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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Administrative Law Judge

Opinion No. 6072 (S.C. Ct. App. filed July 17, 2024)

Colonial Pipeline Company Petitioner,

v.

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

**AIKEN COUNTY’S AND LAURENS COUNTY’S
RETURN TO PETITION FOR WRIT OF CERTIORARI**

Walter H. Cartin (SC Bar #78405)
J. Evan Phillips (SC Bar #103679)
PARKER POE ADAMS & BERNSTEIN LLP
1221 Main Street, Suite 1100
Columbia, South Carolina 29201
(803) 255-8000
waltcartin@parkerpoe.com
evanphillips@parkerpoe.com

J. Madison T. Felder (SC Bar #100606)
PARKER POE ADAMS & BERNSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
madisonfelder@parkerpoe.com

*Attorneys for Respondents Aiken County and
Laurens County*

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QUESTION PRESENTED

- I. Did the Court of Appeals correctly hold that Colonial’s pipeline operation was not an “industrial plant” as used in Section 12-37-220(A)(8) of the South Carolina Code?

INTRODUCTION

The sole issue is whether the Court of Appeals correctly determined that Colonial Pipeline Company’s (“Colonial”) pipeline is not an “industrial plant,” as that term is used in Section 12-37-220(A)(8) of the South Carolina Code (the “Exemption”). Colonial has repeatedly conceded that it is not a manufacturer, does not engage in any production, and does not even refine the petroleum products that it transports. Yet, Colonial argues its pipeline constitutes an “industrial plant” and it is, thus, entitled to claim the Exemption for its assets capable of controlling pollution.

To arrive at this conclusion, Colonial does not put forth one proposed meaning of this term. Instead, Colonial repeatedly misrepresents the Court of Appeals’ decision by stating that the Court of Appeals defined “industrial plant” to include only manufacturers.¹ This is not true. Rather, the Court of Appeals correctly concluded the Exemption’s use of “industrial plant” necessarily required that a company’s facilities engage in production or output activities. Applying this plain, ordinary meaning of “industrial plant,” the Court of Appeals also correctly concluded that Colonial, a transportation company that does not manufacture, produce, or refine a single product, is not entitled to the Exemption.

The plain language of the Exemption mandates this conclusion. The Exemption is available only to “industrial plants,” expressly references “manufacturers,” and identifies a “greige mill” as an example of a qualifying facility. Additionally, for equipment that serves a dual purpose of production and controlling pollution, the Exemption expressly limits the eligible value to the difference in cost between the equipment at issue and equipment with similar “production capacity

¹ Colonial also incorrectly states that the term manufacturer “appears nowhere in the language of the Exemption.” *Compare* Pet. at 5 *with* S.C. Code Ann. § 12-37-220(A)(8).

or capability” that is unable to control pollution. Colonial ignores all of these statutory terms, hyper focuses on the one word “company” within the Exemption’s text, and points to a number of unrelated, irrelevant statutes and cases to advance its argument that a transportation pipeline constitutes an “industrial plant.” Colonial’s proposed interpretation is a quintessential example of a forced construction that improperly expands a statute’s application.

If Colonial’s proposed interpretation of the Exemption is adopted, then every single business in South Carolina that owns pollution control equipment would be entitled to claim the Exemption.² The Court of Appeals’ interpretation, on the other hand, properly applies the Exemption to only those companies that operate “industrial plants.” This would include manufacturers, but it would also include a number of other substantive producers, such as a nuclear power plant or an oil refinery. The Court of Appeals’ interpretation gives effect to the plain, ordinary meaning of every statutory term, harmonizes the statutory language while strictly construing it against the claimed exemption, and applies the Exemption to only those businesses contemplated by the statutory text.

For these reasons, and as explained below, the Court of Appeals’ decision is correct. Colonial’s petition must be denied.

COUNTER-STATEMENT OF THE CASE

I. RELEVANT PROCEDURAL HISTORY

This case arises from Colonial’s 2017 and 2018 applications for a property tax exemption on certain of its assets used for pollution control purposes pursuant to the Exemption. (R. 1992 & 2464). In response to both applications, and pursuant to the Exemption’s requirements, the Department forwarded Colonial’s applications to the South Carolina Department of Health and

² Indeed, Colonial is ultimately asking this Court to affirm the ALC’s Amended Final Order, which defined “industrial plant” as “the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business that uses systemic labor for some useful purpose.” (R. 104). The number of businesses that would qualify as an “industrial plant” under this definition is virtually limitless.

Environmental Control (“DHEC”) and requested that DHEC furnish the Department with a detailed listing of the property that was pollution control property. (R. 2464). DHEC responded to both requests by informing the Department that federal agencies like the United States Department of Transportation regulated pipelines and that DHEC lacked the authority to permit, inspect, or enforce Colonial’s pipeline operations. (R. 2464–65).

On November 19, 2019, the Department issued a department determination denying Colonial’s exemption applications for tax years 2017 and 2018 on the basis that Colonial’s pipeline did not constitute an “industrial plant.” (R. 2465). On December 5, 2018, Colonial commenced this proceeding by filing a request for a contested case hearing with the ALC. (R. 2465).

