's not
15 like natural gas where you can just let the gas
16 blow out into the air. We have to bring in
17 trucks and we have to suck the product out of
18 the pipe until it's not there anymore. And
19 then we can go in and do the cut-out, so it's
20 very costly. It's quite a large ---

21 Q: Endeavor?

22 A: --- process. Yeah pretty, pretty ...

23 Q: All right. Well, tell us about what the --
24 what do the PIGS do to identify cracks and how
25 do they identify them?



1 A: So the ultrasonic technology, it's really just
2 the way that the -- there's a lot of sensors
3 on a tool. The tool, you know, may be 15, 20
4 feet long and 40 inches in diameter. It may
5 have hundreds and hundreds of sensors on the
6 tool. And the way that the sensors are
7 arranged, they can identify different things.
8 So they can be specifically arranged to
9 identify specific types of cracks on the
10 pipeline.

11 Q: And where do you put them in?

12 A: We insert the pipelines or -- I mean we insert
13 the smart PIGS at stations, at facilities that
14 have launchers and receivers. So a launcher is
15 just a long pipe that allows us to inject the
16 tool into a line.

17 Q: Okay. And do they just go under their own --
18 the power of the petroleum or do they have
19 little motors on 'em?

20 A: No. They -- we -- our line runs pretty fast,
21 so we actually, in a lot cases, have to slow
22 the line down and it moves with the product.

23 Q: Okay. And where do you get them back out?

24 A: Wherever we have a receiver. So there's --
25 they're specified. It's approximately, on the



1 main lines, maybe every two hundred miles.
2 What -- that'll be the length of the run, so
3 we'll have a PIG trap and then 200 miles later
4 we'll have a receiver.

5 Q: Okay.

6 A: So they're just spaced out along the pipeline
7 system.

8 Q: All right. And tell us about the PIGS that
9 identify leakage and how on earth do they do
10 that?

11 A: Yeah. So this is a -- the Smartball is a
12 proprietary name, but it's acoustic technology.
13 It's a sphere with a very, very high definition
14 microphone inside and the -- when they get the
15 data back, they look at the acoustical signal
16 and they -- there's a certain pattern and noise
17 level associated with when a product leaks out
18 of a pipeline. So they're looking for that
19 signature.

20 Q: Okay. And then tell us about the PIGS that
21 measure corrosion? I think you may already
22 briefly ---

23 A: Yeah, so the most common in the industry is MFL
24 or magnetic flux leakage technology. It's been
25 around probably since the -- since the '80s.



1 And that -- that's the most common tool that we
2 use. The UT tools for corrosion are pretty
3 new. We've probably only run those in the past
4 couple years, but they're just different ways
5 to look at corrosion. Some are better at
6 looking at different kind of pits, some are
7 better looking at smaller pits, some are better
8 looking at clusters. So sometimes it's best
9 just to stagger those two technologies so
10 you're -- make sure you're seeing everything.

11 Q: All right. And tell us about the PIGS that
12 measure geometry of the pipe?

13 A: A geometry PIG is a PIG with a whole bunch of
14 little fingers surrounding the tool, and as
15 those stringers deflect, it records that. So
16 it -- when we get the data back, it gives us a
17 three dimensional view of the pipeline. And
18 the most important part of that is it
19 identifies dense. There's a certain level of
20 dense in our pipe that are actionable per the
21 federal regulations.

22 Q: Okay. And you run the PIG through the entire
23 line, correct?

24 A: Yes, we do.

25 Q: Main line 1 and 2 and line 29?



1 A: Yes.

2 Q: All right. Let's turn to then -- we discussed
3 at length various and sundry monitoring. Let's
4 discuss just the inspection of the cathodic
5 device itself as opposed to the line.

6 A: Okay.

7 Q: Do you do you regularly inspect the cathodic
8 device?

9 A: The cathodic device is called a rectifier and
10 it is -- it is a power source that -- it's --
11 the document I started off with mentioned an
12 impressed current anode. So an impressed
13 current system means that you're taking a power
14 source and you're inducing a current off of
15 your anode to the pipe and that current load
16 provides the protection for the pipe. So it's
17 critical that the rectifiers are monitored on
18 a regular basis and they're always -- they're
19 performing at the level that they need to be.
20 So ---

21 Q: All right. If we could get you to identify,
22 what is that map?

23 A: So this is a map of South Carolina with all the
24 rectifiers that we have installed out on the
25 right-of-way. So rectifiers are typically



1 installed on a -- we set a power pole and we
2 get a current drop from the local power
3 company, so they're physically sitting there in
4 the right-of-way on a power pole. We have, in
5 the right-of-way, we have a 106 rectifiers on
6 -- in South Carolina. And we have about 15
7 rectifiers in the facilities and some stations
8 ---

9 Q: Okay.

10 A: --- tank farms.

11 Q: So the rectifiers run down the entire pipeline?

12 A: They do.

13 Q: All right. And so you have a recti- -- you
14 have an anode, a power rectifier, a wire
15 attachment and a power feed, is that what ---

16 A: Yes, that's correct.

17 Q: Okay. All right. Coming down to the end here.
18 And so are they randomly on the pipeline system
19 or how are they on the pipeline system?

20 A: When we identify that we're not meeting the
21 cathodic protection levels that are required,
22 then we have to either modify an existing
23 system, maybe make it longer, extend the anode
24 along the pipeline or we have to install a
25 brand new system or we have to do a pipeline



1 re-coat project where we apply a new coating to
2 the pipeline. So one of those three things
3 happens. This -- the more rectifiers,
4 typically the worse the condition of the
5 coating is, it's degrading. We have a lot of
6 rectifiers on this system and approximately 70
7 percent of this line actually has a continuous
8 anode wire that extends about 15 feet off the
9 pipeline for like -- for about 70 percent of
10 the right-of-way. So and ---

11 Q: Where as a brand new pipe would have what?

12 A: A brand new pipe might have a single rectifier
13 with a remote anode bed maybe every 30 miles.

14 Q: Okay. And so at a minimum, there's one every
15 five miles, did you say?

16 A: At least. Typically a remote system would have
17 -- you might have one every five miles.
18 They're about one every mile in this system
19 because there aren't a lot of remote systems.
20 They -- this system is utilizing a continuous
21 anode and a continuous anode typically requires
22 a rectifier every mile.

23 Q: Okay. All right. And how often do you
24 physically inspect the rectifiers?

25 A: The rectifier -- we physically inspect the



1 rectifiers at least twice a year during annual
2 surveys. And we do a rectifier preventive
3 maintenance a different time of the year. And
4 we're out and about. Rectifiers go down and
5 we're -- we have to go out and fix the
6 rectifier. It's a federal requirement that we
7 repair a rectifier when it goes down within 75
8 days, so we're physically out there at least
9 twice a year but in reality it's a lot more
10 than that. Yeah.

11 Q: Does the federal law require you to inspect the
12 rectifiers themselves?

13 A: Yes. They are to be inspected every -- or six
14 times each calendar year not to exceed two and
15 a half months.

16 Q: All right. And so what issues do you have with
17 the rectifier? Again, focus on the rectifier
18 not the disbonding ---

19 A: Yeah.

20 Q: What goes wrong on rectifiers?

21 A: A rectifier, the biggest issue we have with
22 rectifiers is power outages. That happens a
23 lot. Lightening strikes. They're on the side
24 of the road so they can get run over by
25 vehicles when they go off the road. Wire



1 breaks. We have wires that come out of the
2 rectifiers. Sometimes people just cut them and
3 steal the wire. So we have to take action when
4 that happens and it happens quite a bit.

5 Q: Is physical inspections the only inspection you
6 do of a rectifier?

7 A: No. We have remote monitoring units that are
8 mounted to the side of each rectifier and it
9 uses GSM which is cell phone technology or
10 satellite technology. And it -- it's real time
11 monitoring the output of a rectifier, so every
12 two months it will give us -- well every two
13 months is the requirement, but they actually
14 report to us about every week, every one to two
15 weeks and give us an output reading. And also
16 when there is a condition where it loses power
17 or the output falls below the setting we have,
18 it notifies the corrosion technician through
19 either email or text message and they go out to
20 the site to fix the problem.

21 Q: All right. If there's an issue, does federal
22 law require you to repair them?

23 A: Yes. The repair must be made before the --
24 before the next scheduled survey, not to exceed
25 two and a half months.



1 Q: All right. And I believe we've already been
2 ...

3 **MR. MAYBANK:** Haven't we already been over the
4 automatic shutoff valve?

5 **(Off the record discussion with co-counsel.)**

6 **MR. MAYBANK:** If you'll show us -- almost finished
7 here.

8 Q: If you will, show us where the automatic
9 shutoff valve is.

10 A: How do you want me to show you that?

11 Q: We're going to put up a map here.

12 **MR. MAYBANK:** So we're otherwise through with this
13 witness.

14 Q: We could -- why don't you just tell us this,
15 where is it located?

16 A: It's located on the upstream side of Gaffney
17 pump station.

18 Q: Okay. And I believe you already testified that
19 federal law requires it, correct?

20 A: Yes.

21 Q: Okay.

22 **MR. MAYBANK:** We have nothing further, Your Honor.

23 **MR. STANLEY - CROSS-EXAMINATION BY MR. ANTLEY:**

24 Q: Good afternoon.

25 A: Hi.



1 Q: Your role at Colonial doesn't have anything to
2 do with South Carolina property taxes, is that
3 right?

4 A: I'm not in that department, no.

5 Q: Okay. I didn't hear anything today but I just
6 wanted to make sure. Your role is related to
7 cathodic protection, pipe coatings, and
8 automatic shutoff valves.

9 A: Automatic -- I am aware of -- I'm in our asset
10 integrity department so I'm exposed to valves.
11 I work with the people who are directly
12 responsible for valves, so I know it on a high
13 level, intricate details of valve and valve
14 spacing. That would be something that would be
15 done by the group who does the hydraulic
16 modeling for the pipeline.

17 Q: But you testified a little bit earlier ---

18 A: Yes.

19 Q: --- about automatic shutoff ---

20 A: I understand. I understand how they work and
21 what the purpose of them, yes.

22 Q: Okay. Is there a -- there is a business reason
23 for Colonial not to leak product out of its
24 pipeline, right?

25 A: A business reason? It costs us a lot of money.



1 PHMSA would come down on us pretty hard, so
2 yeah, there are a lot of consequences to
3 product coming out of our pipeline.

4 Q: Is it fair to say that cathodic protection
5 pipeline coatings and automatic shutoff valves
6 have a dual purpose of production and pollution
7 control?

8 A: I would say that the intent and the primary
9 purpose of the things you mentioned are to
10 prevent a loss of containment. Now at the same
11 time they also protect assets but the intent of
12 the Code and the primary purpose of is it to
13 prevent a loss of contaminant or pollution
14 control.

15 Q: And there's a -- and you said earlier there is
16 a business reason to prevent a loss of
17 containment?

18 A: I would say it makes, it makes good business
19 sense to not lose the product you're
20 responsible for containing.

21 Q: And all -- or most, if not all, of your
22 testimony today was related to what Colonial
23 does to inspect and maintain the integrity of
24 the pipeline?

25 A: It's to -- it's to demonstrate all of the



1 interaction that takes place in the right-of-
2 way that may not be seen by the average person.
3 All of the -- the -- how much attendance the
4 pipeline actually requires, but my -- but it's
5 -- but a lot of that is asset integrity
6 related.

7 Q: Okay. Did you talk about -- you didn't talk
8 about Colonial producing anything or dealing
9 with transmix or injecting anything in the --
10 drag reducing agent in the pipeline?

11 A: No.

12 Q: Okay. Thank you.

13 **MR. STANLEY - CROSS-EXAMINATION BY MR. CARTIN:**

14 Q: I've just a few questions. And I won't move
15 all the way over there, I'll just do it right
16 here. I'll try to back up from you though so
17 I don't spew vapor all over you. So, I mean,
18 at the end of the day this is a pipe through
19 which refined petroleum products are flowing,
20 correct?

21 A: Correct.

22 Q: And for the most part, you guys do a good job
23 of keeping the product in the pipe, right?

24 A: Right.

25 Q: Because I haven't heard any news stories and



1 I'm sure you would be able to tell me about
2 them if there were massive breaches in the pipe
3 or massive loss of product that resulted in a
4 lot of pollution in South Carolina, fair?

5 A: Right.

6 Q: You're not aware of any massive leaks in South
7 Carolina in the recent past?

8 A: No.

9 Q: Okay. And that's a good thing, right?

10 A: Uh-huh.

11 Q: Because for the most part, the pipe works as
12 it's intended, correct?

13 A: Yes.

14 Q: All right. And you mentioned some pipe
15 coatings that you are replacing now. What --
16 you said y'all were frequently dealing with
17 what particular type of pipe coating?

18 A: The asphalt enamel is the oldest coating of the
19 pipe. That's the one we're re-coating the
20 most.

21 Q: Okay. So that enamel was placed on pipe that
22 was laid back when?

23 A: 1962.

24 Q: Okay. So it would have been buried in 1962 and
25 you're just now having to replace that coating



1 on that pipe?

2 A: We've been replacing it for years. I believe
3 this is to address the last 10 to 12 years of
4 pipeline coating replacement.

5 Q: Okay. For 10 to 12 years you haven't had to
6 dig that pipe up and re-coat it or anything
7 like that necessarily?

8 A: We did not do it to the level that we do it
9 now.

10 Q: Okay.

11 A: Now it's -- you know, you can you can use
12 cathodic protection for so long and at some
13 point the cathodic protection is ineffective.
14 We spent the last 20 years really putting --
15 you saw all the rectifiers on, on --that we
16 have in the system. We spent the last 20 years
17 trying to remediate the problem with additional
18 cathodic protection. But once you have it from
19 end to end, there's not a whole lot more you
20 can do. Then you need to seriously consider
21 coating replacement and that -- that's where
22 we're at.

23 Q: Okay. So it's not very frequent though. I
24 mean it's fair to characterize it, it's very
25 infrequent that you have to actually dig up the



1 pipe or replace the coating?

2 A: We're doing thousands of feet a year.

3 Q: Any -- I understand the entire pipeline, you're
4 always working on some portion of it, but any
5 particular portion of it ---

6 A: We're ---

7 Q: --- it's pretty intact for a long time, right?

8 A: We're doing quite a bit in South Carolina right
9 now.

10 Q: I understand the entire 515 miles of pipe, but
11 I'm talking about -- let's just bring it down
12 to human terms. He had Johnny Fed, I'll do
13 Johnny Red since we're talking about rural
14 South Carolina. So Johnny Red owns a field in
15 rural South Carolina and its got a right-of-way
16 for Colonial Pipeline going through the field,
17 right?

18 A: Uh-huh.

19 Q: Okay. And he's got pipe that was buried there
20 with good coating, done as it was supposed to
21 be by the manufacturer and protected with
22 cathodic protection. Colonial Pipeline is not
23 coming by every year and digging up that field
24 to get to that pipe, are they, typically?

25 A: We -- we're not digging up -- well, we're not



1 -- well, I'm not sure what your question is but

2 ---

3 Q: To replace the pipe coating.

4 A: Right. So we -- what we are doing is we're
5 doing cathodic protection readings, close
6 interval survey and ---

7 Q: I'm not asking -- I'll get to that. I want you
8 to answer the question. You're not digging up
9 that pipe to remove and replace the pipe
10 coatings on that pipe every year, are you?