A contested case hearing on the merits was held before the ALC on August 4–5, 2020. The ALC issued a Final Order on December 1, 2020, in which it concluded that although Colonial did not create or produce any products, its pipeline nevertheless constituted an “industrial plant” under the Exemption. The ALC did, however, conclude that Colonial was not entitled to receive the Exemption for assets used in Colonial’s business if there was no comparable asset that was not capable of controlling pollution. (R. 0078-79). Following the issuance of the Final Order, all parties filed Motions for Reconsideration, and on February 9, 2021, the ALC issued its Amended Final Order. In the Amended Final Order, the ALC again held that Colonial’s pipeline operation was an “industrial plant” under the Exemption but decided that all of Colonial’s claimed assets were eligible for the Exemption even though those assets were not used in production. (R. 111).

In response to the Amended Final Order, the Counties³ and the Department timely filed notices of appeal. The Court of Appeals held oral argument on March 4, 2024. After oral argument, the Court of Appeals reversed the ALC’s decision, and held that because Colonial’s pipeline

³ Abbeville County, Anderson County, Greenville County, Aiken County, Laurens County, and York County are, collectively, the “Counties.”

operation did not create or produce anything, Colonial’s pipeline did not constitute an “industrial plant” and, therefore, none of its assets qualified for the Exemption. Colonial now seeks a writ of certiorari to review the Court of Appeals’ decision.

II. RELEVANT FACTS

A. Overview of Colonial’s Operations and Infrastructure

First and foremost, Colonial is a transportation company. (R. 1485).⁴ All of Colonial’s South Carolina property is assessed at the transportation company ratio of 9.5%. (R. 1492). Colonial does not make or refine any petroleum products in South Carolina. (R. 1486 & 1562). Rather, Colonial receives already refined petroleum products from approximately 30 refineries in the Gulf Coast region of the United States that it transports for its customers. (R. 1562). Colonial’s main competitors, both nationally and in South Carolina, are transportation companies that move refined petroleum products through other means, such as trucks, railroads, and barges. (R. 1535).

The overwhelming majority of Colonial’s pipeline is laid over agriculturally zoned property, and only a very small portion is located in industrial zoned property. (R. 1496 & 1916). All of Colonial’s pipelines are buried between four and five feet below ground. (R. 1544). Thus, an observer on the ground would not be able to see the pipeline itself, although small pipeline markers would be visible at certain levels. (R. 1610).

In addition to its South Carolina pipelines, Colonial also has two tank farms. (R. 1539). Each tank farm includes equipment and infrastructure aimed at transporting the product. (R. 1554–55). The two tank farms receive petroleum products into tanks from the pipelines and then the products are delivered out from the tanks to multiple delivery lines to customers. (R. 1545). Colonial also provides petroleum storage services for third parties. (R. 1551). Additionally, truck

⁴ Colonial concedes this characterization of its operations. *See* Pet. at 6 (“The question before the Court of Appeals was: Is a transportation facility . . . an ‘industrial plant?’”).

terminals, which are owned by third parties, are strategically located close to the tank farm facilities to facilitate transportation of the product to Colonial's customers. (R. 1546). Delivery lines⁵ from Colonial's facilities deliver the product to individual truck terminals where the product is ultimately delivered to Colonial's customers. (R. 1553–54).

Colonial transports multiple products back-to-back through the pipeline, which results in some mixing of the products where they interface to create a fluid called "Transmix."⁶ (R. 1567–68). If Colonial only transported one product at a time in its pipeline, it would not generate any Transmix. (R. 1608–09). Transmix does not meet the refined petroleum product specifications that can be sold for use. (R. 1626–27). The total amount of Transmix moved through the pipeline would account for around only 15–20 minutes of flow over a span of five days. (R. 1574).

There are three ways to handle Transmix. (R. 1590). First, certain Transmix can be re-sold as is. (R. 1590). Second, Transmix can be injected in smaller quantities back into the line so long as it does not adulterate the other products. (R. 1590). Third, Transmix that cannot be either sold as is or injected back into the line is placed on trucks and shipped to a separate, independent Transmix processor to be separated into saleable products. (R. 1590). Importantly, Colonial does not do any processing itself, and there is no evidence that any processing occurs using any of the property involved in this matter (or even in the State of South Carolina).

Colonial also has to manage the movement of product through its pipeline. To do so, Colonial adds Drag Reducing Agents ("DRA") to the product as it is transported, which reduces the amount of friction loss and allows higher flow rates through the pipeline. (R. 1592–93). DRA is the functional equivalent to a lubricant and injecting it into the pipeline does not create anything new.

⁵ A delivery line is simply "that last bit of pipe that goes directly to a single terminal." (R. 1553).

⁶ When one refined petroleum product interfaces with another refined petroleum product, the products mix together to create a fluid called "Transmix." (R. 2462).

Colonial must also remove the water that settles at the bottom of its tanks, which occurs because the water is heavier than the transported petroleum products. (R. 1597 & 1600). This water is referred to as “sting.” (R. 1600). The actual process of removing sting is very simple. It involves nothing more than draining water. (R. 1601). The sting simply flows out of the pipe at the bottom of the tank. (R. 1599). Colonial collects the sting and provides it to a separate company that Colonial pays to dispose of the waste product. (R. 1601).

B. Colonial’s Oversight of Operations

Colonial does not refer to any of its property as a “plant,” and it does not employ any employees classified as “plant managers.” (R. 1603). The main pipelines are operated from Alpharetta, Georgia. (R. 1559–60). The Alpharetta office controls flow rates and pressure in the lines. (R. 1559–60). Although Colonial employs a number of South Carolina based employees, “at any given time, the vast majority of the pipeline probably doesn’t have somebody physically with it.” (R. 1620–21).