11 A: In some fields we are.

12 Q: Okay.

13 A: And what happens is, once our inline inspection
14 regulatory digs start, it's a very expensive
15 way to remediate your pipe, so when we start
16 seeing repeated -- repeatedly visiting the same
17 properties over and over, this moving 100 feet,
18 100 feet and digging up 10 feet at a time, it's
19 not -- it becomes -- it's not very cost
20 effective so we look at the data and then --
21 and we come up with a remediation plan to let's
22 go back in and recoat the segment, the whole
23 property. So ---

24 Q: I gotcha.

25 A: --- so ---



1 Q: That's not all 515 miles of pipe you're
2 constantly having to do that to or else I would
3 see Colonial trucks driving up and down the
4 road all day long all over this part of South
5 Carolina.

6 A: I think you'd be surprised. They're out there
7 quite a bit and they're doing a lot of digging
8 and lot of recoating in South Carolina.

9 Q: I think a helpful analogy would be if -- do you
10 have power lines running anywhere near your
11 house?

12 A: Yeah, I have power in my house so I assume
13 they're nearby.

14 Q: They're somewhere? Do you constantly see the
15 power truck in your yard fixing power lines?

16 A: Not in my yard but ---

17 Q: Okay. That's all I'm getting at. Colonial's
18 not constantly fixing every aspect of this pipe
19 every day to rectify some break down in the
20 material, right?

21 A: Not every aspect of the pipe every day, no,
22 we're not digging up the entire pipe every day.

23 Q: As far as the activities you talked about, you
24 talked about a survey done with PIGS every five
25 years, is that right?



1 A: Yes.

2 Q: Okay. So back to Johnny Red's field, as far as
3 the surveys go, he wouldn't even see the PIG,
4 but the PIG at least, what, once every five
5 years would pass through the pipe?

6 A: Correct. It would go through each pipe every
7 five years.

8 Q: And once a year a plane would fly over his
9 right-of-way, is that right?

10 A: Every two weeks.

11 Q: Every two weeks, okay. And how often would
12 somebody come and mow his field?

13 A: Once a year.

14 Q: Okay, once a year. All right. So that's once
15 a year somebody's coming out there physically.
16 You mentioned every 15 months you have to do a
17 survey, is that right?

18 A: We have to do a survey every year.

19 Q: Okay.

20 A: A cathodic protection survey.

21 Q: But it's no more than 15 months, right?

22 A: Each calendar year it has to happen.

23 Q: So somebody will come out and physically be on
24 the property for that?

25 A: Yes.



1 Q: Okay. So that's at least twice a year you've
2 got to have somebody physically out there. But
3 if nothing's wrong with the pipe, you're not
4 coming out to that field, right?

5 A: Right.

6 Q: Okay. Thank you.

7 **MR. STANLEY - CROSS-EXAMINATION BY MS. WOOTEN:**

8 Q: Mr. Stanley, we haven't met. My name is Kim
9 Wooten. I'm here representing some of the
10 counties. I know that you've been in here for
11 part of the day today and we thank you for your
12 time coming here. I want to start by talking
13 about a question following up that -- that the
14 department had for you, and that is, what the
15 purpose is of the pipe coatings, cathodic
16 protection, et cetera, do you remember being
17 asked about that at your deposition?

18 A: It was a long time ago. I don't remember every
19 part of the deposition.

20 Q: It -- do you remember, do you recall being
21 asked if pipe coatings were used prior to 1962?

22 A: Yes.

23 Q: Okay. And the -- prior to 1971 they were not
24 required by federal law, isn't that correct?

25 A: Right.



1 Q: Okay. And you were asked at your deposition
2 that day why would Colonial choose to put
3 coatings on. Do you remember what you said?

4 A: Yes.

5 Q: What did you say?

6 A: I don't remember everything I said.

7 Q: Okay.

8 A: I just remember ---

9 Q: Do you remember saying, it's in the best
10 interest of the company to protect the asset.
11 Do you remember saying that?

12 A: Sure.

13 Q: Okay. Do you remember saying, it's a good
14 investment, it makes good financial sense ---

15 A: Uh-huh.

16 Q: --- to protect your asset, remember saying
17 that?

18 A: Yes.

19 Q: And that's what your job is, your job is to
20 protect the asset, Colonial asset integrity,
21 correct?

22 A: Yes.

23 Q: Okay. So certainly pollution control is not
24 the company's only or primary concern with
25 these coatings, with these cathodic protections



1 and with these automatic shutoff valves, is it?

2 A: It's the primary.

3 Q: Okay. It was the primary prior to the
4 regulations being installed, was it?

5 A: There were no regulations in '62 that said we
6 had to have it.

7 Q: But yet you did have it?

8 A: Since then a lot of things have happened in the
9 world which changed the way we think about
10 things and changed the regulations to prevent
11 release from the pipe.

12 Q: But you had them before the regulations?

13 A: We did.

14 Q: Okay. All right. Now with regard to -- you
15 looked at a couple of exhibits. One was
16 Exhibit 3 from the petitioner and that was a
17 description that you read about cathodic
18 protection, correct?

19 A: Yes.

20 Q: Do you remember that?

21 A: Yes.

22 Q: Reading that? That is a United States
23 Department of Transportation publication,
24 correct?

25 A: Yes.



1 Q: And so was the exhibit about pipe coatings,
2 correct?

3 A: Correct.

4 Q: Okay. Pipe coatings, cathodic protection, and
5 automatic shutoff valves all are governed by
6 PHMSA, correct?

7 A: That is correct.

8 Q: And that is a Department of Transportation
9 entity?

10 A: Uh-huh.

11 Q: Okay. Johnny Fed, that you're talking about or
12 that Mr. Maybank was talking about, is that the
13 PHMSA people?

14 A: Yes, I suppose so.

15 Q: Well, the ones you deal with are the PHMSA
16 people, right?

17 A: Right.

18 Q: Okay. The neighbors program, that's all done
19 through U.S. DOT PHMSA, correct?

20 A: It is regulated through PHMSA, yes.

21 Q: Through PHMSA?

22 A: Yes.

23 Q: The flooding monitoring, that's all regulated
24 through PHMSA?

25 A: PHMSA requires that we do certain things to --



1 we have programs in place. Colonial determines
2 what those programs are, so ---

3 Q: Right.

4 A: --- so some of those programs aren't
5 specifically in the Reg, it just says you have
6 to do something.

7 Q: Right. You have to do something, you do it,
8 but it's PHMSA related?

9 A: Uh-huh. Yes.

10 Q: So is the mechanical monitoring that you talked
11 about, the inline testing?

12 A: Yes.

13 Q: You have to have a program there too?

14 A: Right.

15 Q: Under PHMSA. The annual surveys, PHMSA?

16 A: Correct.

17 Q: The close interval surveys, that's mandated,
18 you said, by federal law. I'm assuming that's
19 PHMSA.

20 A: PHMSA says we have to have some sort of
21 programs, so that's a Colonial program.

22 Q: The dense in the pipes, that's all PHMSA
23 regulated? At least that's what you said.

24 A: Yes. There are some -- there are some
25 regulatory requirements for dense. Colonial



1 has a more stringent policy behind that.

2 Q: Okay. But to the extent it is regulated, it's
3 regulated by the United States Department of
4 Transportation through PHMSA?

5 A: We are, yes.

6 Q: Okay. Same with rectifiers?

7 A: Right.

8 Q: Okay.

9 **THE COURT:** Any re-direct?

10 **MR. MAYBANK:** Thank you, Your Honor.

11 **MR. STANLEY - REDIRECT EXAMINATION BY MR. MAYBANK:**

12 Q: She's just asked you, the environmental
13 protection is not your only or even primary
14 reason to have cathodic protection in coating.
15 As a law abiding citizen, I --I guess you're --
16 certainly important reasons the Feds require
17 it, don't they?

18 **OBJECTION - BY MS. WOOTEN:**

19 **MS. WOOTEN:** Object to the form.

20 **THE COURT:** In what way?

21 **MS. WOOTEN:** He's asking for a ---

22 **THE COURT:** You object to the form ---

23 **MS. WOOTEN:** -- legal conclusion.

24 **THE COURT:** Okay. That's from a deposition.

25 **MS. WOOTEN:** I understand, Your Honor.



1 **THE COURT:** She objected. You're seeking to reach a
2 legal conclusion.

3 **Q:** Well, is it important to Colonial that you obey
4 the law?

5 **A:** It's very important to Colonial that we obey
6 the law. My -- I mean, I could go to jail for
7 a release that happens that's corrosion
8 prevention related, so.

9 **Q:** Okay. So if you didn't have cathodic
10 protection, you'd be violating the law,
11 correct?

12 **A:** Yes.

13 **Q:** If you didn't have pipeline coating, you'd be
14 violating the law?

15 **A:** That's correct.

16 **MR. MAYBANK:** That's all I have, Your Honor.

17 **THE COURT:** You may step down.

18 Mr. Maybanks, you're out of bullets today?

19 **MR. MAYBANK:** I'm out. We're through, Your Honor.

20 **THE COURT:** When you say through, are you resting or
21 through with this witness' testimony?

22 **MR. MAYBANK:** No, we're resting. So we have one --
23 the DO- -- Department of Revenue has one
24 witness, so I think we'll be here in the
25 morning.



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1 **THE COURT:** Okay. Well, I'll see y'all tomorrow
2 morning.

3 **MR. MAYBANK:** All right. Thank you, Your Honor.

4 **MS. WOOTEN:** Thank you.

5 **(The hearing adjourned at 4:34 p.m.)**

6 **DAY TWO - WEDNESDAY, AUGUST 5, 2020**

7 **CALL TO ORDER:**

8 **COURT REPORTER:** All rise.

9 **THE COURT:** Y'all be seated. All right.

10 **MR. ANTLEY:** Good morning, Your Honor. The
11 Department calls Taylor Ingram.

12 **RESPONDENT'S CASE IN CHIEF:**

13 **COURT REPORTER:** Taylor Ingram?

14 **MR. INGRAM:** Yes.

15 **COURT REPORTER:** I-N-G-R-A-M?

16 **MR. INGRAM:** Yes, ma'am.

17 **COURT REPORTER:** Raise your right hand, please.

18 **MR. INGRAM:** (Witness complies.)

19 **COURT REPORTER:** Do you solemnly swear that the
20 testimony you're about to give in this matter
21 is the truth, the whole truth, and nothing but
22 the truth, so help you God?

23 **MR. INGRAM:** I do, yes.

24 **COURT REPORTER:** Thank you.

25 **TAYLOR INGRAM,** having been duly sworn, testifies as



1 follows:

2 **MR. INGRAM - DIRECT EXAMINATION BY MR. ANTLEY:**

3 Q: Good morning, Mr. Ingram.

4 A: Morning.

5 Q: Could you tell the Court where you work?

6 A: South Carolina Department of Revenue.

7 Q: And what's your job title at the Department of
8 Revenue?

9 A: I'm the Utility Assessment Coordinator for the
10 Department.

11 Q: Okay. And is -- is that -- what division is
12 that part of at the Department of Revenue?

13 A: It's with our Government Services Division.
14 Kind of a part of the Property Section within
15 the Government Services Division.

16 Q: And how long have you been at DOR?

17 A: Started November of 2003 and I've been working
18 with the Utilities since, I think, late 2005,
19 if I'm not mistaken.

20 Q: So, you've been in your current role since late
21 2005?

22 A: Or around there, about 15 years.

23 Q: And what's -- what is your role, what are your
24 job duties?

25 A: I'm in charge of the utility appraisals and



1 assessments for property tax purposes. And
2 utilities covers utility companies as well as
3 transportation for hire companies such as
4 pipelines and railroads. We review, my
5 section, me, currently just me, review the
6 property tax returns for these companies that
7 come in annually and make sure that they're
8 timely and include all the proper information.
9 Use what's included in the property tax returns
10 to estimate an opinion of value and then that
11 value is used to render an assessment. And we
12 certify that assessment to the county so they
13 can then attach their local millage levy rates
14 for tax bills, property tax bills.

15 Q: What kind of training did you undergo, if any,
16 to do this?

17 A: It's kind of a unique appraisal. So there's
18 training out there but you've just got to find
19 it. There's a course out in Utah, they do it
20 annually. Before COVID, they did it annually.
21 It's affiliated with Utah State University out
22 in Logan. And they do a week long course on
23 unit valuation, kind of go start to finish and
24 the ins and outs of it. I did that in 2006.
25 They also offer at that same course, or class,



1 they offer kind of an advanced course where
2 they go over some more specific topics and more
3 detailed information on other things other than
4 just a basic run through on it. I did that one
5 in 2012, I think it was. Early on, I think it
6 was 2006, we also had, kind of, an expert in
7 the field. He had worked with the state of
8 Utah, I think, and then became kind of -- kind
9 of an expert witness as far as utility cases
10 go. He came to South Carolina and the
11 Department of Revenue and -- and did a week
12 long, kind of a session with me on the ins and
13 outs of the unit valuation process, cost
14 approach, income approach. And other than
15 that, we kind of keep up with training for my
16 appraisal license, appra- -- my license to
17 appraise here in South Carolina, as well as
18 there's some conferences and training courses
19 offered periodically for the unit valuation and
20 I try to keep up with those, as well.

21 Q: Okay. Could you explain unit valuation, what
22 that is?

23 A: Sure. So it's an appraisal practice but it's
24 different than an appraisal for a residence or
25 a particular real property site or a commercial



1 site. For unit valuation, you're valuing a
2 group of functioning assets as a going concern.
3 And if you think about it, for a residence or
4 a commercial practice that's just in one
5 location, the appraisal would be of the, you
6 know, the land and the building improvements
7 there within that property. You could do
8 income cost, sales comparison approach to get
9 market value of that particular property. For
10 unit valuation, you're dealing with a bunch of
11 property that goes together for a total system
12 and you're trying to come up with a value of
13 that as it works together. There's some
14 synergies involved. The fact that those pieces
15 are working together for a company or business
16 create a value and that's -- that value might
17 not be seen if you were to just value a piece
18 rather than include it with the whole. And so
19 we, you know, value all the property for the
20 utility companies and the pipelines and
21 railroads that -- that covers, within the
22 different taxing districts and counties of
23 South Carolina, but also if it leaves the state
24 and it's part of the entire system. So we're
25 valuing one entire unit. It's a little bit



1 different but it's still a way to come up with
2 an estimated fair market value.

3 Q: Could you explain the exemption application
4 process and how that works?

5 A: Yes. So, for the utility companies, there's --
6 there's only a handful of -- of property tax
7 exemptions that apply to any of the companies
8 that I deal with. And the -- the application
9 process is -- is somewhat limited in that
10 there's -- there's no technical forms or -- or
11 applications that they fill out along with
12 their property tax returns. Usually it's some
13 sort of supplemental information that's
14 attached to their property tax return so it
15 lets us know that they're requesting some sort
16 of exemption, whether it be rural telephone
17 exemption, pollution control exemption,
18 manufacturer's abatement, there's only a
19 handful of them. And along with the property
20 tax return, you know, we have to make sure that
21 it's included within there. And there is
22 usually some conversations with the taxpayer to
23 find out. Then you would attach this, what
24 does this include, what is this and then it's
25 applied accordingly and as necessary.



1 Q: You mentioned utilities. Is that -- are
2 utilities the only types of property that you
3 look at or are there other types?

4 A: Utilities and under the umbrella of utilities
5 that I handle, there's the transportation of
6 goods for hire companies such as railroads and
7 pipelines.

8 Q: So when you say utilities, it's -- it's not
9 utilities based on their assessment ratio or is
10 it wh- -- for example, a pipeline company like
11 -- like the taxpayer here, Colonial Pipeline.
12 Are they assessed as utilities or as
13 transportation companies or how are they
14 assessed?

15 A: Yeah. Pipelines and railroads are assessed as
16 far as a ratio, slightly different. They have
17 a nine and a half assessment ratio where the
18 other utilities are assessed at ten and a half
19 percent.

20 Q: Okay. Could you explain a little bit about --
21 well actually, let's -- since you're talking
22 about the ratios. So, does Colonial have any
23 property in South Carolina that we assess at
24 10.5 percent?

25 A: Not that I know of. The property that comes



1 through me on the annual property tax return is
2 assessed at nine and a half percent.

3 Q: So, we don't break down portions of Colonial's
4 ---

5 A: No.

6 Q: --- property?

7 A: No, it's all together.

8 Q: Okay. Were you involved in processing
9 Colonial's application for the pollution
10 control exemption in 2017 and 2018?

11 A: Yes.

12 Q: Could you ex- -- just explain that process?

13 A: So along with the annual filing there --
14 there's conversations that we have with the
15 taxpayer representatives and the contacts that
16 we have that when the information comes in, if
17 we need more information or if we're reviewing
18 the information and we reach out and talk about
19 it. A lot of times there's -- there's meetings
20 that need to be, you know, face-to-face that we
21 can go over specifics within the property tax
22 information for that year. I think '17 was the
23 first year that we had a form or a page that
24 was included with the property tax return that
25 listed out some property that Colonial felt was



1 entitled to the pollution control exemption.
2 And I, you know, reviewed that form, kind of
3 went over it, discussions with the taxpayer as
4 well as some discussions internally.

5 Q: Okay. So, what property did Colonial claim as
6 exempt as pollution control property?

7 A: Without seeing the page, I couldn't remember it
8 all, but it was -- there was some valves,
9 automatic shutoff valves. They had a coating
10 or a protection on the pipe that they were
11 listing, something called a cathodic
12 protection, which I'm not an engineer, I don't
13 know entirely what that is, but that was listed
14 on there. There was some other smaller items
15 that dealt with air and water pollution, I
16 believe. The technical term or the definition
17 or classification of those I wouldn't know.

18 Q: And what was the result of the -- their
19 pollution control exemption application, was it
20 granted or denied?

21 A: So there was some -- through conversations, the
22 way it was described on the page that I kind of
23 understood and -- and knew what they were,
24 seeing something similar, heard about something
25 similar before. There were a few items on



1 there that I was unfamiliar with, I didn't
2 really know what they were, didn't know if they
3 pertained to pollution control and just needed
4 some further clarification so, at that point,
5 some of the -- the pieces of property that were
6 on that form were accepted as pollution control
7 and others were denied and I was requesting
8 further information on those before giving any
9 sort of exemption.

10 Q: Why did you deny the -- the items you denied?

11 A: Based on the process as I understood it, that
12 was the only way, or that was the step in the
13 process to -- to move it forward and get
14 further classification from -- from DHEC. I
15 thought DHEC at the time was the one that was
16 gonna provide a percentage of that property
17 that was deemed to be pollution control or they
18 would classify it for us. I think in the code
19 section it says something about DHEC getting
20 involved in utilities. And so when the -- the
21 process got to the point where I couldn't get
22 any clarification internally, I denied it so we
23 could push it to a point that we could get
24 someone else to step in and get some extra
25 guidance.



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1 Q: Did -- did -- what area -- were there
2 particular areas of the exemptions statute that
3 you focused on in making your decision whether
4 to grant or deny the pollution control
5 exemption?

6 A: Yeah. At that time I was focused on whether or
7 not the property the company had listed met
8 the criteria for being classified as pollution
9 control property. I just wanted to know if the
10 property that was listed there was -- was used
11 to control pollution and whether or not it
12 would -- would fit that classification
13 criteria.

14 Q: Did you analyze whether Colonial's property in
15 South Carolina was an industrial plant?

16 A: At that time, I did not, no.

17 Q: Okay. Did you -- have you had any training
18 specifically on this exemption?

19 A: Specified training, no.

20 Q: And, are you aware of any Department guidance,
21 policy, pro- -- policy documents defining
22 industrial plants for this exemption?

23 A: I'm not aware of any, I don't know of any.

24 Q: Okay. So, after the exemption was denied, what
25 -- what happened next in the process?



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1 A: I'm trying to remember the time line here. I
2 believe we had somebody internal with the
3 Department of Revenue reach out to a contact
4 with DHEC, either by way of email or letter or
5 memo, trying to get some sort of classification
6 on the property, or break down to determine
7 what percentage of that property could be
8 deemed pollution control property. There was
9 some back and forth and, I think, DHEC stated
10 that it wasn't their area of expertise because
11 they didn't regulate or -- or oversee the --
12 the pipeline. Think they kind of, I think at
13 the time, said we should reach out to DOT to
14 get some more classification. I think -- I'm
15 not the one that had a lot of direct contact so
16 I can't remember exactly how the correspondence
17 went, but I think DHEC was pushed to give us
18 some sort of clarification or classification
19 because in the code section they were listed as
20 the governing body that would give us that
21 classification. And so they said if we were to
22 classify this, this is how we would do it, I
23 think. Then they sent a memo or letter that
24 said as such.

25 Q: Did you issue a proposed assessment to Colonial



1 Pipeline for 2017 and 2018?

2 A: Yes. We issue a proposed assessment annually,
3 so we would have done that one too.

4 Q: And did ---

5 **COURT REPORTER:** I'm sorry I didn't hear your
6 response. You do that annually what?

7 A: So we would have done that in 2017 and 2018.

8 Q: And were those proposed assessments protested
9 by Colonial?

10 A: Yes.

11 Q: For future years, after this Department
12 determination has been issued, have you granted
13 the pollution control exemption to Colonial for
14 any of it's property, any of Colonial's
15 property? Have you -- did you deny -- excuse
16 me. Did you deny the pollution control
17 exemption to Colonial for 2019, 2020, any
18 perspective years?

19 A: Yeah. I'd have to look at the assessments, but
20 currently we're not granting any pollution
21 control exemption.

22 Q: Okay. Thank you.

23 **MR. INGRAM - CROSS-EXAMINATION BY MR. CARTIN:**

24 Q: I -- I just have one quick question for you,
25 Mr. Ingram. Walt Cartin. Again, I represent



1 Aiken and Laurens County. I think you included
2 Colonial in a group of what you referred to as
3 utilities. When you did that were you using
4 some technical definition of utilities or just
5 your -- your personal understanding of how you
6 think of these companies?

7 A: A little bit of both. For the most part
8 because I'm the utility assessment coordinator,
9 it's kind of lumped in with the umbrella of the
10 companies that I'm able to see which they deal
11 with the utility companies as well as well as
12 pipelines and railro- -- railroads. I don't
13 know off the top of my head what it is but I
14 think there's a regulation that lists out
15 utilities but then it also mentions, on a
16 little side note, that there's pipelines and
17 railroads at the different assessment ratio but
18 kind of included within the umbrella of what's
19 -- what's done by the Department of Utilities.
20 So, I -- I lump them in personally from what
21 I've worked with but -- and I think Trey asked
22 the question, but from the standpoint of an
23 assessment ratio, they're different for
24 transportation goods for hire but from what I
25 work with, I work with utilities and pipelines



1 and railroads so I kind of lump them together.

2 Q: So there could be a separate technical
3 definition that you're not specifically aware
4 of sitting here right now?

5 A: Yes, yes.

6 Q: Okay. That's all.

7 **MR. INGRAM - CROSS-EXAMINATION BY MS. WOOTEN:**

8 Q: All right. Mr. Ingram, we haven't met. My
9 name is Kim Wooten and I'm here on behalf of
10 four of the counties that are intervening in
11 this case. I just have one quick question for
12 you. If you could grab the notebook on top,
13 the smaller one. That's the stipulated exhibit
14 notebook. If you'll turn to Stipulated Exhibit
15 Number 16 for me, please. Are you there with
16 me?

17 **(Joint Exhibit Number 16 was referenced.)**

18 A: I believe so, yes.

19 Q: Okay. And you had mentioned that you had
20 sought the assistance of DHEC to make some
21 determination or to help you make a
22 determination on the pollution control
23 exemption, correct?

24 A: Yes.

25 Q: Okay. And Exhibit 16 is the response from DHEC



1 that you were referring to, correct?

2 A: It appears so, yes.

3 Q: Okay, thank you.

4 **MR. MAYBANK:** Thank you, Your Honor.

5 **MR. INGRAM - CROSS- EXAMINATION BY MR. MAYBANK:**

6 Q: And just to finish up on that point before I
7 turn to my regular questions, you say that you
8 didn't grant it because you reached out to DHEC
9 to get DHEC's response as to whether it was
10 pollution control. And DHEC, in fact,
11 responded by telling you or actually through
12 Trey that it, in fact, it was pollution control
13 equipment, didn't they?

14 A: I'd have to read the letter and kind of go
15 through it, but the way that I remember it
16 being, they said if they ---

17 Q: Well, let me quickly, to speed it up, why don't
18 I read it to you?

19 A: Okay.

20 Q: I'm reading the letter August 27, 2018, which
21 is DHEC's letter. Cathodic protection is one
22 method to meet corrosion standard for USTs,
23 which is underground storage tanks. Shear
24 valves (considered an automatic shut-off valve)
25 were installed to prevent or limit the extent



1 of a petroleum release into the environment.
2 Pipeline coatings are designed to isolate the
3 pipeline to prevent corrosion. While releases
4 from petroleum pipelines should not be --
5 should not generally be directly to "water" but
6 more likely to the ground surface, any release
7 of sufficient size from a petroleum pipeline is
8 likely to impact ground water and may under
9 certain conditions contribute contamination to
10 surface waters via overland flow or groundwater
11 seeps. Therefore, the Department believes the
12 listed technologies, corrosion protection,
13 pipeline coatings, shear valve can be fairly
14 described as pollution control equipment. Now,
15 that seems pretty straight forward to me. Do
16 -- do you have any quibbles with that?

17 A: Just that you started in the middle of the
18 page. Earlier, from the above paragraphs, I
19 believe that they say that they didn't, you
20 know, deal with pipelines. They had been
21 saying the Department's unable to speak for
22 those agencies with regard to the purpose of
23 any specific requirements. And -- and so they
24 -- those paragraphs go hand-in-hand ---

25 Q: Right.



1 A: --- but for this company, they couldn't say
2 whether or not pollution control, but the
3 specific property and the companies that they
4 do deal with, it would ---

5 Q: Underground storage tanks. Okay, so it ends --
6 it ends with, therefore the Department believes
7 the listed technologies can be fairly described
8 as pollution control equipment. That seems to
9 me to be pretty straight forward. Are you --
10 you quibbling that it could be fairly described
11 as pollution control equipment?

12 A: That's what they said.

13 Q: Okay. And you personally don't have any
14 quibble with that, do you?

15 A: With what they've written here, no.

16 Q: Right, okay. All right. And so, you -- so,
17 generally, what you cover, your department
18 covers, is utilities and pipeline and
19 transportation companies?

20 A: Yes.

21 Q: And utilities are actually one of the largest
22 property taxpayers in South Carolina, aren't
23 they?

24 A: They are.

25 Q: SCE&G's probably, or at least used to be, the



1 largest property taxpayer in South Carolina.
2 And -- correct?

3 A: Yes.

4 Q: All right. You don't have a whole lot of
5 staff, do you? Isn't it -- aren't you pretty
6 much by your lonesome?

7 A: For right now I am, we're hiring somebody. We
8 had another individual but he's -- he recently
9 moved to another section.

10 Q: Okay. And so you routinely deal with property
11 tax exemption. South Carolina has a whole raft
12 of them, correct?

13 A: The Department, as a whole, has a bunch of
14 exemptions.

15 Q: Right.

16 A: The ones that I have to deal with are --
17 there's a handful of them.

18 Q: Okay. And pollution control being one of the
19 handful?

20 A: Yes.

21 Q: Okay. And so utilities claim a whole bunch of
22 pollution control exemptions on an annual
23 basis, don't they?

24 A: Relatively. It would depend on your definition
25 of a whole bunch, but yes, there's just a



1 handful of exemptions that are applied for.

2 Q: Okay. So you -- so you see hundreds of
3 millions of dollars of pollution control
4 exemption requests annually from SCE&G and the
5 big utilities, correct?

6 A: I wouldn't speak to a number without any of
7 that in front of me, but there's a good bit
8 associated with pollution control exemption.

9 Q: Okay. And so it'd be fair to say you have a
10 good deal of pollution control exemption
11 experience, correct?

12 A: If by experience you mean seeing it and working
13 with it, making an adjustment for utilities,
14 yes, I've got some experience with it.

15 Q: Okay. And unit valuation actually has -- the
16 context of unit valuation and pollution control
17 exemption are really totally separate and
18 apart. Unit valu- -- something that was exempt
19 as pollution control for a manufacturer, the
20 identical piece of equipment would be exempt
21 under unit valuation for utility, correct?

22 A: It would depend.

23 Q: Okay. And what would that depend on?

24 A: What kind of ---

25 Q: From the value ---



1 A: --- we're talking about.

2 Q: The valuation might differ but whether or not
3 something was pollution control, the unit
4 valuation method has nothing to do with that,
5 correct?

6 A: Well, I would have to know what type of
7 property we're talking about that could be
8 applicable to a manufacturer but also for a
9 utility to say whether or not that specific
10 property could be considered pollution control
11 for both entities.

12 Q: Okay. And so how would the unit valuation
13 method alter whether or not something was
14 pollution control?

15 A: That type of property, I don't know that it
16 would.

17 Q: Okay. So, a smokestack, if a manufacturer had
18 a smokestack to prevent air pollution and the
19 utility had the identical smokestack to prevent
20 air pollution, they would -- the utility would
21 be exempt, notwithstanding, they were valued
22 under the unit valuation method?

23 A: I'm sure that a power company that had a
24 smokestack or something along those lines would
25 apply for pollution control for that.



1 Q: Okay. And so there -- there's actually no
2 regulations or policy documents on what the
3 unit valuation method is in South Carolina,
4 correct?

5 A: I don't think so.

6 Q: Right. So my -- my only point is, unit
7 valuation method relates purely to valuation,
8 not to whether something's pollution control?

9 A: That's correct.

10 Q: Okay. All right. And so, the only issue --
11 and so we all agree, but just to belabor the
12 point, in order to get pollution control
13 exemption, you have to be a facility or
14 equipment of an industrial plant, correct?

15 A: Yes.

16 Q: You have to be designate -- it has designed for
17 the elimination, mitigation, prevention or
18 abatement of water or air pollution, correct?