Colonial’s pipeline is monitored, at various intervals, both visually and mechanically. Mechanically, Colonial’s control room remotely monitors the pipeline from its Alpharetta office. (R. 1694). Visual and physical inspections are far less frequent. Every two weeks, Colonial conducts an aerial inspection of the pipeline corridor by flying over the corridor in a plane. (R. 1682). Once a year, Colonial mows the pipeline right of way and clears debris from the right of way. (R. 1684). Right of way inspectors inspect the corridor periodically to ensure there are no encroachments on the pipeline, and they also conduct flooding and erosion monitoring to ensure the pipeline has not become exposed. (R. 1687–90).

STANDARD OF REVIEW

“Determining the proper interpretation of a statute is a question of law, and [an appellate court] reviews questions of law de novo.” *Town of Summerville v. City of North Charleston*, 378

S.C. 107, 110, 662 S.E.2d 40, 41 (2008). “The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.” *Home Med. Sys., Inc. v. S.C. Dep’t of Revenue*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) (citing *TNS Mills, Inc. v. S.C. Dep’t of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998)). In other words, a tax exemption statute may “not be strained or liberally construed in the taxpayer’s favor.” *Southeastern-Kusan, Inc. v. S.C. Tax Comm’n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). Therefore, the burden is on the taxpayer to prove whether it is entitled to an exemption by bringing itself clearly within the conditions imposed by the statute. *TNS Mills, Inc.*, 331 S.C. at 618, 503 S.E.2d at 475 (citing *York Cty. Fair Assoc. v. S.C. Tax Comm’n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)).

ARGUMENTS

I. THE COURT OF APPEALS CORRECTLY HELD THAT COLONIAL’S PIPELINE IS NOT AN INDUSTRIAL PLANT AS USED IN THE EXEMPTION.

The vast majority, if not all, of the arguments set forth in Colonial’s petition are based on the false premise that the Court of Appeals limited the Exemption’s use of “industrial plant” to only manufactures. *Id.* at p. 5. However, contrary to Colonial’s repeated misrepresentations,⁷ the Court of Appeals made no such ruling. Rather, the Court of Appeals held the Exemption’s use of “industrial plant” necessarily “contemplates some production or output.” *Colonial Pipeline Co. v. S.C. Dep’t of Rev.*, 443 S.C. 448, 461, 905 S.E.2d 129, 136 (2024); *see also id.* at 457–58, 905 S.E.2d at 134 (agreeing with the Department’s position that “the exemption applies only to manufacturers **or other entities engaged in production**”) (emphasis added). Specifically, the Court of Appeals concluded that the “plain and ordinary meaning” of the term “industrial plant”

⁷ Despite the fact that the Court of Appeals’ decision did **not** hold that the Exemption was limited to only manufacturers, Colonial misstates this position no less than 10 times throughout its petition. Pet. at 3, 5, 10, 11, 13, 14, 15, 17, & 19.

as used in the Exemption is “any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.” *Id.* at 461, 905 S.E.2d at 136.

Because the Record establishes that Colonial does not engage in any production or output, the Court of Appeals concluded that Colonial’s pipeline did not constitute an “industrial plant” as used in the Exemption. Accordingly, the Court of Appeals reversed the ALC’s decision and held that Colonial was not entitled to the Exemption for any of its assets. The Court of Appeals’ decision was correct. Colonial’s petition must be denied.

A. The Exemption.

The Exemption has its basis in both the South Carolina Constitution and the South Carolina Code. The South Carolina Constitution provides that “[t]here shall be exempt from ad valorem taxation . . . (h) **all facilities or equipment of industrial plants** which are designed for the elimination, mitigation, prevention, treatment, abatement or control of water, air or noise pollution.” S.C. CONST. art. X, § 3(h) (emphasis added). Section 12-37-220(A)(8) imposes additional requirements in order for a taxpayer to receive the Exemption. In full, section 12-37-22(A)(8) states the following:

Pursuant to the provisions of Section 3, Article X of the State Constitution, and subject to the provisions of Section 12-4-720, there is exempt from ad valorem taxation: . . . (8) **all facilities or equipment of industrial plants which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external, required by state or federal government and used in the conduct of their business.** At the request of the Department of Revenue, [DHEC] shall investigate the property of **any manufacturer or company** eligible for the exemption to determine the portion of the property that qualifies as pollution control property. Upon investigation of the property, the [DHEC] shall furnish the Department of Revenue with a detailed listing of the property that qualifies as pollution control property. **For equipment that serves a dual purpose of production and pollution control, the value eligible for the ad valorem exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control**

pollution.⁸ For the purposes of this item, twenty percent of the cost of any piece of machinery and equipment placed in service in a greige mill qualifies as internal air and noise pollution control property and is exempt from property taxes. “Greige mill” means all textile processes from opening through fabric formation before dyeing and finishing.

S.C. Code Ann. § 12-37-220(A)(8) (emphasis added).

The term “industrial plant” is not defined in the Exemption or any related statute (or any other South Carolina law). When statutory terms are undefined, South Carolina appellate courts “have looked to the usual dictionary meaning to supply its meaning.” *Hock RH, LLC*, 423 S.C. 208, 213, 813 S.E.2d 540, 542 (Ct. App. 2018) (quoting *Lee v. Thermal Eng’g Corp.* 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002)). Based on the primary dictionary definitions of “industry,” “industrial,” and “plant,” the plain and ordinary meaning of “industrial plant” as used in the Exemption must include an element of production or output.⁹

⁸ This provision of the Exemption is referred to herein as the “dual purpose provision.”