19 A: Correct.

20 Q: And I'm just reading from the statute.

21 A: Yeah, I don't have a copy of that so I'm
22 trusting that you're reading it directly from
23 the code section.

24 Q: It has to be required by state or federal law,
25 correct?



1 A: (Nods head.)

2 Q: And then it has to be used conduct of their
3 business, correct?

4 A: Yes.

5 Q: All right. And so, for -- in your mind, the
6 only issue regarding cathodic protection,
7 pipeline coating, and the shutoff valve,
8 initially your -- you just didn't understand
9 what they were, correct?

10 A: Correct.

11 Q: Now see, you didn't know whether they were
12 pollution control or not?

13 A: That is correct.

14 Q: Right. All right. And so, you didn't have any
15 issue regarding -- even through today, you
16 don't have any issue that they are pollution
17 control devices, correct?

18 A: Again, I'm still looking for guidance on those.
19 I don't have a clear understanding of what they
20 ---

21 Q: Right.

22 A: --- are and exactly what they do and whether or
23 not ---

24 Q: Right.

25 A: --- fit the criteria for pollution control



1 property.

2 Q: That's certainly understandable. So, you don't
3 have an opinion that they're not pollution
4 control is all I'm asking?

5 A: No.

6 Q: And you don't have an opinion that they're not
7 required by federal law, correct?

8 A: Correct.

9 Q: And you don't have an opinion that they're not
10 used in the conduct of Colonial's business?

11 A: Correct.

12 Q: All right. So -- so you, in fact, granted the
13 exemptions for four items in 2017 and 2018?

14 A: I believe so. I'm not sure if it was four, but
15 we did grant ---

16 Q: Okay. So, you granted for some.

17 A: Yes.

18 Q: So in 2017 and 2018, you didn't have any issue
19 with Colonial being an industrial plant?

20 A: I didn't even specify. I didn't take note with
21 that.

22 Q: Okay. But you didn't have a problem with them
23 being -- you didn't have an opinion they were
24 not clearly?

25 A: Correct.



1 Q: Right. And you didn't have a problem with the
2 dollars we claimed on any of the items,
3 correct?

4 A: Not necessarily, no.

5 Q: Okay. And, so you -- you then with cathodic --
6 you never probably asked us -- would speculate,
7 you'd never heard of cathodic protection, I'd
8 never heard of it.

9 A: No.

10 Q: Pipeline coating, I'd heard of that. And
11 shutoff valve, I'd heard of that. But I
12 suspect that prior to Colonial's filing, you
13 really had no experience with those particular
14 items?

15 A: That's correct. I ---

16 Q: Right.

17 A: --- hadn't really heard of them.

18 Q: And so you, internally you asked for advice
19 from the Department of Revenue, correct?

20 A: Yes.

21 Q: All right. Then so, at some point, DHEC was
22 contacted as to whether they were pollution
23 control, correct?

24 A: (Nods head.) Yes.

25 Q: And as we've just read over, DHEC said they



1 could be considered pollution control?

2 A: (Nods head.)

3 Q: Okay. So given all of that ---

4 **THE COURT:** Wait a second. He nodded his head ---

5 **MR. MAYBANK:** Right.

6 Q: You do have to say yes or no.

7 A: Well, repeat your last question then, for me,
8 because I -- I didn't know if you were asking
9 something or just saying something.

10 Q: Right. So, the -- the first question in your
11 mind was whether it's pollution control, so you
12 went and internally asked and DHEC was
13 contacted, correct?

14 A: Yes.

15 Q: And -- and according to the letter we just
16 read, DHEC said it could be considered
17 pollution control, correct?

18 A: It could be.

19 Q: Right, okay. And do you have -- again, let me
20 ask you again. You emphasized, could be. Do
21 you have any quibble with it, are you -- are
22 you denying it's pollution control?

23 A: Again, I'm going based on the guidance that I
24 received from them, as well as anybody
25 internally that provides guidance to me.



1 Q: Right.

2 A: I thought there was some ambiguity to the way
3 this was written and that they don't regulate
4 and mandate pipelines. I think that's the way
5 that it was explained to me internally. And
6 so, that would be my quibble with it in that
7 they didn't say with a certainty that we handle
8 pipelines, this is property of a pipeline. We
9 know that this property of this pipeline is
10 considered pollution control.

11 Q: Okay.

12 A: Because they didn't state it that way, there's
13 still some confusion on the matter.

14 Q: Okay. Well, let me ask you. We're up -- we're
15 up today in trial, do you -- do you deny that
16 it's pollution control equipment, cathodic
17 protection, pipeline coating, automatic shutoff
18 valve ---

19 A: I ---

20 **OBJECTION BY MS. WOOTEN:**

21 **MS. WOOTEN:** Your Honor, objection. He's asked and
22 answered this many times.

23 **THE COURT:** Well ---

24 **MR. MAYBANK:** I don't -- I don't think he has or I
25 wouldn't keep quibbling.



1 **THE COURT:** Well, he -- he said that he -- on one
2 hand he said he answered -- well, he doesn't
3 quibble with it at all and then he said that he
4 doesn't deny it. So -- and those are the
5 answers you're seeking, I assume, so ---

6 **MR. MAYBANK:** Right.

7 **THE COURT:** --- you have received those answers to
8 your benefit.

9 **MR. MAYBANK:** All right. So, I'll move on then.

10 Q: All right. So, the denial of the exemption
11 actually was not your idea, correct?

12 A: It would probably be in a property section
13 decision.

14 Q: Okay. And that would be from your boss, I
15 guess?

16 A: It would have been conversations with my boss,
17 yes.

18 Q: Okay. And who actually is your boss?

19 A: At the time, it might've been somebody
20 different. I can't remember who exactly was
21 doing it. Right now, it's currently Nancy
22 Smoke and Meredith Cleland.

23 Q: Okay.

24 **COURT REPORTER:** And Meredith who?

25 A: Cleland.



1 **COURT REPORTER:** Thank you.

2 Q: All right. And -- and in those discussions,
3 was there any discussion of -- of, well maybe
4 the tank farms are exempt, but the long 500
5 miles of pipelines are not. You never heard
6 that discussion, did you?

7 A: I can't remember exactly what the discussions
8 entailed.

9 Q: Okay.

10 A: We would've talked about all the property that
11 was included on that form.

12 Q: Right. But ---

13 A: But like I said, again, the conversation that
14 happened back in 2017 would have been with the
15 supervisor at the time which most likely was
16 not Nancy Smoke.

17 Q: Right.

18 A: Charles Brewer was there, so ---

19 Q: Right.

20 A: --- Charles Brewer would've been the one that
21 -- we would've talked about that. But as far
22 as exactly what we talked about, we would've
23 focused on the property that was included
24 within that form, that Colonial included with
25 the property tax return.



1 Q: Okay. All I'm driving at is, do you see a
2 distinction between a cathodic protection
3 device on the long pipeline versus a cathodic
4 protection device at the tank farm. You don't
5 see any distinction between the two, do you?

6 A: I'm not sure I'm qualified to answer that.

7 Q: Okay. But you're ---

8 A: --- struggling to understand of exactly what
9 cathodic protection is.

10 Q: All right. But you're qualified to accept or
11 reject the exemption. So I'm just asking you
12 personally, do you -- you don't see any
13 distinction between the two?

14 A: I'm qualified to a point until I need further
15 guidance, which is why we're here during this
16 case, because I requested further guidance on
17 this specific type of property.

18 Q: Okay. And so, in fact, that -- our tax code
19 doesn't define industrial plant, correct?

20 A: I don't believe it does.

21 Q: Okay. And there's no DOR document poli- -- you
22 know, revenue ruling or private letter ruling
23 that defines industrial plants, correct?

24 A: Not that I know of.

25 Q: Okay. And the property tax form itself doesn't



1 describe industrial plant?

2 A: No.

3 Q: And as far you know there's no case law in
4 South Carolina prior to this case, describing
5 what's industrial plant?

6 A: I don't know.

7 Q: So, y'all -- y'all don't have any longstanding
8 agency interpretation of what's an industrial
9 plant?

10 A: I don't know.

11 Q: Okay. And you certainly don't have one whether
12 an industrial plant is just a part of a
13 facility and not the rest of the facility?
14 Y'all've never, just never addressed that
15 issue?

16 A: I haven't addressed that, no.

17 Q: Okay. All right. Y'all do routinely look at
18 dictionary definitions that decide what a term
19 means though, don't you?

20 A: I would think so.

21 Q: Okay. Wikipedia and -- and regular dictionary
22 definitions?

23 A: I'm not sure exactly what definitions, but if
24 we need help with something, we would look to
25 define words.



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1 Q: Okay. All right. So, what big pipeline --
2 property tax returns are not a matter of
3 public record, they're not covered by the
4 Taxpayer Confidentiality Act, correct?

5 A: They are open to Freedom of Information
6 requests.

7 Q: Okay. All right. And so what are the other
8 big pipeline companies besides Colonial?
9 There's Transco Williams.

10 A: Yeah. Transcontinental Gas Pipeline.

11 Q: And what other big ones are there?

12 A: You've got Plantation Pipeline, Southern
13 Natural Gas, Elba Express, Dixie Pipeline,
14 there's a small pipeline for planes, LPG.

15 Q: And all of those are mere shipping companies,
16 there's no refineries in South Carolina,
17 correct?

18 A: I don't think so.

19 Q: Okay. So all they do is ship product, as far
20 as you know?

21 A: As far as I know.

22 Q: Okay. And do -- have you granted the property
23 tax exemption to certain -- pollution control
24 exemption to those taxpayers?

25 **OBJECTION BY MR. ANTLEY:**



1 **MR. ANTLEY:** Objection, Your Honor, relevance. It's
2 the same objection we've been making all along
3 about Williams Company. Any evidence related
4 to other pipelines on whether we granted it is
5 not relevant to ---

6 **THE COURT:** Well, see ---

7 **MR. ANTLEY:** --- to this case.

8 **THE COURT:** --- I disagree with you on that and I
9 will tell you -- and so I want to hear your
10 response. Is -- one thing is, they were
11 offering the evidence. This is an individual
12 who's charged with applying the law in this
13 area. You don't think that it is not relevant
14 as to the fact that he may take one position
15 concerning one taxpayer and another concerning
16 another taxpayer and that would not be an
17 impeaching aspect as to his actions?

18 **MR. ANTLEY:** He ---

19 **THE COURT:** And that just astounds me, if you do.
20 And I want to hear why but maybe, if you're
21 gonna explain it to me ---

22 **MR. ANTLEY:** If it's being offered to impeach, then
23 I -- then I think that's different than what I
24 was understanding it was being offered to show,
25 that for -- because some other pipeline or some



1 other taxpayer was granted the exemption that
2 somehow that makes ---

3 **THE COURT:** Okay. Well, maybe I ---

4 **MR. ANTLEY:** --- Colonial an industrial plant.

5 **THE COURT:** Rather than hear from you, can you re- -
6 - rephrase your question or ask it again so ---

7 **MR. MAYBANK:** Right.

8 **THE COURT:** --- I can be clear where we're coming
9 from?

10 **MR. MAYBANK:** Right.

11 **THE COURT:** Y'all remain standing.

12 Q: Why don't we just focus on Transco, then. So
13 you've been -- you've been doing your job since
14 2005?

15 A: Five or six.

16 Q: Yeah, five or six. And so, you've been doing
17 in charge of pipeline companies since 2005 or
18 six?

19 A: Yes.

20 Q: Pipelines and utilities. So, you've received
21 every year since 2005, you've reviewed Transco
22 Pipeline's property tax return?

23 A: That's correct.

24 Q: Okay. And at some point in that period,
25 Transco Pipeline claimed pollution control



1 exemptions, correct?

2 A: They -- they've claimed pollution control for
3 that entire period.

4 Q: Okay. And so you granted the exemption through
5 issuance of your proposed assessment that
6 entire period?

7 **OBJECTION BY MS. WOOTEN:**

8 **MS. WOOTEN:** Your Honor, we -- we object to this
9 line of questioning.

10 **THE COURT:** I'll hear your reasoning.

11 **MS. WOOTEN:** Yes, my reason is, what is he
12 impeaching? This -- this witness, he's not
13 impeaching credibility certainly. There's --
14 there's no proper purpose for impeachment of
15 this witness. The evidence is obviously being
16 offered by Mr. Maybank simply to prove that
17 some other company has received an exemption
18 and that wouldn't be relevant at all in this
19 case.

20 **THE COURT:** All right. Mr. Maybank?

21 **MR. MAYBANK:** The entire issue in the case is
22 whether a mere pipeline company is an
23 industrial plant. Well, Transco is a mere
24 pipeline company and if they've been granted
25 the exemption, it's -- obviously the Department



1 of Revenue considers a mere pipeline company to
2 be an industrial plant. And there's certainly
3 no -- no reason the DOR can't change their
4 mind, but it's certainly relevant that for 15
5 years Transco's received the same exemption
6 we're requesting.

7 **MS. WOOTEN:** Your Honor, I believe that the
8 objection -- or that the reasoning in th- --
9 behind this case is that this company, not a
10 mere pipeline, but that this company is not an
11 industrial plant based on the facts that we've
12 heard and the facts that ---

13 **THE COURT:** Well, I agree with y'all on that.
14 Except the -- what I'd asked about awhile ago
15 was, that the issue is this company. But now
16 it is -- he's questioning the Department
17 regarding their determination regarding this
18 company and in analyzing that determination
19 regarding this company, he's saying it's
20 relevant to consider what analysis they have
21 put forth regarding other companies in the --
22 concerning this same exact issue.

23 **MS. WOOTEN:** Well, there're a couple of things ---

24 **THE COURT:** --- and that's what I'm missing.

25 **MS. WOOTEN:** Oh, I'm sorry, Your Honor.



1 **THE COURT:** No, I'm saying, that what I'm missing
2 from y'all.

3 **MS. WOOTEN:** So, a couple of things. One, this
4 would be relevant if Mr. Maybank was asserting
5 an equal protection argument here. He hasn't
6 asserted that and he's actually asserted in
7 front of the Court in our phone conversation
8 last week that he's not asserting such an
9 argument.

10 Number two, if you heard the testimony from
11 Mr. Stanley, Mr. Maybank brought this out
12 yesterday and he was telling the differences
13 between Transco and his company as far as their
14 pipeline obs- -- operations. If you remember,
15 one of the things he said was, oh, well that's
16 different from a gas pipeline because if we
17 open up a gas pipeline you can just discharge
18 it into the air, we can't do that. So in order
19 for this to be a relevant comparison, in this
20 case, and -- and there be an ---

21 **THE COURT:** Well, that would be something that y'all
22 would bring out on re-direct. The question is
23 can he impeach the witness regarding this
24 particular area.

25 **MS. WOOTEN:** And I don't understand how that's an



1 impeachment. What is he trying to impeach,
2 there's nothing to impeach?

3 **THE COURT:** Well, it appears to me and -- that it
4 would challenge his credibility regarding the
5 determination concerning Colonial Pipeline if
6 he promotes that determination regarding
7 Colonial Pipeline but doesn't promote that
8 determination or analysis regarding another
9 pipeline.