⁹ Merriam-Webster defines “industrial” as “of or relating to industry.” *Industrial*, Merriam-Webster’s Online Dictionary, <https://www.merriam-webster.com/dictionary/industrial> (last visited May 27, 2021). “Industry” is defined as follows:

- a : **manufacturing activity** as a whole
// the nation’s *industry*
- b : a distinct group of productive or profit-making enterprises
// the banking industry
- c : a department or branch of a craft, art, business, or **manufacturer** *especially* : one that employs a large personnel and capital especially in **manufacturing**
- d : systematic labor especially for some useful purpose or the **creation of something of value.**

Industry, Merriam-Webster’s Online Dictionary, <https://www.merriam-webster.com/dictionary/industry> (last visited May 26, 2021) (bold emphasis added). Merriam-Webster defines “plant” as follows:

- a : the land, building, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business
- b : a factory or workshop for the **manufacture of a particular product**
also : POWER PLANT
- c : the total facilities available for **production** or service
- d : the buildings and other physical equipment of an institution.

Plant, Merriam-Webster’s Online Dictionary, <https://www.merriam-webster.com/dictionary/plant> (last visited May 26, 2020) (bold emphasis added)).

B. The Remainder of the Exemption’s Text Supports the Conclusion that Colonial’s Pipeline is Not an Industrial Plant.

Although ignored by Colonial, the statutory text of the Exemption provides further support that the Court of Appeals correctly concluded the meaning of “industrial plant” requires that a facility engage in production or output activities. First, the Exemption’s text indicates that a greige mill is an example of an “industrial plant” and that manufacturers are entitled to the Exemption. *See* S.C. Code Ann. § 12-37-220(A)(8). Second, the dual purpose provision of the Exemption expressly references and, thus, contemplates that the equipment at issue will be involved in production activities. *See id.*

The General Assembly’s inclusion of a greige mill¹⁰ as an example of an “industrial plant” and the explicit reference to manufacturers as qualifying entities is strong evidence that General Assembly intended for an “industrial plant” to engage in production activities. Under the doctrine of *noscitur a sociis*, the meaning of “industrial plant” may be ascertained by reference to associated words in the same statute, such as a greige mill and a manufacturer. *See Southern Mut. Church Ins. Co. v. S.C. Windstorm and Hail Underwriting Ass’n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991) (“Clearly, words in a statute must be construed in context. According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.”) (internal citation omitted).¹¹

Additionally, under the doctrine of *ejusdem generis*, when the General Assembly uses general words (i.e., industrial plant) along with words of particular and specific meaning (i.e., greige mill and manufacturer), “the general words are construed to embrace only persons or things

¹⁰ A greige mill is a type of textile mill where raw material is manufactured into an unfinished product. *See* S.C. Code Ann. § 12-37-220(A)(8) (“‘Greige mill’ means all textile processes from opening through fabric formation before dyeing and finishing.”).

¹¹ *See also Hudson ex rel. Hudson v. Lancaster Convalescent Center*, 407 S.C. 112, 124, 754 S.E.2d 486, 492 (2014); *Eagle Container Co., LLC v. Cty. of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895–96 (2008).

of the same general kind or class of those enumerated.” *Williams v. Quest Diagnostics, Inc.*, 423 S.C. 547, 550, 816 S.E.2d 564, 565 (2018); *see also Sheppard v. City of Orangeburg*, 314 S.C. 240, 243, 442 S.E.2d 601, 603 (1994);¹² *Swanigan v. American Nat. Red Cross*, 313 S.C. 416, 419, 438 S.E.2d 251, 252 (1993). Accordingly, under the doctrines of *noscitur a sociis* and *ejusdem generis*, the Court of Appeals properly interpreted “industrial plant” to be limited to facilities that are similar in nature to a greige mill, such as manufacturers and other entities that engage in substantive production activities.

The Exemption also states that for “equipment that serves a dual purpose of **production** and pollution control, the value eligible for the ad valorem exemption is the difference in cost between this equipment and equipment of similar **production capacity or capability** without the ability to control pollution.” S.C. Code Ann. § 12-37-220(A)(8) (emphasis added). This statutory instruction regarding how to value dual purpose property assumes that all property at issue is either directly involved in *production* or is solely related to pollution control. Thus, this provision is further context that the Exemption applies only to companies that are engaged in substantive production activities.

¹² For example, in *Sheppard*, this Court was tasked with determining whether cable television constituted a “public utility” for purposes of a constitutional provision that permitted a municipality to acquire or purchase the utility. *See generally* 314 S.C. 240, 442 S.E.2d 601. In that case, the constitutional provision at issue stated: “Any incorporated municipality may, . . . operate gas, water, sewer, electric, transportation, or *other public utility* systems and plants. . . .” *Id.* at 243, 442 S.E.2d at 603 (quoting S.C. CONST. art. VIII, § 16) (emphasis in original). When construing whether a cable television provider was considered an “other public utility,” this Court concluded:

The enumerated utilities in article VIII, § 16 are of the same general kind of class of utilities that provide essential services to the public. Therefore, the words ‘other public utility’ in article VIII, § 16 can only encompass utilities that provide essential services to the public. We do not believe that the value and necessity of cable television is so self-evident that this court should declare that a cable television system provides an essential service.

Id. at 243–44, 442 S.E.2d at 603. Application of this principle to this case results in the conclusion that an “industrial plant” only embraces facilities similar in type to those referenced in Section 12-37-220(A)(8) (*e.g.*, a manufacturer, greige mill, or another facility that actively engages in production or output).

Rather than grapple with the legal impact of the Exemption’s specific reference to a greige mill, manufacturers, or the dual purpose provision, Colonial latches on to the one word “company” within the Exemption’s text to show that it qualifies. Specifically, Colonial argues the Exemption is not limited to companies who engage in production or output activities because the statute says “manufacturer *or company*.” Pet. at 12 (emphasis in original). However, it is unreasonable to conclude that the Exemption’s sole use of “or company” is intended to make companies that do not manufacture, produce, or process anything eligible for the Exemption. Colonial’s proposed meaning of “company” improperly focuses on one statutory term and renders a number of the Exemption’s terms entirely meaningless. *Centex Intern, Inc.* 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (“[W]e read the statute as a whole and should not concentrate on isolated phrases within a statute.”) (internal quotations omitted); *see also Duke Energy Corp. v. S.C. Dep’t of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016).

Specifically, the Exemption states that DHEC, at the request of the Department, is required to “investigate the property of any **manufacturer or company** eligible for the exemption.” S.C. Code Ann. 12-37-220(A)(8) (emphasis added). Every manufacturer is a company. Thus, the term “manufacturer” must inform the term “company” or there would have been no reason for the General Assembly to have used “manufacturer.” *See Gordon v. Phillips Utils.*, 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005); *see also Duke Power Co. v. Laurens Elec. Co-op., Inc.*, 344 S.C. 101, 106, 543 S.E.2d 560, 563 (Ct. App. 2000) (“When construing a statute, we must presume the legislature did not intend a futile act.”).

The more reasonable explanation is the word “company” as used in the Exemption refers to companies that do not specifically engage in manufacturing, but still engage in substantive production activities, such as turning raw goods into useable products. “Company” could also simply refer to a parent company of a manufacturer that has the right to claim the Exemption on

the behalf of a wholly owned subsidiary. Unlike Colonial’s proposed interpretation, neither of these interpretations of the term “company” expand the Exemption’s application to *all* companies that own property in South Carolina. Rather, this interpretation assigns to each statutory term its plain, ordinary meaning and gives each statutory term full effect. Therefore, Colonial’s proposed interpretation must be rejected, and its petition must be denied.

C. Colonial’s Pipeline is Not an Industrial Plant Because Colonial Does Not Engage in Any Production or Output.

Despite Colonial’s assertions that it engages in “production activities,” *see* Pet. at 6 & 8–9, Colonial has repeatedly conceded that it does not engage in production. Colonial’s Final Br. 29 (“All parties agree that Colonial is not engaged in production.”); *id.* at 32 (“Colonial is not a manufacturer, and engages in no production.”); *id.* (“Colonial performs no ‘production’ as it is a transportation company.”); *see also* Colonial’s Mot. Reconsid. 6 (R. 762) (“Colonial . . . engages in no production.”); *id.* at 8 (R. 764) (“Colonial performs no ‘production’ as it is a transportation company.”). Therefore, Colonial should not be permitted to now argue that it engages in production, and the Court should reject this line of reasoning.

Colonial also argues, seemingly in the alternative, that if its pipeline does not engage in production, it does engage in “output” sufficient for it to qualify as an “industrial plant.” Pet. at 8–9. However, Colonial again misconstrues the plain, ordinary meaning of a term to suggest that by transporting finished products for distribution it engages in “output.” Output, just like production, requires the creation of something new. *See* OUTPUT, Black’s Law Dictionary (12th ed. 2024) (“**1.** The quantity of goods or work **produced** by a person, machine, factor, business, etc. **2.** The activity or process of **producing goods or materials.** **3.** The amount of electricity **produced** by a generator.”) (emphasis added). It is indisputable that Colonial does not produce or create anything new, and none of these definitions contemplate transporting an already finished product to an end user. Colonial does not engage in “output.”

Nevertheless, Colonial attempts to show that its pipeline engages in production and/or output by asserting that it processes Transmix, injects DRA into the pipeline, removes “sting” from its tanks, and “regrades” the fuel. Pet. at 8–9. These are not production or output activities. As Colonial previously conceded, “production” requires taking one thing and turning it into something new.¹³ None of these functions creates anything new.

First, Colonial’s handling of Transmix is not a production or output activity. Transmix is the automatic result of two different petroleum products coming into contact with each other inside the pipeline (R. 1568). Although Colonial now claims, without any citation to the Record, that it “isolates the product and then blends it into a sellable product,” Pet. at 8, and “processes and sells the transmix,” *id.* at 9–10, there is no evidence in the Record to support these statements. Rather, Colonial either (1) sells the Transmix “as is” to customers, (R.1590); (2) reinjects the Transmix back into the pipeline so long as “the specifications of the product are not being impacted”—i.e., so long as it does not create anything new (R. 1589–90); or (3) sells the Transmix to third parties who take it away from Colonial and process it somewhere else. (R. 1589) (“We actually enter into contractual agreements with parties to come in to remove the transmix through trucks and take it off and to reprocess it.”).

Next, Colonial’s injection of DRA into the pipeline is also not a production or output activity. There is no evidence that DRA enhanced or even changed the nature of the products Colonial transports. DRA simply cuts down friction loss and allows Colonial to move product faster so that it can generate more revenue. (R. 1592–93). DRA is merely the functional equivalent

¹³ See Colonial’s Final Br. 30–31 (defining “production” as follows: (1) “[t]he action of making or manufacturing from components or raw materials, or the process of being so manufactured”; (2) “the act or process of producing”; (3) “the method of turning raw materials or inputs into finished goods or products in a manufacturing process”; (4) “the process of goods being made or manufactured; (5) “the act of producing; creation; manufacture”; and (6) “the process of making, harvesting, or creating something or the amount of something that was made or harvested”).

to a lubricant, and injecting into the pipeline does not create anything new. It is not a production or output activity.