10 **MS. WOOTEN:** If -- am I ---

11 **THE COURT:** So that's where ---

12 **MS. WOOTEN:** I understand what you're saying, Your
13 Honor, but that isn't a credibility issue as
14 far as we're concerned. Respectfully, it's not
15 -- he hasn't lied about anything, he hasn't --
16 it doesn't -- it doesn't impeach his
17 credibility ---

18 **THE COURT:** Credibility doesn't necessarily mean
19 that he's lying, it just means the position is
20 inconsistent and therefore, I have to determine
21 whether that position is valid based on this
22 application.

23 **MS. WOOTEN:** And -- and there hasn't been any
24 evidence ---

25 **THE COURT:** At least from the Department's



1 perspective.

2 **MS. WOOTEN:** I'm sorry, Your Honor. There hasn't
3 been any evidence that this position is
4 inconsistent. There's no -- the Court did not
5 allow evidence about who Transco is, what they
6 do. The only evidence we have on the record is
7 that they are different and that came from
8 their own witness. So, there's no
9 inconsistency that's been shown here.

10 **THE COURT:** Mr. Antley?

11 **MR. ANTLEY:** The witness has already testified that
12 he didn't consider the industrial plant element
13 and if he didn't consider it for Colonial, it's
14 essence -- there's been no -- there's no reason
15 to believe he didn't -- he considered it for
16 other pipelines. I'm not sure. I -- I see
17 that as a consistency that he hasn't considered
18 it for any other pipeline. I don't -- I don't
19 see an inconsistency in our position.

20 **THE COURT:** Okay. Fine with me. Mr. Maybank, want
21 one last -- one last time?

22 **MR. MAYBANK:** I'm sorry, should I go ahead and ask
23 him one last time or respond?

24 **THE COURT:** Respond.

25 **MR. MAYBANK:** Again, the sole issue in our trial is



1 whether a mere pipeline company is an
2 industrial plant. That's a -- virtually the
3 only issue in the case. Another mere pipeline
4 company has been considered to be an industrial
5 plant by granting the exemption. We're not
6 arguing equal protection, we're arguing that
7 it's their -- it's in the Department of
8 Revenue's position that a mere pipeline
9 company, up until our case, is an industrial
10 plant. And the fact that they've granted it
11 for other mere pipeline companies is directly
12 relevant.

13 **THE COURT:** I'll overrule the objection.

14 Q: Okay. All right. And so, we mentioned -- how
15 about the other pipeline companies. Have they
16 ever claimed pollution control exemptions?

17 A: Yes.

18 Q: Okay. And we don't want to be here all day so
19 just give me, say, the two biggest companies
20 that have claimed the pipeli- -- the pollution
21 control exemption?

22 A: To my recollection, the only companies that
23 have filed or claimed pollution control
24 exemption for pipelines would be Colonial and
25 Transcontinental Gas Pipeline.



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1 Q: Okay. So, none of the others have?

2 A: Not that I know of.

3 Q: Okay. All right. And so, you personally --
4 just to bring all this to a halt, you
5 personally have never considered Colonial not
6 to be an industrial plant, you personally?

7 A: No, I never personally thought about that.

8 Q: Okay. Well, you've had all the way up until
9 today to think about it. Through today, you
10 personally -- I don't know, the Department's a
11 lot bigger than you, but you personally never
12 considered Colonial not to be an industrial
13 plant?

14 A: You're -- you're asking about up until today?

15 Q: Right.

16 A: Well, through this case, the definition of
17 industrial plant has been brought about. So,
18 I've been focused on a lot more and
19 conversations, through counsel, I mean, I see
20 that's a focus point.

21 Q: Right.

22 A: There's been questions about whether or not
23 Colonial is an industrial plant. So yeah, I
24 have questioned that here recently.

25 Q: Okay. And what was your question, then?



1 A: Whether or not they are considered to be an
2 industrial plant.

3 Q: Oh, but do you have an opinion that they're
4 not, you personally?

5 A: I'm not sure that I'm the one to answer that.
6 I've sought guidance on that. I mean, that's
7 ---

8 Q: All right.

9 A: --- kind of the point but I've -- I've never
10 thought about it prior to this case ---

11 Q: Right.

12 A: --- and I've thought about it since.

13 Q: Okay. All right, that's fair enough. Now, our
14 statute requires the equipment must be required
15 by state or federal law, correct?

16 A: I believe so.

17 Q: Okay. And it doesn't have to be required by
18 DHEC or EPA however, correct?

19 A: If the law doesn't say that I -- I don't think
20 so.

21 Q: Okay. And you're familiar with the Duke versus
22 the DOR Pollution Control Exemption where the
23 ALC held that the NRC requirements sufficed?

24 A: I'm not familiar with that.

25 Q: Okay. All right. And now, moving on a bit,



1 our statute says that DOR can require DHEC to
2 give a statement, correct?

3 A: Think so.

4 Q: And DHEC is an independent agency, they don't
5 -- they don't report to the DOR, correct?

6 A: No.

7 Q: And they don't always jump when y'all request
8 that statement, do they?

9 A: I -- I'm not sure what dictates the time that
10 they take but I -- but it could be a short
11 amount of time, it could be longer at times.

12 Q: Okay.

13 **MR. INGRAM:** There's no way to get any water, is
14 there?

15 **MS. WOOTEN:** I'll get you some.

16 **MR. INGRAM:** I appreciate that.

17 **MS. WOOTEN:** Your Honor, may I.

18 **THE COURT:** Yeah.

19 **MR. MAYBANK:** We have nothing further, Your Honor.

20 **THE COURT:** I want to just wait for a second before
21 I do re-direct.

22 **MS. WOOTEN:** I -- I have some -- I'm sorry.

23 **MR. INGRAM:** That's okay, I'll take a break, that's
24 fine. I didn't know we needed to ... No
25 worries.



1 **MS. WOOTEN:** Go ahead, Trey.

2 **THE COURT:** Do we need to take a short break. Are
3 you okay?

4 **MR. INGRAM:** I would like something to drink but I
5 don't know how long they're gonna take so I'm
6 not really sure how to -- if anybody else wants
7 a break, just take a break.

8 **MR. CARTIN:** Mr. Luther has graciously volunteered
9 to go get some.

10 **MR. LUTHER:** I'm the water boy.

11 **THE COURT:** That's a high paid water boy. Okay, Mr.
12 Antley?

13 **MR. INGRAM - REDIRECT EXAMINATION BY MR. ANTLEY:**

14 Q: Mr. Ingram, Mr. Maybank asked you about a DHEC
15 letter, I think at the beginning of his
16 cross-examination. Do you recall that letter?

17 A: If it's the exhibit I still have open in front
18 of me, yes, I see it.

19 Q: Are you aware that there was a prior letter
20 from DHEC?

21 A: I'm not sure without seeing it. I'm not sure
22 of it.

23 Q: That exhibit that's in front of you, to whom is
24 it addressed?

25 A: Mr. Antley, Trey Antley.



1 Q: So that would have been sent after this file
2 had been sent from the division level to
3 litigation ---

4 A: Yes.

5 Q: --- is that right?

6 A: Yeah.

7 Q: Okay. And Mr. Maybank also grouped pipelines
8 and utilities. I think you've also mentioned
9 utilities as including pipelines. I just want
10 to make sure we're clear. When you say
11 utilities, you mean property that's subject to
12 unit valuation?

13 A: Yes.

14 Q: Not necessarily how utilities are referred to
15 in the South Carolina Constitution, is that ---

16 A: Correct.

17 Q: Or the South Carolina Code?

18 A: Correct.

19 Q: Okay. I also want to make -- well, I'll let
20 you ---

21 **THE COURT:** Thank you, Mr. Luther.

22 **MR. INGRAM:** Thanks.

23 Q: So, Colonial Pipeline, they protested the
24 assessment, is that correct, your proposed
25 assessment?



1 A: Yes.

2 Q: Okay. And part of that assessment was --
3 included exceptions being granted and denied --
4 -

5 A: Correct.

6 Q: --- is that correct?

7 A: Yes.

8 Q: Okay. They asked you about Transco. Did you
9 ever consider industrial -- the industrial
10 plant element in granting the exemption to
11 Transco, prior to this case?

12 A: Prior to this case I never focused on the
13 language of industrial plant in the exemption.

14 Q: Okay. Since you learned and you've talked
15 about this seems to be a progression, and
16 you've learned more about industrial plant and
17 that element of the pollution control
18 exemption, have you applied it to Transco?

19 A: Since this case and since the Department's
20 determination, no pipeline is given the
21 pollution control exemption.

22 Q: Okay.

23 A: The Department determination, I think, stated
24 that they would not get it, Colonial. And so,
25 by way of a definition that was mentioned



1 within there, I guess it focused on industrial
2 plant. I don't have a copy of that in front of
3 me either but we then denied pollution control
4 exemption for Colonial as well as for the
5 pipeline.

6 Q: Okay. And so the fact that you granted the
7 exemption to Transco in the past, was not a
8 decision or determination that Transco was, in
9 fact, an industrial plant?

10 A: No.

11 Q: Okay. Thank you.

12 **MR. INGRAM - RECROSS-EXAMINATION BY MS. WOOTEN:**

13 Q: I just have a few follow ups for you, Mr.
14 Ingram. If you look -- I want to be real clear
15 about your understanding of what DHEC did in
16 this case. Let's look at the exhibit, the
17 letter, so that's number 16 that you've got in
18 front of you?

19 **(Joint Exhibit Number 16 was referenced.)**

20 A: Yes.

21 Q: And Mr. Maybank read portions of that letter
22 into the record. I'd like to -- to read other
23 portions and ask you what your understanding is
24 of those portions. Okay?

25 A: Okay.



1 Q: If you'd look at the second sentence of the
2 first paragraph, it begins, as previously
3 noted?

4 A: Yes.

5 Q: Okay. What DHEC said is, as previously noted,
6 there are no promulgated South Carolina laws or
7 regulations regulating petroleum pipeline
8 operations, and DHEC lacks the authority to
9 permit pipeline operations, to inspect, or
10 enforce any operational aspect of the pipeline
11 conveying petroleum products. Interstate
12 petroleum pipeline operations are regulated
13 exclusively by federal agencies, including the
14 U.S. Department of Transportation, and the
15 Department is unable to speak for those
16 agencies with regard to the purpose of any
17 specific requirements promulgated by those
18 agencies. Do you see that?

19 A: I do, yes.

20 Q: Okay. And it is your understanding, is it not,
21 that all of the specific requirements regarding
22 cathodic protection, regarding pipeline
23 coatings, and regarding automatic shutoff
24 valves are governed by the federal government
25 through U.S. DOT, isn't that correct?



1 A: I believe that's what they're saying here.

2 Q: Would it surprise you to know that that was the
3 testimony of the witness put on yesterday, for
4 the taxpayer regarding ---

5 **THE COURT:** That's considered pitting the witness.

6 **MS. WOOTEN:** Excuse me, Your Honor?

7 **THE COURT:** Even without him objecting, that's
8 considered pitting the witness. You're pitting
9 one witness against another. I guess, maybe
10 you're not but you're getting him to agree to
11 it.

12 **MS. WOOTEN:** Right, Your Honor.

13 **THE COURT:** So -- well, I'll let you go on that one,
14 the more I think about it. Technically it is
15 pitting witnesses, but maybe not. But go
16 ahead.

17 **MS. WOOTEN:** Thank you, Your Honor.

18 Q: Would it surprise you, or would you agree, with
19 the testimony from witnesses in this case that
20 the regulations regarding the cathodic
21 protection, the pipeline coating, and the
22 automatic shutoff valves are governed
23 exclusively by U.S. DOT regulations through
24 PHMSA.

25 A: I -- I didn't hear any other testimony but it



1 would not surprise me if they're reading this
2 or agreeing with this.

3 Q: Okay. And -- and if you go on in the DOT or in
4 the DHEC letter, which is, I think is extremely
5 important and as -- as Mr. Maybank says, pretty
6 straight forward to me. Look at paragraph
7 three of the letter.

8 A: Okay.

9 Q: Paragraph three begins, Colonial has
10 specifically listed three items purported to be
11 pollution control equipment that remains at
12 issue. You see that?

13 A: I do.

14 Q: Okay. Then -- then DHEC says, in the context
15 of USTs, you see that?

16 A: Yes.

17 Q: All right. USTs are underground storage tank
18 systems, correct?

19 A: Correct.

20 Q: Those are governed, as DHEC's letter says,
21 under state law and regulations. Do you see
22 that?

23 A: Yes.

24 Q: This is not -- Colonial is not claiming an
25 exemption for an underground storage tanks



1 system, is it?

2 A: I don't believe so.

3 Q: And DHEC specifically limits this opinion to
4 the context of the USTs, do they not?

5 A: That's what it would appear, yes.

6 Q: Okay. And was it your understanding that by
7 sending this letter, DHEC refused to render an
8 official opinion on this issue?

9 **OBJECTION BY MR. MAYBANK:**

10 **MR. MAYBANK:** Wait, Your Honor, we would object.
11 How can he answer what DHEC's opinion was.

12 **THE COURT:** I sustain that.

13 **MS. WOOTEN:** I was asking for his understanding,
14 Your Honor.

15 **THE COURT:** It doesn't matter who calls it. You're
16 calling for speculation. I mean, it's his
17 speculative opinion, so it's still speculation.

18 **MS. WOOTEN:** Okay. May I ask him, Your Honor, what
19 is his understanding of what this letter meant?
20 He saw ---

21 **THE COURT:** You can ask him whatever you wish and
22 I'll rule on whatever objection's made. So, go
23 ahead.

24 Q: What is your understanding of what DHEC's
25 position was taken on the -- in this letter.



1 What was your understanding of that?

2 A: It -- it sounds as if, now I'm coinciding this
3 with prior correspondence that may have been
4 had with DHEC, but it sounds as if DHEC was
5 required to make a call and if we were pushing
6 them to make a call they -- the only way that
7 they could possibly do that would be to compare
8 it to a -- a similar, in their opinion, company
9 that they do regulate or oversee. But that
10 they can't make a call for Colonial Pipeline
11 because they don't regulate or oversee Colonial
12 Pipeline and so they -- they've done that.

13 Q: Thank you.

14 **THE COURT:** All right. Recross?

15 **MR. MAYBANK:** Yes, just a couple of quick questions.

16 **THE COURT:** On new matter.

17 **MR. INGRAM - RECROSS-EXAMINATION BY MR. MAYBANK:**

18 Q: We talked to you -- you again brought up -- we
19 brought, again brought up Transco. Now, you
20 say you never considered whether Transco was an
21 industrial plant? Never noodled it over?

22 A: That wasn't something I considered.

23 Q: Okay. But, of course, as part of the statute
24 you were required to find an industrial plant
25 in order to grant it, correct?



1 A: That was granted so long ago, that could've
2 been somebody else because I would have sought
3 guidance to grant exemptions such as that
4 nature, so.

5 Q: Okay. But, so, for both Transco and Colonial,
6 I mean the statute says you gotta be an
7 industrial plant, correct?

8 A: Correct.

9 Q: Okay. And so, when you grant it, by
10 definition, you're finding it's an industrial
11 plant. Even though you may not have noodled it
12 over, by definition you found it was an
13 industrial plant by granting it, correct?