Additionally, the removal of sting is not a production or output activity. Sting is the water that settles to the bottom of Colonial's tanks. (R. 1600–01). All Colonial has to do to remove sting is “[j]ust drain it off.” (R. 1601). Then, “[i]t goes to a hazardous waste material company to deal with it.” (R. 1601). Colonial's removal of sting is the equivalent of taking out the trash. It is not a production or output activity.

Further, regrading fuel is not a production or output activity. As Colonial admits in its petition, regrading is nothing more than “chang[ing] the label of the product.” Pet. at p. 9. And when Colonial's witness was cross-examined further about this issue at the hearing, the witness answered “correct” in response to the Department's question that “the only thing you do is change the label?” (R. 1633). Certainly, the simple act of changing the label of a product does not qualify an operation as an “industrial plant.”

Finally, the fact that Colonial transports 185,000 barrels per day into South Carolina does not change this analysis. The Record is clear that Colonial receives and transports petroleum products that have already been refined by someone else. (R. 1562 & 2462). Simply moving a finished product from one location to another does not equate to engaging in production or output.

D. Other South Carolina Laws Provide Additional Support to the Conclusion that Colonial's Pipeline is Not an Industrial Plant.

As a transportation company, Colonial is not entitled to a property tax exemption that is meant for an entirely different class of taxpayers. The Constitutional taxation structure implies that transportation companies and companies that produce goods are, and should be, treated differently for property tax purposes.

Specifically, the Constitution sets forth the assessment ratios applicable to different classes of property. S.C. CONST. art. X, § 1. Many of these separate classifications are based on the

activities of the property's owner. For instance, manufacturers are to be taxed on an assessment equal to 10.5% of the fair market value of their property. *Id.* art. X, § 1(1). On the other hand, transportation companies are to be taxed on an assessment equal to 9.5% of the fair market value of their property. *Id.* art. X, § 1(2). Although the Constitution does not expressly address the definition of "industrial plant," the categorical segregation between manufacturers and transportation companies for property tax assessment ratios shows that there is a clear delineation between the activities of a transportation company and that of a manufacturer or other company that engages in production activities.

The Department's regulations further suggest that Colonial's property is not part of an "industrial plant." Regulation 117-1700.4 defines "transportation companies" to include "(1) Railroad companies; (2) Pipeline companies; and (3) Express companies." Colonial is clearly a transportation company under the Department's regulations, as well as Colonial's own admissions.

Additionally, Regulation 117-1700.7 defines the term "plant site." It states that "[a] plant site shall consist of all land contiguous to a plant which is related to the overall manufacturing operation." (emphasis added). Because the Department's duly promulgated regulation ties the existence of a plant to manufacturing operation, the pollution control exemption should be applicable only to property that is used in manufacturing or other production. Consequently, a transportation company that is not engaged in either manufacturing or the production of any products is not and should not be eligible for a tax exemption clearly aimed at taxpayers engaged in manufacturing and production activities.

E. The Unrelated Case Law and Statutes Offered by Colonial Do Not Support the Conclusion that Colonial's Pipeline Constitutes an Industrial Plant.

Colonial also offers a number of other cases and statutes to further support its argument that Colonial's pipeline meets the statutory requirements for the Exemption. However, no statute or case cited by Colonial relates, directly or indirectly, to the Exemption. And, as shown below,

no statute or case cited by Colonial supports the conclusion that Colonial’s pipeline is an “industrial plant” or that Colonial qualifies for the Exemption.

1. The South Carolina Cases Cited by Colonial that Use the Term Industrial Plant Do Not Support Colonial’s Position.

Colonial cites to three pre-1950s South Carolina cases that use the term “industrial plant” and claims that “several of the facilities in these cases do not appear to be manufacturers yet were found to be industrial plants.” Pet. at 10. However, the meaning of the term “industrial plant” was not at issue in any of these cases and all of the referenced facilities were engaged in production—a function that Colonial does not perform. If these cases support any position, it is that the plain and ordinary meaning of “industrial plant” is a place where manufacturing or other production activities take place.

The first case cited by Colonial is *Mayfield v. Southern Ry. Co.*, 85 S.C. 165, 67 S.E. 132 (1910). In that case, the term “industrial plant” was used as a shorthand reference for the facilities of a cotton mill. *Id.* The next case cited by Colonial is *Magill v. Southern Ry. Co.*, 95 S.C. 306, 78 S.E. 1033 (1913).¹⁴ In *Magill*, “industrial plant” was also used as a shorthand reference for a brick mill. 95 S.C. 306, 78 S.E. at 1036. The third case cited by Colonial is *Allison v. Ideal Laundry & Cleaners*, 215 S.C. 344, 55 S.E.2d 281. The use of “industrial plant” was, again, a shorthand reference to a cannery and a glass factory.

Under the Court of Appeals’ decision, a cotton mill, a brick mill, a cannery, and a glass factory would all likely qualify as an “industrial plant” for purposes of the Exemption because all are involved in the act of taking raw materials and producing something new. However, that in no way supports a finding that Colonial’s pipeline, which produces nothing and simply transports

¹⁴ The Court in *Magill* also used the term “industrial plant” to reference a cotton mill at issue in *Goodwin v. Atlantic Coast Line R. Co.*, 82 S.C. 321, 64 S.E. 242 (1909). *Compare Magill*, 95 S.C. 306, 78 S.E. at 1036 with *Goodwin*, 82 S.C. 321, 64 S.E. at 243–44.

already finished products, is an “industrial plant” for purposes of the Exemption. If these cases support any position, it is that South Carolina courts understand the plain, ordinary meaning of “industrial plant” to be a place where production occurs.