14 A: I'm not sure, I guess, I don't know.

15 Q: I'm sorry?

16 A: I guess, I'm not -- I'm not sure. That wasn't
17 something that I focused on was the language at
18 that ---

19 Q: Right.

20 A: Okay.

21 Q: And, you know, four elements, you don't have to
22 focus on all four of them, but by granting it
23 to Transco and Colonial Pipeline, by
24 definition, you found it an industrial plant,
25 correct?



1 OBJECTION BY MR. ANTLEY:

2 **MR. ANTLEY:** Objection, Your Honor. It sounds like
3 he's asking the witness to draw a legal
4 conclusion.

5 **MR. MAYBANK:** I'm just asking, he granted it, what
6 does that mean.

7 **MR. ANTLEY:** It means ---

8 **THE COURT:** He's already answered it, I thought, but
9 ---

10 **MR. ANTLEY:** Asked and answer, as well.

11 **THE COURT:** He's already gran- -- he's already said
12 he granted it.

13 **MR. MAYBANK:** Right.

14 **THE COURT:** And I -- what you're asking is an
15 inference that we can consider from the result
16 of that granting.

17 **MR. MAYBANK:** All right. I'll move on, Your Honor.
18 Just one last one.

19 Q: We heard a -- we went through the DHEC letter
20 at length here. In your opinion, your personal
21 opinion, you've never considered cathodic
22 protection, pipeline coating, or automatic
23 shutoff valves as not being pollution control
24 equipment, correct?

25 A: I've always questioned whether or not they were



1 pollution control.

2 Q: Okay.

3 A: And needed guidance on those.

4 Q: Okay.

5 **MR. MAYBANK:** All right. I think that's all we
6 have, Your Honor.

7 **THE COURT:** You may step down.

8 **MR. INGRAM:** Thank you.

9 **MR. ANTLEY:** No further witnesses from the
10 Department, Your Honor.

11 **MS. WOOTEN:** None from us, Your Honor.

12 **MR. CARTIN:** None from Aiken and Laurens County,
13 Your Honor.

14 **THE COURT:** All right. Well, then I'm going to ask
15 for proposed orders, but I think I'd like to
16 just hear just a quick summary of your
17 positions.

18 **MR. MAYBANK:** I'm -- I'm sorry, I didn't hear you,
19 Your Honor.

20 **THE COURT:** I'd like to hear just a quick summary of
21 your positions, just where I -- I can have it
22 if I decide to ask you a few questions later.
23 Y'all want a break or y'all ready to go?

24 **MR. MAYBANK:** I think we're ready to go.

25 **MR. ANTLEY:** I'm prepared, Your Honor.



1 **THE COURT:** Okay. Well then, Mr. Maybank?

2 **CLOSING STATEMENT - BY MR. MAYBANK:**

3 **MR. MAYBANK:** Okay. The -- again, the two issues
4 before the Court and the last day and this
5 morning are, first of all are we -- is Colonial
6 an industrial plant. But really the rest of
7 the statute I think there's -- there's really
8 been no dispute over, it's just whether we're
9 an industrial plant.

10 The second issue before the Court is have we
11 proven that cathodic protection, pipeline
12 coatings, and automatic shutoff valve are
13 pollution control equipment assuming we are an
14 industrial plant. Our argument just quite
15 short or simply on industrial plant is, we're
16 an industrial plant in -- in part and the DOR
17 has said we're an industrial plant. They say
18 we're an industrial plant up until last year.
19 So, the Department itself has conceded. Now,
20 they may not have noodled it over, and that's
21 totally appropriate. We're -- we're so -- one
22 way to look at it, so obviously an industrial
23 plant who would even -- who would even think
24 about it. Who would even noo- -- noodle it
25 over. What purpose would there be when we're



1 so obviously an industrial plant. There's no
2 definitions in the -- in the code, there's no
3 case law. There are cases from other states
4 however, and sh- -- mere shipping facilities
5 have been considered "industrial plant" in
6 other states. So if you look at dictionary
7 definitions, if you look at a couple of cases
8 from the other states, you look at that full
9 day of testimony of what we did, we are clearly
10 an industrial plant.

11 Now, in your ---

12 **THE COURT:** When you say, clearly an industrial
13 plant, you mean the entire?

14 **MR. MAYBANK:** I was just going to turn to that. So
15 the pipeline, you know, I guess the first
16 question is, well can you bifurcate it if -- if
17 everyone conceded, which they haven't, but if
18 everyone conceded that the tank farms, for
19 example, were an industrial plant, do we have
20 to prove that the pipelines are also an
21 industrial plant or is that mere finding the
22 tank farms as an industrial plant, does that
23 suffice? And of course, there's no -- there's
24 no law on that in -- in South Carolina. But
25 the testimony was exhaustively -- exhaustive as



1 to how the pipelines were attended. They're
2 attended both but visually and mechanically.
3 So the visual attendance would be a plane flies
4 -- flo- -- flies over every two weeks. We --
5 the grass is mowed once a year and the pipeline
6 markers are verified under that. There's an
7 annual survey where annually they go out and
8 check every cathodic protection device, they
9 check the pipeline. And then there's a close
10 interval survey which goes even in more
11 exhaustive detail every five years down the
12 entire pipeline. Then there are mechanically
13 ---

14 **THE COURT:** That's all oversight of the pipeline.
15 How does oversight of the pipeline, unless I'm
16 us- -- maybe I can -- I don't want to put the
17 wrong term in your mouth, but how does
18 oversight of the pipeline equate to an
19 industrial activity?

20 **MR. MAYBANK:** It -- it -- we were really responding
21 to your summary judgement order which you said
22 the pipelines are unattended.

23 **THE COURT:** Okay.

24 **MR. MAYBANK:** So we -- we showed they are very well
25 attended.



1 **THE COURT:** Okay, I understand. And, by the way, on
2 that summary judgement, one thing I didn't --
3 can I follow that out more. Your -- you are
4 offering testimony, you said, to dispute the
5 summary judgement and motions that they have
6 made and I made a miscorrect statement, I said,
7 it would be remanded. If your summary
8 judgement motions, and I'm looking to the
9 counties, if the Supreme Court reversed my
10 decision on that, they would find that there's
11 no genuine issue of material fact and that
12 y'all are entitled by -- for a judgement as a
13 matter of law, so there wouldn't be -- need to
14 be any testimony on that. But I also denied
15 some in part. So given all the different
16 nuances, I mean, I get something -- some of the
17 testimony but I just wanted to clear that up.
18 I -- I'd incorrectly stated that.

19 **MR. MAYBANK:** Yeah. And we threw in that testimony
20 to try and prevent the Court having to remand
21 it. We're hoping if they do reverse it so we
22 don't have to remand it because they pro- --
23 proved their case.

24 **THE COURT:** Okay. Well, that would regard your
25 summary judgement.



1 **MR. MAYBANK:** Right.

2 **THE COURT:** Yeah.

3 **MR. MAYBANK:** Correct. And -- and just as, pure
4 legal issue, the denial of a summary judgement,
5 you can't appeal it, so is your order the law
6 of the case factually. We were nervous it may
7 ---

8 **THE COURT:** It would be -- absolutely, would be the
9 law of the case factually because it's all ---

10 **MR. MAYBANK:** Right.

11 **THE COURT:** --- may concern whether as a note of
12 genuine issue of material fact then they ---

13 **MR. MAYBANK:** Right.

14 **THE COURT:** --- factual findings on summary
15 judgement motion. But let's -- let's just go
16 ahead on, please, with your arguments.

17 **MR. MAYBANK:** Right. So, if -- if the heart of
18 Colonial's business, which would be the tank
19 farms and so forth, if they're an industrial
20 plant, the pipelines themselves, which are part
21 and parcel of the entire operation, I don't
22 know how you -- how you segregate them. If --
23 if the tank farms are an industrial plant, the
24 entire line is an industrial plant. And we
25 went into painful detail ---



1 **THE COURT:** So you're arguing if the industrial --
2 if the tank farms are an industrial plant, that
3 which feeds the materials to the industrial
4 plant would be a component of the industrial
5 plant?

6 **MR. MAYBANK:** Correct.

7 **THE COURT:** All right.

8 **MR. MAYBANK:** So, we -- I think we rise and fall
9 together.

10 **THE COURT:** All right.

11 **MR. MAYBANK:** And so, we -- and -- I won't belabor
12 it but we have considerable testimony on the --
13 on the mechanical examination of it as -- as
14 well.

15 The second issue is, of course, factually of
16 course, we have to prove cathodic protection,
17 pipeline coating, and the one shear valve are
18 pollution control equipment. So, even if
19 you're an industrial plant we still got to
20 approve that. And we went into painful
21 testimony, federal law requires it, we -- best
22 practices require it. You know, we would be in
23 violation of federal law if we didn't have
24 them. They're certainly used in Colonial
25 Pipeline's business and they're clearly



1 pollution control devices required by federal
2 law. It's just -- it's really just that
3 simple. And we went into painful detail what
4 would happen if we didn't use them. So that
5 would be our position, Your Honor.

6 **THE COURT:** Okay.

7 **CLOSING STATEMENT - BY MR. ANTLEY:**

8 **MR. ANTLEY:** Starting, I just want to briefly
9 address his -- the logic of, we must've
10 determined them to be an industrial plant if we
11 granted the pollution control exemption. That
12 same logic could work the other way if we --
13 there's testimony that since 2 -- since this
14 issue has arisen and we've looked at the
15 industrial plant issue, we've denied for all
16 property. So if we denied for all property
17 then they must not be an industrial plant. In
18 -- if we granted it incorrectly, the Department
19 can't be estopped from then correcting that
20 mistake, and we want -- and that's what we want
21 to do. We want to get this right. There's no
22 money flowing to the Department. We're --
23 we're just trying to get this decision right
24 and we want to be able to apply it correctly,
25 prospectively, as well.



1 So, with that being said, the -- today the
2 taxpayer has failed to meet it's burden. It's
3 operations in South Carolina do not constitute
4 an industrial plant under the narrow
5 construction required of exemption statutes.
6 The language of the exemption statute itself
7 uses the term manufacturer, and it also
8 mentions production. And so with that -- when
9 you take that into consideration, it -- it
10 informs the determination of what's an
11 industrial plant. It shows that an industrial
12 plant must have some form of production.

13 So, under unit valuation we look at the
14 pipeline as a whole. We don't -- we don't zoom
15 in on these booster stations or tank farms.

16 **THE COURT:** All right. So, where I can understand,
17 the unit valuation, all this testimony you just
18 offered about that, that's directed not toward
19 analysis of whether the -- the equipment is
20 pollution control equipment, but whether or not
21 the Colonial Pipeline is an industrial plant?

22 **MR. ANTLEY:** That's correct.

23 **THE COURT:** Okay.

24 **MR. ANTLEY:** Yes, Your Honor. And -- and by looking
25 at -- and by using unit valuation and looking



1 at the pipeline as a whole, the taxpayer does
2 receive the benefit because, if we zoom in and
3 we start looking in these areas, like a tank
4 farm, we say well this looks like a
5 manufacturer, then we have to increase that
6 assessment ratio from 9.5 to 10.5 percent.

7 **THE COURT:** I don't get that point. If you are a
8 industrial plant, you're an industrial plant
9 whether the ratio is 50 percent, 20 percent, or
10 whatever, so. And then if you are entitled to
11 pollution control exemption, you'd be entitled
12 to the pollution control exemption no matter
13 what the ratio is. You're either entitled to
14 it or you're not. I don't see there being an
15 element of the ratio that affects that
16 determination.

17 **MR. ANTLEY:** The point of the ratio is to show that
18 they're -- show how we don't zoom in on
19 portions of this. Because if we did we could
20 treat it differently for ratios and it would --
21 if we treat it differently for exemptions, then
22 we should also treat it differently for
23 assessment ratios. And, in the Department's
24 definition of -- of what an industrial plant
25 constitutes, we refer to manufacturers. It has



1 to have some kind of production element, maybe
2 utilities as well, which is also assessed at
3 that higher assessment ratio.

4 **THE COURT:** Whatever. I will think about it.

5 **MR. ANTLEY:** Okay. Thank you.

6 So, any -- any production that might occur in
7 the taxpayer's property in South Carolina,
8 that's de minimus. They paint it as -- as
9 there's a lot of production, there's a lot of
10 processing going on, but what's really going on
11 is the product's moving through our state
12 there. And anything that goes on in this state
13 is to help move that product. It's -- it's not
14 -- they're not a refinery, they're not even
15 doing blend stocks, blending different blend
16 stocks to create a new product here in South
17 Carolina. And they admit that they are a
18 transportation company. And because the
19 taxpayer's operations in South Carolina do not
20 constitute industrial plant, it does not
21 qualify for the pollution control exemption.

22 **THE COURT:** Okay.

23 **CLOSING STATEMENT - BY MR. CARTIN:**

24 **MR. CARTIN:** Good morning, Your Honor. I've been
25 quiet today. Suppose I should have ---



1 **MR. MAYBANK:** You gonna get that out of your system
2 now?

3 **MR. CARTIN:** That's right. I'll save myself for
4 that.

5 Your Honor, I'm going to go back to where we
6 started with this and urge the Court to adopt
7 a very narrow construction of the term
8 industrial plant. I think that's mandated by
9 the TNS Mills case, it says it has to be
10 strictly construed against them because what
11 I'm hearing in the case that's been put on, is
12 essentially a case that's been put on to meet
13 the definition of industrial plant. It says
14 anything where anything where -- where business
15 that involves a dirty hazardous product takes
16 place. And I don't think that's what the
17 statute was intended to show. I think the
18 Court's initial statement in the motion for
19 summary judgement, which I also found
20 significant, that certain portions of the
21 pipeline are -- are unattended. While they may
22 not be literally unattended, I think
23 practically they're unattended. I tried to
24 bring that out yesterday during the hearing
25 just to show that -- I'm sitting here listening



1 to the testimony and I'm getting the image in
2 my head of a little guy in a blue shirt with a
3 hard hat and a lunch pail going to work at the
4 pipeline everyday. And for the most part,
5 that's just not what the case is. That defies
6 common experience. Most of us know we have
7 utility lines in the back -- in the back of our
8 house or around us and there's not constantly
9 SCE&G or Dominion people crawling all over
10 those things to fix them. Certainly there's
11 activity, certainly they're being monitored and
12 certainly if a tree falls over and knocks those
13 things down, they've got to come fix it. We
14 would expect that Colonial Pipeline would
15 monitor it's pipeline, but heck, they do that
16 from Alpharetta, Georgia. They do some
17 physical monitoring too, some physical testing
18 but the intervals are five years, annually.
19 With these -- with the example I tried to bring
20 out about Johnny the farmer in his field, he's
21 not going to have Colonial people constantly
22 moving all over this field. It's five feet
23 below the ground. Practically, they can't have
24 a lot of interaction with this, so I think it
25 is fair to say that there are miles and miles,



1 515 miles, of unattended pipeline, practically
2 unattended pipeline.

3 **THE COURT:** Well, let me ask you about that.
4 Because even if it is unattended, if -- I need
5 to understand your viewpoint on if the tank
6 farm is an industrial plant and this pipeline
7 feeds into the industrial plant, would it not
8 be a component of the industrial plant? Now I
9 assume you're going to have a position opposite
10 of that, so that's why I want to ---

11 **MR. CARTIN:** Well, I assume the Court -- and it's --
12 Your Honor. I had not given a lot of deep
13 thought to this because my client, Laurens and
14 Aiken County, do not have any of those
15 production facilities so I'm trying to just
16 block and tackle on my ---

17 **THE COURT:** Okay.

18 **MR. CARTIN:** --- issue that affects my particular
19 clients. And I'm afraid that if I give you an
20 unthought out answer I would probably spoil it.
21 I think there probably is a way to segregate
22 them out, I mean if the Court were to so choose
23 because I think if you look at the activity and
24 the testimony, there are different activity
25 centers.



1 I would still dispute -- I'd still think for
2 the reasons set forth in our summary judgement,
3 and as Mr. Antley alluded, I think there is
4 some production component to the industrial
5 plant -- industrial plant definition. And we
6 laid out that in detail in our motion for
7 summary judgement, I'm afraid I would stumble
8 if I tried to do it here.

9 **THE COURT:** That -- that's fair enough. I just
10 asked.

11 **MR. CARTIN:** So -- so I'll -- I'll try to make that
12 later a little bit more plain, certainly in our
13 proposed order. But I -- I would just say,
14 without belaboring anything -- I want to
15 address the transmix too.

16 The transmix is like if somebody hired me to
17 bring a truck load of gravel to their house and
18 I had an open bed pickup truck with some gravel
19 in it and I drove to the house and all of a
20 sudden it's fall time and I get out and low and
21 behold there's a bunch of leaves in the truck
22 of gravel I promised to -- to deliver to their
23 house. If I picked out all those leaves to
24 make sure all I'm delivering to my client is
25 the gravel, that's all the transmix process is.



1 Making sure the product that goes in the pipe
2 is what the customer gets.

3 And so, you know, I don't want there to be
4 this allusion that there's some production that
5 we're creating some -- a new product where
6 there wasn't a product before. No, we're just
7 separating the leaves out of the pickup truck
8 so we're giving the gravel that we said we were
9 going to deliver.

10 So, I -- I would thank the Court and
11 everybody for their -- for their kindness.
12 It's been a great group to work with, always.
13 And thank you for your time, Your Honor.

14 **THE COURT:** Ms. Wooten?

15 **CLOSING STATEMENT - BY MS. WOOTEN:**

16 **MS. WOOTEN:** Your Honor, picking up on something
17 that the other counties have brought up in the
18 beginning. The reason that we're here is
19 because this decision would have far reaching
20 implications on our counties, on our four
21 counties. As you heard the testimony, there
22 are a number of pipelines in the state, each of
23 which I'm sure is going to try to piggy back on
24 whatever ruling this is. That affects us
25 mightily from a revenue standpoint and from an



1 administrative standpoint. So, that's --
2 that's the reason that we find this decision on
3 this company so important.

4 But, I think there are a couple of things
5 about the industrial plant issue. One is, of
6 course, the federal regulation, and I think --
7 I think one of the things that became very
8 clear from the testimony that was even more
9 clear during this trial than it was previously
10 when we did file our summary judgement motions,
11 is that this company is a transportation
12 company. It -- it, while it, as Your Honor
13 pointed out, in -- in your summary judgement
14 order, while you could be an industrial plant
15 in a transportation company, in this particular
16 situation, we do not believe that this is an
17 industrial plant. Rather it is a
18 transportation company at it's core and if you
19 noticed the testimony that came out from every
20 single witness, all of it's operations are
21 governed by the United States Department of
22 Transportation. Other than a few minor
23 regulations from the EPA and others. DOT
24 considers this to be a transportation company.

25 **THE COURT:** All right. My question regarding that



1 would be, if it is a transportation company
2 that engages in industrial activities and this,
3 I guess Colonial Pipeline would have to equate
4 the exemptions they are seeking to those
5 industrial activities. So that would be a
6 given, number one.

7 **MS. WOOTEN:** Yes, sir.

8 **THE COURT:** But, now, I'm just going on the big
9 picture first. If it is a transportation
10 company that engages in industrial activity,
11 then could it sti- -- could it still not take
12 this exemption?

13 **MS. WOOTEN:** And -- and I think that's a good point,
14 Your Honor; however, I think that the -- the
15 operative word here is not industrial but
16 plant. And if you look at -- I know, Your
17 Honor, have used some dictionary definitions,
18 which are -- which are instructive and helpful,
19 if; however, if you look at the federal reg,
20 which was conceded applies in this case, the
21 term industrial plant ---

22 **THE COURT:** Federal reg from where?

23 **MS. WOOTEN:** This is -- I don't have the first page
24 of it. It's in our summary judgement motion,
25 Your Honor. I'm sorry I don't have the cite.



1 **THE COURT:** Well, I'm -- I'm just asking. I can't
2 remember -- I can go back and look at all those
3 later, but the federal reg that would be
4 pertinent to me would be the federal reg
5 dealing with pollution control, would it not?

6 **MS. WOOTEN:** It -- it would, Your Honor.

7 **THE COURT:** And so, is that reg coming out of
8 pollution control? I don't know one way or the
9 other, I'm just asking.

10 **MS. WOOTEN:** And I can't -- I can't recall ---

11 **THE COURT:** Okay.

12 **MS. WOOTEN:** --- what section this comes out of.

13 **THE COURT:** Well, then you can proceed ahead.

14 **MS. WOOTEN:** But I will tell you that the federal
15 reg that I'm referring to does require and this
16 is -- it's from the Energy Code, Your Honor,
17 which would apply to this particular company
18 obviously because they're an energy related
19 company. And the term industrial plant does
20 have a component that's required of industrial
21 production or output. We don't have any output
22 or production from this company. If you also
23 look at the North Carolina general statute,
24 which would be instructive. North Carolina
25 General Statute, Section 62-2, which was not



1 sited in our original motion. Industrial plant
2 is defined there as, any plant, mill, or
3 factory engaged in the business of
4 manufacturing, which is not what this company
5 is. The wide reaching implications of this, to
6 hold a transportation company that the U.S. DOT
7 considers a transportation company would be
8 trucking companies, any sort of rail companies
9 ---

10 **THE COURT:** Well, trucking companies wouldn't engage
11 in transmixing, so I could ---

12 **MS. WOOTEN:** Your Honor, I'm not sure that's true.

13 **THE COURT:** Well ---

14 **MS. WOOTEN:** And -- and railroad companies, as well.

15 **THE COURT:** Well, I'll tell -- let me go with that.
16 There's no evidence one way or the other, so I
17 shouldn't have made that comment, but then on
18 the other hand, I mean, I've got transmixing
19 here. I don't know what industrial -- trucking
20 companies do. I would think they would just,
21 I mean, I -- I guess they have to worry about
22 water getting in their stuff but after that, I
23 wouldn't think they'd put a diesel fuel and
24 airline fuel together in the same tank.

25 **MS. WOOTEN:** Your Honor, I do think there was some



1 testimony on that in the 30(B)(6) deposition.

2 **THE COURT:** Okay.

3 **MS. WOOTEN:** About that, but -- but that's why it's
4 such a wide reaching ---

5 **THE COURT:** Has that 30(B)(6) deposition been
6 admitted in?

7 **MS. WOOTEN:** It is, it's in the record, Your Honor.

8 **THE COURT:** Okay.

9 **MS. WOOTEN:** It was an agreed upon exhibit in the
10 record.

11 **THE COURT:** Okay.

12 **MS. WOOTEN:** So, and -- and I think it became very
13 clear that DOT has taken it upon themselves to
14 carefully and specifically regulate pipelines
15 as a transportation company.

16 And the next thing was just a brief point
17 that we brought up about DHEC. Section 12-37-
18 220(A)(8) predicates the Department's approval
19 of pollution control exemption on an
20 affirmative determination from DHEC. And if
21 you -- if you look at that letter carefully,
22 and we went over that with Mr. Ingram this
23 morning, DHEC has repeatedly refused, in two
24 letters as he said, to provide any affirmative
25 determination on whether this is pollution



1 control equipment. So, in our ---

2 **THE COURT:** You said that, what, that was 12-37-
3 220(A)(8)?

4 **MS. WOOTEN:** Yes, Your Honor.

5 **THE COURT:** All right. And that's -- requires an
6 affirmative?

7 **MS. WOOTEN:** Yes, Your Honor. And that's also in
8 our summary judgement motion.

9 **THE COURT:** Okay.

10 **MS. WOOTEN:** Right.

11 **THE COURT:** All right.

12 **MS. WOOTEN:** So, in -- in ---

13 **THE COURT:** And I assume it'll be in your proposed
14 order, too.

15 **MS. WOOTEN:** It will, Your Honor. Thank you. And -
16 - and that is required and it was not done. So
17 that would be our -- our request, Your Honor.

18 At this time, we'd request a judgement as a
19 matter of law, which I'm assuming that you're
20 denying at this time since you've asked for a
21 proposed orders.

22 **THE COURT:** That would be correct.

23 **MS. WOOTEN:** Thank you, Your Honor.

24 **THE COURT:** well, I don't know if there is a correct
25 -- the correct motion is a involuntary non-suit



1 and what I will issue will be a judgement as a
2 matter of law, probably one way or the other.
3 All right.

4 **MS. WOOTEN:** Yes, Your Honor.

5 **THE COURT:** Any ---

6 **REPLY - BY MR. MAYBANK:**

7 **MR. MAYBANK:** Yeah, just extremely briefly. The
8 Department has argued that the exemption's
9 limited to manufacturers and the statute
10 couldn't be broader. It says manufacturer or
11 company. So I don't -- I don't know how you
12 can say it any broader than that, manufacturer
13 or company. Now the company has to be an
14 industrial plant, but you -- it couldn't be any
15 broader, manufacture or company. So, that's
16 the property tax statute.

17 The sales tax statute, by contrast, is
18 limited to manufacturers. So the pollution
19 control sales tax exemption statute's limited
20 to manufacturers. So when the General Assembly
21 wants to limit an exemption to a manufacturer,
22 it knows how to do so. In fact, there's a
23 whole bunch of tax credits that are limited to
24 manufacturers and not others. So, you know,
25 the question is, is shipping hundreds of



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1 thousands of gallons of -- of petroleum
2 products through South Carolina and offloading
3 hundreds of thousands of gallons and creating
4 tens of thousands of gallons of transmix and
5 tens of -- and considerable amount of sting, is
6 that an industrial activity. And I think that
7 the evidence shows that it clearly is.

8 **THE COURT:** Okay. Thank y'all very much.

9 **MR. CARTIN:** Thank you, Your Honor.

10 **MS. WOOTEN:** Thank you, Your Honor.

11 **(There being nothing further, the hearing concluded**
12 **at 11:19 a.m.)**

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CERTIFICATE

This is to certify that the within hearing consisting of three hundred seventy seven (377) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 27, 2020.


Amanda J. Creel Godfrey
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 17, 2021



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35 48:1	5th 1:22	70 3:19 280:6,9	
350 5:10 119:18	5,000 109:2,3 154:6	70s 92:4 96:22	
351 5:10	5,500 190:12,14	700 2:3	
353 5:11	50 10:2,3 34:8 56:5	74 3:19,20	
355 5:12	113:12 169:20,24	75 98:24 107:9,9	
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361 5:13	500,000 105:19	281:7	
364 5:13	515 98:21 99:2,10	77 3:20,21	
365 189:18 253:16	160:24 161:18	78 3:21	
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4	53 3:14,15	68:25 91:3 204:15	
4 1:14 3:1 6:2	55 107:3	219:22,23	
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41 3:12	61 205:13	87 128:17 191:6,7	
413 40:10	62 84:14 91:23,23	88 3:25	
44 3:12,13 177:14	96:19 205:13	89 4:1	
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45 107:3 169:18	62-2 372:25	9 4:2 8:3 9:19 67:20	
46 3:13	63 3:17 205:12	97:18	
47 3:14	630 199:6	9-11 142:24	
48 204:21	65 3:17 27:8	9.5 51:12,15,22,23	
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1 **THE COURT:** All right.

2 **MR. CARTIN:** And I think there's some -- there's --
3 I know I have personally been confused 'cause
4 the Supreme Court issues orders but the
5 Administrative Law Court's under you, not under
6 Justice Batey. And so ---

7 **THE COURT:** They're not under me. They're under our
8 rules. And yeah, when they did that it didn't
9 apply to our Court. Because I recognize the
10 confusion and that's why I'm bringing it up
11 rather than just not even addressing it at all.
12 All right, so that means that it's not
13 submitted. Is that everybody? Well I heard
14 from Mr. Cartin, Mr. Maybank. Mr. Antley, you
15 haven't taken a stance.

16 **MR. ANTLEY:** The Department also consents, Your
17 Honor.

18 **CATHODIC PROTECTION DISCUSSION:**

19 **THE COURT:** Okay. All right. So now really one of
20 the final things I wanted to discuss was the
21 issue of cathodic protection. If somebody
22 wants to clarify it for me but the way that my
23 understanding of cathodic protection is that
24 cathodic protection applied from the beginning
25 'cause the coating's on the pipeline or on the



1 pipes are cathodic protection. And then as
2 time or the technology has evolved is what we
3 should say, cathodic protection has come to
4 mean more than just the coatings on the
5 pipeline. There's also now a cathodic
6 protection system. And it seems to me that the
7 parties have not understood that concept. So
8 either the parties have not understood that
9 concept or I'm missing the concept. So can
10 someone tell me -- and, Ms. Buckner, have I
11 pretty well summed up how I perceive this?

12 **MS. BUCKNER:** Yeah. I think their -- just wanted a
13 slight clarification whether the pipe coatings
14 were considered different from the cathodic
15 protection system or whether they were all part
16 of one and the same system eventually, how any
17 differentiation you guys may perceive that.

18 **THE COURT:** All right. So, does anyone -- whoever
19 wants to start, tell me.

20 **MR. CARTIN:** Your Honor, I'm happy to get started on
21 that. They are separate and distinct concepts.
22 The pipe coatings -- both pipe coatings and
23 cathodic protection have been around since the
24 inception of these pipelines since they were
25 originally in place. The pipe coatings are



1 actually a coating on the pipe itself. There
2 was discussion in the 30(b)6 testimony about
3 the different types of pipe coatings can have
4 and the evolution of those coatings. The
5 cathodic protection system however is
6 different. The cathodic protection system is
7 sort of outside of the pipeline and ---

8 **THE COURT:** Wait, let me stop you so I can make sure
9 I understand. So you don't envision the pipe
10 coatings to be cathodic protection?

11 **MR. CARTIN:** No, Your Honor. I believe they're
12 separate and distinct protective measures for
13 the pipeline. The cathodic protection uses an
14 anode and a diode to create an electric current
15 in the metal itself which stops the chemical
16 reaction that results in corrosion. So the
17 pipe coatings and the cathodic protection work
18 in conjunction with one another but they are in
19 fact distinct concepts.

20 **THE COURT:** The problem is the testimony didn't come
21 out the way you're explaining it. It was a
22 little different. But anybody else -- here,
23 I'll go off Mr. -- I spotlighted you, Mr.
24 Cartin. So anyone else want to respond?