2. *Meeting the Statutory Definition of “Industrial Facility” Under S.C. Code Ann. § 31-24-110 is Not Relevant to Determining whether Colonial’s Pipeline is an Industrial Plant.*

Colonial argues that the definition for “manufacturing or industrial facility” set forth in Section 31-24-110 is relevant to establishing that Colonial’s pipeline operation is an “industrial plant” pursuant to the Exemption. It is not. First, and most importantly, the term “industrial plant” is not found anywhere within Title 31 of the South Carolina Code.

Second, although Colonial may meet the definition of “manufacturing or industrial facility” under Section 31-24-110, so too does a sightseeing plane, train, boat, and bus.¹⁵ However, it would be absurd to argue that simply because a sightseeing boat business met the statutory definition of “manufacturing or industrial facility” for purposes of being shielded from liability from nuisance lawsuits, that same sightseeing boat also qualified as an “industrial plant” for purposes of the Exemption. *See Duke Energy Corp. v. S.C. Dept. of Revenue*, 415 S.C. 351, 358, 782 S.E.2d 590, 593–94 (2016) (“It is axiomatic that a statute will not be construed to lead to absurd results. All rules of construction are subordinate to that obvious proposition.”).

¹⁵ “Manufacturing or industrial facility” is defined as follows:

[A]ny facility that operates in a manufacturing sector *or* **transportation and warehousing sector**, including, but not limited to, any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment used in manufacturing, processing, **distribution**, warehousing, and technology intensive operations.

S.C. Code Ann. § 31-24-110(C) (emphasis added). “Transportation and warehousing sector” is defined as follows:

[I]ndustries providing transportation of passengers and cargo, warehousing and storage for goods, scenic and sightseeing transportation, and support activities related to modes of transportation by air, rail, water, road, and pipeline.

Id. § 31-24-110(B).

3. *The Sales Tax Exemption for Pollution Control Equipment is Not Limited to Manufacturers but is Limited to Substantive Producers.*

Continuing its misrepresentation that the Court of Appeals' decision limited the term "industrial plant" to include only manufacturers, Colonial argues that "[w]hen the General Assembly intends to limit application of a statute to only manufacturing activities, it says as much" and references the sales tax exemption for pollution control equipment found in Section 12-36-2120(17). Pet. at 11–12. Colonial's argument is not correct. Just like the Exemption, Section 12-36-2120(17) is not limited to manufacturers, but it is limited to companies that actively engage in production or output activities.

Specifically, Section 12-36-2120 exempts for sales tax the "machines used in manufacturing, *processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale.*" S.C. Code Ann. § 12-36-2120 (emphasis added). Section 12-36-2120 is further evidence that both pollution control tax exemptions are intended for companies engaged in either manufacturing *or* other production activities. The Exemption and Section 12-36-2120 show a clear intention by the General Assembly to limit both tax exemptions to the general type of company that takes a product and turns it into something new—not a transportation company that does not produce anything at all.

4. *29 C.F.R. § 1910.106 is Not Instructive and Does Not Define Industrial Plant to Include Pipelines.*

Colonial argues that its pipeline operation "meets C.F.R. § 1910.106's definition of 'industrial plant.'" Pet. at 15. This statement is, again, not correct. First, the term "industrial plant" is not defined anywhere in 29 C.F.R. § 1910. Second, there is no evidence in the Record that this regulation even applies to Colonial's operations. Third, a review of the specific subsection that contains the term "industrial plant" shows that the requirements are applicable to the storage of flammable liquids inside of a building, not Colonial's outdoor tank farms or pipeline. *See* 29 C.F.R.

§ 1910.106; *see also id.* § 1910.106(j) (“Scope. . . . This section does not apply to: (1) Bulk transportation of flammable liquids[.]”).

5. *There is No Conflict Between the Court of Appeal’s Decision and the Federal Clean Water Act, Zoning Ordinances, or the Insurance Industry.*

Colonial argues that by the Court of Appeals deciding to define “industrial plant” to include production or output, this will somehow enable a company that is not a “manufacturer” to argue it is not an “industrial plant,” and is, thus, no longer subject to the Clean Water Act or industrial zoning ordinances. Colonial further argues this will also cause “potential strife” within the insurance industry. Pet. at 16–17. These arguments are not only nonsensical, but none of these issues were previously raised by Colonial.¹⁶ “It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998). Despite the fact that Colonial improperly raises these issues for the first time to this Court, each argument—all of which have no application to Colonial or the Exemption, are entirely speculative, and apply only to some unknown business who may seek to conjure up a novel, irrational legal argument at some point in the future—are addressed in turn.