25 **MR. MAYBANK:** We would largely agree with what Mr.



1 Cartin said. They are two separate systems.
2 The best explanation of them comes from the
3 federal government which we had in our briefs
4 we quoted them at length, or was that a
5 proposed order we quoted them at length. But
6 they are two separate systems. We claimed the
7 pollution control exemption just for the
8 repairs and not for the system itself. So we
9 repair cathodic protection or we repair the
10 coating. That was the extent of our pollution
11 control exemption, not for the underlying
12 system of either the coating or the cathodic
13 protection but just for the cost of the
14 repairs.

15 **THE COURT:** All right. With that said, anybody
16 else?

17 **MR. ANTLEY:** Your Honor, my understanding of it was
18 also that they were two separate systems. They
19 were also applied for separately, listed
20 separately on the application.

21 **THE COURT:** Yeah. I noticed that. That was my
22 struggle is on one hand if they were listed but
23 then when I started reading the testimony I
24 think it was even the expert for Colonial
25 Pipeline seemed to refer to the coatings as



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1 cathodic. And there in lied my confusion. All
2 right. Well with that said that really is the
3 extent of what I wanted to discuss with y'all.
4 I'm going to just get back in and start working
5 on the motions for reconsideration unless y'all
6 think there's something else that needs to be
7 brought to my attention.

8 **MR. MAYBANK:** Would now be the appropriate time for
9 a brief oral argument on the motions or you
10 don't need that?

11 **THE COURT:** I'll tell you what. I've gone through
12 the trouble of getting y'all on this call. So
13 -- and I know you're lawyers and it's difficult
14 not to want to argue about something. So I'll
15 hear from you, Mr. Maybank. You said you
16 wanted to go. When you say brief I would like
17 it to be brief if you don't mind.

18 **ORAL ARGUMENTS - MR. MAYBANK:**

19 **MR. MAYBANK:** Sure. So the basis for our motion for
20 reconsideration was the Court's denial of the
21 coatings. And we pointed out in our motion,
22 the dual use doctrine which the Court relied on
23 is limited to quote production end-quote. And
24 we put a number of dictionary definitions down.
25 We don't engage in production which is a



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1 manufacturing concept. And we noted that both
2 the County's motions and proposed orders as
3 well as the DOR's motions and proposed orders
4 all agree we do not produce anything. One
5 point of agreement amongst all of us, we're a
6 transportation company not a manufacturing
7 company, and therefore we contend the dual use
8 doctrine doesn't apply at all.

9 **THE COURT:** Well I do agree with y'all that my
10 Order, I've got to decide one way or the other
11 now. My approach in the Order on the dual use
12 was not the correct one. So that will be
13 modified. All right. Mr. Cartin?

14 **ORAL ARGUMENTS - MR. CARTIN:**

15 **MR. CARTIN:** Yes, Your Honor. I too will be very
16 brief. And I would just mention this as you're
17 reading Colonial's motion for reconsideration.
18 For a statute that's not about production there
19 sure are a lot of references to production in
20 analysis that involves production in the
21 statutory context. In fact I found that some
22 of the language there actually that was used in
23 that brief actually supported some of the
24 arguments that we were making. So I just
25 wanted to bring up as the Court reviews that



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1 anew, that perhaps if it requires to analyze
2 the statutes so much talk about production then
3 maybe there's something more to our original
4 arguments. And I know the Court's rejected
5 those, but I would just ask the Court to
6 consider those again. And as for the dual use
7 exception, I think there's the idea that's been
8 put out there by Colonial that if they don't
9 produce anything then that section doesn't
10 apply. But what I would tell the Court is that
11 lays out a broad principle about how anything
12 under this exception would be valued. So let's
13 assume for a moment that it is a broader
14 application than just production. I think it
15 makes sense that the pollution control
16 exception would only apply to the property
17 that's actually for pollution control. So you
18 would segregate out all the other business
19 property. I mean that would seem to me to be
20 the logical import of how the statute is set
21 up. It wouldn't be because you have -- there
22 are some pollution control. Let's say there's
23 a five cent nob attached to some manufacturing
24 product and the nob contains pollution control.
25 We would not say that that entire maybe



1 multimillion dollar manufacturing product is
2 except from taxation because of a five cent
3 nob. And I think that's the -- so I think that
4 language about the productive capacity, even if
5 the Court rejects our arguments about the
6 application of industrial plant has a broader
7 application and a common sense application from
8 a tax perspective.

9 **THE COURT:** All right. Mr. Kozlarek.

10 **ORAL ARGUMENT - MR. KOZLAREK:**

11 **MR. KOZLAREK:** I think it's most appropriate for Ms.
12 Wooten to respond.

13 **THE COURT:** All right, Ms. Wooten. Do you want to
14 give a brief? I don't even -- your camera's
15 not on and your microphone's muted. There you
16 go. Still muted. Want me to unmute you?

17 (No response.)

18 **THE COURT:** Ms. Wooten?

19 (No response.)

20 **THE COURT:** Well, Mr. Kozlarek, I'm not getting Ms.
21 Wooten.

22 **MR. KOZLAREK:** That's all right, Your Honor. I
23 apologize for the technical difficulties.
24 Obviously we agree with Mr. Cartin in the
25 analysis with respect to the dual use. I think



1 the other aspects of our motion to reconsider,
2 notwithstanding the inflammatory language are
3 correct in that there are statutory
4 construction issues with the Court's Order in
5 that tax exceptions are stickily construed
6 against the tax payer for example and that the
7 burden of proof is on the tax payer on all of
8 those factual issues and that to the extent ---

9 **THE COURT:** Can I stop you there?

10 **MR. KOZLAREK:** Yes, sir.

11 **THE COURT:** There's a struggle. When you say burden
12 of proof, strict construction applies to the
13 interpretation of the meaning of the statute.
14 Strict construction does not apply to the
15 factual issues to consider. There are other
16 aspects of whether they have the burden or not.
17 But that -- you're taking the strict
18 construction principle and using it --
19 utilizing that as a principle for determining
20 the burden of proof. And that has been
21 something I've noticed and I don't think that's
22 a correct approach. But if I'm wrong tell me.

23 **MR. KOZLAREK:** I do think they are two different
24 issues, Your Honor. I think that the strict
25 construction of the statute raises a question



1 for example about the use of the definitions as
2 to what an industrial plan is where there may
3 be more than one option. The strict
4 construction in our view requires the Court to
5 look at a definition that would restrict the
6 granting of a tax exemption versus the use of
7 a statute -- or the use of a definition that
8 would be more inclined grant a tax exemption
9 particularly when those definitions are outside
10 of the context of a tax scheme and they are
11 just general definitions. The burden of proof
12 however is the petitioner has that burden in
13 this case as a petitioner attempting to claim
14 an exemption. And therefore to the extent that
15 the Court is lacking evidence to establish
16 whether a piece is exempt or not, that burden
17 fell on the petitioner. And if the Court is
18 lacking that evidence then that is a failure on
19 the petitioner's case.

20 **THE COURT:** I agree with you on that. In the dual
21 use area I don't think my approach was correct
22 on -- where you argued that I -- you or Mr.
23 Cartin argued that I shifted the burden of
24 proof. I do see your point on that. Is that
25 what you're discussing right now?



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1 **MR. KOZLAREK:** Correct, Your Honor.

2 **THE COURT:** All right. Anything else?

3 **MR. KOZLAREK:** No, Your Honor. Thank you.

4 **THE COURT:** All right. Let me see. Let me get you
5 off the spotlight, Mr. Kozlarek. All right.
6 Anybody -- anything else before we go?

7 **MR. ANTLEY:** Yes, sir.

8 **THE COURT:** Oh, go ahead, Mr. Antley.

9 **ORAL ARGUMENTS - MR. ANTLEY:**

10 **MR. ANTLEY:** The purpose of the Department's
11 response in opposition to petitioner's motion
12 for reconsideration was to adopt some of the
13 arguments raised -- adopt only some of the
14 arguments raised by the County. It was never
15 the Department's intent to adopt any tone,
16 particularly the arguments that tax exemptions
17 are construed strictly against the tax payer,
18 that the burden of proof is on the petitioner,
19 that the claimed property was not facilities or
20 equipment of an industrial plant, and that the
21 -- an interpretation to include a
22 transportation company would broaden the
23 statute beyond the intent of the legislature.
24 So I expect in the future I will file responses
25 without adopting other motions.



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1 **THE COURT:** Or maybe just a little more carefully.

2 **MR. ANTLEY:** Yes. And the only additional point I
3 would raise that I did not see raised in the
4 other motions was just that it seemed the
5 motion for reconsideration hinted that the dual
6 purpose provision of the pollution control
7 exemption was beyond the constitutional -- the
8 language in the Constitution. And I just
9 wanted to note that a facial challenge to the
10 Constitutionality of a statute cannot be
11 brought at the Administrative Law Court.

12 **THE COURT:** Yeah, you didn't have to worry about
13 that one. I've got that one figured out.

14 **MR. ANTLEY:** I figured.

15 **THE COURT:** All right.

16 **ORAL ARGUMENTS - MR. MAYBANK (CONT.):**

17 **MR. MAYBANK:** If I could just bring up one totally
18 unrelated point. There was a reference to ex
19 parte communication with your clerk. We had
20 never considered it to be a problem to have an
21 ex parte communication with a clerk relating
22 purely to scheduling. So for example if I lost
23 the phone number ---

24 **THE COURT:** Mr. Maybank?

25 **MR. MAYBANK:** Uh-huh?



1 **THE COURT:** Hold on a second. You can go read the
2 rules. That is considered ex parte
3 communication. Now there is acceptable ex
4 parte communication and if it's only on a
5 matter of scheduling and there's three other
6 requisites for emergency matters and one other,
7 then it's still ex parte communication. It's
8 just whether it's improper ex parte
9 communication. But it's ex parte communication
10 of which I have to acknowledge and to notify
11 the parties properly and give the parties a
12 chance to respond. And that's something I did
13 and I think I did it in -- did I do it in the
14 Scarla (ph) presentation?

15 **MS. BUCKNER:** Uh-huh.

16 **THE COURT:** So if you go and watch the Scarla (ph)
17 presentation, I went to the specific rules that
18 bind the judges. Because I think lawyers miss
19 that. You need to understand how we have to
20 look at ex parte communication and then from
21 that perspective understand it better. So on
22 one hand you're not correct that it's not ex
23 parte communication. On the other hand you can
24 engage in ex parte communication that is still
25 proper. But it places me in a position to



1 respond to that ex parte communication in a
2 proper fashion. And it's -- personally I'd
3 just prefer y'all to copy all sides. But I'm
4 not finding that Mr. Kozlarek did anything
5 wrong with that ex parte communication. So is
6 that clear for everybody? Mr. Maybank, I
7 didn't hear you.

8 **MR. MAYBANK:** It is.

9 **THE COURT:** Okay.

10 **MR. MAYBANK:** The example I was going to use, if I
11 lost the phone number for the call-in, you
12 know, emailing her and not CCing everybody, is
13 that something I shouldn't do or I guess the
14 prudent thing to do would be to CC everybody
15 even though it's just my little ---

16 **THE COURT:** Well some of these things get to be so
17 minor. Your example would be one that, you
18 know, under the rules I got a responsibility to
19 even bring that up. If it involves a
20 substantive matter or a matter of the merits.
21 So I would have to bring that to the attention,
22 I know. I'd have to go look at the rule again
23 about whether it's the little minor issues.
24 But you know, this is a good discussion to
25 have. By me naming the communication what it



1 is, I am not casting dispersions upon it one
2 way or the other. But I am going to properly
3 name the communication, okay? 'Cause whatever
4 you do that is ex parte is ex parte
5 communication. Takes us back to us looking at
6 the meaning of the definition -- the definition
7 of these terms. Okay?

8 **MR. MAYBANK:** Thank you.

9 **THE COURT:** So the coatings and the cathodic
10 protection, this is a question my law clerk has
11 for us, were both installed in 1962? And in
12 asking that question, I don't think they were
13 because I don't think the cathodic protection
14 system was available in 1962.

15 **MR. MAYBANK:** That's correct, Your Honor. I do not
16 believe the cathodic protection was installed
17 in 1962, it came later.

18 **THE COURT:** Okay. Is that the understanding of all
19 the other parties?

20 **MR. CARTIN:** Your Honor, I'm feverishly looking in
21 the 30(b)6. I thought it was.

22 **THE COURT:** Well I don't see -- Mr. Cartin, my
23 struggle -- that's why I said, this all got
24 confusing. If y'all go back and look at the
25 testimony you'll actually see what I'm talking



1 about where the witness in the court referred
2 to the pipe coatings as cathodic protection.
3 But if it didn't exist in 1962 I don't know how
4 it could be installed in 1962.

5 **MR. MAYBANK:** Mr. Cartin is furiously looking.

6 **MR. ANTLEY:** I'm looking at the 30(b)6 definition
7 and it looks like -- sorry, deposition. And on
8 page 290, line 15 there's a question. Okay,
9 what about cathodic protection? And on line 16
10 the answer says, we have always had cathodic
11 protection on our system.

12 **MR. CARTIN:** And in addition to that on page 263 at
13 around line 17 through 19 there's the
14 statement, and cathodic protection has always
15 been on our system.

16 **THE COURT:** See, there's the problem though. When I
17 was looking at the transcript, cathodic
18 protection by at least one witness was
19 referenced involving the pipeline coatings.
20 And that's, you know, I understand what y'all
21 are telling me now, but I can tell y'all the
22 record is a little convoluted on all this, Mr.
23 Cartin. 'Cause -- or do you actually think
24 that what exists now with the electrodes, the
25 rectifiers and all that, that that was in place



1 in 1962?

2 **MR. CARTIN:** I believe so. Now the specific
3 component parts may be different just as
4 technology changes over the years. But the
5 basics of the cathodic protection, I think that
6 was established at least in the 30(b)6, and
7 it's our failing for not brining that out more
8 clearly I think to show that. And I'm happy to
9 provide supplemental citations to the 30(b)6 to
10 sort of tease out whether it's there or not,
11 tease out the question that the Court's asked.

12 **THE COURT:** So you're not trying to supplement the
13 record, you're just saying that you can
14 supplement the citations to ---

15 **MR. CARTIN:** Yes, Your Honor. More drawing
16 attention to evidence that's already in the
17 record.

18 **THE COURT:** Does anybody object to that?

19 **MR. MAYBANK:** We don't, Your Honor.

20 **MR. ANTLEY:** No, Your Honor.

21 **MR. KOZLAREK:** No objection.

22 **THE COURT:** All right. Well then I'll just give all
23 of y'all five days to submit additional
24 citations.

25 **MR. MAYBANK:** And it's limited to that one ---



1 **THE COURT:** And I can tell y'all, y'all need to look
2 at the record too because what you're saying
3 contradicts the testimony of the hearing. So
4 if y'all want to tease this out, please. I'm
5 not going to say, good luck. But I would love
6 for you to explain it to me. But I think it
7 did get convoluted. Okay.

8 **MR. CARTIN:** Thank you, Your Honor.

9 **THE COURT:** All right. Well with that said, thank
10 y'all for your time.

11 **(There being nothing further, the administrative**
12 **hearing concluded at 10:39 a.m.)**