First, the Court of Appeals’ decision will have absolutely no impact on whether the Clean Water Act applies to Colonial or any other company. Colonial, as a pipeline company, has a separate and distinct NAICS code from manufacturing businesses. *See* NAICS Association, <https://www.naics.com/search-naics-codes-by-industry/> (last visited Oct. 16, 2024) (providing a NACIS code of 486210 for “Pipeline Transportation of Natural Gas” and six-digit NACIS codes beginning in either 31 or 32 for “Manufacturing”). Additionally, the term “industrial plant” is not

¹⁶ To the extent Colonial argues that these issues were raised to the Court of Appeals in Colonial’s Petition for Rehearing, that would not change the analysis of whether the issues were properly before the Court. “The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended. . . .” *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011) (quoting *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001)).

anywhere within the hundreds of specific NAICS codes under the “Manufacturing” industry title. *See id.*, <https://www.naics.com/six-digit-naics/?v=2017&code=31-33> (last visited Oct. 16, 2024) (showing extremely specific NAICS codes for myriad different business types, such as dog and cat food manufacturing, wet corn milling, tortilla manufacturing, breweries, hosiery and sock mills, etc.). Put simply, there is no rationale argument that a company could make as a result of the Court of Appeals’ decision that would change whether that company is or is not subject to the Clean Water Act because of its NAICS code.

Additionally, Colonial argues that “anyone not a manufacturer will now argue it can locate in areas within which local zoning ordinances prohibit industrial activity.” Pet. at 16. Colonial did not cite to any actual zoning ordinance that was limited to only “industrial plants” or “manufacturers,” so it is impossible to meaningfully respond to Colonial’s theoretical argument. However, to the extent Colonial is arguing that it, as a company who is not a manufacturer and does not operate an industrial plant, is entitled to be located within non-industrial zoned property, that is already the case. The overwhelming majority of Colonial’s pipeline is laid over agriculturally zoned property, and only a very small portion of the pipeline is located in industrial zoned property. (R. 1496 & 1916).

Colonial further argues that the Court of Appeals’ decision “will also impact the insurance industry” because “[a]n insured who is not a traditional manufacturer based on its NAICS code will argue the exclusion does not apply to its industrial activity.” Pet. at 17. This is incorrect for the same reasons the Court of Appeals’ decision will have no impact on which companies are subject to the Clean Water Act. What some unknown insurer may or may not argue in the future is also irrelevant to determining what the term “industrial plant” means for purposes of the Exemption.

F. The ALC’s Interpretation of Industrial Plant is a Conclusion of Law, Not a Finding of Fact.

Colonial’s final argument is that the Court of Appeals committed an error by reversing the ALC’s finding of fact “that Colonial was industrial plant” and “[t]hat finding of fact cannot be disturbed on appeal, particularly where those facts are clearly supported by the evidence.” Pet. at 19. This is not correct.¹⁷

The ALC was tasked with interpreting what the statutory term “industrial plant” means in the Exemption. “An issue regarding statutory interpretation is a question of law,” which appellate courts review de novo. *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) (quoting *Univ. of S. California v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).

To be clear, the ALC made the *conclusion of law* that “industrial plant” as used in the Exemption meant “the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or business that uses systemic labor for some useful purpose.” (R. 0104). After constructing an overly broad definition of “industrial plant” that included essentially every single business operating in this State, the ALC then applied certain facts to determine that Colonial’s pipeline operation met that overly broad definition. (R. 0106–08). Notably, however, the ALC did not, because it could not, rely on any findings of fact showing that Colonial engaged in production activities.

Colonial also argues that “[t]here was no conflicting evidence that Colonial’s operation was not an industrial plant” and “not a single witness testified that Colonial’s facilities were not

¹⁷ This argument is not only legally and factually incorrect, but it is the first time it is being asserted by Colonial. Therefore, the issue is not properly before this Court. *See Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 734; *Herron*, 395 S.C. at 466, 719 S.E.2d at 643.

an industrial plant.” Pet. at 18–19. However, what Colonial is actually saying is that no Colonial witness offered any testimony on an issue of law, despite that any such testimony would have been improper. *State v. Commander*, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011) (citing *Dawkins v. Fields*, 354 S.C. 58, 66–67, 580 S.E.2d 433, 437 (2003) (holding that not even an expert witness can properly testify on issues of law). What the term “industrial plant” means in the Exemption is *the* issue of law in this case.

Moreover, Colonial improperly characterizes what the Department “held” with respect to initially granting the Colonial’s 2017 and 2018 applications for the Exemption. Colonial relies on testimony from a Department employee at the division level who incorrectly granted the Exemption for some limited property claimed by Colonia. (R. 2463–64). However, that same witness testified that he never analyzed whether Colonial’s property was an “industrial plant.” (R. 1751). Then, after this initial decision, the Department issued a department determination (i.e., the final agency decision) in which it denied Colonial’s applications for the Exemption and expressly found that Colonial was not an “industrial plant.” (R. 1786). The Department’s final decision, just like the Court of Appeals’ decision, was correct.

CONCLUSION

The Court of Appeals correctly concluded that the Exemption’s use of “industrial plant” necessarily requires that a company’s facility be engaging in production or output activities. The Record is clear that Colonial’s pipeline performs neither of these activities. Accordingly, the Court of Appeals correctly held that Colonial is not entitled to the Exemption. Therefore, Colonial’s petition must be denied.

[Signature Page Follows]

Respectfully submitted,

s/J. Evan Phillips

Walter H. Cartin (SC Bar #78405)
J. Evan Phillips (SC Bar #103679)
PARKER POE ADAMS & BERNSTEIN LLP
1221 Main Street, Suite 1100
Columbia, South Carolina 29201
(803) 255-8000
waltcartin@parkerpoe.com
evanphillips@parkerpoe.com

J. Madison T. Felder (SC Bar #100606)
PARKER POE ADAMS & BERNSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
madisonfelder@parkerpoe.com

*Attorneys for Appellants Aiken County and
Laurens County*

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